

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between El Expreso Bus Company ("El Expreso"), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER") (collectively "the Parties").

I. BACKGROUND

WHEREAS, by letter dated February 8, 2017, IER notified El Expreso in writing that it had initiated an independent investigation, DJ# 197-74-580 ("IER Investigation"), to determine whether El Expreso engaged in unfair employment practices prohibited under the Immigration and Nationality Act's anti-discrimination provision, 8 U.S.C. § 1324b ("Act").

WHEREAS, IER concluded, based on the IER Investigation, that reasonable cause exists to believe that beginning no later than August 1, 2016, and continuing through at least November 1, 2016, El Expreso engaged in a pattern or practice of discriminatory hiring based on citizenship status in violation of 8 U.S.C. § 1324b(a)(1) by failing to consider or hire qualified and available protected individuals for temporary bus driver positions because it preferred to fill those positions with temporary visa workers holding H-2B visas.

WHEREAS, El Expreso disputes the findings and conclusions of IER that reasonable cause exists to believe that El Expreso engaged in a pattern or practice of discriminatory hiring based on citizenship status in violation of 8 U.S.C. § 1324b(a)(1) by failing to consider or hire qualified and available protected individuals for temporary bus driver positions because it preferred to fill those positions with temporary visa workers holding H-2B visas.

WHEREAS, IER and El Expreso wish to address and resolve the dispute in relation to IER's reasonable cause findings without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises below, and to fully and finally resolve the IER Investigation as of the date of this Agreement, IER and El Expreso agree as follows:

II. TERMS OF AGREEMENT

1. The "Effective Date" of this Agreement shall be the date the last party signs the Agreement. The term of this Agreement is three years following the Effective Date.
2. El Expreso shall pay a civil penalty to the United States Treasury in the amount of \$31,500. El Expreso shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalties no later than five federal business days from the Effective Date.
3. The monies discussed in Paragraph 2 shall be paid via the FedWire electronic fund transfer system within ten federal business days of the Effective Date or receipt of fund

transfer instructions from IER, whichever is later. On the day of payment, El Expreso shall confirm payment via email to Julia Heming Segal at julia.heming.segal@usdoj.gov and Jenna Grambort at jenna.grambort@usdoj.gov that includes the reference number DJ #197-74-580 in the subject line.

4. Aside from the provisions of Paragraph 2, IER shall not seek from El Expreso any additional civil penalty for the pattern or practice of discriminatory hiring based on citizenship status in violation of 8 U.S.C. § 1324b(a)(1) that was the subject of the IER Investigation through the Effective Date.
5. El Expreso shall make available up to \$197,500 to compensate Qualified Individuals, as described below:
 - a. A “Qualified Individual,” as described in this Paragraph, shall be any “protected individual” as defined in 8 U.S.C. § 1324b(a)(3) who (i) between August 1, 2016 and November 1, 2016, directly applied or who was referred for employment as a temporary bus driver with El Expreso, and (ii) met El Expreso’s minimum qualifications; and (iii) did not subsequently decline consideration for employment or receive an offer of employment as a temporary bus driver from El Expreso.
 - b. Within 30 days from the Effective Date, El Expreso shall provide IER via email to Julia.Heming.Segal@usdoj.gov and Jenna.Grambort@usdoj.gov with the name and contact information (including e-mail addresses), for all non-H-2B visa workers who applied or were referred for bus driver positions with El Expreso between August 1, 2016, and November 1, 2016, and to whom El Expreso did not make an offer of employment.
 - c. Within 15 days from IER’s receipt of the information in Paragraph 5(b), IER will send via First Class Mail a written notification of this Agreement (“Notice Letter”) (Attachment A) and an Applicant Back Pay Claim Form (“Claim Form”) (Attachment B) to all individuals El Expreso has identified pursuant to Paragraph 5(b), and to any other applicants or referrals of whom IER is aware, to determine if they are a Qualified Individual entitled to receive compensation for lost wages due to El Expreso’s alleged unfair employment practices, and will notify El Expreso of any other applicants or referrals of whom IER is aware (other than those identified by El Expreso pursuant to Paragraph 5(b) above).
 - d. Individuals who wish to be considered for back pay relief will have 45 days from the date of the Notice Letter to return the Claim Form to IER, unless the individual can demonstrate good cause (as determined by IER) for the failure to return or postmark a Claim Form by the specified deadline.
 - e. No later than 90 days from the date of the Notice Letter, IER will initially calculate and notify El Expreso of the amount of back pay owed to each

claimant IER determines to be a Qualified Individual. IER will perform this initial calculation using a formula that multiplies the hourly pay rate by the number of hours on a weekly basis specified in the El Expreso's 2016 H-2B job order, for the period November 1, 2016 through August 1, 2017 ("the contract period"), and subtracts the pay that the Qualified Individual earned from an alternate employer during the contract period (i.e., mitigation earnings). If the total amount of back pay that would be owed to Qualified Individuals exceeds \$197,500 IER shall initially calculate a *pro rata* amount of back pay for each Qualified Individual using the fraction that represents the amount of back pay owed to the Qualified Individual compared to the total back pay fund amount. The parties agree that El Expreso's total liability to Qualified Individuals under this Paragraph shall not exceed \$197,500.

