

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

October 14, 2016

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| UNITED STATES OF AMERICA, |) | |
| Complainant, |) | |
| |) | |
| v. |) | 8 U.S.C. § 1324a Proceeding |
| |) | OCAHO Case No. 15A00073 |
| |) | |
| FRIMMEL MANAGEMENT, LLC |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

FINAL DECISION AND ORDER

Appearances:

Eli Laff
Brent Landis
for the complainant

Christopher J. Brelje
Leon Silver
Andrew Jacob
Mary Curtin
for the respondent

I. INTRODUCTION

This is an action pursuant to the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2012). The United States Department of Homeland Security, Immigration and Customs Enforcement (ICE, Complainant, or the government) filed an amended complaint consisting of four counts against Frimmel Management, LLC (Frimmel Management,

Respondent, or the company).¹ The company filed an answer and the parties completed prehearing procedures.

Presently pending are ICE's (1) Motion to Amend Complaint to remove five of the violations charged in the complaint and (2) Motion for Summary Decision. Frimmel Management filed a response to both motions. As discussed in detail below, ICE's Motion to Amend Complaint is granted and its Motion for Summary Decision will be granted in part and denied in part.

II. BACKGROUND AND PROCEDURAL HISTORY

Frimmel Management is a domestic limited liability company organized under Arizona law. On August 9, 2013, ICE personally served Respondent with a Notice of Inspection and an Immigration Enforcement Subpoena. The Notice of Inspection advised Respondent that a review of its Employment Eligibility Verification Forms I-9 was scheduled for August 12, 2013. The Immigration Enforcement Subpoena requested that the company provide the original Forms I-9 "for all current employees and all former" employees, pursuant to IRCA's retention requirements, copies of any identity and employment authorization documents attached to the employees' Forms I-9, a list of all employees receiving wages from August 9, 2010, to the date of the Notice of Inspection, and other related employee and business records. Bret Frimmel submitted a stack of Forms I-9 to ICE on August 12, 2013. Moreover, ICE indicated that it received the requested employee records from a payroll service provider in August 2013.

On November 6, 2013,² ICE served Frimmel Management with a Notice of Suspect Documents, which informed the company that 105 of its employees, who were listed in an attachment, did not appear to be authorized for employment in the United States, according to records checked by ICE's Homeland Security Investigations (HSI) unit. ICE explained, "The documents submitted to you were found to pertain to other individuals, or there was no record of the alien registration numbers being issued, or the documents pertain to individuals, but the individuals are not employment authorized or their employment authorization has expired." Notice of Suspect Documents at 1. The notice also indicated that ICE would consider the named employees to be unauthorized for employment unless they "present valid identification and employment eligibility documentation acceptable for completing the Form I-9, other than the

¹ On June 8, 2016, Complainant's Motion to Amend Complaint "to remove reference to Uncle Sam's" from the case caption was granted. According to Respondent, Frimmel Management leases employees to Uncle Sam's restaurants. The record shows that Bret Frimmel, who is the agent of Frimmel Management, is also an owner of Uncle Sam's restaurants.

² The Notice of Suspect Documents is dated October 28, 2013, and does not include a certificate of service. According to Auditor Miller, this notice was served on Frimmel Management on November 6, 2013, and the company has not asserted otherwise.

documentation previously submitted to you” *Id.* Frimmel Management was further advised that “HSI presumes that employers who, within 10 business days of receiving a Notice of Suspect Documents letter, verify the work authorization of suspect employees or take other appropriate actions to resolve the apparent employment of unauthorized workers to have demonstrated reasonable care under the INA.” *Id.* The notice also included the contact information of the HSI auditor in the event that Frimmel Management or an employee chose to challenge the finding of suspect documents.

On February 10, 2015, ICE personally served Frimmel Management with a Notice of Intent to Fine, which set forth four counts. Count I alleged that Respondent failed to ensure that 258 named employees properly completed section 1 of their Forms I-9 and/or that Respondent failed to properly complete sections 2 or 3 of these employees’ Forms I-9, in violation of 8 U.S.C. § 1324a(a)(1)(B), noting these are “substantive paperwork violations aggravated for seriousness.” Count II alleged that Respondent failed to ensure that sixty-six named employees properly completed section 1 of their Forms I-9 and/or that Respondent failed to properly complete sections 2 or 3 of these employees’ Forms I-9, noting these are “substantive paperwork violations with aggravations for seriousness and unauthorized alien.” Count III alleged that Respondent failed to prepare and/or present Forms I-9 for thirty-three named employees, in violation of 8 U.S.C. § 1324a(a)(1)(B), noting these are “substantive paperwork violations with aggravation for seriousness.” Count IV alleged that Respondent failed to prepare and/or present Forms I-9 for thirty-one named employees, noting these are “substantive paperwork violations with aggravations for seriousness and unauthorized alien.”³ ICE assessed a total fine amount of \$391,391.00 for all four counts. The Notice of Intent to Fine also set forth that all 388 named employees were hired after November 6, 1986.

Respondent timely requested a hearing before an Administrative Law Judge. On August 11, 2015, ICE filed a four-count complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), which fully incorporated the Notice of Intent to Fine, including the proposed penalty amount.

On September 16, 2015, Frimmel Management filed its answer to the complaint. Frimmel Management contended that ICE’s evidence in support of all four counts in the complaint “is the fruit of an illegal investigation violative of the Fourth and Fifth Amendments to the U.S. Constitution,” and is therefore inadmissible. Respondent’s Answer at 2. Frimmel Management states that ICE’s investigation and I-9 audit were “direct” results of a criminal investigation by the Maricopa County Sheriff’s Office (MCSO), into whether Respondent’s owners, including Mr. Frimmel, knowingly hired or employed unauthorized aliens. *Id.* at 3. A state court dismissed the criminal complaints against these individuals, finding that the MCSO’s investigation involved “faulty affidavits, misstatement[s] of evidence, and other law enforcement

³ The employees identified in the complaint have been listed in the attached Appendix.

misdeeds.” *Id.* Frimmel Management therefore asserts that the information that ICE obtained, which led to its audit of the company, is “fruit of the poisonous tree.” *Id.*

Frimmel Management further asserted the following affirmative defenses: (1) ICE’s investigation must be dismissed because it is the result of egregious governmental misconduct in violation of Respondent’s Fifth Amendment right to due process; and (2) ICE failed to state a claim upon which relief may be granted. In addition, Respondent stated that “in the event the Court finds Complainant’s evidence to be admissible, any alleged paperwork mistakes on I-9 forms are essentially the same mistakes repeated many times on many I-9 forms.” *Id.* at 5. Frimmel Management also claimed that it is a small business with a high turnover rate for its employees and that it will become insolvent “if a fine of any size is assessed against it.” *Id.* at 4-5.⁴

On October 26, 2015, ICE filed a “Motion to Amend Complaint” and a “First Amended Complaint Regarding Unlawful Employment.” ICE explained that the amended complaint removes four of the alleged violations from Counts I and II of the complaint pursuant to 28 U.S.C. § 2462’s five-year statute of limitations. The amended complaint further moves one of the alleged violations from Count IV to Count III and removes one alleged violation from Count IV. Accordingly, Count I of the amended complaint names 255 employees, Count II names 65 employees, Count III names 34 employees, and Count IV names 29 employees. The amended complaint’s proposed fine amount was \$380,404.75. In response, Frimmel Management filed an answer which asserts the same arguments and defenses as presented in its original answer.

On November 22, 2015, ICE filed its prehearing statement, in which it proposed nine factual stipulations. These factual stipulations generally relate to the procedural history of the case. Proposed factual stipulation eight states, “Respondent failed to prepare or present Forms I-9 for the ninety-nine (99) persons listed in Count III and Count IV.” Complainant’s Prehearing Statement at 4. Proposed factual stipulation nine states, “Respondent is not, and has not been, the subject of any previous findings of violations of the provisions of INA § 274A.” *Id.* On December 8, 2015, ICE filed a “Motion to Amend Prehearing Statement,” requesting to add exhibit G-13, “Notice of Unauthorized Aliens,” to its preliminary exhibit list.

Respondent filed its prehearing statement on December 23, 2015. The company stated that it was not prepared to propose stipulations and requested that the “threshold issue in this case regarding tainted evidence be resolved first.” Respondent’s Prehearing Statement at 2.

A. Motion to Quash

⁴ Although Respondent casts these arguments relating to the penalty as “affirmative defenses,” they are not defenses to liability.

On March 7, 2016, Complainant filed a “Motion to Quash Notices of Deposition,” as Frimmel Management sought to depose Ryan Miller, Matthew Allen, Harold Beasley, Pat Contreras, and Joshua Henderson. Complainant did not contest Respondent’s Notice of Deposition for HSI Auditor Ryan Miller because Auditor Miller initiated and conducted the underlying audit that resulted in the Notice of Intent to Fine issued to Frimmel Management. However, ICE contended that all other Notices of Deposition should be quashed as the testimony of the four other individuals noticed would be “irrelevant and unnecessarily duplicative” to the testimony provided by Auditor Miller. Complainant’s Motion to Quash at 3. Matthew C. Allen and Harold R. Beasley are “high level managers” at HSI and Joshua Henderson is a detective with the MCSO. *Id.* at 3-4. Complainant further indicated it did not know an individual named Pat Contreras. *Id.* at 4.

On March 18, 2016, Frimmel Management filed its response to ICE’s Motion to Quash Notices of Depositions. The company reasserted its affirmative defense that the instant matter should be dismissed and that all evidence obtained by ICE “must be excluded under the fruit-of-the-poisonous-tree doctrine because [ICE] learned of the evidence that prompted its audit from the illegal [MCSO] raids on the Uncle Sam’s restaurants.” Respondent’s Response to Motion to Quash at 2. Frimmel Management argued that “[e]vidence that is tainted by a fourth amendment violation must be excluded even in a civil matter and even where the matter is before a different sovereign. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050-51 (1984) (applying [the exclusionary rule] in a civil deportation matter).” *Id.* Specifically, Frimmel Management stated that “if ICE began its audit of Respondent after receiving [an email from MCSO about the criminal investigation], then the ALJ must suppress all evidence obtained in that audit.” *Id.* at 3-4. Respondent asserted that it therefore had a “substantial need to conduct discovery into why MCSO sent Harold Beasley, Pat Contreras, and Ryan Miller” this email, which Respondent contends was done in order to cause ICE to initiate an audit of Frimmel Management. *Id.* at 3.

On March 31, 2016, Administrative Law Judge Stacy Paddock, who previously presided over this matter, issued an Order Granting Complainant’s Motion to Quash Notices of Deposition and Denying Respondent’s Motion for Extension of Discovery Deadline. *See United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271 (2016).⁵ Judge Paddock noted that Frimmel Management issued the Notices of Deposition for the four individuals at issue in order to establish “the relationship between MCSO and ICE” and ascertain how Respondent’s identity

⁵ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

was disclosed to ICE. Judge Paddack cited to the United States Supreme Court's holding in *Lopez-Mendoza*, 468 U.S. at 1039-40, that the identity of a respondent in a civil proceeding is “never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred,” and held that Frimmel Management's identity and the method by which it came to the attention of ICE, even if the result of an unlawful police action, could not be suppressed in the OCAHO proceedings. *Id.* at 6-7.

Judge Paddack further found that Respondent did not demonstrate any egregious actions by relevant ICE officials who performed the audit of Respondent's paperwork or that the suppression of evidence would serve the exclusionary rule's primary purpose of deterrence to unlawful police action, as OCAHO adjudications are not within the “zone of primary interest” of the MCSO police. *Id.* (citing *Adamson v. Comm'r*, 745 F.2d 541, 546 (9th Cir. 1984)). Accordingly, ICE's Motion to Quash was granted, as Frimmel Management did not demonstrate that its identity could be suppressed pursuant to the exclusionary rule and because the company failed to demonstrate that testimony relevant to the OCAHO proceeding would result from the depositions of Mr. Contreras, Mr. Beasley, Mr. Allen, and/or Mr. Henderson.

