

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

March 6, 2017

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 16A00023
	)	
METROPOLITAN ENTERPRISES, INC.,	)	
Respondent.	)	
_____	)	

FINAL DECISION AND ORDER

Appearances:

Michael Horowitz  
for the complainant

Carmelo Grimaldi  
for the respondent

I. INTRODUCTION

This is an action arising under 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 Department of Homeland Security, Immigration and Customs Enforcement (ICE, Complainant, or the government) alleges that Metropolitan Enterprises, Inc. (Metropolitan, Respondent, or the company) engaged in 209 violations of IRCA’s employment verification system, 8 U.S.C. § 1324a(b). Metropolitan denies these allegations.

Pending are Complainant’s Motion for Summary Decision and Motion for Default Judgment. No responses were filed by Respondent. For the reasons provided below, Complainant’s Motion for Summary Decision will be **GRANTED, IN PART**, and its Motion for Default Judgment will be **DENIED** as moot.

## II. PROCEDURAL HISTORY AND POSITIONS OF THE PARTIES

On March 24, 2015, ICE personally served Metropolitan, which is located in Brooklyn, New York, with a Notice of Inspection (NOI), advising Metropolitan that a review of its Employment Eligibility Verification Forms I-9 was scheduled for April 2, 2015. The NOI also stated that the “purpose of the inspection is to assess [Metropolitan’s] compliance with the provisions of [IRCA].”<sup>1</sup>

On November 16, 2015, ICE personally served Metropolitan with a Notice of Intent to Fine (NIF), setting forth two counts. Count I alleged that Metropolitan failed to ensure that 156 employees properly completed section 1 of their Forms I-9, and/or that Metropolitan itself failed to properly complete sections 2 or 3 of the Forms I-9 for 156 employees, including five purported to be unauthorized workers. Count II alleged that Metropolitan failed to prepare and/or present Forms I-9 for fifty-three employees.<sup>2</sup> The NIF further asserted that all the named individuals were hired by Respondent after November 6, 1986, and assessed a civil monetary penalty amount of \$195,648.75 for the 209 alleged violations. Respondent timely requested a hearing before an Administrative Law Judge (ALJ).

On February 29, 2016, ICE filed a two-count complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) fully incorporating the NIF, including the proposed civil monetary penalty. On March 29, 2016, Metropolitan filed an answer, denying the material allegations of the complaint and setting forth seven affirmative defenses.<sup>3</sup>

On May 2, 2016, ICE filed a prehearing statement, in which it proposed nine factual stipulations that generally relate to Metropolitan’s corporate status and the procedural history of the case.

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<sup>1</sup> ICE did not indicate when it received the Forms I-9 from Metropolitan and as there is no evidence to the contrary, the undersigned presumes that Metropolitan presented the requested documents to ICE within the allotted timeframe.

<sup>2</sup> The employees identified in the complaint have been listed in the attached Appendix.

<sup>3</sup> The affirmative defenses generally contend that ICE failed to allege *prima facie* violations of the INA or failed to state a claim upon which relief may be granted. *See* Respondent’s Answer at 2. In addition, the fourth affirmative defense states that the complaint should be dismissed for lack of jurisdiction, the fifth affirmative defense claims ICE failed “to address the actions of third parties who were responsible for compliance with” the INA, and the sixth affirmative defense contends that the proposed penalty amount is excessive. *Id.* Respondent has not further argued or supported any of its proposed affirmative defenses, and the undersigned finds them to be abandoned. Moreover, even if they were not abandoned, the undersigned would find each to be meritless regarding liability.

The factual stipulations also identified the type of substantive violations that ICE claims it discovered on Respondent's Forms I-9. According to the government, Respondent failed to provide Forms I-9 for fifty-three of its employees and of the 156 Forms I-9 it provided: (i) eight Forms I-9 contained no employee signature in section 1 and no employer signature in section 2, (ii) sixty-five forms contained no employee attestation or signature in section 1 and no employer signature in section 2, (iii) forty-six forms contained no employer signature in section 2, (iv) twenty-three forms contained a completely blank section 2, and (v) fourteen forms contained no citizenship or immigration status checked in section 1. *See* Complainant's Prehearing Statement at 2-7. ICE also named the five employees it determined to be unauthorized for employment.

On June 1, 2016, Respondent filed its prehearing statement. Respondent reasserted that the complaint should be dismissed for lack of personal jurisdiction on account of lack of proper service.<sup>4</sup> Respondent also stated that ICE incorrectly characterized the alleged violations as substantive and did not properly consider the five statutory factors in setting a penalty amount, which Respondent considers "excessive." Respondent's Prehearing Statement at 2. Respondent also claimed that "the number of alleged unauthorized aliens 'knowingly' hired or employed by Respondent is zero." *Id.* In addition, according to Metropolitan, it is "[u]nlike most other industries, [and] companies in Respondent's industry receive workers for an extremely short period of time to perform construction type work" and therefore ICE improperly failed to consider the actions of these third parties "who were responsible for compliance with" the INA. *Id.* at 3. The company also set forth that "[g]iven the seriousness of the foregoing issues (including the grossly inflated penalty amount), Respondent declines to enter into any stipulations of fact with ICE and asserts it is ICE's responsibility to prove all elements of the underlying violations." *Id.* According to Metropolitan, the facts in dispute include the assessed penalty amount, the role third parties played in this matter, "the conduct of ICE officials during the investigation/audit," and the nature of Metropolitan's business. *Id.* at 4.

#### A. Complainant's Motion for Summary Decision

On November 17, 2016, Complainant filed a Motion for Summary Decision<sup>5</sup> (Complainant's Motion), to which it attached five proposed exhibits: Ex. G-1) NOI (2 pp.); Ex. G-2) Forms I-9

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<sup>4</sup> Counsel for Respondent orally withdrew this argument, which was raised as the fifth affirmative defense in the answer, during a telephonic prehearing conference on August 30, 2016, at which time both parties were represented by their respective counsel.

<sup>5</sup> Complainant presented this filing as a Motion for Summary Judgment; however, the undersigned will refer to it as a Motion for Summary Decision consistent with the nomenclature used in 28 C.F.R. pt. 68.38. *See* OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2016). Nevertheless, Rule 68.38 is modeled after Federal Rule of Civil Procedure 56(c), which provides for summary judgment in federal cases. *See United States v. Holtsville 811 Inc.*, 11 OCAHO no. 1258, 5 (2015).

and related documentation pertaining to the individuals named in Counts I and II (367 pp.); Ex. G-3) Respondent's Payroll Register and Earnings Summary (Payroll Register) (18 pp.); Ex. G-4) ICE, Form I-9 Inspection Overview: Fact Sheet (I-9 Fact Sheet) (Jun. 26, 2013), <http://www.ice.gov/news/library/factsheets/i9-inspection.htm> (4 pp.); G-5) Respondent's 2014 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return, NYS-45-MN (2014 Fourth Quarter Withholding Return) (6 pp.); G-6) 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) (21 pp.); and Ex. G-7) Declaration of Abraham Peters, ICE forensic auditor (2 pp.).

