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

March 9, 2023

UNITED STATES OF AMERICA, Complainant, v. BRIAN DE JESUS CORRALES-HERNANDEZ Respondent.	))))))))	8 U.S.C. § 1324c Proceeding OCAHO Case No. 2021C00033

Appearances: Joey L. Caccarozzo, Esq., for Complainant
Brian de Jesus Corrales-Hernandez, pro se

MODIFICATION BY THE CHIEF ADMINISTRATIVE HEARING OFFICER OF THE ADMINISTRATIVE LAW JUDGE'S FINAL ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

This case arises under the document fraud provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324c. The United States Department of Homeland Security, Immigration and Customs Enforcement ("DHS" or "Complainant"), filed a complaint against the Respondent on May 19, 2021, charging Respondent with two counts of violating 8 U.S.C. § 1324c. Count I of the complaint alleged that the Respondent violated 8 U.S.C. § 1324c(a)(2) by presenting a fraudulent permanent resident card on March 21, 2013, in order to obtain employment and to complete the employment authorization verification form (Form I-9). The complaint further alleged that Respondent continued working for the employer to whom he presented the fraudulent document until December 2017 when he was terminated due to providing the fraudulent document. Count II of the complaint alleged that the Respondent violated 8 U.S.C. § 1324c(a)(5) by making false statements in an application for adjustment of status he filed in 2018.

On February 9, 2023, Administrative Law Judge (ALJ) Andrea Carroll-Tipton issued an Order on Complainant's Motion for Summary Decision ("Final Order") finding Respondent liable for both violations, assessing a total civil penalty of $888 for the two violations and ordering the Respondent to cease and desist from further violations of 8 U.S.C. §§ 1324c(a)(2) and (5). *See United States v. Corrales-Hernandez*, 17 OCAHO no. 1454b (2023). On February 15, 2023, the Chief Administrative Hearing Officer (CAHO) issued a Notification of Administrative Review ("Notification"), in accordance with 28 C.F.R. § 68.54(a)(2), identifying one issue to be reviewed.

See United States v. Corrales-Hernandez, 17 OCAHO no. 1454c, 4 (2023).

The Notification provided that the parties could submit briefs or other written statements addressing the issue presented within twenty-one days of the date of entry of the ALJ's order. *Id; see also* 28 C.F.R. § 68.54(b)(1) (establishing the twenty-one day deadline for filing briefs related to administrative review). The Notification therefore set March 2, 2023, as the deadline for submitting briefs or other written statements related to the administrative review. *Corrales-Hernandez*, 17 OCAHO no. 1454c, at 4.

I also separately issued an invitation to the public to file amicus briefs. *Id.* The deadline for parties to file amicus briefs was February 27, 2023. OCAHO received one amicus brief in response to this invitation, a Request to Appear as Amicus Curiae and Brief for Amicus Curiae Immigration Reform Law Institute ("Amicus Brief" or "Amicus Br.").[1] As indicated in the Notification, the parties were provided with a copy of the amicus brief and an opportunity to file a response; the deadline for filing responses to the amicus brief was set as March 7, 2023. *Id.* at 4-5. Neither party filed a response to the amicus brief.

On February 28, 2023, OCAHO received from Complainant an Emergency Motion for Extension of Time to File Complainant's Brief in Response to Notification of Administrative Review ("Emergency Motion"). In the Emergency Motion, Complainant requested that the March 2, 2023 deadline for filing briefs be extended by thirty-five days.

Later that same day, February 28, 2023, I issued an Order Granting in Part Complainant's Emergency Motion for Extension of Time, *see United States v. Corrales-Hernandez*, 17 OCAHO no. 1454d, 4-5 (2023), in which I extended the deadline for filing briefs to March 7, 2023.[2]

OCAHO timely received Complainant's Brief in Response to Notification of Administrative Review ("Complainant's Brief" or "C's Br."). Respondent did not file a brief related to this administrative review.

I have reviewed the ALJ's Final Order, the briefs related to administrative review, and all relevant documents in the underlying case record. For the reasons stated below, the ALJ's Final Order will be MODIFIED.

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[1] OCAHO accepted and considered this Amicus Brief and thanks the amicus for its contribution.

[2] The undersigned granted Complainant's request only in part because Complainant did not meet its burden of showing that its request established the undersigned's authority to extend the thirty-day statutory adjudication deadline for administrative review contained in 8 U.S.C. § 1324c(d)(4). *See Corrales-Hernandez*, 17 OCAHO no. 1454d, at 2-4. However, the undersigned did not consider all possible arguments related to an extension of that deadline, because either Complainant did not raise them or the case did not call for their consideration. Thus, for example, the undersigned did not address whether the CAHO possesses the authority to toll the deadline in 8 U.S.C. § 1324c(d)(4) when the last day of that deadline falls on a weekend or federal holiday. *See* 28 C.F.R. § 68.8(a) (noting that OCAHO time computations include the next business day when the last day of a relevant time period falls on a weekend or federal holiday). Similarly, the undersigned also had no occasion to address whether administrative review proceedings under 8 U.S.C. § 1324c may be stayed when such a stay would push a decision beyond the deadline in 8 U.S.C. § 1324c(d)(4). *Cf. Heath v. I-Services, Inc.*, 15 OCAHO no. 1413a, 2 (2022) (noting that the ALJ has inherent authority to stay proceedings); 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.")

II. JURISDICTION AND STANDARD OF REVIEW

The CAHO has discretionary authority to review the ALJ's final order in a case brought under 8 U.S.C. § 1324c. *See* 8 U.S.C. § 1324c(d)(4); 28 C.F.R. § 68.54(a). Under OCAHO's rules, a party may file a written request for administrative review within ten days of the date of entry of the ALJ's final order, or the CAHO may review an ALJ's final order on his or her own initiative by issuing a notification of administrative review within ten days of the date of entry of the ALJ's final order. *See* 28 C.F.R. § 68.54(a)(1)-(2). If administrative review is requested or noticed, the CAHO may enter an order that modifies or vacates the ALJ's order or remands the case for further proceedings within thirty days of the date of entry of the ALJ's order. *See* 8 U.S.C. § 1324c(d)(4); 28 C.F.R. § 68.54(d)(1).