Frimmel Management requested interlocutory review by the Chief Administrative Hearing Officer (CAHO), who declined to modify or vacate Judge Paddack's interlocutory order. *United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271a (2016). Specifically, the CAHO found “no error in the ALJ's holding that ‘respondent has failed to demonstrate that its identity can be suppressed pursuant to the exclusionary rule.’” *Id.* at 5 (citing *Frimmel Mgmt.*, 12 OCAHO no. 1271 at 8). The CAHO also noted that Frimmel Management made a reference in its request for interlocutory review to the fruit-of-the-poisonous-tree doctrine and ICE's failure to show that one of the doctrine's exceptions applied, but declined to address the merits of this argument as it “was neither fully briefed by the parties in the proceedings below nor squarely addressed by the ALJ in her interlocutory order. Similarly, these arguments were not fully briefed on review.” *Id.* at 6. However, the CAHO stated, “To the extent [R]espondent's arguments on this point are not foreclosed by the ALJ's holding in the interlocutory order with respect to exclusion of [R]espondent's identity under *INS v. Lopez-Mendoza*, [R]espondent may raise and fully brief this issue at the appropriate time in the ongoing proceedings before the ALJ.” *Id.*

B. Motion for Summary Decision

On May 26, 2016, Complainant filed its Motion for Summary Decision (Complainant's Motion). ICE attached the following proposed exhibits to its motion: G-1) Notice of Inspection and Immigration Enforcement Subpoena; G-2) Notice of Suspect Documents; G-3) Forms I-9 for Count I employees; G-4) Forms I-9 for Count II employees;⁶ G-5) Frimmel Management's

⁶ Attached to these Forms I-9 are printouts from ICE's check results with TECS and its Central Index System (CIS), which ICE presented as evidence of the alleged unauthorized status of these employees. “TECS is the principal system used by officers at the border to assist with screening

Arizona Department of Economic Security Unemployment Insurance Quarterly Wage Reports for 2010 (3rd and 4th Quarters), 2011, 2012, 2013 (1st and 2nd Quarters); G-6) Frimmel Management's Payroll Register for June 2013-August 2013; G-7) Frimmel Management's Employee Roster Report dated August 12, 2013; G-8) Frimmel Management's 2012 Census Report for its 401(k) plan; G-9) Frimmel Management's Articles of Incorporation; G-10) Affidavit of HSI Auditor Ryan Miller; G-11) MCSO Human Smuggling Division/C.E.S Shift Summary DR: 13-008988; G-12) Department of Homeland Security (DHS) Receipt for Property; G-13) Notice of Unauthorized Aliens; G-14) Arizona Secretary of State Registered Name for Uncle Sam's; G-15) MCSO Criminal Employment Unit Shift Summary DR: 13-189120; and G-16) Amended Affidavit of HSI Auditor Miller.

On July 11, 2016, Complainant filed a Statement Regarding the Appropriateness of the Proposed Fine (Complainant's Penalty Statement).

On July 8, 2016, Respondent filed a Response to Complainant's Motion for Summary Decision (Respondent's Response). Frimmel Management attached the following proposed exhibits to its response: Ex. A) MCSO NewsRelease, *Sheriff Now Investigating Uncle Sam, Search Warrant Being Executed*, July 27, 2013; Ex. B) MCSO NewsRelease, *Uncle Sam's Identity Theft Operation Yields Arrests*, July 18, 2013; Ex. C) Ruling, *State of Arizona v. Bret Frimmel*, CR2014-103633-001 DT (Ariz. Sup. Ct., Maricopa Cnty., April 15, 2015); Ex. D) Order, *State of Arizona v. Bret Frimmel*, CR 2014-103633-001 DT (Ariz. Sup. Ct., Maricopa Cnty., April 23, 2015); Ex. E) Excerpts from Auditor Miller's deposition; and Ex. F) Amended Affidavit of Auditor Miller.

III. POSITIONS OF THE PARTIES

A. Complainant's Motion

1. Liability

Concerning Frimmel Management's assertion that the Fourth Amendment exclusionary rule is applicable in this case, ICE argues that the "attenuated basis" exception applies because there is not a sufficient nexus between the MCSO investigation and the evidence that Complainant obtained during its investigation. Complainant's Motion at 13-14 (citing *United States v. Smith*, 155 F.3d 1051, 1060 (9th Cir. 1998)). ICE further asserts that pursuant to precedent from the Supreme Court and the Court of Appeals for the Ninth Circuit (Ninth Circuit), the caselaw of which is authoritative, Frimmel Management is incorrect in arguing a "but for" test with respect

and determinations regarding admissibility of arriving persons." DHS, *DHS/CBP/PIA-009(a) – TECS System: CBP Primary and Secondary Processing (TECS) National SAR Initiative* (Aug. 26, 2015), <https://www.dhs.gov/publication/tecs-system-cbp-primary-and-secondary-processing-tecs-national-sar-initiative>.

to the exclusionary rule. *Id.* at 14. In addition, according to ICE, Respondent failed to show that “ICE obtained any information from the MCSO investigation other than Frimmel Management’s identity,” as Auditor Miller learned of the MCSO investigation from local news reports and subsequently conducted an independent investigation. *Id.* Auditor Miller “complied with all laws and regulations in conducting his audit.” *Id.* at 14-15.

Turning to the allegations of the complaint, ICE claims that Frimmel Management has never contested that the alleged substantive paperwork violations exist. Complainant’s Motion at 15. According to ICE, the vast majority of the Count I substantive paperwork violations include Respondent failing to properly list an employment authorization document and failing to sign the employer attestation in section 2. Count I also includes Respondent’s failure in ensuring that its employees signed the attestation in section 1 and attested to a citizenship or immigration status, all substantive violations. *Id.* at 18. ICE contends that the Count II violations are similar to those charged in Count I but that the employees named in Count II “appear to have presented false identity documents or their documents could not be verified.” *Id.* at 20. Therefore, ICE considers these employees to be unauthorized for employment. *Id.*

As to Count III, Complainant argues there is no genuine issue of material fact with respect to liability because based on the “three-year time period covered in the present Form I-9 inspection” and the company’s employment records, Frimmel Management failed to prepare or present to Auditor Miller sixty-three Forms I-9. *Id.* at 22. Count IV also alleges failures to prepare and/or present Forms I-9 and ICE further contends that “each named employee listed in Count IV used a document for employment that had not been lawfully issued to him or her.” *Id.* at 26. However, ICE withdrew the allegations with respect to the Forms I-9 of Denee Porter-Ishak (#27) and Moises Silva (#32) in Count II and Jorge Armando Nava Lares (#17) in Count IV. *Id.* at 25 nn. 14-15, 29 n.16. Accordingly, ICE argues it is entitled to summary decision with respect to the charged 380 violations in Counts I-IV.

2. Penalty

ICE set a \$935 baseline penalty amount in accordance with its agency guidelines because Frimmel Management had an eighty-four percent violation rate (380 substantive paperwork violations out of 453 required Forms I-9). Complainant’s Penalty Statement at 3 (citing ICE, *Form I-9 Inspection Overview: Fact Sheet (I-9 Fact Sheet)*, 3 (Jun. 26, 2013), <http://www.ice.gov/news/library/factsheets/i9-inspection.htm>). ICE further contends that the “higher base fine is warranted because it is clear that Frimmel Management clearly did not take steps to ensure that it was properly completing the verification forms.” *Id.* at 4. In assessing the fine amount, ICE neither enhanced nor mitigated the baseline penalty on account of Frimmel Management’s size, good faith, or history of previous violations. ICE enhanced the baseline penalty by five percent for all of the violations on account of seriousness. *Id.* at 4-5. ICE also aggravated the baseline penalty by an additional five percent for the Count II and Count IV violations because of the alleged unauthorized status of the named employees. *Id.* at 5.

According to the government, Frimmel Management has never denied that the employees named in Counts II and IV were unauthorized and has asserted that “it never ‘intentionally or knowingly’ hired unauthorized aliens.” *Id.* at 6. Moreover, ICE does not consider Frimmel Management’s assertion of an inability to pay the fine to be a relevant factor in assessing the fine amount “under the circumstances.” *Id.* ICE’s proposed penalty amount is \$377,412.75.⁷

B. Respondent’s Response

1. Liability

Frimmel Management reiterates that ICE’s evidence is not admissible because it was derived from MCSO’s unlawful investigation. Frimmel Management contends that on “July 17, 2013, MCSO conducted one of Sheriff [Joe] Arpaio’s publicity-driven workplace immigration raids, searching and seizing records at two Uncle Sam’s restaurants to which Frimmel Management leases employees, and at Bret Frimmel’s home.” Respondent’s Response at 2. Mr. Frimmel was subsequently prosecuted for violating Arizona’s identity theft laws. However, on April 15, 2015, a Maricopa County Superior Court judge ruled that the July 2013 warrants “were supported by affidavits made in knowing or reckless disregard of the truth,” and, therefore, all evidence obtained from using those warrants were ordered suppressed. *Id.* Frimmel Management claims that although ICE received a tip about alleged unauthorized workers at Uncle Sam’s restaurants, “[o]nly when Auditor Miller saw the media reports regarding MCSO’s July 2013 raids at Uncle Sam’s did Auditor Miller commence his investigation of Frimmel Management.” *Id.* at 3. For these reasons, Frimmel Management argues, the evidence obtained by ICE during its investigation must be suppressed as fruit of the poisonous tree and, consequently, that summary decision must be denied.

Frimmel Management further contends that Judge Paddock’s and the CAHO’s application of *Lopez-Mendoza* to this OCAHO proceeding “failed to distinguish that what was at issue in *Lopez-Mendoza* was discovery of the ongoing illegal immigration status of an individual. In contrast, what is at issue here is discovery of evidence of past violations of immigration law.” *Id.* at 5. According to Respondent, unlike the situation in *Lopez-Mendoza*, the exclusionary rule applies in this matter “because it would only preclude the use of evidence of Frimmel Management’s past violations against it.” *Id.* at 6. Therefore, ICE’s evidence relating to Frimmel Management’s “alleged past violations of federal law must be suppressed if it was the result of an illegal search and seizure.” *Id.* at 6-7.

⁷ ICE’s penalty assessment reflects the following: (1) the penalty for the 255 Count I violations is \$250,346.25, which includes a 5% enhancement of the \$935 baseline fine; (2) the penalty for the 65 Count II violations is \$66,852.50, which includes a 10% enhancement; (3) the penalty for the 32 Count III violations is \$31,416, which includes a 5% enhancement; and (4) the penalty for the 28 Count IV violations is \$28,798, which includes a 10% enhancement.

2. Penalty

Frimmel Management also argues that ICE’s penalty amount is “disproportionate to the gravity of the alleged offenses.” *Id.* at 7. The company states, “to seek the high end dollar amount multiplied 200 times over for the single mistake of ‘failure to sign’ is disproportionate to the gravity of the offense, and, in fact, looks like vindictiveness.” *Id.* The company also claims that ICE should have treated good faith and Respondent’s lack of a history of previous violations as mitigating factors. *Id.*

IV. DISCUSSION AND ANALYSIS

A. Applicable Legal Standards

1. Summary Decision

OCAHO rule 28 C.F.R. § 68.38(c) establishes that an Administrative Law Judge “shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.” Relying on Supreme Court precedent, OCAHO case law has held, “An issue of material fact is genuine only if it has a real basis in the record. A genuine issue of fact is material if, under the governing law, it might affect the outcome of the suit.” *Sepahpour v. Unisys, Inc.*, 3 OCAHO no. 500, 1012, 1014 (1993) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

“Once the moving party satisfies its initial burden of demonstrating both the absence of a material factual issue and that the party is entitled to judgment as a matter of law, the nonmoving party must come forward with contravening evidence to avoid summary resolution.” *United States v. Four Seasons Earthworks, Inc.*, 10 OCAHO no. 1150, 3 (2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)); *see generally* FED. R. CIV. P. 56(e). OCAHO rule 28 C.F.R. § 68.38(b) provides that the party opposing the motion for summary decision “may not rest upon the mere allegations or denials” of its pleadings, but must “set forth specific facts showing that there is a genuine issue of fact for the hearing.” Moreover, “the court must view all facts and all reasonable inferences to be drawn from them ‘in the light most favorable to the non-moving party.’” *United States v. WSC Plumbing, Inc.*, 9 OCAHO no. 1062, 3 (2000) (quoting *Matsushita*, 475 U.S. at 587).