### 1. Liability

In its motion, ICE argues it is entitled to summary decision as to liability under Count I because a simple "visual examination" demonstrates that the 156 Forms I-9 which Respondent presented all contain at least one substantive violation, per DHS's interim guidelines, or the Virtue Memorandum. Complainant's Motion at 4-5. ICE classifies the type of substantive violation(s), as it had in its prehearing statement, and states the section 1 violations include Respondent's failure to ensure that its employees checked the box attesting to the appropriate citizenship or immigration status and its failure to ensure its employees signed the employee attestation. *Id.* at 10. The section 2 violations include Metropolitan's failure to sign the employer attestation or to complete section 2 at all. *Id.* at 11-12.

ICE contends it is entitled to summary decision as to Count II because Respondent never presented either Forms I-9 or any evidence to suggest that Forms I-9 were timely prepared on behalf of the named fifty-three individuals. ICE avers that these individuals were still employed by Respondent as of at least October 2014, as supported by listings on Respondent's 2014 Fourth Quarter Withholding Return. *Id.* at 7 (citing Ex. G-5).

In addition, Complainant states that any argument asserting liability of the "union/hiring hall," which allegedly provided Respondent with employees, is meritless because the individuals listed on the NIF were hired and paid by Respondent. "If a hiring hall is sending workers that cannot be properly verified, or are not authorized to work, then those workers must be sent back, rather than employed by Respondent." *Id.* at 14. Complainant further states that contrary to Respondent's assertion in its prehearing statement, Complainant did not allege that Respondent knowingly hired unauthorized workers and, therefore, has met its burden of proving liability for paperwork violations. As Metropolitan did not provide any opposing arguments or evidence, ICE avows that there are no genuine issues of material fact with respect to liability under Counts I and II.

### 2. Penalty

According to Complainant, it should also be granted summary decision with respect to its proposed civil monetary penalty amount of \$195,648.75. ICE considered the five penalty factors required by statute and regulation: (1) the size of the business; (2) the good faith of the employer; (3) the seriousness of the violations; (4) whether the individual employee was an unauthorized alien; and (5) the history of previous violations by the employer. ICE used its internal agency guidelines to set the baseline penalty amount to \$935 because Respondent had a violation rate of more than 50%, as there were 209 violations out of 209 required Forms I-9, and based on ICE's treatment of the penalty factors, the fine amount remained \$935 per violation. Complainant's Motion at 9; *see also id.*, Ex. G-4. ICE aggravated the baseline penalty amount by five percent on account of the seriousness of all the violations and mitigated it by five percent due to Respondent's good faith; the size of Respondent's business and the history of previous violations were treated as neutral factors.

ICE contends that it determined that five of the named individuals in Count I were not authorized for employment and therefore aggravated the penalty amount by five percent to \$981.75 for these five violations. According to Complainant, the Alien numbers that Federico Alberto Abreu Merca and Luis Sandoval presented to Respondent were never issued to anyone and the Alien numbers that Jose Barajas, Marco Garcia, and Jose Velez used belonged to different individuals. *Id.* at 13. ICE did not submit the materials that led it to determine these five individuals were unauthorized because of "Privacy Act concerns." *Id.* Rather, the government submitted an affidavit from its forensic auditor who investigated the work authorization status of these individuals. *Id.* at 14 (referencing Ex. G-7).

ICE requests that the proposed penalty not be reduced because of Metropolitan's "complete lack of compliance with the Form I-9 procedures." *Id.* at 10. It asserts that all of the violations present are very serious and recognizes that while only one violation will be assessed for each Form I-9, out of the 156 Forms I-9 presented, 41 forms contained two separate substantive violations and 65 forms contained three substantive violations, manifesting a "blatant disregard for the employee verification requirements." *Id.*

Metropolitan did not file a response to Complainant's Motion for Summary Decision.

#### B. Complainant's Motion for Default Judgment

On January 26, 2017, ICE filed a Motion for Default Judgment. According to ICE, Respondent failed to comply with the scheduling order that ALJ Thomas McCarthy, who previously presided over this matter, set during the August 30, 2016 telephonic prehearing conference. Dispositive motions were due November 17, 2016, and responses were due December 17, 2016. As Respondent did not file either a dispositive motion or a response to Complainant's Motion for Summary Decision, Respondent's noncompliance with the ALJ's order should be deemed an abandonment of its request for a hearing. *See* Complainant's Motion for Default Judgment at 2

(citing 28 C.F.R. § 68.37(b)(1)). Accordingly, Complainant seeks that a judgment be entered in its favor with respect to liability and the proposed penalty amount.

### III. DISCUSSION AND ANALYSIS

#### A. Applicable Legal Standards

##### 1. Summary Decision

OCAHO regulation 28 C.F.R. § 68.38(c) establishes that an ALJ “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 United States Supreme Court precedent, OCAHO case law has held that “[a]n issue of material fact is genuine only if it has a real basis in the record” and that “[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)).<sup>6</sup> “In determining whether there is a genuine issue as to a material fact, all facts and reasonable inferences to be derived therefrom are to be viewed in the light most favorable to the non-moving party.” *United States v. Primera Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

“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 regulation 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.”

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<sup>6</sup> 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>.

## 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).

“Summary decision does not necessarily ensue just because the nonmoving party fails to respond to a motion for summary decision; the proponent of the motion still has the burden of establishing that the party is entitled to judgment as a matter of law,” including on the issue of an appropriate civil monetary penalty. *United States v. New China Buffet Rest.*, 10 OCAHO no. 1132, 6 (2010) (citing *United States v. Sourovova*, 8 OCAHO no. 1020, 283, 284 (1998)). 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) (affirmance by the Chief Administrative Hearing Officer (CAHO)) (citations omitted).

## 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* Virtue Memorandum. The United States Court of Appeals for the Second Circuit (Second Circuit) recently accorded the Virtue Memorandum *Skidmore* deference on account of it being “well-

reasoned and thorough.” *See Buffalo Transp., Inc. v. United States*, 844 F.3d 381, 385 (2d Cir. 2016).<sup>7</sup> Relevant to the instant case, substantive violations include failure to prepare or present a Form I-9. Virtue Memorandum at 3. The Virtue Memorandum also characterizes as substantive: (1) an employee’s failure to check the appropriate box identifying his or her citizenship or immigration status in section 1; (2) an employee’s failure to sign the attestation in section 1; (3) an employer’s failure to record a proper List A document or proper Lists B and C documents in section 2; and (4) an employer’s failure to sign the attestation in section 2. Virtue Memorandum at 3-4.

