

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”), the terms of which are set forth in part II below, is made and entered into by and between Carrillo Farm Labor, LLC (“Respondent”) and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“Immigrant and Employee Rights Section” or “IER”), formerly known as the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

I. BACKGROUND

WHEREAS, the Immigrant and Employee Rights Section accepted as complete charges filed by Texas RioGrande Legal Aid, Inc. (“Charging Party”), on behalf of [REDACTED] and [REDACTED] (“Injured Parties”) against Respondent, identified as DJ Numbers 197-49-92 and 197-49-93 respectively, alleging that Respondent engaged in discriminatory hiring based on citizenship status in violation of the anti-discrimination provision of the Immigration and Nationality Act, 8 U.S.C. § 1324b (“Act”);

WHEREAS, on December 12, 2016, the Immigrant and Employee Rights Section notified Respondent that it had initiated an investigation based on the Charging Party’s charges to determine whether Respondent engaged in any pattern or practice of discrimination prohibited by 8 U.S.C. § 1324b;

WHEREAS, on April 5, 2017, the Charging Party was notified that IER was continuing to investigate the charges;

WHEREAS, the Immigrant and Employee Rights Section concluded based upon its investigation that there is reasonable cause to believe that Respondent engaged in discriminatory hiring based on citizenship status in violation 8 U.S.C. § 1324b(a)(1).

WHEREAS, Respondent and the Injured Parties entered into a bilateral agreement resolving, among other claims, their claims under the Act, and providing, among other things, \$44,000 in full back pay for the Injured Parties’ and three other individuals’ lost wages;

WHEREAS, the Immigrant and Employee Rights Section and Respondent (“Parties”) wish to resolve this investigation without further delay or expense and hereby acknowledge that they are voluntarily and freely entering into this Agreement;

WHEREAS, this Agreement does not constitute and shall not be construed as an admission by Respondent of any act in violation of 8 U.S.C. § 1324b, or as an admission by the United States of the merits of any of Respondent’s positions or potential defenses.

NOW, THEREFORE, in consideration of the mutual promises contained below, and to fully and finally resolve the instant investigation, the Parties agree as follows:

II. TERMS OF SETTLEMENT

1. This Agreement becomes effective as of the date of the last signature below, which date is referenced hereafter as the "Effective Date."
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of five thousand dollars (\$5,000).
3. The monies discussed in paragraph 2 shall be paid via the FedWire electronic fund transfer system in two payments: \$2,500 by June 30, 2017 and \$2,500 by September 15, 2017. IER will send FedWire fund transfer instructions to Respondent's legal counsel, Rosemary Marin. Respondent shall send a confirmation of the payment to Richard.Crespo@usdoj.gov and Lorren.Love@usdoj.gov within 24 hours of each date on which the funds are transferred. The email confirming payment shall have Respondent's name and the investigation numbers, DJ # 197-49-92 and 197-49-93, printed in the subject line.
4. In accordance with 8 U.S.C. § 1324b and 28 C.F.R. § 68.52, Respondent shall not:
 - (a) Discriminate on the basis of citizenship, immigration status or national origin in violation of 8 U.S.C. § 1324b.
 - (b) Discriminate in the employment eligibility verification and reverification processes, i.e., Respondent shall (i) honor documentation that on its face reasonably appears to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a(b); (ii) not request more or different documents than are required by law; and (iii) permit all employees to present any document or combination of documents acceptable by law both at initial hire and during any lawful re-verification of continued employment authorization.
 - (c) Intimidate, threaten, coerce, or retaliate against any person for his or her participation in this matter or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
5. Respondent shall post an English and Spanish version of IER's "If You Have the Right to Work" poster ("IER Poster"), an image of which is available at <https://www.justice.gov/crt/worker-information#poster>, in all places where notices to employees and job applicants are normally posted. The IER Poster will be posted within fourteen (14) days from the Effective Date and for a period of two years after the Effective Date of this Agreement.