2. Burdens of Proof and Production

In cases arising under 8 U.S.C. § 1324a, the government has the burden of proving by a preponderance of the evidence that the respondent is liable for committing a violation of the employment eligibility verification requirements. *See United States v. Nebeker, Inc.*, 10

OCAHO no. 1165, 4 (2013) (citing *United States v. Am. Terrazzo Corp.*, 6 OCAHO no. 877, 577, 581 (1996)). In addition to proving liability, “[t]he government has the burden of proof with respect to the penalty, *United States v. March Construction, Inc.*, 10 OCAHO no. 1158, 4 (2012), and must prove the existence of any aggravating factor by a preponderance of the evidence, *United States v. Carter*, 7 OCAHO no. 931, 121,159 (1997).” *United States v. Niche, Inc.*, 11 OCAHO no. 1250, 6 (2015).

However, after the government has introduced evidence to meet its burden of proof, “the burden of *production* shifts to the respondent to introduce evidence . . . to controvert the government’s evidence. If the respondent fails to introduce any such evidence, the un rebutted evidence introduced by the government may be sufficient to satisfy its burden” *United States v. Durable, Inc.*, 11 OCAHO no. 1231, 5 (2014) (referencing *United States v. Alvand, Inc.*, 2 OCAHO no. 352, 378, 382 (1991) (modification by CAHO); *United States v. Kumar*, 6 OCAHO no. 833, 112, 120-21 (1996); *Breda v. Kindred Braintree Hosp., LLC*, 10 OCAHO no. 1202, 7-8 (2013)).

3. Employment Verification Requirements

Employers must prepare and retain Forms I-9 for employees hired after November 6, 1986, and are required to produce the Forms I-9 for inspection by the government upon three days’ notice. 8 C.F.R. § 274a.2(b)(2)(ii); *United States v. Keegan Variety, LLC*, 11 OCAHO no. 1238, 2 (2014). Employers must ensure that an employee complete section 1 of the Form I-9 and attest to his or her citizenship or immigration status in the United States by signing and dating the Form I-9 no later than the first day of employment. 8 C.F.R. § 274a.2(a)(3) (attestation under penalty of perjury), (b)(1)(i)(A). For employees employed for three business days or more, an employer must sign section 2 of the Form I-9 within three days of the employee’s first day of employment to attest under penalty of perjury that it reviewed the appropriate documents to verify the individual’s identity and employment authorization. 8 C.F.R. § 274a.2(a)(3), (b)(1)(ii).

Failures to satisfy the requirements of the employment verification system are known as “paperwork violations,” which are either “substantive” or “technical or procedural.” See Memorandum from Paul W. Virtue, INS Acting Exec. Comm’r of Programs, *Interim Guidelines: Section 274A(b)(6) of the Immigration & Nationality Act Added by Section 411 of the Illegal Immigration Reform & Immigrant Responsibility Act of 1996* (Mar. 6, 1997) (Virtue Memorandum) available at 74 No. 16 Interpreter Releases 706 (Apr. 28, 1997).

4. Penalty Assessment

Civil money penalties are assessed when an employer fails to properly prepare, retain, or produce upon request the Forms I-9, according to the following parameters established at 8 C.F.R. § 274a.10(b)(2): the minimum penalty is \$110 and the maximum penalty is \$1100 for each

individual with respect to whom a paperwork violation occurred after September 29, 1999. Pertinent regulations and OCAHO case law set forth that if a paperwork violation is proven, then a fine must be assessed. 8 C.F.R. § 274a.10(b)(2) (“A respondent determined . . . to have failed to comply with the employment verification requirements as set forth in § 274a.2(b), shall be subject to a civil penalty”); *Keegan Variety*, 11 OCAHO no. 1238 at 7 (discussing that there is no fine waiver and a penalty must be assessed).

Title 8 U.S.C. § 1324a(e)(5) requires consideration of the following factors when assessing civil money penalties for paperwork violations: (1) the size of the employer’s business; (2) the employer’s good faith; (3) the seriousness of the violations; (4) whether the employee is an unauthorized alien; and (5) the employer’s history of previous violations. “The statute does not require that equal weight necessarily be given to each factor, nor does it rule out consideration of other factors.” *United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000). Although not an exhaustive list, additional factors may be considered, including a company’s ability to pay the proposed penalty and policies of leniency established by statute. *See Niche*, 11 OCAHO no. 1250 at 6-7. ICE has broad discretion in setting the penalties; however, OCAHO is not bound by the government’s penalty methodology and the Administrative Law Judge may conduct a *de novo* review of the penalty assessment. *United States v. Holtville 811 Inc.*, 11 OCAHO no. 1258, 10 (2015) (citing *United States v. Aid Maint. Co.*, 8 OCAHO no. 1023, 321, 343 (1999); *United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011)).

B. ICE’s Evidence Will Not be Suppressed Pursuant to the Exclusionary Rule

As a threshold matter, Frimmel Management’s request to exclude ICE’s evidence is again hereby denied, even though MCSO’s investigation was found to have been conducted in violation of the Fourth Amendment.⁸

1. Frimmel Management’s Identity Cannot be Suppressed

The undersigned fully incorporates the reasoning of Judge Paddack’s Order Granting Complainant’s Motion to Quash Notices of Deposition, which was also affirmed by the CAHO, in finding that the exclusionary rule is inapplicable to the instant OCAHO proceeding. *Frimmel Mgmt.*, 12 OCAHO no. 1271 at 6-8; *Frimmel Mgmt.*, 12 OCAHO no. 1271a at 5 (order of the CAHO). OCAHO precedent has recognized that the exclusionary rule, which is a “judicially created remedy designed to provide a deterrent against future [Fourth Amendment] violations by law enforcement officers,” may be applied in administrative proceedings. *United States v.*

⁸ Frimmel Management also argued in its answer that ICE’s evidence was inadmissible because it was derived from an investigation that violated Respondent’s Fifth Amendment right and that ICE failed to state a claim upon which relief may be granted. However, Frimmel Management did not further brief these arguments and I will therefore not address them.

Carpio-Lingan, 6 OCAHO no. 909, 1019, 1022, 1025-26 (1997); *see also United States v. Jenkins*, 5 OCAHO no. 743, 164, 176 (1995) (citing cases).

Frimmel Management contends that the interlocutory orders misapplied *Lopez-Mendoza* because that case involved “discovery of the ongoing illegal immigration status of an individual,” but that here, “discovery of evidence of past violations of immigration law” is at issue. Respondent’s Response at 5. First, as stated in the CAHO’s order, although this may be a distinction, it “is not a material one,” because the Ninth Circuit has found that “‘the rule that identity evidence is not suppressible is not limited’ to cases involving ongoing or continuous violations.” *Frimmel Mgmt.*, 12 OCAHO no. 1271a at 4 (citing *United States v. Del Toro Gudino*, 376 F.3d 997, 1001-02 (9th Cir. 2004)).

Second, the evidence of record demonstrates that contrary to Respondent’s assertion, the only evidence that ICE discovered as a result of MCSO’s publicized raid on Uncle Sam’s restaurants was Frimmel Management’s *identity*. Frimmel Management itself asserted that HSI Auditor Miller learned about the company through the MCSO News Release. Respondent’s Response at 3; *see also id.*, Exs. A, E at 10. Subsequently, Auditor Miller’s independent investigation into Frimmel Management’s compliance with the employment verification system began with service of Notice of Inspection and culminated in a Notice of Intent to Fine, and, ultimately, a complaint. *See Complainant’s Motion*, Ex. G-1. There is no evidence to suggest that Auditor Miller failed to carry out this investigation in accordance with DHS guidelines or that he relied on evidence directly obtained from MCSO’s unlawful conduct.

Accordingly, Respondent has failed to show that the evidence it seeks to suppress, namely, ICE’s findings from its I-9 audit and investigation that concluded in a fine assessed against the company, constitutes fruit of the poisonous tree. This is because, as stated above, Frimmel Management’s identity is the evidence that ICE obtained as a result of the publicized MCSO investigation. The challenged evidence, which flowed from this discovery, was the result of HSI’s own civil investigation, independent of MCSO’s criminal inquiry into the company. “[T]here is no sanction to be applied when an illegal arrest only leads to discovery of the man’s identity and that merely leads to the official file or other *independent evidence*.” *Del Toro Gudino*, 376 F.3d at 1001 (citing *United States v. Orozco-Rico*, 589 F.2d 433, 435 (9th Cir. 1978) (emphasis added)); *United States v. Aguilar*, 883 F.2d 662, 709 (9th Cir. 1989) (“Where the government stumbles upon illegality, albeit through an improper search, the law breaker is not somehow insulated forever thereafter from further independent investigation.”). The circumstances of the instant proceedings are therefore not as distinct from those in *Lopez-Mendoza*, as Frimmel Management proposes, and *Lopez-Mendoza* mandates that Respondent’s identity can “never” be suppressed. 468 U.S. at 1039 (citing cases).

In addition, Respondent’s characterization that the charged paperwork violations are “past violations of immigration law” is incorrect. Generally, paperwork violations are “continuous” violations until they are corrected or until the employer is no longer required to retain the Form

I-9 pursuant to IRCA's retention requirements. *See* 8 C.F.R. § 274a.2(b)(2)(i)(A); *United States v. Curran Eng'g Co.*, 7 OCAHO no. 975, 874, 895 (1997) (collecting cases); *see also United States v. WSC Plumbing, Inc.*, 9 OCAHO no. 1061, 11 (2000). As discussed below, Respondent is liable for the charged substantive paperwork violations. *See* discussion *infra* IV.C; Appendix A. Therefore, these paperwork violations are not "past violations" but are continuous, further undermining Respondent's argument that *Lopez-Mendoza* is inapplicable here because *Lopez-Mendoza* was in an ongoing, or continuous, unlawful status. Respondent is similarly in an ongoing status of noncompliance with IRCA's employment verification requirements.

2. Attenuated Basis Exception

Even assuming for the sake of argument that the challenged evidence here constituted fruit of the poisonous tree, the undersigned concurs with ICE that such evidence would fall under the "attenuated basis" exception. *See Smith*, 155 F.3d at 1060 (noting there are three exceptions to the exclusionary rule) (citing *United States v. Ramirez-Sandoval*, 872 F.2d 1392, 1396 (9th Cir. 1989)). The core of Frimmel Management's argument is that ICE would not have conducted an I-9 audit "had there not been an illegal search." Respondent's Response at 4. As ICE correctly notes, this argument uses a "but for" test, which the Supreme Court and the Ninth Circuit have rejected. *Smith*, 155 F.3d at 1060. "Rather, the taint inquiry is more akin to a proximate causation analysis. . . . at *some* point along the line, evidence might be 'fruit,' yet nonetheless be admissible because it is no longer 'tainted' or 'poisonous.'" *Id.* Assuming that ICE's evidence relating to its audit of Frimmel Management is "fruit" of MCSO's illegal conduct, this evidence was not a "direct result" of MCSO's conduct. As explained above, this evidence was obtained as a direct result of an independent investigation carried out by ICE's HSI unit, an entity wholly separate from MCSO. In essence, MCSO provided a lead to HSI, which Auditor Miller discovered via a public announcement,⁹ about possible I-9 verification failures because of the criminal allegations that the restaurant was hiring unauthorized workers. "A lead, however, is

⁹ The record also shows that MCSO sent an email on July 18, 2013, to numerous individuals, including MCSO officials, Auditor Miller, and other ICE agents, that included an attached MCSO Shift Summary DR 13-008988. Respondent's Motion to Quash, Ex. R-3. ICE also submitted a copy of this shift summary with its motion, *see* Complainant's Motion, Ex. G-11, which briefly describes the MCSO's criminal investigation up until the execution of search warrants on July 17, 2013, for Uncle Sam's restaurants and Mr. Frimmel's home. *Id.* Auditor Miller also received an MCSO shift summary in January 2014, describing the arrests of Mr. Frimmel and Uncle Sam's general manager, Lisa Norton, for violating Arizona's identity theft laws. *Id.*, Ex. G-15. This exchange of information does not alter the fact that HSI nevertheless conducted its own independent I-9 investigation, which resulted in ICE's discovery of evidence to support the Notice of Intent to Fine and OCAHO complaint, and thus has no bearing on my conclusion regarding the application of the exclusionary rule.

simply not enough to taint an entire investigation.” *Id.* at 1063 (citing *Hoonsilapa v. INS*, 575 F.2d 735, 738 (1978); *United States v. Cales*, 493 F.2d 1215, 1216 (1974)).¹⁰

3. Suppression of the Challenged Evidence Does Not Sufficiently Deter Future Unlawful Police Conduct

Importantly, as discussed in Judge Paddack’s order, Respondent has failed to show that suppression of the challenged evidence would satisfy the exclusionary rule’s primary goal of deterring future unlawful police conduct. *See Frimmel Mgmt.*, 12 OCAHO no. 1271 at 7 (citing *Adamson*, 745 F.2d at 546); *see also United States v. Janis*, 428 U.S. 433 at 447 (1976).¹¹ Respondent has not alleged and the record does not establish that any ICE officials engaged in unlawful or egregious conduct and MCSO’s evidence was already ordered suppressed in the relevant state court, thereby serving the rule’s goal of deterrence. There has not been any showing that “further application of the exclusionary rule in [this] federal civil proceeding” would deter unlawful conduct by the MCSO because this OCAHO proceeding is not within the “zone of primary interest” of the MCSO police officers, who sought criminal convictions based on Arizona’s identity theft laws. *Adamson*, 745 F.2d at 545 (citing *Janis*, 428 U.S. at 458). “On the other side of the scale, the cost to the public of excluding the evidence can be readily measured in dollars and cents.” *Grimes v. Comm’r*, 82 F.3d 286, 290 (9th Cir. 1996).