#### 4. Civil Money Penalties

Civil money penalties are assessed for paperwork violations according to the parameters set forth at 8 C.F.R. § 274a.10(b)(2): the minimum penalty for each individual with respect to whom a violation occurred after September 29, 1999, and before November 2, 2015, is \$110, and the maximum is \$1100. *See also* 28 C.F.R. §§ 85.1, 85.5. In assessing an appropriate penalty, the following statutory factors must be considered: 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). As stated above, the government bears the burden of proving the existence of any aggravating factor by a preponderance of the evidence.

The weight to be given each of the five factors will depend upon the facts and circumstances of the individual case. *United States v. Raygoza*, 5 OCAHO no. 729, 48, 51 (1995) (noting that each factor’s significance is based on the specific facts in the case). Although 8 U.S.C. § 1324a(e)(5) “requires due consideration of the enumerated factors, it does not mandate any particular outcome of such consideration, and nothing in the statute or the regulations requires in OCAHO proceedings either that the same weight be given to each of the factors in every case, or that the weight given to any one factor is limited to any particular percentage of the total.” *United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6-7 (2011) (internal citations omitted). Further, the enumeration of these factors does not rule out consideration of such additional factors as may be appropriate in a specific case. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000). Although the statutory factors must be considered in every case, there is otherwise no single method mandated for calculating civil money penalties for violations of 8 U.S.C. § 1324a(a)(1)(B). *United States v. Senox Corp.*, 11 OCAHO no. 1219, 4 (2014); *see also United States v. The Red Coach Rest., Inc.*, 10 OCAHO no. 1200, 3 (2013) (affirmance by the CAHO noting decisions using varied approaches to calculating penalties); *cf. United States v. Int’l Packaging, Inc.*, 12 OCAHO no. 1275a, 6 (2016) (noting that nothing in 8 U.S.C. § 1324a(e)(5) requires the five statutory factors to be considered exclusively on a binary

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<sup>7</sup> As Respondent has its principal office in New York, case law from the Second Circuit provides pertinent legal authority. 28 C.F.R. § 68.56; *see also United States v. Curran Eng’g Co.*, 7 OCAHO no. 975, 874, 880 n.5 (1997).

scale); *United States v. Romans Racing Stables, Inc.*, 11 OCAHO no. 1232, 5 (2014) (affirmance by the CAHO) (noting that a failure to affirmatively establish a statutory factor as aggravating does not require that the factor necessarily be treated as mitigating). ICE's penalty calculations are not binding in OCAHO proceedings, and penalties may be examined *de novo* by the ALJ if appropriate. *See Ice Castles Daycare*, 10 OCAHO no. 1142 at 6.

## B. Analysis

### 1. Paperwork Violations

Count I, ¶ A alleges that there are substantive paperwork violations in section 1 and/or sections 2 or 3 of the Forms I-9 for the 151 named individuals. Count I, ¶ B alleges that there are substantive paperwork violations in section 1 and/or section 2 or 3 of the Forms I-9 for the five named individuals who ICE further contends are unauthorized for employment in the United States. Count II sets forth that Metropolitan failed to prepare and/or present Forms I-9 for fifty-three individuals.

ICE has provided both arguments and evidence in order to meet its burden of proving by a preponderance of the evidence the counts of the complaint, its penalty assessment, and its entitlement to summary decision. Consequently, the burden of production shifted to the Respondent to produce evidence and arguments to rebut the government's case and to rebut the evidence of record supporting the government's case. Because Respondent failed to provide any response to the government's Motion for Summary Decision, however, its cursory arguments contained in its answer and prehearing statement have been considered for the purposes of rebutting the government's claims. *See United States v. Hair U Wear, LLC*, 11 OCAHO no. 1268, 10 (2016).

As the original effective date of IRCA is November 6, 1986, ICE states that "Respondent opened in November 2002, thus hiring all its employees after that date, and therefore the hiring provisions of IRCA are fully applicable to it." *See* Complainant's Motion at 4. The government's assertion is correct but not fully contextualized. As a prior Administrative Law Judge explained in *United States v. H & H Saguario Specialists*, 10 OCAHO no. 1144, 6 (2012), "[t]his formulation becomes more and more vague, however, with each passing year since the enactment of the statute," because an employer is required to prepare and retain the Forms I-9 of current employees and with respect to former employees "only for a period of three years after that employee's hire date, or one year after that employee's termination date, whichever is later." *Id.* (quoting 8 U.S.C. § 1324a(b)(3) ("Retention of verification form"); 8 C.F.R. § 274a.2(b)(2)(i); *United States v. Ojeil*, 7 OCAHO no. 984, 982, 992 (1998)). Thus, "[a] more accurate statement of the government's burden [is] that the government must show not only that the individual was hired after November 6, 1986, but also that the individual is either still employed or was hired within three years prior to the date of the Notice of Inspection or

terminated within one year prior to the that date, whichever is later.” *H&H Saguario Specialists*, 10 OCAHO no. 1144 at 6. Consequently, “[b]ecause the relevant dates for determining the retention period for a former employee’s I-9 are the actual dates of that employee’s hire and termination, and not the quarter within which that date occurred,” ICE should generally provide the actual hire and termination dates for the former employees. *Id.* at 7.

In the instant case, because the NOI was served on March 24, 2015, *see* Complainant’s Motion, Ex. G-1, ICE must demonstrate that the individuals listed in the complaint were either current employees or former employees who Metropolitan hired between March 24, 2012, and March 24, 2015, or terminated between March 24, 2014, and March 24, 2015, whichever date is later. 8 U.S.C. § 1324a(b)(3)(B). In addition, for purposes of the employment verification system, an “employee” is an “individual who provides services or labor for an employer for wages or other remuneration.” 8 C.F.R. § 274a.1(f).

ICE proffered Metropolitan’s Payroll Register for March 23, 2015-March 29, 2015, which shows that the listed individuals received wages during that period, and its 2014 Fourth Quarter Withholding Return, which shows that the named individuals received wages at some point between October 1-December 31, 2014, or at some point in 2014. *See* Complainant’s Motion, Exs. G-3; G-5. Moreover, in support of its allegations under Count I, the government presented the Forms I-9 and copies of the attached identity and employment authorization documents, if any, of the named individuals. *See id.*, Ex. G-2.