Under the Administrative Procedure Act (APA), which governs OCAHO cases, the reviewing authority in administrative adjudications "has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule." 5 U.S.C. § 557(b). This authorizes the CAHO to apply a *de novo* standard of review to ALJ final orders. *See Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Mfg. Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990). In applying that standard, the CAHO exercises independent judgment and discretion free from ideological or institutional pressure. The CAHO reviews both questions of law and questions of fact *de novo*, although the CAHO should not dismiss an ALJ's findings of fact "cavalierly" and "should accord some degree of consideration of [those findings] depending on the particular circumstances of the case under review." *United States v. Fasakin*, 14 OCAHO no. 1375b, 4 (2021). In conducting this review, "the CAHO must ensure that the ALJ's overall decision is well-reasoned, based on the whole record[,] . . . free from errors of law, and supported by or in accordance with reliable, probative, and substantial evidence contained in the record." *Id.* at 5.

III. BACKGROUND

A. Statutory Provision at Issue, 8 U.S.C. § 1324c(a)(2)

The issue presented in this administrative review relates to the alleged violation in Count I of the complaint, in which DHS charged the Respondent with violating 8 U.S.C. § 1324c(a)(2). That provision provides that it is unlawful for any person or entity knowingly "to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document [(collectively "fraudulent document")] in order to satisfy any requirement of [the INA] or to obtain a benefit under [the INA]." 8 U.S.C. § 1324c(a)(2). In order to establish a violation of § 1324c(a)(2), Complainant must prove the following four elements by a preponderance of the evidence:

(1) that Respondent used, attempted to use, possessed, obtained, accepted, received, or provided a fraudulent document;

(2) with knowledge of the document's fraudulent nature;

(3) after November 29, 1990; and,

(4) for the purpose of satisfying a requirement of the INA or obtaining a benefit under the INA.

See United States v. Rubio-Reyes, 14 OCAHO no. 1349a, 4 (2020); *see also United States v. Zapata-Cosio*, 5 OCAHO no. 822, 774, 782 (1995).

If a violation of 8 U.S.C. § 1324c(a)(2) is established, an order must be issued requiring the violator to cease and desist from the violations at issue and pay a civil penalty. *See* 8 U.S.C. § 1324c(d)(3). Civil penalties for violations of 8 U.S.C. § 1324c are assessed in accordance with the provisions of the relevant regulations, including 8 C.F.R. § 270.3(b)(1)(ii)(A), 8 C.F.R. § 1270.3(b)(1)(ii), 28 C.F.R. § 68.52(e), and 28 C.F.R. § 85.5, though the specific applicable regulatory range depends on when the violation occurred and when it was assessed. *See also Corrales-Hernandez*, 17 OCAHO no. 1454c, at 2 n.2 (discussing the penalty structure for violations of 8 U.S.C. § 1324c).

Considering the relevant regulations together, one of two penalty ranges could apply to the Respondent's violation of 8 U.S.C. § 1324c(a)(2) in this case. If the violation occurred between March 27, 2008, and November 2, 2015, the minimum civil penalty would be $375, and the maximum civil penalty would be $3,200. *See* 28 C.F.R. § 68.52(e)(1)(i); 8 C.F.R. § 270.3(b)(1)(ii)(A). If the violation occurred after November 2, 2015, and was assessed after June 19, 2020, but on or before December 13, 2021, the minimum civil penalty would be $481 and the maximum civil penalty would be $3,855.[3] *See* 28 C.F.R. § 85.5.

B. Positions of the Parties in Proceedings Before the ALJ

The complaint alleged that "[o]n March 21, 2013, the Respondent presented a fraudulent Permanent Resident Card (I-551)" to a human resources officer at Eagle Eye Produce as part of the process of completing a Form I-9. Compl. at 3. DHS also asserted in the complaint that Respondent admitted that he purchased the fraudulent documents at a gas station, and "admitted he used the documents listed on his Form I-9, and signed by the Respondent on March 21, 2013, until he was fired by Eagle Eye Produce in December 2017." Compl. at 3. Accordingly, DHS alleges, the Respondent therefore "had knowledge of the fraudulent nature of the I-551 and Social Security number he used to gain employment with Eagle Eye Produce from March 2013 to December 2017." Compl. at 3-4. The complaint further asserts that "[t]he Respondent admitted he used the fraudulent I-551 and Social Security number as proof of his employment eligibility when filling out the Respondent's Employment Eligibility Verification Form (I-9). The Respondent, therefore, used the fraudulent I-551 document to satisfy the employment eligibility and verification requirements of Section 274A of the Immigration and Nationality Act of 1952 (as amended), 8 U.S.C. § 1324a."[4] Compl. at 4 (citation omitted).

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[3] The date of assessment is the date DHS serves a Notice of Intent to Fine on a respondent. *United States v. Bhattacharya*, 14 OCAHO no. 1380a, 4 (2021). In the instant case, the date of assessment was October 20, 2020. Compl. at 2, Ex. A.

[4] In its Brief on Administrative Review, Complainant reframes this allegation, arguing that the respondent used the fraudulent documents "to obtain an immigration benefit, namely employment," rather than to satisfy an immigration requirement. *See* C's Br. at 8. The Amicus Brief also repeatedly characterizes the use of a fraudulent document to obtain employment as use of that document in order to "obtain a benefit" under the INA. *See* Amicus Br. at 4, 6-8. However, the complaint in this matter alleges that the Respondent used the fraudulent document in order to "satisfy the . . . requirements of . . . the [INA]," rather than alleging that the use was in order to "obtain a benefit" under the INA. Compl. at 4. OCAHO has not always been precise as to whether the use of a fraudulent document to obtain employment is a violation of 8 U.S.C. § 1324c because it is a use to satisfy a requirement of the INA or because it is a use to obtain a benefit under the INA. Complainant's original framing of this allegation in the complaint is consistent with past OCAHO case law, which has found that, "as a matter of law, an individual that is unauthorized to work in

Respondent filed an answer to the complaint. In the answer, Respondent did not expressly deny any of the allegations in the complaint and, thus, did not contest liability for the alleged violations. *See* 28 C.F.R. § 68.9(c)(1) (noting that "any allegation not expressly denied [in the answer] shall be deemed to be admitted"). Moreover, he explicitly stated "I have accepted and plead guilty" to the allegations. Answer at 1. The remainder of Respondent's answer offers an explanation for his actions, discussing his family circumstances and personal economic situation. Answer at 1-2.