6. For a period of two years after the Effective Date of this Agreement, Respondent shall ensure that all individuals who are responsible for formulating, providing training on, or implementing Respondent's hiring, firing, equal employment, and employment eligibility verification policies, including all managers and employees who have any role in the employment eligibility verification process, such as completing the Form I-9 and/or using the E-Verify system ("Human Resources Personnel"), are in possession of the most current version of the Form I-9, USCIS Employment Eligibility Verification Handbook for Employers (M-274) ("Handbook"), available at www.uscis.gov/I-9, and the most current USCIS E-Verify Manual (M-775) ("Manual"), available at www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf. Copies of these documents and future revisions of the Form I-9, Handbook and Manual can be obtained from the United States Citizenship and Immigration Services ("USCIS") at www.uscis.gov.
7. To the extent that Respondent has or, during the term of this Agreement, creates written policies or procedures relating to hiring, firing and/or the employment eligibility verification and re-verification processes, Respondent will provide such proposed policies or procedures to IER forty-five (45) days before their proposed effective date for IER review.
8. Within ninety (90) days of the Effective Date, all Human Resources Personnel and any other individuals who have any role in hiring, firing and recruitment will participate in training provided by IER.
 - (a) The training will consist of viewing an Immigrant and Employee Rights Section webinar presentation and viewing an E-Verify for Existing Users webinar presentation by USCIS
 - (b) All employees will be paid their normal rate of pay, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all costs associated with these training sessions.
 - (c) For a period of two years after the Effective Date of this Agreement, all new Human Resources Personnel and personnel involved in the I-9 and E-Verify processes and who are hired after the training described in this paragraph has been conducted, shall attend an IER Employer/HR webinar training within sixty (60) days of hire or promotion.

- (d) Respondent shall compile attendance records for a period of two years after the Effective Date of this Agreement, listing the individuals who comply with the training as described in this paragraph in the form of Attachment A, including their full name, title, signature, and the date of the training, and send the records via email to Richard.Crespo@usdoj.gov and Lorren.Love@usdoj.gov within ten (10) days of each training session. The emails transmitting attendance records shall have Respondent's name and the investigation numbers, DJ # 197-49-92 and 197-49-93, printed in the subject line.
9. During the two-year term of this Agreement, IER reserves the right to make such reasonable inquiries as it, in its discretion, believes necessary or appropriate to assess Respondent's compliance with this Agreement, including, but not necessarily limited to, requiring written reports from Respondent concerning its compliance; inspecting Respondent's premises; examining Respondent's employees, officials or other persons; and requesting copies of Respondent's documents. Respondent shall provide such documents in electronic form unless the parties agree otherwise.
10. If, during the two years after the Effective Date of this Agreement, the Respondent seeks authority to employ seasonal agricultural workers under the H-2A visa program, Respondent shall, within five calendar days after seeking such authority, provide IER via email to Richard.Crespo@usdoj.gov and IER@usdoj.gov a notice of the visa application and a copy of the Labor Condition Application. Once IER gets notice, IER has a right to make reasonable inquiries to ensure Respondent's compliance with this Agreement.
11. Nothing in this Agreement limits IER's right to inspect Respondent's Forms I-9 pursuant to 8 C.F.R. § 274a.2(b)(2)ii and 8 C.F.R. § 44.302. Respondent shall provide such documents in electronic form unless requested otherwise.
12. If, during the two years after the Effective Date of this Agreement, IER has reason to believe that Respondent is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Respondent of the purported violation rather than initiate a new discrimination investigation or seek to judicially enforce the Agreement. If IER has exercised its discretion to notify Respondent of the purported violation, unless extended in writing by IER, Respondent shall have thirty (30) days from the date it is notified by IER of the purported violation(s) to cure the violation(s) to IER's satisfaction, before IER deems Respondent to be in violation of this Agreement and proceeds to take appropriate enforcement actions.

13. This Agreement does not affect the right of any individual to file a charge under the Act alleging an unfair immigration-related employment practice against Respondent, the authority of IER to investigate or file a complaint on behalf of any such individual, or the authority of IER to conduct an independent investigation, for any of Respondent's employment practices occurring after the Effective Date or outside of the scope of this investigation or this Agreement.
14. This Agreement resolves any and all differences under 8 U.S.C. § 1324b between the parties relating to the investigation of the charges identified as DJ Numbers 197-49-92 and 197-49-93, through the Effective Date. The provisions of paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty for the alleged violations of 8 U.S.C. § 1324b(a)(1) that are the subject of the charge investigations, designated as DJ Numbers 197-49-92 and 197-49-93, through the Effective Date.
15. The United States may bring a civil action in the United States District Court for the District of New Mexico to enforce this Agreement, and may in such action seek to have the court impose any remedy authorized at law or equity. This provision does not constitute and should not be construed as a waiver: (a) by the United States of sovereign immunity, or any other jurisdictional or legal defense available to the United States, or (b) by the Respondent of any defenses available to Respondent.
16. 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 Respondent committed is not reasonably foreseeable. To the extent that either 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.
17. 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 thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.
18. The Parties agree to bear their own costs, attorneys' fees and other expenses incurred in this investigation.
19. 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.

20. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The parties agree to be bound by facsimile signatures.

Carrillo Farm Labor, LLC

By: Maria Carrillo
Maria Carrillo
Authorized Representative

Dated: 05/18/2017

Immigrant and Employee Rights Section

By: Jodi Danis
Jodi Danis
Acting Deputy Special Counsel

Dated: 5/23/17

C. Sebastian Aloit
Special Litigation Counsel

Richard Crespo
Trial Attorney