ICE did not provide hiring or termination dates for any of the employees listed in the complaint, however, even though it bears the burden of proving that Metropolitan was required to retain the Forms I-9 alleged in the complaint at the time of the NOI. ICE’s lack of particularity regarding the retention period does not aid its arguments, nor does its evident presumption that the undersigned will simply sift through its filings to discern important information that it failed to specify. “[M]ind reading is not an accepted tool of judicial inquiry,” *United States v. Stanford Sign and Awning, Inc.*, 10 OCAHO no. 1145, 8 (2012) (citation omitted), and ICE is cautioned to be more particularized in its arguments in future cases. Nevertheless, in the instant case, after sorting through all of the evidence, the undersigned is able to make sufficient findings to decide the pending Motion for Summary Decision.

The individuals listed on the Payroll Register, who received wages during the period of March 23-29, 2015, are employees for whom Metropolitan was required to prepare and present Forms I-9. *See* Complainant’s Motion, Ex. G-3. The 2014 Fourth Quarter Withholding Return identifies individuals who received wages during October 1- December 31, 2014, as well as the individuals who received wages at some point in 2014, which is notated by “Gross Wages” or “Gross YTD.” *Id.*, Ex. G-5. Based on the fact that the NOI was served on March 24, 2015, and pursuant to the applicable retention period, the individuals who received wages in the 2014 fourth quarter are employees for whom Metropolitan was required to prepare and present Forms I-9. However,

with respect to any employees who received wages at some point in 2014, but not in the fourth quarter, this evidence alone does not establish that Metropolitan was required to retain their Forms I-9 because there are no hire or termination dates for these employees. Conceivably, Metropolitan could have terminated these individuals prior to March 24, 2014, in which case Metropolitan would not necessarily have been obligated to retain the Form I-9 as late as March 24, 2015, depending on when the individuals were hired. Thus, the undersigned must turn to other evidence in the record to discern whether Metropolitan can be found liable for alleged violations related to those individuals.

a. Metropolitan is Not Liable for Twenty of the Alleged Violations

i. Dates of Employment are Unknown

The alleged violations with respect to the following twelve Count I individuals and one Count II individual will be dismissed because they are only listed on the 2014 Fourth Quarter Withholding Return as having received wages in 2014 but not in the fourth quarter: Eduardo Andrade (#6), Tasheena Carpenter (#29), Abdourahaman Diabate (#41), Edgar Garcia (#57), Shiekh Hoque (#68), Raul Munoz (#99), Anthony Naso (#101), Jason Ortiz (#108), Panama Nathud (#109), Adrian Quituizaca (#116), Anthony Valdes (#143), Filiberto Vega (#146), and Vladimir Augustin (Count II, #2). *See* Complainant's Motion, Ex. G-5; *see also* Appendix, Counts I-II. The record is lacking additional evidence that sheds light on these employees' respective hire dates or termination dates. Accordingly, ICE has not established that Metropolitan was required to retain these Forms I-9 as of the date of the NOI and, thus, has also failed to meet its burden of proof of establishing these alleged violations. *See H&H Saguario Specialists*, 10 OCAHO no. 1144 at 6.

Although identity and work authorization documents are attached to the Forms I-9 of Mr. Andrade, Ms. Carpenter, Mr. Diabate, Mr. Munoz, Mr. Naso, Mr. Ortiz, Mr. Panama, Mr. Quituizaca, and Mr. Valdes, based on the dates of issuance of those documents, it is not evident that these employees were hired on a date that would place them within the required retention period. *See id.*, Ex. G-2 at 14-16, 65-66, 90-91, 207-08, 211-12, 225-28, 241-42, 333-36. Mr. Garcia and Mr. Hoque's Forms I-9 do not identify their dates of hire and there are no documents attached to their I-9s. *Id.* at 121, 145. In addition, neither Mr. Vegas's Form I-9 nor his attached documents identify any relevant dates. *Id.* at 345-47.

Because all facts and reasonable inferences are to be viewed in the light most favorable to Respondent, I find that ICE has failed to meet its burden of proving that Metropolitan needed to retain and present Forms I-9 for these thirteen individuals as of the date it served the NOI in March 2015, and any violations present on their forms will accordingly be dismissed.

ii. No Evidence of Wages Paid

In addition, ICE failed to prove by a preponderance of the evidence that the following seven individuals received wages from Metropolitan to qualify as employees: Leocadio Andrade (#7), Andre Brown (#21), James Gibbs (#61), Edward Johnson (#70), Ivan King (#72), Giovanni Mannino (#82), and Marcos Morales Alvares (#95). These individuals were not listed on either the Payroll Register or the 2014 Fourth Quarter Withholding Return. As a prior ALJ explained in *United States v. Dr. Robert Schaus, D.D.S.*, 11 OCAHO no. 1239, 6 (2014),

The mere presence of an individual's name on a list, or even on an I-9 form, without a scintilla of evidence that the individual actually provided any services or labor to an employer or ever actually received any wages or other forms of remuneration from the employer during the period at issue, is insufficient to make a prima facie showing that the person was an employee.

Accordingly, although Forms I-9 were prepared on their behalf, *see* Complainant's Motion, Ex. G-2 at 17, 46, 131, 148, 152, 172, 199, this evidence does not sufficiently establish that they were employees of Metropolitan. Therefore, the company will not be held liable for any alleged violations pertaining to their Forms I-9, and these seven violations will be dismissed. *See* Appendix, Count I.

Accordingly, because Complainant failed to prove by a preponderance of the evidence that twenty of the individuals listed in the complaint were employees of Metropolitan or employees for whom Metropolitan had to retain and present Forms I-9 at the time of the inspection, twenty violations will be dismissed and summary decision is denied as to these violations. *See* Appendix, Counts I-II.

#### b. Metropolitan is Liable for the Remaining 189 Violations

However, the evidence of record establishes that the remaining 189 individuals named in the complaint—136 under Count I and 52 under Count II, plus one, discussed in more detail below, that may fall under either Count—are employees for whom Metropolitan was required to prepare and present Forms I-9. *See* Appendix, Counts I-II. Most of these 189 employees are listed on either the Payroll Register or on the 2014 Fourth Quarter Withholding Return as having earned wages in the 2014 fourth quarter. *See* Complainant's Motion, Exs. G-3; G-5. Forty-four employees, however, are listed on the 2014 Fourth Quarter Withholding Return as having received wages in 2014 but not in the fourth quarter. *Id.*, G-5. Nevertheless, having examined all of the government's submissions, I have determined that Metropolitan was required to present Forms I-9 for these forty-four employees at the time of the inspection because the earliest possible date on which Metropolitan hired them falls within the applicable retention period. This determination is based on the dates indicated by the employees' signatures on their Forms I-9 or Forms W-4, Employee's Withholding Allowance Certificate, or on the dates of issuance of their attached identity or work authorization documents, including driver's licenses, Social Security

cards, or certificates of completion for various work-related trainings. *See* Complainant's Motion, Ex. G-2. Although ICE did not demonstrate a specific hiring date for these employees, the documentary evidence is sufficient to establish that the dates of hire for them occurred sometime between March 24, 2012, and March 24, 2015, which is sufficient to establish that the Forms I-9 for those employees were subject to retention and presentation at the time of the NOI.