Complainant's Motion for Summary Decision largely reiterates the allegations from the complaint, asserting that the Respondent "admitted he used the documents listed on his Form I-9, which he signed on March 21, 2013, until he was fired by Eagle Eye Produce in December 2017." C's Mot. Summ. Dec. at 7.[5] Complainant's Motion continues: "The respondent admitted he used a fraudulent I-551 and Social Security number as proof of his employment eligibility when filling out the Form I-9, to work at Eagle Eye Produce. The respondent, therefore, used the fraudulent I-551 document to satisfy the employment eligibility and verification requirements of Section 274A of the Immigration and Nationality Act of 1952 (as amended), 8 U.S.C. § 1324a." *Id.* at 7-8 (citation omitted).

Respondent did not file a response to the Complainant's Motion for Summary Decision. Complainant subsequently filed Complainant's Renewed Motion for Summary Decision on June 9, 2022, reiterating its previous arguments. Respondent also did not file a response to the Complainant's Renewed Motion for Summary Decision.

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the United States who knowingly presents fraudulent documents in order to obtain employment at a private company does so with the purpose of satisfying a requirement of the INA." *United States v. Rubio-Reyes*, 14 OCAHO no. 1349a, 6 (2020); *see also United States v. Morales-Vargas*, 5 OCAHO no. 732, 68, 72-73 (1995) (noting also that "the actions of both the employer and the employee in the verification process are undertaken to satisfy a requirement of the INA"); *accord United States v. Dominguez*, 7 OCAHO no. 972, 789, 807 (1997) (citing *United States v. Morales-Vargas* and acknowledging that "[i]t has been held that providing documents for the purpose of gaining illegal employment constitutes an action undertaken 'in order to satisfy any requirement of the [INA].'") (modified by the CAHO on other grounds). More recently—and consistent with Complainant's reframing of this allegation—OCAHO has stated that employment is a benefit under the INA for purposes of 8 U.S.C. § 1324c(a)(2), albeit while citing earlier caselaw treating employment authorization as a requirement to be satisfied under the INA. *See United States v. Torentino*, 15 OCAHO no. 1397, 7 (2021) ("Respondent knowingly obtained, possessed, and used a counterfeit lawful permanent resident card and a counterfeit social security card to obtain employment—a benefit under the INA—in violation of 8 U.S.C. § 1324c(a)(2)."). I need not resolve whether there is a legally significant distinction in the context of using a fraudulent document to obtain employment in violation of 8 U.S.C. § 1324c(a)(2) between employment authorization (*i.e.*, satisfying a requirement of the INA related to employment eligibility) and actual employment (*i.e.* an arguable benefit under the INA flowing from employment eligibility) because it is undisputed in the instant case that Respondent both demonstrated employment authorization and obtained employment at the same time in 2013 through the presentation of a fraudulent document. Moreover, the sole question on administrative review does not involve the fourth element of a violation of 8 U.S.C. § 1324c(a)(2); rather, it pertains to when the first element—*i.e.*, "use" of a fraudulent document—occurred.

[5] In support of this assertion, DHS cites to Exhibit G-4, attached to its Motion for Summary Decision. Exhibit G-4 is a sworn statement made by the Respondent in 2019, and although the statement can be construed as an admission that the Respondent worked without authorization, it contains no specific details regarding Respondent's use of the fraudulent document at issue in the Count I violation. It appears that DHS actually intended to cite to its Exhibit G-5, which is an affidavit from DHS Special Agent Brian Wells averring, *inter alia*, that Respondent "continued to work with the [fraudulent] documents listed on his Form I-9 submitted on March 21, 2013, until he was fired by [his employer] in December 2017." C's Mot. Summ. Dec., Ex. G-5.

C. Decision of the ALJ

In her Final Order, the ALJ found the Respondent liable for both violations alleged in the complaint. *See Corrales-Hernandez*, 17 OCAHO no. 1454b, at 9-10. The ALJ imposed a civil penalty of $481 for the Count I violation, and $407 for the Count II violation. *Id.* at 11. For both violations, the ALJ characterized this as the "minimum statutory penalty" based on the inflation-adjusted penalty amounts in the relevant regulations. *Id.*; *see also* 28 C.F.R. § 85.5. The regulations at 28 C.F.R. § 85.5 apply to violations of 8 U.S.C. § 1324c that occurred after November 2, 2015, for which penalties were assessed sometime after August 1, 2016. 28 C.F.R. § 85.5.

Regarding the penalty assessment for the Count I violation, the ALJ's Final Order noted that the Respondent presented the fraudulent document at issue on March 21, 2013. *Corrales-Hernandez*, 17 OCAHO no. 1454b, at 10 n.10. The ALJ therefore noted that there was a "question as to whether . . . the violation in Count I occurred prior to November 2, 2015." *Id.* However, based on the fact that Respondent continued to work for the employer to whom he presented the fraudulent documents until December 2017, the ALJ "treat[ed] the violation as occurring after November 2, 2015." *Id.*

D. Notification of Administrative Review

In the Notification, I noted that I would review whether DHS met its burden to establish that the violation alleged in Count I of the complaint occurred after November 2, 2015, and, thus, whether the ALJ correctly assessed the civil penalty for that count. *Corrales-Hernandez*, 17 OCAHO no. 1454c, at 4. More specifically, the issue on review encompassed the following specific legal question:

> whether a violation of 8 U.S.C. § 1324c(a)(2) for the knowing use of a forged, counterfeit, altered, or falsely made document in order to obtain employment and complete the employment eligibility verification Form I-9 constitutes a "continuing violation" for the duration of employment at the employer to whom the document was presented or, alternatively, whether the knowing use occurs only at the time the document is presented to obtain employment and complete the employment eligibility verification Form I-9.