In conclusion, Frimmel Management’s request that ICE’s evidence be suppressed as fruit of the poisonous tree is denied for the all the aforementioned reasons, including those set out by Judge Paddack in her interlocutory order and affirmed by the CAHO.

C. Frimmel Management’s Liability

Through the relevant Arizona Unemployment Quarterly Wage Reports and Frimmel Management pay stubs, employee roster reports, and 401(k) census reports, ICE demonstrated that the 380 individuals named in the complaint received wages from Frimmel Management for

¹⁰ Respondent also briefly addresses the “inevitable discovery” exception in its response. However, because I have found that ICE’s evidence does not constitute fruit of the poisonous tree, I will not address this argument.

¹¹ In its response, Frimmel Management again mischaracterized the holding of *Adamson*, as it did in its Motion for Interlocutory Review by the CAHO, by stating that the exclusionary rule was applied in *Adamson* “to suppress evidence in a civil tax proceeding.” Respondent’s Response at 6; *see Frimmel Mgmt.*, 12 OCAHO no. 1271a at 5. “In *Adamson* . . . [the Ninth Circuit] declined to apply the exclusionary rule and determined that admitting the evidence would not have implicated the integrity of the courts because, *in that case*, the evidence had not been obtained through egregious conduct.” *Gonzalez-Rivera v. INS*, 22 F.3d 1441, 1448 n.3 (9th Cir. 1994).

their services and therefore qualify as “employees.” *See* 8 C.F.R. § 274a.1(f); Complainant’s Motion, Exs. G-5–G-8. Second, ICE demonstrated that these individuals were either current employees or former employees who fall within the statutory retention period for whom Frimmel Management was required to prepare and/or present Forms I-9. Regarding former employees, the Form I-9 retention rules require an employer to retain Forms I-9 for three years after the date employment began or one year after employment was terminated, whichever date is later. 8 U.S.C. § 1324a(b)(3) (“Retention of verification form”). Here, the Notice of Inspection was served on August 9, 2013. Therefore, Frimmel Management was required to present to ICE the Forms I-9 of former employees who were hired between August 9, 2010, and August 9, 2013, or were terminated between August 9, 2012, and August 9, 2013, whichever date is later.

1. Counts I and II

Count I alleges that there are substantive violations in section 1 and/or sections 2 or 3 of the Forms I-9 for the 255 named individuals. Count II alleges that there are substantive violations in section 1 and/or sections 2 or 3 of the Forms I-9 for the sixty-five named individuals, who ICE further contends are unauthorized for employment in the U.S. A visual examination of these 320 Forms I-9 demonstrates that there is at least one substantive paperwork violation in each form, as charged by ICE. *See* Complainant’s Motion at 18-20; Appendix A, Counts I- II.¹²

Frimmel Management is liable for the following substantive paperwork violations: (1) failure to ensure that an employee checks a box in section 1 attesting to whether he or she is a U.S. citizen, a lawful permanent resident (LPR), or an alien authorized to work; (2) failure to ensure that an employee sign the attestation in section 1; (3) failure to review and verify a proper List A or Lists B and C document(s) in section 2; and (4) failure to provide the document title, identification number(s), and/or expiration date(s) of a proper List A or Lists B and C document(s) in section 2. *See* Virtue Memorandum at 3-4.¹³ The substantive violations on the company’s Forms I-9 also include omission of the expiration date of a driver’s license in section 2 and of the issuing authority for a List A document or a List B document in section 2. *United States v. Hartmann Studios, Inc.*, 11 OCAHO no. 1255, 10 (2015) (citation omitted); *United States v. Frio Cnty. Partners, Inc.*, 12 OCAHO no. 1276, 7 (2016); *United States v. Ketchikan Drywall Servs., Inc.*, 10 OCAHO no. 1139, 19 (2011). In addition, failure to reverify an individual’s employment

¹² Although ICE alleged that several of the Forms I-9 contained more than one substantive violation, I have not addressed whether each alleged substantive violation exists, as all of the Forms I-9 clearly contain at least one substantive violation. The company will only be held liable for one substantive violation per Form I-9. *See* Appendix A, Counts I-II.

¹³ Frimmel Management recorded the identity and/or employment authorization documents under the wrong “List” in section 2 in numerous Forms I-9. The undersigned referred to these documents in the Appendix by their proper List A, List B, or List C designation and not in accordance with how Respondent recorded them on the Forms I-9.

authorization, if it expires, by completing section 3 no later than the date of expiration is a substantive violation. *See* Virtue Memorandum at 4; *see also Hartmann Studios*, 11 OCAHO no. 1255 at 10.

Frimmel Management has not refuted ICE's showing that there is no genuine issue of material fact with respect to the company's liability. Therefore, ICE will be granted summary decision with respect to all 255 Count I violations and all 65 Count II violations, for a total of 320 violations.

Furthermore, ICE met its burden of proving that most, but not all, of the employees identified in Count II were unauthorized for employment. However, this is a factor that will be considered in the penalty assessment. *See* discussion *infra* IV.D.1.c.

2. Counts III and IV

Count III alleges that Frimmel Management failed to prepare and/or present Forms I-9 for thirty-two of the named employees. Count IV alleges that the company failed to prepare and/or present Forms I-9 for twenty-eight employees, whom ICE further contends were unauthorized for employment.¹⁴ Failure to prepare and/or present a Form I-9 is a substantive violation. *See* Virtue Memorandum at 3. The record substantiates that Frimmel Management did not prepare and/or present Forms I-9 for these sixty employees listed in Counts III and IV and Respondent has neither asserted any countervailing argument nor refuted this showing. Complainant's Motion at 22-31; Appendix, Counts III-IV. Therefore, ICE will be granted summary decision with respect to all sixty violations charged in Counts III and IV. However, as discussed below with regard to the penalty assessment, ICE met its burden of proving that only two of the twenty-eight employees named in Count IV were unauthorized for employment. *See* discussion *infra* IV.D.1.c. The government did not carry its burden of proof by a preponderance of the evidence with respect to the remaining twenty-six employees.

For all these reasons, ICE's motion is granted as to all 380 violations charged under Counts I-IV.

D. Penalty Assessment

ICE established Frimmel Management's liability for 380 violations of 8 U.S.C. § 1324a(a)(1)(B). The permissible fine amount for these violations ranges from the statutory minimum of \$41,800 to the maximum of \$418,000. ICE's proposed civil penalty of \$377,412.75 represents a fine in the upper range of penalty assessments for first-time offenses. Penalties near the maximum should be reserved for the most egregious violations. *United States v. Fowler Equip. Co.*, 10

¹⁴ As mentioned above, ICE removed Denee Porter-Ishak (#27) and Moises Silva (#32), listed under Count III, and Jorge Armando Nava Lares (#14), listed under Count IV, from the amended complaint.

OCAHO no. 1169, 6 (2013). ICE’s penalty guidelines are not binding in this forum, and Administrative Law Judges may review penalty assessments *de novo*. See *Niche*, 11 OCAHO no. 1250 at 9. For the reasons provided below, I will adopt, in part, ICE’s penalty assessment.

1. Statutory Factors

Due consideration must be given to the following factors in setting an appropriate penalty amount: 1) the size of the employer’s business; 2) the employer’s good faith; 3) the seriousness of the violations; 4) whether or not the individual was an unauthorized alien; and 5) the employer’s history of previous violations. 8 U.S.C. § 1324a(e)(5). “The statute does not require that equal weight necessarily be given to each factor, nor does it rule out consideration of other factors.” *Hernandez*, 8 OCAHO no. 1043 at 664.

a. History of Previous Violations, Good Faith, and Size of the Business

ICE appropriately treated the absence of a history of previous violations as a neutral factor. As OCAHO case law instructs, “[N]ever having violated the law before does not necessarily warrant additional leniency, and it is still appropriate to treat this factor as a neutral one.” *United States v. New China Buffet Rest.*, 10 OCAHO no. 1133, 6 (2010). Good faith will also be considered a neutral factor. “[T]he primary focus of a good faith analysis is on the respondent’s compliance before the investigation.” *Id.* at 5 (citing *United States v. Great Bend Packing Co.*, 6 OCAHO no. 835, 129, 136 (1996); *United States v. Chef Rayko, Inc.*, 5 OCAHO no. 794, 582, 592 (1995) (modification by the CAHO)). Prior to the investigation, it is evident that Frimmel Management had a significantly poor rate of compliance. This alone, however, does not warrant a finding of bad faith on behalf of the employer. *Id.* at 6 (citing *Hernandez*, 8 OCAHO no. 1043 at 670). ICE acknowledges that Respondent did not fail to cooperate with the government during its inspection. See Complainant’s Penalty Statement at 4. Although Frimmel Management avers that Auditor Miller uses these two factors as a “settlement tool,” see Respondent’s Response at 7-8, there has been no showing that the fine amount should be reduced because of good faith or the lack of a history of previous violations. Therefore, both factors will be treated as neutral.

ICE also treated the size of Frimmel Management’s business as a neutral factor. Frimmel Management stated in its answer that it employs eighty-one individuals. OCAHO considers companies which employ less than 100 employees to be small businesses. See *United States v. Cawoods Produce, Inc.*, 12 OCAHO no. 1280, 18 (2016) (citing *Niche*, 11 OCAHO no. 1250 at 10). I will therefore treat Frimmel Management’s size as a mitigating factor.

b. Seriousness of the violations

“Paperwork violations are always potentially serious. The seriousness of a violation refers to the degree to which the employer has deviated from the proper form. A violation is serious if it renders the congressional prohibition of hiring unauthorized aliens ineffective.” *United States v.*

Sunshine Bldg. Maint., Inc., 7 OCAHO no. 997, 1122, 1179-80 (1998) (internal citations omitted). Undoubtedly, all of the established substantive violations are serious and ICE met its burden of proving that aggravation on account of this factor is appropriate. *See Holtsville 811*, 11 OCAHO no. 1258 at 10. Frimmel Management is liable under Counts III and IV for sixty violations of failing to prepare or present a Form I-9, which is considered the most serious of all violations. *United States v. Romans Racing Stables, Inc.*, 11 OCAHO no. 1230, (2014) (citing *United States v. MEMF, LLC*, 10 OCAHO no. 1170, 5 (2013)). In addition, the paperwork failures present in Counts I and II are also very serious. Frimmel Management's failure in ensuring that numerous employees signed section 1 of their Forms I-9 is a serious violation. *United States v. Golf Int'l*, 11 OCAHO no. 1222, 14 (2014). Relatedly, Respondent's failure in ensuring that its employees attested to a citizenship or immigration status in section 1 by checking the appropriate box is also very serious. *Cawoods*, 12 OCAHO no. 1280 at 18.