Turning to liability under Count I, a visual examination of the Forms I-9 at issue demonstrates that there is at least one substantive paperwork violation in each form, as charged by ICE. *See* Complainant's Motion at 7-8, 10-13; Appendix, Count I.<sup>8</sup> Metropolitan is liable for the following substantive paperwork violations: (1) failure to ensure that an employee checks a box in section 1 attesting to his or her citizenship or immigration status; (2) failure to ensure that an employee sign the employee attestation in section 1; (3) failure to review, verify, and identify a proper List A or Lists B and C document(s) in section 2; and (4) failure to sign the employer attestation in section 2. *See* Virtue Memorandum at 3-4.

Furthermore, the record substantiates that Metropolitan did not prepare and/or present Forms I-9, undoubtedly a substantive violation, for fifty-two of the employees named in Count II. *Id.* at 3. Respondent has neither asserted any countervailing argument nor refuted this showing and will accordingly be held liable for fifty-two of the violations charged under Count II. *See* Appendix, Count II.

Finally, regarding Luis Sandoval, according to ¶ B of Count I of the complaint, the last four digits of his social security number are 3062. Mr. Sandoval is listed on the Payroll Register and 2014 Fourth Quarter Withholding Return, both of which also identify the last four digits of his social security number as 3062. *See* Complainant's Motion, Exs. G-3 at 12; G-5 at 5. However, the Form I-9 in the record pertaining to Luis Sandoval identifies a social security number ending in 2844 that is different than the numbers provided in the Payroll Register and 2014 Fourth Quarter Withholding Return. *Id.*, Ex. G-2 at 262. Thus, either Metropolitan employed two individuals with the name Luis Sandoval and with two different social security numbers, but nevertheless only provided a Form I-9 for inspection to ICE for one of them, the one with the 2844 social security number; or, it employed only one individual named Mr. Sandoval whose Form I-9 contains a different social security number than the one reflected in Metropolitan's payroll records. In either case, however, Metropolitan is liable for a violation of 8 U.S.C. § 1324a. Based on the payroll records, Metropolitan was required to retain a Form I-9 for a Mr. Sandoval with a 3062 social security number at the time of the NOI, as he received wages in the 2014 fourth quarter. *Id.*, G-5 at 5. Thus, if Metropolitan employed two individuals named Luis Sandoval, it did not provide the Form I-9 for inspection for the one with a 3062 social security number. Consequently, it would be liable for a violation of 8 U.S.C. § 1324a(a)(1)(B) for a

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<sup>8</sup> Although numerous Forms I-9 contain more than one substantive violation, the company will only be held liable for one substantive violation per Form I-9. *See* Appendix, Count I.

failure to timely prepare and/or present a Form I-9 for that Mr. Sandoval, though the violation would then be moved from ¶ B of Count I to Count II of the complaint to conform to the evidence. *See* 28 C.F.R. § 68.9(e) (allowing amendments to pleadings to conform to the evidence); *United States v. Metropolitan Warehouse, Inc.*, 10 OCAHO no. 1207, 3 (2013) (moving an allegation from Count I of a complaint to Count III to conform to the evidence). Conversely, if Metropolitan employed only one individual named Luis Sandoval whose Form I-9 contains a different social security number than the one contained on his payroll records, Metropolitan is liable for the verification violations contained on that Form and as charged in the complaint, including the failure of Mr. Sandoval to attest to his alien or citizenship status in Section 1, his failure to certify his answers in Section 1, and Metropolitan's failure to attest to the information in Section 2. *See* Complainant's Motion, Ex. G-2 at 262. Thus, in either case, ICE has established liability for Metropolitan for a violation of 8 U.S.C. § 1324a(a)(1)(B) pertaining to the employment of a Luis Sandoval with a 3062 social security number.

Metropolitan did not file a response to ICE's Motion, nor did it point to any evidence supporting its general denial of the complaint's allegations. Its vague, conclusory, and undeveloped arguments regarding third party involvement in the hiring of the individuals named in the complaint is insufficient to refute ICE's showing that there is no genuine issue of material fact as to liability for the established substantive paperwork violations. ICE will therefore be granted summary decision with respect to 136 Count I violations, 52 Count II violations, and the violation regarding Mr. Sandoval, regardless of whether it falls within Count I or Count II, for a total of 189 violations.

## 2. Civil Money Penalties

### a. Statutory Factors

I have considered the five statutory factors in evaluating the appropriateness of ICE's proposed penalty against Metropolitan: 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).

At the outset, the undersigned notes that ICE did not file any evidence regarding how it calculated the proposed fine specifically against Metropolitan, other than its generalized guidance for calculating the baseline fine based on the violation percentage. Complainant's Motion, Ex. G-4. Thus, although the undersigned has no reason to necessarily doubt the assertions made in the government's Motion regarding the calculation of the proposed penalty, assertions of counsel and unsupported allegations made in a brief or motion are not evidence and may not be considered as such. *Cormia v. Home Care Giver Servs., Inc.*, 10 OCAHO no. 1160, 5 (2012); *see also United States v. Hotel Martha Washington Corp.*, 6 OCAHO no. 846, 216, 225 n.5 (1996) (noting that allegations in a brief are not evidence and are not to be treated as such). Consequently, the only evidence submitted by the government to be considered in assessing the civil money penalty are the seven exhibits noted.

Here, ICE ostensibly treated the size of the business and the history of previous violations as neutral factors. The evidence regarding the size of Metropolitan's business is equivocal based on its payroll records, and this factor is appropriately treated as neutral. Complainant's Motion, Exs. G-3, G-5. In addition, the record does not support either aggravation or mitigation on account of Metropolitan's history of previous violations, and because "compliance with the law is the expectation, not the exception," *see United States v. Snack Attack Deli, Inc.*, 10 OCAHO no. 1137, 9 (2010), I will also treat this factor as neutral.