Id. As I indicated in the Notification, no other issues were being reviewed related to the ALJ's Final Order.[6] *Id.*

The Notification also observed that "[b]ecause DHS proposed a civil money penalty for Count I consistent with a tacit allegation that the violation occurred after November 2, 2015, it bears the burden of establishing that the violation of 8 U.S.C. § 1324c(a)(2) in Count I did, in fact, occur after that date." *Id.* at 3 (citation omitted). As further explained in the Notification,

[6] As noted in the Notification, the lone issue under review is a specific issue related to the penalty amount for the Count I violation under 8 U.S.C. § 1324c(a)(2). Therefore, I do not reach or discuss any issues related to the Count II violation or any other aspects of the Count I violation. For example, although the resolution of the penalty issue based on the particular facts of Respondent's case may also have implications regarding the application of the statute of limitations in 28 U.S.C. § 2462 in other cases, that issue is not under review in the instant case because Respondent waived it. *See Corrales-Hernandez*, 17 OCAHO no. 1454b, at 3-4 n.5; *Corrales-Hernandez*, 17 OCAHO no. 1454c, at 3 n.3.

> [a]lthough the ALJ appears to have determined that the Respondent's continued employment extended his violation of [8 U.S.C. § 1324c(a)(2)] through the date his employment ceased in 2017, OCAHO caselaw is silent as to whether a violation in this context is a continuing violation. Rather, although OCAHO recognizes continuing violations in cases under 8 U.S.C. § 1324a, . . . the issue of whether Respondent's conduct in Count I constitutes a continuing violation through the end of his employment in December 2017 such that it would qualify as a violation occurring after November 2, 2015, for purposes of assessing a civil money penalty appears to be one of first impression in a case arising under 8 U.S.C. § 1324c.

Id. (citations omitted).

E. Briefs Related to Administrative Review

Complainant's Brief argues that the ALJ's Final Order "was correct in all material aspects"; that if any errors do exist in the Final Order, "they are harmless or immaterial"; and that the Respondent's conduct as alleged in Count I of the complaint "constitutes a continuing violation under 8 U.S.C. [§ 1324c]." C's Br. at 1-2.

Complainant's Brief further argues that a violation of 8 U.S.C. § 1324c(a)(2) for using fraudulent documents to satisfy the employment eligibility and verification requirements of 8 U.S.C. § 1324a "does not occur merely on the day of hiring." C's Br. at 9. Analogizing to 8 U.S.C. § 1324a—which prohibits an employer from knowingly continuing to employ an unauthorized worker, *see* 8 U.S.C. § 1324a(a)(2)—Complainant asserts that "individuals who violate 8 U.S.C. § 1324c through the use of a fraudulent document would violate the law every day they would go to work and rely on that document for an immigration benefit, i.e. the benefit to work in the United States."[7] C's Br. at 9. Accordingly, Complainant argues, "[t]he respondent's continued employment should be viewed as a series of repeated violations of [8 U.S.C. § 1324c] until the respondent's period of employment ends." C's Br. at 9. In support of its argument, Complainant cites to cases that address issues related to operation of statutes of limitations for claims arising under other federal statutes. C's Br. at 5, 9 (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 118 (2002) (claim under Title VII of the Civil Rights Act of 1964) and *Flynt v. Shimazu*, 940 F.3d 457, 463-64 (9th Cir. 2019) (claim under 42 U.S.C. § 1983)). Based on this line of argument, Complainant asserts that the violation continued to occur after November 2, 2015, and that, therefore, the civil penalty assessed by the ALJ was proper. C's Br. at 10.

Amicus similarly argues that "Congress intended the knowing 'use' of a fraudulent document in order to be hired by and complete Form I-9 for a U.S. employer to constitute a 'continuing violation,' lasting for the duration of the time services are performed for that employer." Amicus Br. at 3. In support of this conclusion, amicus offers multiple arguments, including analogies to the concept of "continuing violations" in other civil contexts and "continuing offenses" in the criminal context. *See generally* Amicus Br. at 3-9.

More specifically, amicus suggests that if Congress wished to, it "could have easily limited the types of violations covered under 8 U.S.C. § 1324c(a)(2) by making explicit reference to the 'submission' or 'presentation' of fraudulent documents to an employer for the purposes of

[7] As noted above, *see supra* note 4, this framing of the Count I violation is a departure from how DHS initially framed the violation in its complaint, but this reframing does not alter my analysis or the ultimate conclusion on review.

completing Form I-9," asserting that "[t]he submission or presentation of a document is a discrete act." Amicus Br. at 6-7. Amicus also asserts that the "continuing obligation of the employer" to ensure that they are not knowingly continuing to employ unauthorized workers in violation of 8 U.S.C. § 1324a(a)(2) shows that an employee's use of a fraudulent document to gain unauthorized employment "is every bit as continuous." Amicus Br. at 8. On these grounds, amicus therefore asserts that "a violation of 8 U.S.C. § 1324c(a)(2) should be considered a 'continuing violation' that perdures for the entire period of employment at the employer to whom the document was presented." Amicus Br. at 10.

IV. DISCUSSION

A. Use of a Fraudulent Document to Satisfy the Employment Eligibility Verification (Form I-9) Requirements and Obtain Employment in Violation of 8 U.S.C. § 1324c Is Not a "Continuing Violation"

At bottom, the issue on review in Respondent's case is one of statutory construction—what does "use" mean in the context of 8 U.S.C. § 1324c(a)(2)?[8] If "use" signifies a continuing violation of 8 U.S.C. § 1324c(a)(2), then Respondent's violation continued until December 2017 when his employment was terminated, and the ALJ's penalty calculation was appropriate. If "use" connotes a one-time or discrete event or instance, then Respondent's violation of 8 U.S.C. § 1324c(a)(2) was completed on March 21, 2013, and the ALJ relied on an incorrect penalty range in calculating Respondent's penalty for his violation in Count I.

Because the issue on review is one of statutory construction, the "starting point must be the language employed by Congress," *see Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 337 (1979)), and unless something suggests otherwise, "affected individuals and courts alike are entitled to assume statutory terms bear their ordinary meaning," *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1481-82 (2021). As an initial point, the undersigned notes that unlike other statutory provisions within OCAHO's jurisdiction, there is no explicit language in 8 U.S.C. § 1324c(a)(2) indicating that "use" should be treated as a continuing violation. *Compare*, *e.g.*, 8 U.S.C. § 1324a(a)(2) (titled "Continuing Employment" and prohibiting an employer from "continuing to employ" a noncitizen knowing that individual is or has become unauthorized for employment). Thus, the statutory text itself does not compel a conclusion that "use" in 8 U.S.C. § 1324c(a)(2) is a continuing offense.