Section 2 of the Form I-9 has been described as "the very heart" of the employment verification system. *United States v. Emp'r Solutions Staffing Group II, LLC*, 11 OCAHO no. 1242, 11 (2015), *vacated on other grounds*, 2016 WL 4254370 (5th Cir. 2016) (quoting *United States v. Acevedo*, 1 OCAHO no. 95, 647, 651 (1989)). Accordingly, Frimmel Management's failure to attest and sign section 2 of almost 300 Forms I-9 is a very serious violation. *Frio Cnty.*, 12 OCAHO no. 1276 at 18 (citing *Hartmann Studios*, 11 OCAHO no. 1255 at 14). The other section 2 violations here include failures to verify and record a proper List A or Lists B and C document(s) or to record any documents at all. These are all very serious, substantive violations as well. *United States v. Kenneth McPeck Racing Stables, Inc.*, 11 OCAHO no. 1249, 5 (2015) (citing *Emp'r Solutions*, 11 OCAHO no. 1242 at 11, 15; *Ketchikan Drywall Servs.*, 10 OCAHO no. 1139 at 10). Approximately ten of the Forms I-9 at issue contain neither an employee signature nor an employer signature, rendering any information provided on the form virtually meaningless in complying with the employment verification scheme of 8 U.S.C. § 1324a(b). In addition, failure to provide important identifying information for the List A or Lists B and C document(s), such as issuing authority and document number, are slightly less serious substantive violations. *See Frio Cnty.*, 12 OCAHO no. 1276 at 18. Therefore, the fine amount was appropriately aggravated on account of seriousness.

c. Involvement of Unauthorized Aliens

i. Count IV violations

ICE aggravated the Counts II and IV violations because of the alleged unauthorized status of the named employees. The undersigned first finds that ICE met its burden of proving the unauthorized status of two of the twenty-eight Count IV individuals, Juan Alvarado Chamatum and Eduardo Gallardo. These two individuals were listed in the Notice of Suspect Documents. *See Complainant's Motion*, Ex. G-2. In addition, Frimmel Management's payroll shows that these two individuals used the same Social Security number. *Id.*, Ex. G-8 at 6, 14. The Notice of Suspect Documents and the company's own payroll records together cast reasonable doubt on

the authorized status of these two employees. Frimmel Management did not respond to this showing and, consequently, ICE has met its burden of proof by a preponderance of the evidence with respect to the unauthorized status of Mr. Chamatum and Mr. Gallardo.

However, ICE failed to meet its burden of proof with respect to remaining twenty-six Count IV violations. *See* Appendix A, Count IV. These twenty-six individuals were listed in either the Notice of Suspect Documents or the Notice of Unauthorized Aliens, which Auditor Miller states was served on Respondent on August 9, 2013, with the Notice of Inspection. *See* Complainant's Motion, Exs. G-2, G-13, G-16 at 3. ICE also asserted that "MCSO advised" and Complainant verified that six of these employees used a Social Security number belonging to someone else. *Id.* at 26-31 (referencing Ex. G-11). It is well-established OCAHO precedent that a Notice of Suspect Documents or references to discrepancies or suspect documents alone do not prove that an individual was unauthorized for employment. *United States v. Platinum Builders of Cent. Fla., Inc.*, 10 OCAHO no. 1199, 9 (2013). Beyond its own allegations or the unverified allegations of the MCSO, ICE did not show by a preponderance of the evidence that these employees were not authorized to work in the United States. Therefore, the fine will not be enhanced on this basis for the twenty-six Count IV violations.

ii. Count II violations

As to Count II, ICE met its burden of proving that fifty-three of the named employees were unauthorized for employment. *See* Appendix A, Count II. In addition to the Notice of Suspect Documents, ICE presented the following evidence to corroborate that these employees were unauthorized for employment: (1) printouts of check results with the TECS and/or CIS databases indicating that the Social Security numbers or the Alien numbers that the employee provided on his or her Form I-9 either was not issued at all, was not issued to him or her, or belonged to a different individual named in the check results; or (2) printouts of check results with the TECS and/or CIS databases that demonstrate no record was found matching the name and date of birth that the employee provided on his or her Form I-9, along with no record of the Social Security number or driver's license number provided. *See* Complainant's Motion, Ex. G-4.

The record further demonstrates that Frimmel Management neither contested these findings nor addressed the alleged unauthorized status of these employees in its response. "When the government makes a prima facie showing that a document is false based on a computer search of its records system, and the employer fails to provide any evidence to the contrary, substantial evidence supports a finding of lack of authorization." *United States v. Occupational Res. Mgmt. Inc.*, 10 OCAHO no. 1166, 5 (2013) (citing *Mester Mfg. Co. v. INS*, 879 F.2d 561, 566 (9th Cir. 1989)). Therefore, ICE's credible evidence, which cast substantial and specific doubt on the employment authorization of the employees, created a rebuttable presumption that these employees were not authorized for employment. As Frimmel Management failed to counter this showing, ICE has met its burden of proving by a preponderance of the evidence that these

employees were unauthorized for employment. Accordingly, aggravation of the fine is warranted for fifty-three violations because of these employees' unauthorized status.

However, with respect to the remaining twelve employees named in Count II, ICE did not meet its burden of showing by a preponderance of the evidence that they were unauthorized. *See* Appendix A, Count II. Although ICE also presented printouts of its record check results from the TECS and/or CIS databases, the results concerning these employees only indicate that their driver's license number or state identification number belonged to someone else or was not issued at all. A driver's license and state identification card are acceptable List B documents, meaning they establish identity, which is an essential part of the employment verification process. 8 C.F.R. § 274a.2(b)(1)(v)(B)(1)(i); *see also* Form I-9, List of Acceptable Documents at 9 (Mar. 8, 2013). However, because a List B document does not alone establish employment authorization, by the same logic, the fact that ICE's records has cast doubt on its validity does not alone establish a lack of employment authorization.

In addition, with respect to Maria Alvarez (#3), ICE submitted an "Employment Authorization Document Update/Inquiry," which shows that the Social Security number she provided on her Form I-9 belongs to her and that she was granted an Employment Authorization Card (EAC) on December 10, 2010, which expired on December 9, 2011. *See* Complainant's Motion, Ex. G-4 at 7, 9. She indicated on her I-9 that she was an alien authorized to work until December 9, 2011. *Id.* at 7. There are two additional printouts regarding Ms. Alvarez's EAC showing that she was granted work authorization for periods after December 9, 2011. Without any explanation from ICE, these EAC printouts do not clearly reflect Ms. Alvarez's unauthorized status. Similarly, as to Oscar Dominguez (#18), the EAC Update/Inquiry does not sufficiently or clearly demonstrate that Mr. Dominguez is unauthorized. *Id.*, Ex. G-4 at 55. Finally, as to Junior Pita (#46), the CIS check result shows that ICE made a query into an Alien number. *Id.* at 122. The number that ICE checked is the number that is written after "A#" on Mr. Pita's Form I-9 under "ID" in List B. *Id.* at 121. However, because the document title of this number is "ID," it is not unlikely that this "A#" does not actually correspond to an Alien number. ICE could have made a query into this number as a state ID based on the ambiguous manner in which it is presented on the Form I-9.

The burden of proof remains with ICE and while the government's evidence is suggestive, without more, it does not rise to the level of a preponderance of the evidence. *United States v. Liberty Packaging, Inc.*, 11 OCAHO no. 1245, 10 (2015). Therefore, aggravation of the fine is inappropriate with respect to these twelve violations.

2. Non-statutory factor

Frimmel Management also asserted in its answer an inability to pay the fine, which is an appropriate factor to consider in the penalty assessment. *See Niche*, 11 OCAHO no. 1250 at 11. A party seeking consideration of a non-statutory factor, such as ability to pay the penalty, bears

the burden of proof in showing that the factor should be considered as a matter of equity, and that the facts support a favorable exercise of discretion. *See United States v. Buffalo Transp., Inc.*, 11 OCAHO no. 1263, 11 (2015) (citing *United States v. Century Hotels Corp.*, 11 OCAHO no. 1218, 4 (2014)). However, the company did not further address this issue or present any supporting evidence, and therefore did not meet its burden of showing that this factor supports a favorable exercise of discretion. *Niche*, 11 OCAHO no. 1250 at 11-13 (discussing that the respondent's submission of affidavits from company personnel and a "Profit and Loss Statement" to meet its burden of showing how the penalty assessment would result in economic detriment warranted mitigation of the fine). Accordingly, the fine will not be reduced on account of this non-statutory factor.

3. Recalculation of the Penalty

Pursuant to my *de novo* authority in assessing the penalty amount, I will set \$900 as the penalty amount, which includes aggravation for seriousness and mitigation for Respondent's small size, for (a) all 255 Count I violations, (b) the 12 Count II violations not involving unauthorized aliens, (c) all 32 Count III violations, and (d) the 26 Count IV violations not involving unauthorized aliens. The penalty amount for these 325 violations is accordingly \$292,500. Although this penalty amount is close to the maximum permissible amount, I find it appropriate in light of the gravity of the violations. Frimmel Management not only failed to prepare and/or present close to 300 Forms I-9, multiple Forms I-9 that the company did complete were overall so deficient that they rendered the I-9 essentially useless.

Furthermore, the penalty amount for the 53 Count II and the 2 Count IV violations involving unauthorized aliens will be aggravated to \$1000 per violation to reflect that IRCA's employment verification scheme was completely undermined by the employment of unauthorized workers. The penalty amount for these 55 violations is therefore \$55,000. Accordingly, the total civil money penalty for all 380 paperwork violations in Counts I-IV is \$347,500.

V. CONCLUSION

Complainant's Motion for Summary Decision is granted in part, pursuant to 28 C.F.R. § 68.38, and denied in part. ICE met its burden of proving that Frimmel Management is liable for 380 violations of 8 U.S.C. § 1324a(a)(1)(B), failing to comply with the employment verification system of 8 U.S.C. § 1324a(b), as charged in Counts I-IV of the amended complaint.

The undersigned also finds that ICE did not demonstrate that it is entitled to summary decision with respect to its proposed penalty amount because ICE failed to show that all the employees named in Counts II and IV were unauthorized for employment as charged in the complaint. However, ICE established that fifty-three of the employees named in Count II and two of the employees named in Count IV were unauthorized for employment, thereby justifying an

enhancement of the fine for fifty-five paperwork violations. Mitigation of the fine is appropriate in light of Respondent's small size. Furthermore, I concur with ICE's treatment of good faith and history of previous violations as neutral factors. Frimmel Management is ordered to pay a total civil money penalty amount of \$347,500.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Frimmel Management, LLC is a domestic limited liability company organized under Arizona law.
2. On August 9, 2013, the Department of Homeland Security, Immigration and Customs Enforcement served Frimmel Management, LLC with a Notice of Inspection.
3. The Department of Homeland Security, Immigration and Customs Enforcement served Frimmel Management, LLC with a Notice of Intent to Fine on February 10, 2015.
4. On March 10, 2015, Frimmel Management, LLC requested a hearing before an Administrative Law Judge.
5. On August 11, 2015, the Department of Homeland Security, Immigration and Customs Enforcement filed a four-count complaint with the Office of the Chief Administrative Hearing Officer.
6. Visual examination of the I-9s for the individuals named in Counts I and II reflects the errors and omissions alleged by the Department of Homeland Security, Immigration and Customs Enforcement.
7. Visual inspection of the Forms I-9s for the individuals named in Counts I and II reflects additional errors and omissions, but only one penalty will be assessed for each I-9, regardless of the number of paperwork violations.
8. Frimmel Management, LLC did not prepare and/or present to the Department of Homeland Security, Immigration and Customs Enforcement the Forms I-9 for the individuals named in Count III and IV.