ICE allegedly considered good faith a mitigating factor. "[T]he primary focus of a good faith analysis is on the respondent's compliance *before* the investigation." *United States v. New China Buffet Rest.*, 10 OCAHO no. 1133, 5 (2010) (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 Metropolitan 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); *but see United States v. Williams Produce, Inc.*, 5 OCAHO no. 730, 54, 62 (1995) (noting that lack of reasonable care and diligence in acting in accordance with 8 U.S.C. § 1324a(a)(1)(B) as manifested by a large magnitude of paperwork violations warrants penalty aggravation for a lack of good faith), *aff'd sub nom. Williams Produce, Inc. v. INS*, 73 F.3d 1108 (11th Cir. 1995) (Table). However, the nature of the violations that ICE established under Count I for improper completion of Forms I-9 is disconcerting. *See United States v. Pegasus Family Rest., Inc.*, 12 OCAHO no. 1293, 8 (2016). Numerous forms had at least 2 substantive violations and several contained 3, lacking an employee's citizenship or immigration attestation, an employee signature, and the employer signature, rendering the Form I-9 virtually useless. Multiple Forms I-9 also have a completely blank section 2, meaning there is no recording of a proper List A or Lists B and C document, signifying that the employer did not verify the identity and work authorization of the individual, and no employee signature. *See Appendix, Count I.* Several forms also contain a blank section 2, along with another substantive violation. *Id.* These widespread, fundamental errors, which as a whole have undermined the purpose of the employment verification system, strongly suggest that Metropolitan did not take proper "steps 'to ascertain what the law requires and to conform its conduct to the law,' which is a critical focus of a good faith analysis." *Pegasus Family Rest.*, 12 OCAHO no. 1293 at 9 (citing *United States v. SKZ Harvesting, Inc.*, 11 OCAHO no. 1266, 15 (2016)). Therefore, although neither party claims that a lack of good faith should aggravate the penalty amount, there is no evidence in the record to warrant mitigation either. Moreover, 8 U.S.C. § 1324a(e)(5) does not require good faith, or any of the statutory factors, to be considered solely on a binary scale. *See Int'l Packaging*, 12 OCAHO no. 1275a at 6; *see also Romans Racing Stables*, 11 OCAHO no. 1232 at 5. Overall, the record as a whole supports finding this factor to be neutral.

ICE treated the seriousness of the violations as an aggravating factor. Among the serious violations alleged in the complaint and confirmed by the evidence related to Respondent's Forms I-9 are the failure to prepare a Form I-9 at all, the failure to ensure that the employee checks a box attesting to his or her status, the failure to ensure that the employee signs section 1, and the failure of the employer to sign the attestation in section 2. *See generally United States v. Durable, Inc.*, 11 OCAHO no. 1229, 15 (2014) (explaining why these violations are considered serious), *aff'd by CAHO*, 11 OCAHO no. 1231 (2014). Indeed, the failure to prepare an I-9 at all is among the most serious of possible violations because it frustrates the national policy intended to ensure that unauthorized aliens are excluded from the workplace. *See United States v. Super 8 Motel*, 10 OCAHO no. 1191, 14 (2013). Failure to ensure that an employee checks the box attesting to his or her status in section 1 is serious because if the employee fails to provide information sufficient to disclose his or her immigration status on the face of the form, the employee's signature attests to nothing at all. *Durable*, 11 OCAHO no. 1229 at 15 (citing *United States v. Ketchikan Drywall Services, Inc.*, 10 OCAHO no. 1139, 15 (2011)). Failure to ensure that the employee signs section 1 is a serious violation because the employee has not attested to being authorized to work in the United States. *See Durable*, 11 OCAHO no. 1229 at 15 (2014) (citing *United States v. Task Force Sec., Inc.*, 4 OCAHO no. 625, 333, 341 (1994)). "Failing to sign section 2 could also be interpreted as an employer's avoidance of liability for perjury." *Durable*, 11 OCAHO no. 1229 at 15 (citing *Ketchikan Drywall Services*, 10 OCAHO no. 1139 at 10 (2011)); *see also United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271c, 19 (2016). Although seriousness of violations is evaluated along a continuum and other categories of violations may be marginally less serious, the violations for which Respondent is liable in both Counts are sufficiently serious to warrant aggravation of the penalty amount. *See also Pegasus Family Rest.*, 12 OCAHO no. 1293 at 9-10 (further noting the seriousness of these types of violations and similarly finding aggravation of the penalty amount warranted).

Finally, ICE aggravated the fine amount for five of the Count I, ¶ B violations based on the alleged unauthorized status of Federico Alberto Abreu Merca, Jose Barajas, Marco Garcia, Luis Sandoval, and Jose Velez. The only evidence submitted in support of this aggravation, however, is a brief, conclusory affidavit from an ICE Forensic Auditor, Abraham Peters. Complainant's Motion, Ex. G-7. Auditor Peters states that he inspected Metropolitan's Forms I-9 and used the databases of U.S. Citizenship and Immigration Services<sup>9</sup> to verify the names and A numbers that Metropolitan's employees provided in their Forms I-9. *Id.* He explained that the A numbers that Jose Barajas, Marco Garcia, and Jose Velez provided relate to a different person and that the A

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<sup>9</sup> Auditor Peters stated that he examined databases maintained by "United States Citizen [sic] and Immigration Services." Complainant's Motion, Ex. G-7 at 2. Presumably, Auditor Peters meant to refer to United States Citizenship and Immigration Services, but his misidentification of the agency whose databases he searched does not enhance the persuasive value of his declaration.

numbers that Federico Alberto Abreu Merca and Luis Sandoval provided was never issued to any individual. *Id.* at 2.

It is well-established in OCAHO case law that significant database discrepancies with adequate evidentiary support, particularly when unrebutted, can support a finding that aggravation of a civil money penalty is warranted due to the presence of unauthorized aliens. *See United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271d, 16 (2017) (collecting cases). In the instant case, however, Auditor Peters neither identified which databases he searched nor provided any details regarding how he conducted the searches. *Compare Frimmel Mgmt.*, 12 OCAHO no. 1271c at 6 n.6, 20-21 (finding aggravation of a civil money penalty warranted due to the presence of unauthorized aliens based on specific and explicated database discrepancies following documented searches by ICE of two databases, TECS and the Central Index System). He also alluded to a Notice of Suspect Documents being issued to Metropolitan, but no such document was proffered by ICE as evidence. Auditor Peters's brief statement lacks sufficient detail to be accorded persuasive weight by itself, particularly when compared with evidentiary submissions in other cases on the same issue. *See id.* Moreover, ICE presented no additional evidence in support of its contention that the civil money penalty for these five individuals should be aggravated because of their unauthorized status.<sup>10</sup>