Further, regarding the ordinary definitions of the word "use," Black's Law Dictionary defines "use" first and foremost as "to employ for the accomplishment of a purpose; to avail oneself of." *Use, Black's Law Dictionary* (11th ed. 2019). Similarly, Merriam-Webster defines "use" as "to put into action or service" or "avail oneself of." *Use*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/use (last visited March 7, 2023). Although a "use" may be repeated, none of these definitions suggests that an individual "use" continues once its purpose has concluded. Thus, these definitions suggest that "use" is not a continuing concept, but one that has a discrete end point, namely when its purpose is accomplished or has been availed of.

Similarly, the Supreme Court, in defining "use" in the context of 18 U.S.C. § 924(c)(1),

[8] Although "use" occurs in other subsections of 8 U.S.C. § 1324c, the analysis of its meaning for purposes of administrative review in the instant case is limited solely to its appearance in 8 U.S.C. § 1324c(a)(2). Accordingly, the undersigned offers no opinion on the meaning of "use" in other places in 8 U.S.C. § 1324c in which it appears.

identified the "ordinary or natural" meaning of "use" as being "variously defined as '[t]o convert to one's service,' 'to employ,' 'to avail oneself of,' and 'to carry out a purpose or action by means of.'" *Bailey v. United States*, 516 U.S. 137, 145 (1995) (quoting *Smith v. United States*, 508 U.S. 223, 228-29 (1993)). The Court observed that all of the referenced definitions of "use" "imply action and implementation." *Id.* Again, although the Supreme Court's observations arose in a significantly different context, its consideration of the term "use" does not suggest it as a continuing concept, but rather one that lasts until its purpose is accomplished or has been availed of.

In short, these textual considerations strongly point toward a conclusion that "use" is not a continuing offense in 8 U.S.C. § 1324c(a)(2), and that conclusion becomes inescapable upon a review of relevant caselaw addressing continuing offenses.

Most caselaw addressing continuing offenses arises in the criminal context. *See*, *e.g.*, *Toussie v. United States*, 397 U.S. 112 (1970) (reversing a criminal conviction for failing to register for the draft as barred by the applicable statute of limitations because the crime was not a continuing offense). Nevertheless, OCAHO jurisprudence has long looked to interpretations of criminal law provisions, particularly 18 U.S.C. § 1546, in interpreting analogous—or, in some cases, identical—language in 8 U.S.C. § 1324c. *See*, *e.g.*, *United States v. Remileh*, 5 OCAHO no. 724, 15, 22-23 (1995) (CAHO modification) (noting that "[c]omparing the language of the parallel criminal and civil statutes covering immigration-related document fraud [*i.e.*, 18 U.S.C. § 1546 and 8 U.S.C. § 1324c] is a useful source for guidance in interpreting Congress' intended breadth of the more recently written [8 U.S.C. § 1324c]"), *aff'd sub nom. Remileh v. INS*, 101 F.3d 66 (8th Cir. 1996); *cf. Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 148 (2002) (discussing the point that individuals who use fraudulent documents for employment in the United States may be subject to fines or criminal prosecution under 8 U.S.C. § 1324c and 18 U.S.C. § 1546). Thus, it is entirely appropriate to look to interpretations of continuing offenses in the criminal context in considering the issue under review, particularly since the issue appears to be one of first impression for OCAHO.

The Supreme Court has outlined two tests to determine whether an offense constitutes a continuing offense: either "the explicit language of the substantive . . . statute compels such a conclusion, or the nature of the [offense] involved is such that Congress must assuredly have intended that it be treated as a continuing one." *Toussie*, 397 U.S. at 115. Regarding the first test, as discussed, *supra*, the language of 8 U.S.C. § 1324c(a)(2) does not explicitly compel a conclusion that "use" in 8 U.S.C. § 1324c(a)(2) is a continuing offense. For the second test, although the issue is perhaps a closer call, the nature of the offense—*i.e.*, using a fraudulent document to demonstrate employment authorization and obtain employment—does not demonstrate an assured intent to treat it as a continuing offense.

A decision of the U.S. Court of Appeals for the Fifth Circuit ("Fifth Circuit"), *United States v. Tavarez-Levario*, 788 F.3d 433 (5th Cir. 2015), illustrates why "use" in 8 U.S.C. § 1324c(a)(2) does not denote a continuing offense under either prong of the *Toussie* test. In *Tavarez-Levario*, the defendant "was indicted by a federal grand jury for having knowingly used, possessed, obtained, accepted, and received a counterfeit I-551 ('green card') and counterfeit Social Security card in violation of 18 U.S.C. § 1546(a)." 788 F.3d at 435. Specifically, the defendant was alleged to have "presented a counterfeit green card and counterfeit social security card to obtain employment." *Id.* The defendant argued that his prosecution was barred by the statute of

limitations because his offense was not a continuing one. *Id.* at 435-36. The prosecution argued that "'use' of a counterfeit document was a continuing offense such that the statute of limitations did not begin to run until [the defendant] was no longer employed based on the documents." *Id.* at 435. The district court agreed with the prosecution, rejected the defendant's argument, and accepted his conditional guilty plea. *Id.* at 436.

On appeal, the Fifth Circuit reversed, concluding that "use" of a fraudulent immigration document under 18 U.S.C. § 1546(a) to obtain employment did not constitute a "continuing offense" for the length of the employment for statute of limitations purposes. *See id.* at 435. Applying the Supreme Court's framework in *Toussie*, the Fifth Circuit first found that "[t]he explicit statutory language does not compel a conclusion that use of a counterfeit or fraudulently obtained immigration document is a continuing offense," noting that, in other instances, Congress explicitly stated when a crime was a continuing offense. *Id.* at 437. In this instance, the Fifth Circuit thought it "clear" that the term "use" in the context of 18 U.S.C. § 1546 meant "[t]o employ for the accomplishment of a purpose." *Id.* at 438 (quoting *Black's Law Dictionary* (10th ed. 2014)). The Fifth Circuit also repeated the Supreme Court's characterization of the term "use" as one that "implies 'action and implementation,'" particularly when viewed "in the context of § 1546(a), which separately proscribes 'possessing' a counterfeit or fraudulently obtained immigration document." *Id.* (quoting *Bailey*, 516 U.S. at 145).