B. Conclusions of Law

1. Frimmel Management, LLC is an entity within the meaning of 8 U.S.C. § 1324a(a)(1).

2. All conditions precedent to the institution of this proceeding have been satisfied.
3. OCAHO rule 28 C.F.R. § 68.38(c) establishes that an Administrative Law Judge “shall enter a summary decision for either party if the pleadings, affidavits, material obtained . . . show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.”
4. Employers must ensure that an employee complete section 1 of the Form I-9 and attest to his or her citizenship or immigration status in the United States by signing and dating the Form I-9 no later than the first day of employment. 8 C.F.R. § 274a.2(a)(3) (attestation under penalty of perjury), (b)(1)(i)(A).
5. For employees employed for three business days or more, an employer must sign section 2 of the Form I-9 within three days of the employee’s first day of employment to attest under penalty of perjury that it reviewed the appropriate documents to verify the individual’s identity and employment authorization. 8 C.F.R. § 274a.2(a)(3), (b)(1)(ii).
6. In cases arising under 8 U.S.C. § 1324a, the government has the burden of proving by a preponderance of the evidence that the respondent is liable for committing a violation of the employment eligibility verification requirements. *See United States v. Nebeker, Inc.*, 10 OCAHO no. 1165, 4 (2013) (citing *United States v. Am. Terrazzo Corp.*, 6 OCAHO no. 877, 577, 581 (1996)).
7. In addition to proving liability, “[t]he government has the burden of proof with respect to the penalty, *United States v. March Construction, Inc.*, 10 OCAHO no. 1158, 4 (2012), and must prove the existence of any aggravating factor by a preponderance of the evidence, *United States v. Carter*, 7 OCAHO no. 931, 121,159 (1997).” *United States v. Niche, Inc.*, 11 OCAHO no. 1250, 6 (2015).
8. “The ‘body’ or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred.” *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039-40 (1984) (citations omitted).
9. Frimmel Management, LLC is liable for 380 violations of 8 U.S.C. § 1324a(a)(1)(B).
10. In assessing the appropriate penalty, an Administrative Law Judge must consider the following factors: 1) the size of the employer’s business; 2) the employer’s good faith; 3) the seriousness of the violations; 4) whether the individual was an unauthorized alien; and 5) the employer’s history of previous violations. 8 U.S.C. § 1324a(e)(5). The statute neither requires that equal weight be given to each factor, nor rules out consideration of additional factors. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

11. The Department of Homeland Security, Immigration and Customs Enforcement met its burden of proof by a preponderance of the evidence that penalty enhancement was warranted on account of the seriousness of all 380 violations for which Frimmel Management, LLC is liable.

12. The Department of Homeland Security, Immigration and Customs Enforcement met its burden of proof by a preponderance of the evidence that penalty enhancement was warranted for Frimmel Management, LLC's hiring of fifty-three unauthorized workers named in Count II and two unauthorized workers in Count IV of the complaint.

ORDER

ICE's Motion for Summary Decision is granted in part. ICE met its burden of proving that Frimmel Management, LLC is liable for 380 violations of 8 U.S.C. § 1324a(a)(1)(B). The company is therefore directed to pay a civil money penalty in the total amount of \$347,500. The parties are free to establish a payment schedule in order to minimize the impact of the penalty on the operations of the company.

SO ORDERED.

Dated and entered on October 14, 2016.

Robert J. Lesnick
United States Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an

Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.

APPENDIX A

COUNT I

| No. | Employee Name | Violation(s) Alleged | Finding |
|------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1 | Adams, Ashley | No employer signature in section 2 | Violation as alleged |
| 2 | Aguada, Alexis | No employer signature in section 2 | Violation as alleged |
| 3 | Aguilera, Tomas | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employee signature in section 1; No employer signature in section 2 | Violation as alleged |
| 4 | Ake, Victor | No employer signature in section 2 | Violation as alleged |
| 5 | Albright, Shaylee | No employer signature in section 2 | Violation as alleged |
| 6 | Allaby, Rebekah | No employer signature in section 2; Issuing authority of LPR card in section 2 not provided | Violation as alleged |
| 7 | Alvarez, Jason | No employer signature in section 2 | Violation as alleged |
| 8 | Anderson, Cayley | No employer signature in section 2 | Violation as alleged |
| 9 | Annis, Lauren | Only Social Security card (List C) recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 10 | Araiza, Luis | No employer signature in section 2 | Violation as alleged |
| 11 | Arellano, Erika | No employer signature in section 2 | Violation as alleged |
| 12 | Arland, Emily | No employer signature in section 2 | Violation as alleged |
| 13 | Austin, Melanie | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No List A or Lists B and C document(s) recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 14 | Bailey, Dayna | More than one box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |
| 15 | Bailey, Lisa | No employer signature in section 2 | Violation as alleged |
| 16 | Baker, Cody | No employer signature in section 2 | Violation as alleged |
| 17 | Barraza, Emilia | No employer signature in section 2 | Violation as alleged |
| 18 | Barrera, Rebecca | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |

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|----|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| 19 | Bartimoli, Nicolas | No employer signature in section 2 | Violation as alleged |
| 20 | Barton, Courtney | No employer signature in section 2; Issuing authority of driver's license in section 2 not provided | Violation as alleged |
| 21 | Beach, Katelyn | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |
| 22 | Beirne, Rachel | No employer signature in section 2 | Violation as alleged |
| 23 | Beltran, Kevin | No employer signature in section 2 | Violation as alleged |
| 24 | Bennett, Terra | Issuing authority of driver's license in section 2 not provided; Documents recorded under wrong list in section 2; No employer signature in section 2 | Violation as alleged (no issuing authority or employer signature) |
| 25 | Beucler, Jessica | No employer signature in section 2 | Violation as alleged |
| 26 | Blackwell, Jessica | No List A or Lists B and C document(s) recorded in section 2 ; No employer signature in section 2 | Violation as alleged |
| 27 | Bloor, Haley | No employer signature in section 2 | Violation as alleged |
| 28 | Boemark, Elisabeth | No employer signature in section 2 | Violation as alleged |
| 29 | Borbon, Pedro | Improper List B document recorded (driver's permit) in section 2; Documents recorded under wrong list in section 2; No employer signature in section 2 | Violation as alleged (improper document and no employer signature) |
| 30 | Bourdan, Ashton | No employer signature in section 2 | Violation as alleged |
| 31 | Bray, Julia | No employer signature in section 2 | Violation as alleged |
| 32 | Brown, Laura | Only List B document is recorded in section 2 | Violation as alleged |
| 33 | Bullock, Candace | No employer signature in section 2 | Violation as alleged |
| 34 | Butcher, Elizabeth | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employee signature in section 1 | Violation as alleged |
| 35 | Buzzatto, Kylie | Only List B document is recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 36 | Calnese, Kanisha | No employer signature in section 2 | Violation as alleged |
| 37 | Cañez, Angel | No employer signature in section 2 | Violation as alleged |

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| 38 | Cardona, Fernando | No employer signature in section 2 | Violation as alleged |
| 39 | Castro, Morgan | Documents recorded under wrong list in section 2; No employer signature in section 2 | Violation as alleged (no employer signature) |
| 40 | Catania, Alisha | Documents recorded under wrong list in section 2; No employer signature in section 2 | Violation as alleged (no employer signature) |
| 41 | Cerovski, Carrie | Documents recorded under wrong list in section 2; No employer signature in section 2 | Violation as alleged (no employer signature) |
| 42 | Cervantes, Ricardo | No employer signature in section 2 | Violation as alleged |
| 43 | Cervantez, Albert | No employer signature in section 2 | Violation as alleged |
| 44 | Charlesworth, Christina | No employer signature in section 2 | Violation as alleged |
| 45 | Charlton, Emerald | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employee signature in section 1; No employer signature in section 2 | Violation as alleged |
| 46 | Cholinard, Lindsay | No employer signature in section 2 | Violation as alleged |
| 47 | Chung, Kahealani | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 48 | Clark, Kandice | Document number of List A document in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 49 | Claus, Joel | No employer signature in section 2 | Violation as alleged |
| 50 | Clemmer-Castellanos, Victoria | No employer signature in section 2; | Violation as alleged |
| 51 | Cockrell, Alexa | No employer signature in section 2 | Violation as alleged |
| 52 | Coleman, Marquese | No employer signature in section 2 | Violation as alleged |
| 53 | Collins, Emily | No employer signature in section 2 | Violation as alleged |
| 54 | Collver, Haley | Two List C documents recorded | Violation as alleged |
| 55 | Conroy, Brittany | No employer signature in section 2 | Violation as alleged |
| 56 | Copeland, Brielle | Improper List B document (driver's permit) recorded in section 2 | Violation as alleged |
| 57 | Copelin, Jennifer | No employer signature in section 2 | Violation as alleged |
| 58 | Copelin, Taylor | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 59 | Cruz, Jesus | No employer signature in section 2 | Violation as alleged |

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|----|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| 60 | Cully, Erica | No employer signature in section 2 | Violation as alleged |
| 61 | Cummins, Gabriela | No employer signature in section 2 | Violation as alleged |
| 62 | Dahistedt, Lauren | No List A or Lists B and C document(s) recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 63 | Dahm, Melissa | No issuing authority of driver's license in section 2 provided; Documents recorded under wrong list in section 2 | Violation as alleged (no issuing authority) |
| 64 | Dake, Heather | Only List B document recorded in section 2 | Violation as alleged |
| 65 | Davidson, Jordan | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 66 | Deans, Taylor | No employer signature in section 2 | Violation as alleged |
| 67 | DelRivero, Kimberly | No employer signature in section 2 | Violation as alleged |
| 68 | Dias, Devon | No employer signature in section 2 | Violation as alleged |
| 69 | Diaz, Juan | No employer signature in section 2 | Violation as alleged |
| 70 | DiDomizio, Chantill | No employer signature in section 2 | Violation as alleged |
| 71 | Dilley, Tanner | No employee signature in section 1; Two List C documents recorded in section 2 | Violation as alleged |
| 72 | Dobkins, Jana | Issuing authority of driver's license not recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 73 | Donnelly, Payton | No employer signature in section 2 | Violation as alleged |
| 74 | Dowdle, Breanna | Document title under List B not provided and no List C document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 75 | Dunn, Kendra | No employer signature in section 2 | Violation as alleged |
| 76 | Elenes, Bryan | No employer signature in section 2 | Violation as alleged |
| 77 | Estrada, Angel | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; Documents recorded under wrong list in section 2; No employer signature in section 2 | Violation as alleged |
| 78 | Eutsler, Anjelica | No employer signature in section 2 | Violation as alleged |
| 79 | Farrell, Keli | No employer signature in section 2 | Violation as alleged |
| 80 | Farrimond, Jacob | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |

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|-----|--------------------------|---------------------------------------------------------------------------------------------------------------------------|----------------------|
| 81 | Figueroa, Jose | Issuing authority of driver's license not provided in section 2; No employer signature in section 2 | Violation as alleged |
| 82 | Fischer, Patience | Document title and issuing authority of "ID" not provided in section 2 | Violation as alleged |
| 83 | Flores, Tatiana | No List A or Lists B and C document(s) recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 84 | Frias, Victor | No employer signature in section 2 | Violation as alleged |
| 85 | Gallegos, Juan | No employer signature in section 2 | Violation as alleged |
| 86 | Garcia, Gildardo | Issuing authority of driver's license not provided in section 2; No employer signature in section 2 | Violation as alleged |
| 87 | Garrison, Alan | No employer signature in section 2 | Violation as alleged |
| 88 | Gernert, Steven | No employer signature in section 2 | Violation as alleged |
| 89 | Gonzalez, Jose | No employer signature in section 2 | Violation as alleged |
| 90 | Goodrich-McGrath, Brooke | Expiration date of driver's license not provided in section 2; No employer signature in section 2 | Violation as alleged |
| 91 | Gregory, Polina | No employer signature in section 2 | Violation as alleged |
| 92 | Grunthaner, Melanie | Issuing authority of "Identification" card in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 93 | Gutierrez, Gabriella | No employer signature in section 2 | Violation as alleged |
| 94 | Gutierrez, Yuren | No employer signature in section 2 | Violation as alleged |
| 95 | Guzman, Thomas | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 96 | Harden, Brittany | No employer signature in section 2 | Violation as alleged |
| 97 | Hartz, Keanna | No employer signature in section 2 | Violation as alleged |
| 98 | Harvey, Devon | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work | Violation as alleged |
| 99 | Hazen, Ashlyn | No employer signature in section 2 | Violation as alleged |
| 100 | Hernandez, Christian | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 101 | Hernandez, Ebeni | No employer signature in section 2 | Violation as alleged |
| 102 | Hernandez, Ernesto | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |

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| 103 | Hernandez, Jose C. | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |
| 104 | Hernandez, Jose R. | Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 105 | Hernandez, Rachael | Document title of numbers recorded in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 106 | Hernandez, Raul | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 107 | Hernandez, Sydney | No employer signature in section 2 | Violation as alleged |
| 108 | Hester, Emily | No employer signature in section 2 | Violation as alleged |
| 109 | Hicks, Miranda | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 110 | Higuera, Breyel | No employer signature in section 2 | Violation as alleged |
| 111 | Hill, Steven | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 112 | Hirschi, Madison | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 113 | Hodil, Debra | No List A or Lists B and C document(s) recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 114 | Hollabaugh, Skye | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 115 | Hood, Brett | No employer signature in section 2 | Violation as alleged |
| 116 | Humphrey, Chelsey | No employer signature in section 2 | Violation as alleged |
| 117 | Hunter, Elizabeth | No employer signature in section 2 | Violation as alleged |
| 118 | Ireland, Raymond | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |
| 119 | Ivy, Caroline | No employer signature in section 2 | Violation as alleged |
| 120 | Jacks, Cori | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |

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| 121 | Jaramillo, Dionicio | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |
| 122 | Kelley, Coral | No employer signature in section 2 | Violation as alleged |
| 123 | Kempf, Charles | No employer signature in section 2 | Violation as alleged |
| 124 | Kershaw, Dani | Issuing authority of "Birth Cert." in section 2 not provided | Violation as alleged |
| 125 | Kershner, Taylor | No employer signature in section 2 | Violation as alleged |
| 126 | Kluge, Karalyn | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 127 | Kobert, Taylor | No employer signature in section 2 | Violation as alleged |
| 128 | Koca, Kenneth | No employer signature in section 2 | Violation as alleged |
| 129 | Kowalchuk, Angela | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 130 | Kriegel, Kelly | No employer signature in section 2 | Violation as alleged |
| 131 | Krukowski, Sami | No employer signature in section 2 | Violation as alleged |
| 132 | Kuznecova, Anastasij | No employer signature in section 2 | Violation as alleged |
| 133 | Lachcik, Shelly | No employee signature in section 1; no employer signature in section 2 | Violation as alleged |
| 134 | Lagunas, Giovanni | No employer signature in section 2 | Violation as alleged |
| 135 | Landavaso, Rebecca | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 136 | Lewis, Marissa | No employer signature in section 2 | Violation as alleged |
| 137 | Leyva, McKenna | No employer signature in section 2 | Violation as alleged |
| 138 | Liu, Angel | No employer signature in section 2 | Violation as alleged |
| 139 | Lund, Cassidy | No employer signature in section 2 | Violation as alleged |
| 140 | Luyendyk, Maida | No employer signature in section 2 | Violation as alleged |
| 141 | Luyssaert, Betsy | No employer signature in section 2 | Violation as alleged |
| 142 | Lynch, Erica | No employer signature in section 2 | Violation as alleged |
| 143 | Mancini, Anthony | No employer signature in section 2 | Violation as alleged |
| 144 | Marino, John | No employer signature in section 2 | Violation as alleged |

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|-----|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 145 | Marquez, Luis | No employer signature in section 2 | Violation as alleged |
| 146 | Marshall, Ashley | No employer signature in section 2 | Violation as alleged |
| 147 | Martin, Brandi | No employer signature in section 2 | Violation as alleged |
| 148 | Martinez, Angela | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 149 | Martinez, Keegan | No employer signature in section 2 | Violation as alleged |
| 150 | Martinez, Oscar | No employer signature in section 2 | Violation as alleged |
| 151 | McCabe, Taylor | No employer signature in section 2 (employee signed employer attestation) | Violation as alleged |
| 152 | McCluskey, Michael | No employee signature in section 1; No List A or Lists B and C document(s) recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 153 | McCullough, Tyler | No employer signature in section 2 | Violation as alleged |
| 154 | McDuffie, Megan | No employer signature in section 2 | Violation as alleged |
| 155 | McElrath, Mariah | No employer signature in section 2 | Violation as alleged |
| 156 | McEvoy, Katrina | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employee signature in section 1 | Violation as alleged |
| 157 | McFarland, Nadine | Issuing authority of driver's license in section 2 not provided | Violation as alleged |
| 158 | Meins, Casey | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 159 | Meza, Jonathan | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 160 | Miramontes, Zenia | Issuing authority of driver's license in section 2 not provided | Violation as alleged |
| 161 | Monzon, Cristhian | Alien number not provided in section 1 after box checked for LPR (and number not provided in sections 2 or 3 or in documents attached to Form I-9); No employer signature in section 2 | Violation as alleged |
| 162 | Mora, Antonio | No employer signature in section 2 | Violation as alleged |
| 163 | Moreno, Mauvia | No employer signature in section 2 | Violation as alleged |
| 164 | Mrazek, Brittaney | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 165 | Mundy, Victoria | Document title of List A document not provided | Violation as alleged |

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|-----|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 166 | Munnery, Tiffany | Alien number not provided in section 1 after box checked for LPR (and number not provided in sections 2 or 3); Expiration date of driver's license in section 2 not provided | Violation as alleged |
| 167 | Negrete, Jaime | No employee signature in section 1; Issuing authority of "ID" in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 168 | Nguyen, Anthony | No employee signature in section 1 | Violation as alleged |
| 169 | Nichols, Kevin | Only List C document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 170 | Nunez, Angel | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 171 | O'Boyle, Breanna | No document number of driver's license in section 2 provided; No employer signature in section 2 | Violation as alleged |
| 172 | Ochoa, Jorge | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |
| 173 | Oddo, Breanna | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 174 | Olson, Candace | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 175 | Oprea, Sonia | No employer signature in section 2 | Violation as alleged |
| 176 | Ortega, Cesar | No employer signature in section 2 | Violation as alleged |
| 177 | Ortiz, Cynthia | Improper List A document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 178 | Ortiz, Dezmond | No employer signature in section 2 | Violation as alleged |
| 179 | Ott, Kristy | No employer signature in section 2 | Violation as alleged |
| 180 | Owens, Kevin | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 181 | Pantaleon, Silvestre | No employer signature in section 2 | Violation as alleged |
| 182 | Parker, Rhiannon | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 183 | Pascal, Jessica | No employer signature in section 2 | Violation as alleged |

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|-----|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 184 | Perez, Jesus | Box checked in section 1 indicating alien authorized to work but birth certification (California) recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 185 | Pieri, Nicole | No List A or Lists B and C document(s) recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 186 | Pohlmeyer, Samara | No employer signature in section 2 | Violation as alleged |
| 187 | Powell, Lynzie | No document number provided in section 2 for Social Security card; No employer signature in section 2 | Violation as alleged |
| 188 | Prenovost, Ashley | No employer signature in section 2 | Violation as alleged |
| 189 | Pupillo, Angela | No employer signature in section 2 | Violation as alleged |
| 190 | Quiroz, Jessica | No employer signature in section 2 | Violation as alleged |
| 191 | Ramirez, Genesis | No employer signature in section 2 | Violation as alleged |
| 192 | Ramirez, Joel | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 193 | Ramirez, Robert | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |
| 194 | Rocha, Rogelio | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 195 | Roche, Amanda | No employer signature in section 2 | Violation as alleged |
| 196 | Rodriguez, Margarita | No employer signature in section 2 | Violation as alleged |
| 197 | Ryner, Andrea | Only List C document recorded in section 2 | Violation as alleged |
| 198 | Salinas, Estevan | Expiration date of driver's license in section 2 not provided; Document title of List C document in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 199 | Sanchez, Cameo | No employer signature in section 2 | Violation as alleged |
| 200 | Santos, Vanessa | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 201 | Schmidtke, Bailee | Issuing authority of driver's license in section 2 not provided; Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |

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| 202 | Schramke, Breann | No employer signature in section 2 | Violation as alleged |
| 203 | Segaline, Nicole | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 204 | Shadowens, Kaila | No employer signature in section 2 | Violation as alleged |
| 205 | Shively, Madison | No employer signature in section 2 | Violation as alleged |
| 206 | Silva, Aaron | Only List C document recorded in section 2; No employer signature in section 2 (employee signed section 2) | Violation as alleged |
| 207 | Sinkhorn, Tiffany | No employer signature in section 2 | Violation as alleged |
| 208 | Smelter, Amanda | No employer signature in section 2 | Violation as alleged |
| 209 | Smith, Danielle | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 210 | Smith, Jenna | Issuing authority of driver's license in section 2 not provided | Violation as alleged |
| 211 | Stalker, Sarah | No employer signature in section 2 | Violation as alleged |
| 212 | Stark, Sabrina | No employer signature in section 2 | Violation as alleged |
| 213 | Stires, Chelsea | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 214 | Stoneberger, Stephanie | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 215 | Stout-Murphy, Christin | Issuing authority of driver's license in section 2 not provided | Violation as alleged |
| 216 | Strang, Jaime | Document title and issuing authority of List B document in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 217 | Stuart, Mackenzie | No box in section 1 indicating U.S. citizen, LPR, or alien authorized to work | Violation as alleged |
| 218 | Suarez, Monica | Issuing authority of passport in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 219 | Surber, Patricia | No employer signature in section 2 | Violation as alleged |
| 220 | Swart, Siera | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 221 | Szoke, Amanda | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |

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|-----|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 222 | Tarango, Tania | No employer signature in section 2 | Violation as alleged |
| 223 | Terry, Anabel | No employer signature in section 2 | Violation as alleged |
| 224 | Terry, Danielle | No employer signature in section 2 | Violation as alleged |
| 225 | Thornton, Brianne | No employer signature in section 2 | Violation as alleged |
| 226 | Todd, Nichole | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 227 | Toledo, Alfredo Pablo | Issuing authority of driver's license in section 2 not provided | Violation as alleged |
| 228 | Torres, Alfonso | Two List C documents recorded in section 2 | Violation as alleged |
| 229 | Torres, Elizabeth | No employer signature in section 2 | Violation as alleged |
| 230 | Torres, Jessica | Issuing authority of driver's license in section 2 not provided | Violation as alleged |
| 231 | Trevett, Ashley | No employer signature in section 2 | Violation as alleged |
| 232 | Trojanek, Mary | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 233 | Trottier, CassiDee | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employee signature in section 1 | Violation as alleged |
| 234 | Tye, Alyssa | No employer signature in section 2 | Violation as alleged |
| 235 | Vahary, Robert | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |
| 236 | Valderas, Juan | Issuing authority of driver's license in section 2 not provided; No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work | Violation as alleged |
| 237 | Vazquez, Juan | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |
| 238 | Vaughn, Suzanna | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 239 | Victoria, Mario | No employer signature in section 2 | Violation as alleged |
| 240 | Vinay-Harrod, Meghan | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |

| | | | |
|-----|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| 241 | Vise, Ashlee | Expiration date of driver's license in section 2 not provided; Title of List C document in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 242 | Warda, Rachel | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged |
| 243 | Warrell, Jay | No employer signature in section 2 | Violation as alleged |
| 244 | Webb, Megan | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employee signature in section 1; No employer signature in section 2 | Violation as alleged |
| 245 | Werton, Tara | Issuing authority of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 246 | White, Sarah | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged |
| 247 | Williams, Kaylyn | Documents recorded under wrong list in section 2; No employer signature in section 2 | Violation as alleged (no employer signature) |
| 248 | Wilson, Megan | No employer signature in section 2 | Violation as alleged |
| 249 | Winger, Keri | No employee signature in section 1 | Violation as alleged |
| 250 | Wittels, Daryn | No employer signature in section 2 | Violation as alleged |
| 251 | Woods, Austin | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged |
| 252 | Wright, Jonquil | No employer signature in section 2 | Violation as alleged |
| 253 | Wurgler, Marissa | No employer signature in section 2 | Violation as alleged |
| 254 | York, Jacqueline | No employer signature in section 2 | Violation as alleged |
| 255 | Yuzuik, Trina | No employer signature in section 2 | Violation as alleged |

COUNT II

| No. | Employee Name | Violation Alleged | Finding | Did ICE Establish Unauthorized Status? |
|-----|---------------|------------------------------------|----------------------|----------------------------------------|
| 1 | Aguilar, Juan | No employer signature in section 2 | Violation as alleged | Y |