- f. Within 30 days from the date on which IER notifies El Expreso of its initial determinations regarding the amounts owed to each Qualified Individual pursuant to Paragraph 5(e), El Expreso will notify IER in writing if El Expreso disagrees with any assertion that the individual is a Qualified Individual as defined in Paragraph 5(a) and/or the specific back pay determination, and provide an explanation for its position along with copies of any supporting documents.
- g. After considering any disagreements submitted by El Expreso under Paragraph 5(f), IER will make a final determination regarding the amount to be paid, if any, and will, within 30 days of receiving El Expreso's notice of disagreement under Paragraph 5(f), notify El Expreso in writing of its final determinations. If necessary, IER's final determination will recalculate any *pro rata* back pay determinations, taking into account the final number of Qualified Individuals and amounts to be paid.
- h. If El Expreso does not notify IER of any disagreements under Paragraph 5(f), IER's back pay determinations will become final 30 days from its initial back pay determinations under Paragraph 5(e). If El Expreso notifies IER of any disagreements under Paragraph 5(f), IER's back pay determinations will become final 30 days from IER's final back pay determinations under Paragraph 5(g). El Expreso shall, within 30 days of the date that IER's back pay determination becomes final, send each Qualified Individual by first class mail and email (if one is available) a Back Pay Determination Letter (Attachment C) indicating the amount of back pay to be received. El Expreso shall enclose with the Back Pay Determination Letter a Release of Liability (Attachment D) for hiring discrimination claims arising from the IER Investigation and all applicable tax forms. The Back Pay Determination Letter shall request that the Qualified Individuals return any tax forms to El Expreso within 30 days and contain a self-addressed return envelope with sufficient postage. On the same day El Expreso mails out the Back Pay Determination Letters, El Expreso shall send IER by e-mail to Julia Heming Segal at

julia.heming.segal@usdoj.gov and Jenna Grambort at jenna.grambort@usdoj.gov (with attachments in .PDF format), copies of the letters and addressed envelopes it sends to Qualified Individuals, including the reference number DJ #197-74-580 in the subject line.

- i. Within 30 days from El Expreso's receipt of applicable tax forms and a signed release of liability from a Qualified Individual, El Expreso shall send the individual the back pay amount (as determined by IER) in the form of a check via certified USPS mail or IER-approved courier service. On the same day, El Expreso shall send a copy of the check to julia.heming.segal@usdoj.gov and jenna.grambort@usdoj.gov including the reference number DJ #197-74-580 in the subject line. El Expreso shall withhold applicable taxes based on the rates of the current year and shall provide each Qualified Individual with all applicable income tax reporting forms. El Expreso is responsible for paying any employer-side taxes or contributions due to the federal or state government based on the payments made Qualified Individuals pursuant to this Settlement Agreement. El Expreso shall follow the applicable instructions contained in IRS Publication 957 and credit the Qualified Individuals' back pay award to calendar quarters of the year when the back wages would have been earned.
 - j. All written communications from El Expreso to Qualified Individuals relating to this Agreement shall be submitted to IER for prior review and approval.
 - k. Any remaining amount of the \$197,500 El Expreso made available that has not been distributed to Qualified Individuals pursuant to the process set forth in this paragraph shall revert to El Expreso.
6. For the term of this Agreement, El Expreso shall engage in required and supplemental recruitment of U.S. workers for all available positions before employing H-2B visa workers for those positions. These required and supplemental recruitment activities shall include, at a minimum, the following:
- a. With respect to job orders, and electronic, online platforms, including state workforce agency job banks, El Expreso shall:
 - i. Ensure that each job order is accessible and visible to job seekers in each area of intended employment;
 - ii. Make reasonable efforts to contact all applicants who express interest online and give each full consideration for employment;
 - iii. Enable any functionality of the electronic, online platform that allows a jobseeker to apply online;
 - iv. Enable any notifications available as part of the electronic, online platform that indicate that there is a new applicant or referral, with notifications to an email address within El Expreso's control;