Turning to the second possible avenue for finding a crime to be a "continuing offense," the Fifth Circuit identified the "defining characteristic of a continuing offense" as being an offense that "involves ongoing perpetration, which produces an ongoing threat of harm." *Id.* at 439. The Fifth Circuit continued:

> Unlike other crimes that have been construed as continuing offenses, use of a counterfeit or fraudulently obtained immigration document does not by its nature involve ongoing perpetration that produces an ongoing threat of harm. There is nothing about the "use" of an immigration document that denotes temporal longevity. As explained above, a person uses a counterfeit or fraudulently obtained immigration document when he employs the document for a purpose. This may take the form of employing the counterfeit or fraudulently obtained document to obtain employment, gain entry into the country, or obtain other rights and privileges that normally proceed from the employment of a valid immigration document. Any of these uses of a counterfeit or fraudulently obtained immigration document naturally occur in incidents of finite duration; they do not by nature involve "a continuous, unlawful act or series of acts." For example, using a fraudulent document to obtain entry into the country occurs as a discrete incident, as might the attainment of employment or other benefits. This is in stark contrast to traditional continuing offenses, such as conspiracy, that by their essence prohibit conduct that perdures.

Id. at 440 (citations omitted) (quoting *United States v. Brazell*, 489 F.3d 666, 668 (5th Cir. 2007)).

Further, the Fifth Circuit explicitly rejected the prosecution's argument—one materially identical to the arguments made by Complainant and the amicus—that the presentation of fraudulent documents to obtain employment is necessarily a continuing offense because that presentation allowed the defendant to maintain the ongoing benefit of employment:

> The Government argues, however, that Tavarez committed a continuing offense because the facts demonstrate that he presented counterfeit documents to his employer, which then set in motion a process by which the documents continually allowed Tavarez to maintain his employment and provided Tavarez with the ongoing benefits of employment. This argument suffers from two flaws.
>
> First, under *Toussie,* the analysis of whether a crime constitutes a continuing offense involves examining the offense itself, not the defendant's particular conduct. Second, the fact that a particular defendant's conduct provided long-term benefits to that defendant does not mean that his offense is a continuing one. Instead, the nature of the offense itself must be such that it inherently involves criminal activity of an ongoing or continuous character. Even a crime that naturally occurs in a single, finite incident can produce prolonged benefits to an offender; this does not mean that the statute of limitations refrains from running until all benefits of the criminal act dissipate.

Id. (citations omitted). Accordingly, the Fifth Circuit concluded that the nature of the offense at issue—*i.e.*, the use of a fraudulent document to obtain employment—was "not 'such that Congress must assuredly have intended that it be treated as a continuing one.'" *Id.* at 441 (quoting *Toussie*, 397 U.S. at 115).

Although *Tavarez-Levario* was decided in the criminal context, its analysis appears equally applicable to analogous civil violations such as those under 8 U.S.C. § 1324c, particularly in light of OCAHO's history of utilizing interpretations of 18 U.S.C. § 1546 in analyzing similar or identical provisions in 8 U.S.C. § 1324c. *See Remileh*, 5 OCAHO no. 724, at 22-23 (noting that "[c]omparing the language of the parallel criminal and civil statutes covering immigration-related document fraud [*i.e.,* 18 U.S.C. § 1546 and 8 U.S.C. § 1324c] is a useful source for guidance in interpreting Congress' intended breadth of the more recently written [8 U.S.C. § 1324c]"). Further, the factual circumstances of *Tavarez-Levario* and the instant case are nearly identical in all material respects, and there is no apparent reason in this situation to apply a different analysis to similar facts. Accordingly, although not binding authority,[9] the undersigned finds the Fifth Circuit's analysis in *Tavarez-Levario* to be strongly persuasive, particularly as it appears to be the only federal or OCAHO case that directly engages, albeit in an analogous manner, with the particular issue on review in this case.

Several other cases, though not as closely on point as *Tavarez-Levario*, also point to the conclusion that Respondent's use of a fraudulent document to obtain employment was not a continuing offense. First, in *Toussie* itself, the Supreme Court rejected an argument that failing to register for the draft was a continuing offense even though there was a regulation expressly stating that registering for the draft was a "continuing duty." *Toussie*, 397 U.S. at 119-20. Instead, the Court noted that draft registration was an "instantaneous" event and that there is "nothing inherent in the act of registration itself which makes failure to do so a continuing crime." *Id*. at 122. Similarly, establishing employment authorization and then obtaining employment are discrete, instantaneous events. Although employment may continue, of course, the act of being hired itself

[9] The instant case arises within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, and the undersigned applies binding authority, if any, from that Circuit. *See* 28 C.F.R. § 68.56.

is a distinct event that does not continue once employment has been obtained.

Additionally, although a possessory offense is a continuing offense, a false statement offense is not. *See United States v. Krstic*, 558 F.3d 1010, 1017 (9th Cir. 2009). As alleged and argued by Complainant, Respondent's presentation of a fraudulent document to demonstrate employment authorization and obtain employment is much closer to a false statement offense than to a possessory offense.[10] Further, to the extent previous OCAHO case law has addressed the construction of the word "use" in 8 U.S.C. § 1324c(a)(2), it has similarly required a showing of "active employment" of fraudulent documents in order to establish the "use" of those documents under § 1324c(a)(2). *See United States v. Dominguez*, 7 OCAHO no. 972, 789, 811-13 (1997) (citing *Bailey*, 516 U.S. 137, and denying the complainant's motion for summary decision as to the allegation that respondent "used" or "attempted to use" fraudulent documents because complainant did not show "that there was 'active employment'" of the fraudulent documents). Again, once an individual demonstrates employment authorization and obtains employment through the use of a fraudulent document, there is generally no reason for any further "active employment" of that document.[11]

In sum, the language of 8 U.S.C. § 1324c itself, pertinent definitions of the word "use," and relevant caselaw all point to the same conclusion. The use of a fraudulent document to establish employment authorization and to obtain employment is a one-time, discrete event, and not a continuing offense. Thus, the use of a fraudulent document in such circumstances in violation of 8 U.S.C. § 1324c(a)(2) is not a continuing offense.