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|----|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---|
| 2 | Alvarado, Luis | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged | Y |
| 3 | Alvarez, Maria | Issuing authority of driver's license in section 2 not provided; employee's expired work authorization not updated and reverified in section 3 | Violation as alleged | N |
| 4 | Alvirena, Jose | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged | N |
| 5 | Arellano, David | No employer signature in section 2 | Violation as alleged | Y |
| 6 | Arteaga, Ruben | No employer signature in section 2 | Violation as alleged | Y |
| 7 | Baca, Mario | Expiration date of driver's license in section 2 not provided; No employer signature in section 2 | Violation as alleged | N |
| 8 | Bedoni, Franson | No employer signature in section 2 | Violation as alleged | N |
| 9 | Brooks, Catherine | No employer signature in section 2 | Violation as alleged | N |
| 10 | Caballeros, Edgar | Document title or issuing authority of "I.D." in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 11 | Cabanas, Carlos | Alien number not provided in section 1 after box checked for LPR (and number not provided in sections 2 or 3); Improper List A document recorded in section 2 (Mexican passport); No employer signature in section 2 | Violation as alleged | Y |
| 12 | Cano, Maria | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged | Y |
| 13 | Chavez, Ariel | Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 14 | Chavez, Jorge | Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 15 | Clavido, Tomas | No employer signature in section 2 | Violation as alleged | Y |
| 16 | Cinz Cruz, Rogelio | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged | N |
| 17 | Diaz, Jose | Only List C document in section 2 provided; No employer signature in section 2 | Violation as alleged | Y |

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|----|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---|
| 18 | Dominguez, Oscar | No employee signature in section 1; No employer signature in section 2 | Violation as alleged | N |
| 19 | Espinoza, Yomaira | No employer signature in section 2 | Violation as alleged | Y |
| 20 | Ferrer, Ricardo | Issuing authority of LPR card in section 2 not provided | Violation as alleged | Y |
| 21 | Flores, Jose | No box in section 1 checked indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged | Y |
| 22 | Friedman, Josephine | Multiple boxes checked in section 1 | Violation as alleged | Y |
| 23 | Gallegos Lopez, Kathy | No employee signature in section 1 | Violation as alleged | Y |
| 24 | Guevara, Rosario | No box in section 1 checked indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged | Y |
| 25 | Gutierrez, Adolfo | No employer signature in section 2 | Violation as alleged | Y |
| 26 | Gutierrez Lopez, Javier | No employer signature in section 2 | Violation as alleged | Y |
| 27 | Lamar, Joseph | No employer signature in section 2 | Violation as alleged | Y |
| 28 | Lopez, Dover | No box in section 1 checked indicating U.S. citizen, LPR, or alien authorized to work; Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 29 | Lopez, Eduardo | No employer signature in section 2 | Violation as alleged | Y |
| 30 | Lopez, Ivan | Number recorded under List B only; No employer signature in section 2 | Violation as alleged | Y |
| 31 | Martinez, Ariel | No employer signature in section 2 | Violation as alleged | Y |
| 32 | Martinez, Christian | No employer signature in section 2 | Violation as alleged | Y |
| 33 | Mercado, Jose | Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 34 | Moran Vargas, Roberto | No employer signature in section 2 | Violation as alleged | Y |
| 35 | Munoz, Jose | No employer signature in section 2 | Violation as alleged | Y |
| 36 | Munoz, Juan | No employer signature in section 2 | Violation as alleged | Y |
| 37 | Navarro, Ramiro | No employee signature in section 1 | Violation as alleged | Y |
| 38 | Noriega, Jose | More than one box checked in section 1; No employer signature in section 2 | Violation as alleged | Y |
| 39 | Nunez, Nathan | No employer signature in section 2 | Violation as alleged | Y |
| 40 | Olmos, Carlos | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; no employee signature in section 1; no employer signature in section 2 | Violation as alleged | Y |

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|----|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---|
| 41 | Orozco Barajas, Artemio | No employer signature in section 2 | Violation as alleged | Y |
| 42 | Pacheco, Edgar | Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 43 | Perez, Agustin | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No List A or Lists B and C document(s) recorded in section 2; No employer signature in section 2 | Violation as alleged | Y |
| 44 | Perez, Rafael | Only List B document recorded in section 2; No employer signature in section 2 | Violation as alleged | Y |
| 45 | Pita, Geovanni | Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 (employee signed) | Violation as alleged | Y |
| 46 | Pita, Junior | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; Document title of List B document in section 2 not provided; No employer signature in section 2 (employee signed) | Violation as alleged | N |
| 47 | Posada, Jose | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 48 | Ramos, Luis | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employee signature in section 1; Issuing authority of LPR card in section 2 not provided | Violation as alleged | Y |
| 49 | Raymundo Bernal, Rene | Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 50 | Rivera, Francisco | No employee signature in section 1; No employer signature in section 2 | Violation as alleged | Y |
| 51 | Rivera, Jose | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; Issuing authority of LPR card in section 2 not provided | Violation as alleged | Y |
| 52 | Rocha, Juan | Improper List B document provided (driver's permit); No employer signature in section 2 | Violation as alleged | Y |

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|----|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---|
| 53 | Roman, Ramon | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 54 | Romero, Juan | Alien number not provided in section 1 after box checked for LPR (and number not provided in sections 2 or 3) | Violation as alleged | N |
| 55 | Roque, Miguel | Issuing authority of LPR card in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 56 | Rosa, Santiago | Document title and number of List B document in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |
| 57 | Santos Valenzuela, Jesus | Alien number not provided in section 1 after box checked for LPR (and number not provided in sections 2 or 3); No employer signature in section 2 | Violation as alleged | N |
| 58 | Scheoneman, Korin | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work | Violation as alleged | N |
| 59 | Silva, Carlos | Only List C document recorded in section 2; No employer signature in section 2 | Violation as alleged | Y |
| 60 | Silva, Christopher | No employer signature in section 2 | Violation as alleged | Y |
| 61 | Tapia, Alonzo | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 (employee signed) | Violation as alleged | Y |
| 62 | Uzarraga, Jose | No employer signature in section 2 | Violation as alleged | Y |
| 63 | Villalba, Miguel | No box checked in section 1 indicating U.S. citizen, LPR, or alien authorized to work; No employer signature in section 2 | Violation as alleged | N |
| 64 | Vivar Reyes, Jesus | No employer signature in section 2 | Violation as alleged | Y |
| 65 | Zacapaia, Genaro | Document number of List A document in section 2 not provided; No employer signature in section 2 | Violation as alleged | Y |

COUNT III

| No. | Employee Name | Violation(s) Alleged | Finding |
|------------|----------------------|---------------------------------------|----------------------|
| 1 | Acosta Aguilar, Jose | Failure to prepare and/or present I-9 | Violation as alleged |

| | | | |
|----|---------------------------------|---------------------------------------|----------------------------------------------------------------------|
| 2 | Aguilar Flores, Jose Artemio | Failure to prepare and/or present I-9 | Violation as alleged |
| 3 | Anthony, Cayci | Failure to prepare and/or present I-9 | Violation as alleged |
| 4 | Antunez, Pedro | Failure to prepare and/or present I-9 | Violation as alleged |
| 5 | Barrios, Paul | Failure to prepare and/or present I-9 | Violation as alleged |
| 6 | Basich, Amanda | Failure to prepare and/or present I-9 | Violation as alleged |
| 7 | Bernal Rivera, Jacinto | Failure to prepare and/or present I-9 | Violation as alleged |
| 8 | Brito, Gerardo | Failure to prepare and/or present I-9 | Violation as alleged |
| 9 | Ceja, Magdaleno | Failure to prepare and/or present I-9 | Violation as alleged |
| 10 | Daws, Erica | Failure to prepare and/or present I-9 | Violation as alleged |
| 11 | Dianne, Millanes Melissa | Failure to prepare and/or present I-9 | Violation as alleged |
| 12 | Farni, Ashlee | Failure to prepare and/or present I-9 | Violation as alleged |
| 13 | Flint, Derek | Failure to prepare and/or present I-9 | Violation as alleged |
| 14 | Foran, Patricia | Failure to prepare and/or present I-9 | Violation as alleged |
| 15 | Foti, Kendra | Failure to prepare and/or present I-9 | Violation as alleged |
| 16 | Gutierrez, Cesar | Failure to prepare and/or present I-9 | Violation as alleged |
| 17 | Hernandez, Rebecca | Failure to prepare and/or present I-9 | Violation as alleged |
| 18 | Higgins, Amanda | Failure to prepare and/or present I-9 | Violation as alleged |
| 19 | Leal Rivera, Jose | Failure to prepare and/or present I-9 | Violation as alleged (received wages during inspection period) |
| 20 | Lopez, Neiver | Failure to prepare and/or present I-9 | Violation as alleged |
| 21 | Marin, Jorge | Failure to prepare and/or present I-9 | Violation as alleged |
| 22 | Marino, Leonardo | Failure to prepare and/or present I-9 | Violation as alleged |
| 23 | Morrison, Lindsay | Failure to prepare and/or present I-9 | Violation as alleged |
| 24 | Norton, Lisa | Failure to prepare and/or present I-9 | Violation as alleged |
| 25 | Ojeda, Osualdo | Failure to prepare and/or present I-9 | Violation as alleged |

| | | | |
|-----------------|------------------|---------------------------------------|----------------------|
| 26 | Perez, Joe Duran | Failure to prepare and/or present I-9 | Violation as alleged |
| 28 ¹ | Rames, Oscar | Failure to prepare and/or present I-9 | Violation as alleged |
| 29 | Rivera, Rafael | Failure to prepare and/or present I-9 | Violation as alleged |
| 30 | Sheddon, Eileen | Failure to prepare and/or present I-9 | Violation as alleged |
| 31 | Shimp, Lexis | Failure to prepare and/or present I-9 | Violation as alleged |
| 33 | Smith, Denise | Failure to prepare and/or present I-9 | Violation as alleged |
| 34 | Tapia, Taylor | Failure to prepare and/or present I-9 | Violation as alleged |

COUNT IV

| No. | Employee Name | Violation Alleged | Finding | Did ICE Establish Unauthorized Status? |
|------------|----------------------------------|---------------------------------------|----------------------|-----------------------------------------------|
| 1 | Abundez Gonzalez, Fernando Steve | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 2 | Acosta, Felipe | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 3 | Alvarado Chama, Juan | Failure to prepare and/or present I-9 | Violation as alleged | Y |
| 4 | Arredondo, Manuel | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 5 | Balderas, Antonio | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 6 | Balderas, Carmen | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 7 | Gallardo, Eduardo | Failure to prepare and/or present I-9 | Violation as alleged | Y |
| 8 | Gonzalez, Fernando | Failure to prepare and/or present I-9 | Violation as alleged | N |

¹ Denee Porter-Ishak (#27) and Silva Moises (#33) were removed from the complaint.

| | | | | |
|-----------------|-----------------------|---------------------------------------|----------------------------------------------------------------|---|
| 9 | Gonzalez, Luis | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 10 | Gonzalez, Marcial | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 11 | Gregorio, Carlos | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 12 | Hernandez, Juan | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 13 | Ibarra Echauary, Luis | Failure to prepare and/or present I-9 | Violation as alleged (received wages during inspection period) | N |
| 14 | Lares, Armando | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 15 | Meneses, Andres | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 16 | Moran Vargas, Victor | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 18 ² | Navarro, Edgar | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 19 | Osorio, Joaquin | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 20 | Pantaleon, Christina | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 21 | Pena, Jose | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 22 | Perez, Rodolfo | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 23 | Ramirez, Johnathan | Failure to prepare and/or present I-9 | Violation as alleged | N |

² Jorge Armando Nava Lares (#17) was removed from the complaint.

| | | | | |
|----|--------------------------------|---------------------------------------|----------------------------------------------------------------|---|
| 24 | Ramirez, Rene | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 25 | Reyes, Alberto | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 26 | Rosales, Alicia | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 27 | Villanueva Fernandez, Valentin | Failure to prepare and/or present I-9 | Violation as alleged (received wages during inspection period) | N |
| 28 | Zavala, Jose | Failure to prepare and/or present I-9 | Violation as alleged | N |
| 29 | Zavala Zavala, Gerardo | Failure to prepare and/or present I-9 | Violation as alleged | N |