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<sup>10</sup> ICE stated that it did not submit any material in support of its claim that these individuals were unauthorized for employment because of "Privacy Act concerns." *See Complainant's Motion* at 13. Although the Privacy Act of 1974 only applies to U.S. citizens and lawful permanent residents, 5 U.S.C. § 552a(a)(2), DHS previously, by policy, extended coverage under the Privacy Act to all aliens regardless of immigration status. *See DHS Privacy Office, Privacy Policy Guidance Memorandum 2007-01, Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons* (Jan. 7, 2009), <https://www.dhs.gov/sites/default/files/publications/privacy-policy-guidance-memorandum-2007-01.pdf>. On January 25, 2017, however, President Donald J. Trump issued an Executive Order, *inter alia*, directing executive agencies to "ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information." Exec. Order No. 13768, *Enhancing Public Safety in the Interior of the United States*, 82 Fed. Reg. 8799, 8802 (Jan. 25, 2017). On February 20, 2017, DHS issued an implementation memorandum of that Executive Order stating that it "will no longer afford Privacy Act rights and protections to persons who are neither U.S. citizens nor lawful permanent residents" and directing the DHS Privacy Office to rescind its prior memorandum to the contrary. Memorandum from Secretary of Homeland Security John Kelly, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf). Despite this change in policy regarding the scope of the Privacy Act, ICE has not filed anything further regarding this issue. Thus, the undersigned's consideration of the issue is limited solely to the seven exhibits ICE previously filed. Moreover, to the extent that ICE relied on prior policy in limiting the scope of its

In short, ICE’s sole evidence in support of aggravation for this factor is a vague, generalized, and conclusory declaration. That declaration, standing alone, is simply insufficient to meet ICE’s burden. Consequently, ICE has not shown by a preponderance of the evidence that these five employees were not authorized to work in the United States, and the civil money penalty will not be enhanced on account of this factor. To the contrary, although it does not always follow that a factor found not to be aggravating must necessarily and automatically be found to be mitigating, *Int’l Packaging*, 12 OCAHO no. 1275a at 6, the record as a whole in this case supports some, modest mitigation for this factor.

#### b. Non-Statutory Factors

Metropolitan did not specifically argue that a non-statutory factor should be considered. *See United States v. Buffalo Transp., Inc.*, 11 OCAHO no. 1263, 11 (2015) (“A party seeking consideration of a non-statutory factor, such as ability to pay the penalty, bears the burden of showing that the factor should be considered as a matter of equity and that the facts support a favorable exercise of discretion.”), *aff’d.*, 844 F.3d 381 (2d Cir. 2016) (citation omitted). Thus, the undersigned has no basis to consider any such factors and finds no mitigation is warranted based on a non-statutory factor.

To be sure, in its prehearing statement, Metropolitan asserted that ICE failed to consider the fact that companies in its industry “receive workers for an extremely short period of time to perform construction type work.” Respondent’s Prehearing Statement at 3. Construing this as an argument for mitigation due to a high turnover rate, however, does not aid Respondent, for a high turnover rate is neither inherently mitigating nor aggravating regarding the penalty calculation for violations of 8 U.S.C. § 1324a(a)(1)(B). *See Pegasus Family Rest.*, 12 OCAHO no.1293 at 13.

Although Respondent failed to respond to the Motion for Summary Decision, the undersigned has given due consideration to all of the statutory factors in 8 U.S.C. § 1324a(e)(5), as well as to a potentially colorable non-statutory factor. After considering the totality of evidence, the arguments of the parties, and the relevant factors to be considered in penalty assessments, the undersigned finds that the penalties proposed by ICE, while arguably defensible, are slightly disproportionate to the overall extent of the violations and factors in this case. Thus, I find that the penalty in the instant case should be reduced, albeit modestly, in the exercise of discretion. *See Ice Castles Daycare Too*, 10 OCAHO no. 1142 at 6.

Pursuant to my *de novo* authority in assessing the penalty amount and having considered the requisite factors, I will set the penalty amount for the 189 Count I and Count II violations at \$800 per violation, which recognizes the severity of the violations present in the forms that

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evidentiary submissions on this issue, neither that policy nor the Privacy Act itself relieves ICE of its burden in this proceeding to establish an aggravating factor by a preponderance of the evidence.

Metropolitan presented and the minimal support for mitigation. Accordingly, the total civil monetary penalty for which Metropolitan is liable is \$151,200.

#### IV. CONCLUSION

ICE'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 Metropolitan is liable for 189 violations of 8 U.S.C. § 1324a(a)(1)(B), as charged in Counts I and II of the complaint. However, ICE failed to meet its burden of proof as to twenty violations because it did not show by a preponderance of the evidence that twenty of the individuals were employees of Metropolitan or employees for whom Metropolitan had to present a Form I-9 at the time of the inspection.

Respondent did not seriously contest ICE's arguments as set forth in its Motion for Summary Decision and abandoned its arguments regarding its alleged affirmative defenses. ICE has demonstrated through uncontroverted proof that no genuine issue of material fact exists with respect to Metropolitan's liability for 189 violations and will therefore be granted summary decision as to these 189 violations. For those violations, Metropolitan is ordered to pay a total civil money penalty amount of \$151,200. Complainant's Motion for Default Judgment is denied as moot.

#### V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

##### A. Findings of Fact

1. Metropolitan Enterprises, Inc. is an entity located in the State of New York.
2. On March 24, 2015, the Department of Homeland Security, Immigration and Customs Enforcement served Metropolitan Enterprises, Inc. with a Notice of Inspection.
3. The Department of Homeland Security, Immigration and Customs Enforcement served Metropolitan Enterprises, Inc. with a Notice of Intent to Fine on November 16, 2015.
4. Metropolitan Enterprises, Inc. timely requested a hearing on December 15, 2015.
5. The Department of Homeland Security, Immigration and Customs Enforcement did not demonstrate by a preponderance of the evidence that 20 of the 209 individuals named in the complaint were either employees of Metropolitan Enterprises or employees for whom Metropolitan had to prepare and present Forms I-9 at the time of the inspection.

6. Metropolitan Enterprises, Inc. failed to timely prepare and/or present Forms I-9 for fifty-two employees.
7. Metropolitan Enterprises, Inc. failed to properly complete Forms I-9 for 137 employees.
8. Metropolitan Enterprises, Inc. was not found to have the presence of unauthorized aliens in its workforce.

#### B. Conclusions of Law

1. Metropolitan Enterprises, Inc. is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2012).
2. All conditions precedent to the institution of this proceeding have been satisfied.
3. Metropolitan Enterprises, Inc. is liable for 189 violations of 8 U.S.C. § 1324a(a)(1)(B).
4. OCAHO regulation 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.”
5. “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)).
6. “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).
7. OCAHO regulation 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.”
8. “In determining whether there is a genuine issue as to a material fact, all facts and reasonable inferences to be derived therefrom are to be viewed in the light most favorable to the non-moving party.” *United States v. Primera Enters., Inc.*, 4 OCAHO no. 615, 259, 261 (1994) (citations omitted).