- v. Notify all jobseekers of the bus driving positions available (both permanent and temporary) and consider each jobseeker for the position the jobseeker selects; and
 - vi. Not close any of its H-2B-related job orders until 7 days before the work start date and consider any applications or referrals received during that period.
- 7. Within 30 days of the Effective Date, El Expreso shall review its employment policies and revise such policies to prohibit discrimination based on citizenship status, immigration status or national origin in the recruitment, hiring, employment eligibility verifications and firing processes.
- 8. During the term of this Agreement, El Expreso shall provide IER, within 15 days of its posting, a copy of any job order posted with a state workforce agency in contemplation of seeking authority to hire temporary visa workers under the H-2B visa program. Such copies shall be transmitted as an attachment to an email addressed to julia.heming.segal@usdoj.gov and jenna.grambort@usdoj.gov.
- 9. During the term of this Agreement, El Expreso shall retain a copy of every bus driver job application, referral, resume, and job inquiry that is submitted to El Expreso, including but not limited to those accessible through a state workforce agency job bank that relate to an El Expreso job order, and produce copies to IER upon request. Additionally, El Expreso shall create and maintain a log of all walk-in applicants for bus driver positions during the term of this Agreement.
- 10. During the Term of this Agreement, El Expreso shall keep a written record of the action(s) it took with respect to each application, referral, resume, or job inquiry identified in the previous Paragraph, including whether or not the individual was successfully contacted, interviewed, offered a job, hired, or not selected, the dates on which these actions occurred, the name(s) of the personnel involved in the hiring process, and the reason(s) for the non-selection.
- 11. During the Term of this Agreement, El Expreso shall keep a copy of all H-2B-related forms, documents, applications, petitions, letters, recruitment reports, and responses to requests for more information that it submits to and/or receives from the U.S. Department of Labor and U.S. Citizenship and Immigration Services.
- 12. Within 90 days from the Effective Date, all of El Expreso's employees, contractors, and agents with any current involvement in recruiting or hiring workers, or drafting documents to be submitted to the Department of Labor or U.S. Citizenship and Immigration Services in connection with requests for temporary visa workers, shall participate in a free IER employer webinar presentation, on a date mutually agreeable to the Parties. After the initial webinar, newly hired or assigned individuals who become involved in any of the activities listed in this paragraph shall attend an IER webinar within 60 days of the initiation of their involvement, provided such webinar is offered by IER within the 60-day timeframe. In the event that an IER webinar is not offered within the timeframes discussed herein, such individuals shall attend an IER webinar at the next

available date. Within ten days after each webinar participation, El Expreso shall send an email to julia.heming.segal@usdoj.gov and jenna.grambort@usdoj.gov with a list of the participants by name and job title, including the reference number DJ #197-74-580 in the subject line.

13. During the term of this Agreement, IER reserves the right to make reasonable inquiries and/or requests to El Expreso as necessary to determine El Expreso's compliance with this Agreement. As a part of such review, IER may, provided reasonable notice is given to El Expreso, require written reports concerning compliance, inspect El Expreso's premises, examine witnesses, and examine and copy El Expreso's documents.
14. Nothing in this Agreement limits IER's right to inspect El Expreso's Forms I-9 within three business days pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
15. If IER has reason to believe that El Expreso is in violation of any provision of this Agreement, IER may, in its sole discretion, notify El Expreso of the potential violation and the basis for such contention without opening an investigation. El Expreso will then have 45 days from the date of IER's notification to provide explanation regarding the alleged violation and/or cure the suspected violation to IER's satisfaction before IER notifies El Expreso of IER's reason to believe that El Expreso is in violation of this Agreement.
16. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against El Expreso not released or waived by the individual in a Release of Liability, IER's authority to investigate or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of El Expreso's employment practices.
17. This Agreement resolves any and all differences between the parties with respect to El Expreso relating to the IER Investigation, DJ # 197-74-580 through the Effective Date.
18. The United States District Court for the Southern District of Texas, Houston Division, 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.

III. OTHER TERMS

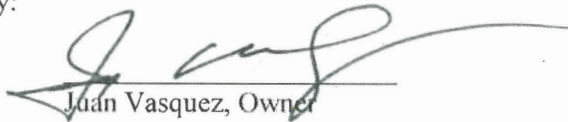
19. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and the term or provision shall be deemed not to be a part of this Agreement. El Expreso and IER shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
20. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8

U.S.C. § 1324b that IER has reasonable cause to believe that El Expreso committed is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.

21. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
22. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. Any modifications to the Agreement must be in writing and signed or affirmed by both parties.
23. 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 shall be bound by facsimile signatures.

El Expreso Bus Company

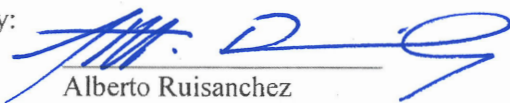
By:


Juan Vasquez, Owner

Dated: 5/23/2019

Immigrant and Employee Rights Section

By:


Alberto Ruisanchez
Deputy Special Counsel

Dated: 5/29/2019

C. Sebastian Aloat
Special Litigation Counsel

Julia Heming Segal
Trial Attorney

Jenna Grambort
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