To be sure, the arguments of Complainant and the amicus regarding the use of 8 U.S.C. § 1324c(a)(2) to further bolster the employment authorization system in 8 U.S.C. § 1324a appear

[10] To be clear, there are multiple ways to commit a violation of 8 U.S.C. § 1324c(a)(2)—*i.e.*, "use, attempt to use, possess, obtain, accept, or receive or to provide" a fraudulent document—and 8 U.S.C. § 1324c(a)(2) prohibits the possession of a fraudulent document as well as its use. Although the complaint takes a shotgun approach by alleging all of the various ways of violating 8 U.S.C. § 1324c(a)(2), Complainant subsequently argued only that Respondent was liable because he "used" a fraudulent document. *See*, *e.g.*, C's Mot. Summ. Dec. at 5 ("The respondent used identification documents which did not belong to him to secure employment."), 7-8 ("The respondent, therefore, used the fraudulent I-551 document to satisfy the employment eligibility and verification requirements of [8 U.S.C. § 1324a].") Consequently, the ALJ construed Complainant's position as alleging that Respondent violated 8 U.S.C. § 1324c(a)(2) only by using a fraudulent document, and I have construed Complainant's position similarly for purposes of administrative review. However, even if Complainant had advanced a possession-based argument before the ALJ, the record contains no evidence that Respondent actually possessed the fraudulent document after he used it in 2013 to obtain employment, and there is no basis to assume that he continued to possess it through the termination of his employment in 2017. Indeed, there is no indication by the Special Agent who interviewed Respondent that Respondent still possessed the fraudulent document at that time. C's Mot. Summ. Dec., Ex. G-5. Accordingly, even if Complainant had made a possession-based argument for purposes of establishing a continuing violation of 8 U.S.C. § 1324c(a)(2), it would have nevertheless failed to meet its burden of proof on the record before me that Respondent possessed the document in question after November 2, 2015.

[11] The undersigned acknowledges that an individual who has used a fraudulent document to obtain employment may actively employ it again at a later date—*e.g.*, if the individual's employer attempts to re-verify the individual's employment authorization—and that such later use may also constitute a violation of 8 U.S.C. § 1324c(a)(2). However, such later "use" would constitute a separate, discrete violation, rather than a continuing one, and Complainant could determine how to charge such an individual accordingly, though any civil money penalty would be calculated per document rather than per violation. In any event, the record does not indicate that Respondent actively employed a fraudulent document at any time other than when he initially demonstrated employment authorization and obtained employment.

strong at first blush; however, upon closer inspection, they are ultimately unpersuasive.[12] First, the comparison with the provisions of 8 U.S.C. § 1324a(a)(2) actually cuts against the arguments of Complainant and the amicus. *See* C's Br. at 5-6; Amicus Br. at 7-8. As discussed, *supra*, 8 U.S.C. § 1324a(a)(2) expressly uses the words "continue" and "continuing" whereas no similar language appears in 8 U.S.C. § 1324c(a)(2). As OCAHO has previously noted, "[t]he Supreme Court has 'long held' and reiterated that '[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271d, 6 (2017) (quoting *Sebelius v. Cloer*, 133 S. Ct. 1886, 1894 (2013) (quoting *Bates v. United States*, 522 U.S. 23, 29-30 (1997))). Thus, Congress's decision to include "continuing" language in 8 U.S.C. § 1324a(a)(2) but not in 8 U.S.C. § 1324c(a)(2) strongly suggests, by implication, that all offenses in that latter provision are not necessarily continuing ones.

Moreover, the structure of 8 U.S.C. § 1324a itself undermines the arguments of Complainant and the amicus. That section contains separate provisions for unlawfully hiring and unlawfully continuing to employ a noncitizen without employment authorization, indicating that there is a clear distinction between the separate acts of hiring and continuing to employ. *See* 8 U.S.C. §§ 1324a(a)(1)(A) and 1324a(a)(2). The arguments of Complainant and amicus collapse that distinction by relying on a view of employment as an undifferentiated process encompassing both obtaining employment (*i.e.*, hiring) and continuing employment. However, the statutory structure simply does not accord with the interpretation that Complainant and amicus seek to place on it. Put differently, even accepting that 8 U.S.C. § 1324c helps support the enforcement regime of 8 U.S.C. § 1324a, nothing in the language of the former suggests that it was intended to merge the employment distinctions between hiring and continued employment existing in the latter.

Additionally, although amicus relies heavily on *Toussie*, *see*, *e.g.*, Amicus Br. at 6 (arguing that "[t]o say that one uses something 'conveys ongoing action' and 'clearly contemplates a prolonged course of conduct'" and citing *Toussie*, 397 U.S. at 120), that case largely cuts against its arguments for the reasons given above. Moreover, *Toussie* did not suggest that the concept of "use" inherently "conveys ongoing action" or "clearly contemplates a prolonged course of conduct," principally because the definition of "use" was not specifically at issue in that case. Rather, *Toussie* laid out a test for determining when an offense is a continuing one, and its ultimate conclusion that failing to register for the draft was not a continuing offense—notwithstanding a longstanding regulation imposing a "continuing duty" to do so—because the relevant statute did not clearly contemplate a prolonged curse of conduct undermines rather than supports the

[12] In passing and with little elaboration, Complainant cites "Title VII Civil Rights Act claims, false imprisonment, hostile work environment, and many [unspecified] others" in support of its arguments and for the proposition that the continuing violation doctrine is "well recognized." C's Br. at 5. The undersigned does not dispute the existence of the legal concept of a continuing violation, but Complainant's examples are unexplicated, easily distinguished, or inapposite. Moreover, "the doctrine of continuing offenses should be applied in only limited circumstances," *Toussie*, 397 U.S. at 115, and the clear trend in recent years has been to limit or question its application, particularly in situations involving discrete acts, *see, e.g., Sodhi v. Maricopa County Special Health Care District*, 9 OCAHO no. 1124, 6 (2007) ("Whether the concept of a continuing violation even remains viable for claims other than [hostile work environment] harassment after . . . *Morgan* is not entirely clear. What is clear . . . however, is that a specific discrete act or occurrence takes place at a particular point in time, and that each alleged discriminatory or retaliatory act thus 'occurred' on the day that it 'happened.'"). Thus, Complainant's recitation of these examples does little to advance its arguments.

arguments of amicus.

At their heart, the arguments of Complainant and amicus are ones of policy, and the undersigned does not doubt that as a policy matter, a broad, continuing-offense interpretation of "use" in 8 U.S.C. § 1324c(a)(2) would further the effectuation of the prohibitions in 8 U.S.C. § 1324a. However, the undersigned is tasked with interpreting the statutory language and not with weighing the policy wisdom of particular phrasing in 8 U.S.C. § 1324c(a)(2). *See United States v. Rodgers*, 466 U.S. 475, 484 (1984) ("Resolution of the pros and cons of whether a statute should sweep broadly or narrowly is for Congress."). More significantly, "[a]n inquiry into statutory interpretation 'begins with the statutory text, and ends there as well if the text is unambiguous.'" *United States v. Mar-Jac Poultry, Inc*., 12 OCAHO no. 1298, 31 (2017) (quoting *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (plurality opinion)). Further, "when statutory language is sufficiently clear, there is no reason to examine additional considerations of policy," *id*., because "it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law," *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam) (emphasis in original). Thus, although the arguments of Complainant and amicus are well-presented, they cannot overcome the statutory language of 8 U.S.C. § 1324c itself, interpreted by ordinary definitions of the word "use" and relevant caselaw.

In light of the foregoing, I conclude that the "use" of a fraudulent document to obtain employment and complete the employment eligibility verification Form I-9 in violation of 8 U.S.C. § 1324c(a)(2) does not constitute a "continuing violation" for the duration of employment at the employer to whom the document was presented. Rather, an individual "uses" a fraudulent document only when he or she actively employs the document for a particular or discrete purpose, such as by presenting the document to the employer at the outset of employment in order to complete the Form I-9.

B. Complainant Did Not Meet Its Burden to Show that Respondent Used the Fraudulent Document at Issue after November 2, 2015

As the Complainant in this matter, DHS bears the burden of proving both liability and the appropriate penalty. *See* 5 U.S.C. § 556(d) (providing that, in cases conducted under the APA, "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof"); *Corrales-Hernandez*, 17 OCAHO no. 1454c, at 3 (noting that "DHS also bears the burden of proof regarding both liability and the reasonableness of a civil money penalty in cases arising under 8 U.S.C. § 1324c"). In its case before the ALJ, DHS represented that it was "seeking the statutory minimum civil monetary penalty amount." *See* C's Renewed Mot. Summ. Dec. at 3. As noted above, *see supra* Part III.A, if the violation occurred after November 2, 2015, the minimum civil penalty would be $481, *see* 28 C.F.R. § 85.5. However, if the violation occurred between March 27, 2008, and November 2, 2015, the minimum civil penalty would be $375. *See* 28 C.F.R. § 68.52(e)(1)(i); 8 C.F.R. § 270.3(b)(1)(ii)(A).

By imposing a civil penalty of $481 for the Count I violation, the ALJ implicitly found that DHS had met its burden of showing that the violation occurred after November 2, 2015. With respect to Count I, the evidence in the record shows only that Respondent presented the fraudulent I-551 on March 21, 2013. *See Corrales-Hernandez*, 17 OCAHO no. 1454b, at 3-4 (finding that Respondent filled out a Form I-9 and presented a fraudulent I-551 to Eagle Eye Produce on March 21, 2013 to verify his identity and work eligibility); C's Mot. Summ. Dec., Exs. G-2, G-5; Compl.

at 3. There is no evidence in the record indicating that Complainant used the fraudulent document after that date, and as discussed, *supra*, his use of that document to obtain employment was not a continuing "use" for the duration of his employment.

Accordingly, Complainant did not meet its burden to show that Respondent used a fraudulent document to satisfy a requirement of the INA or obtain a benefit under the INA after November 2, 2015. The evidence of record indicates that the Count I violation for use of a fraudulent document occurred on March 21, 2013. Therefore, the appropriate minimum civil money penalty based on a violation date of March 21, 2013, is $375, rather than the $481 imposed by the ALJ's Final Order.[13] The ALJ's Final Order will be modified to reflect the correct minimum penalty amount for the Count I violation.

V. CONCLUSION

For the above stated reasons, the ALJ's Final Order is hereby MODIFIED as follows:

For purposes of assessing an appropriate civil penalty, Respondent's violation of 8 U.S.C. § 1324c(a)(2) will be treated as occurring on March 21, 2013. Based on this finding, the civil penalty for the violation of 8 U.S.C. § 1324c(a)(2) is reduced to $375.

Respondent shall therefore pay a total civil penalty of $782 for his two violations of 8 U.S.C. § 1324c.

Any other portions of the ALJ's Final Order that have not been modified as stated above remain valid and binding on the parties.

Under OCAHO's rules, an ALJ's final order under 8 U.S.C. § 1324c becomes the final agency order sixty days after the date of the order, unless the CAHO modifies, vacates, or remands the order. *See* 28 C.F.R. § 68.52(g). However, if the CAHO enters a final order that modifies or vacates the ALJ's final order, and the CAHO's order is not referred to the Attorney General pursuant to 28 C.F.R. § 68.55, the CAHO's order "becomes the final agency order thirty (30) days subsequent to the date of the modification or vacation." *See* 28 C.F.R. § 68.54(e). As the CAHO has modified the ALJ's final order in this case, this final order of the CAHO will become the final agency order thirty days from the date of the order, unless it is referred to the Attorney General for further review.

SO ORDERED.

James McHenry
Chief Administrative Hearing Officer

[13] The undersigned notes that the ALJ's penalty assessment falls within the regulatory range for penalties for violations occurring at the time of Respondent's violation, March 21, 2013. *See* 8 C.F.R. § 270.3(b)(1)(ii)(A); 28 C.F.R. § 68.52(e)(1)(i). Thus, the ALJ potentially could have imposed such a penalty regardless of the specific date of Respondent's violation in Count I if she had clarified her intent to do so. However, the ALJ's Final Order made clear that she intended to impose only the minimum penalty for that violation, *see Corrales-Hernandez*, 17 OCAHO no. 1454b, at 11, and Complainant has not challenged that approach. Accordingly, because the ALJ relied on the incorrect range to establish the minimum penalty for Respondent's violation in Count I and because there is no basis on administrative review to impose a penalty higher than the minimum, the penalty assessment for that violation necessarily requires modification.