9. 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).
10. An employer is required to prepare and retain the Forms I-9 of current employees and with respect to former employees "only for a period of three years after that employee's hire date, or one year after that employee's termination date, whichever is later." *United States v. H & H Saguaro Specialists*, 10 OCAHO no. 1144, 6 (2012) (quoting 8 U.S.C. § 1324a(b)(3) ("Retention of verification form")); 8 C.F.R. § 274a.2(b)(2)(i); *United States v. Ojeil*, 7 OCAHO no. 984, 982, 992 (1998)).
11. For purposes of the employment verification system, an "employee" is an "individual who provides services or labor for an employer for wages or other remuneration." 8 C.F.R. § 274a.1(f).
12. Employers must ensure that an employee completes 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), (b)(1)(i)(A).
13. 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).
14. As set forth at 8 U.S.C. § 1324a(e)(5), the following factors must be considered 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.
15. The 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).
16. The weight to be given each of these factors will depend upon the facts and circumstances of the individual case. *United States v. Raygoza*, 5 OCAHO no. 729, 48, 51 (1995).
17. Although 8 U.S.C. § 1324a(e)(5) "requires due consideration of the enumerated factors, it does not mandate any particular outcome of such consideration, and nothing in the statute or the regulations requires in OCAHO proceedings either that the same weight be given to each of the

factors in every case . . . or that the weight given to any one factor is limited to any particular percentage of the total.” *United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6-7 (2011) (internal citations omitted).

18. ICE’s penalty calculations are not binding in OCAHO proceedings, and penalties may be examined *de novo* by the Administrative Law Judge if appropriate. *See United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011).

19. A critical focus of a good faith analysis is for companies “to ascertain what the law requires and to conform its conduct to the law.” *United States v. SKZ Harvesting, Inc.*, 11 OCAHO no. 1266, 15 (2016).

20. The failure to prepare an I-9 at all is among the most serious of possible violations because it frustrates the national policy intended to ensure that unauthorized aliens are excluded from the workplace. *See United States v. Super 8 Motel*, 10 OCAHO no. 1191, 14 (2013).

21. Failure to ensure that an employee checks the box attesting to his or her status in section 1 is serious because if the employee fails to provide information sufficient to disclose his or her immigration status on the face of the form, the employee’s signature attests to nothing at all. *United States v. Durable, Inc.*, 11 OCAHO no. 1229, 15 (2014) (citing *United States v. Ketchikan Drywall Services, Inc.*, 10 OCAHO no. 1139, 15 (2011)), *aff’d by CAHO*, 11 OCAHO no. 1231 (2014).

22. Failure to ensure that the employee signs section 1 is a serious violation because the employee has not attested to being authorized to work in the United States. *See United States v. Durable, Inc.*, 11 OCAHO no. 1229, 15 (2014) (citing *United States v. Task Force Sec., Inc.*, 4 OCAHO no. 625, 333, 341 (1994)).

23. “Failing to sign section 2 could also be interpreted as an employer’s avoidance of liability for perjury.” *United States v. Durable, Inc.*, 11 OCAHO no. 1229, 15 (2014) (citing *United States v. Ketchikan Drywall Services, Inc.*, 10 OCAHO no. 1139, 10 (2011)); *see also United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271c, 19 (2016).

24. It is well-established in OCAHO case law that significant database discrepancies with adequate evidentiary support, particularly when unrebutted, can support a finding that aggravation of a civil money penalty is warranted due to the presence of unauthorized aliens. *See United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271d, 16 (2017) (collecting cases).

25. A party seeking consideration of a non-statutory factor, 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), *aff’d.*, 844 F.3d 381 (2d Cir. 2016) (citation omitted).

To the extent that any statement of fact is deemed to be a conclusion of law or any conclusion of law is deemed to be a statement of fact, the same is so denominated as if set forth as such.

ORDER

ICE's Motion for Summary Decision is **GRANTED, IN PART**. Metropolitan Enterprises, Inc. is liable for 189 violations of 8 U.S.C. § 1324a(a)(1)(B) and is directed to pay civil penalties in the total amount of \$151,200. The parties are free to establish a payment schedule in order to minimize the impact of the penalty on the operations of the company. ICE's Motion for Default Judgment is **DENIED** as moot.

SO ORDERED.

Dated and entered this 6th day of March, 2017.

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James R. McHenry III  
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****COUNT I, ¶ A**

<b>No.</b>	<b>Employee Name<sup>11</sup></b>	<b>Violation(s) Alleged</b>	<b>Finding</b>
1	Aguilar, Carlos	No documents identified under List A or Lists B and C in section 2; no employer signature in section 2	Violation as alleged
2	Aguilar Mejia, Omar	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
3	Alcanta, Juan	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no documents identified under List A or Lists B and C in section 2; no employer signature in section 2	Violation as alleged
4	Amisculesei, Mihai	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
5	Amisculesei, Radu	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
6	Andrade, Eduardo	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	<b>Not established</b>
7	Andrade, Leocadio	No citizenship or immigration status attestation in section 1; no employee signature in section 1; section 2 not completed	<b>Not established</b>
8	Andrews, Tony	No employee signature in section 1; no employer signature in section 2	Violation as alleged
9	Arias, Juan	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
10	Avila, Victor	Section 2 not completed	Violation as alleged

<sup>11</sup> The undersigned has identified these individuals' names based on their Forms I-9 and attached documents. The spelling of several names is different than the manner in which ICE identified them in the complaint.

11	Barajas, Fernando	Section 2 not completed	Violation as alleged
12	Barajas, Luis	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
13	Barragan, Jose	No employer signature in section 2	Violation as alleged
14	Barragan, Juan	No citizenship or immigration status attestation in section 1; section 2 not completed	Violation as alleged
15	Barrios, Alex	No employer signature in section 2	Violation as alleged
16	Barton, Glenn	No employer signature in section 2	Violation as alleged
17	Berroa, Rufino	No citizenship or immigration status attestation in section 1; no employer signature in section 2	Violation as alleged
18	Bonitto, Jamel	Section 2 not completed	Violation as alleged
19	Brito, Victor	No citizenship or immigration status attestation in section 1; section 2 not completed	Violation as alleged
20	Brooks, Christopher	No employer signature in section 2	Violation as alleged
21	Brown, Andre	No employer signature in section 2	<b>Not established</b>
22	Cabrera, Mario	No citizenship or immigration status attestation in section 1	Violation as alleged
23	Cabrera, Wilmer	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
24	Calle, Gilber	No citizenship or immigration status attestation in section 1; section 2 not completed	Violation as alleged
25	Camacho, Jose	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
26	Campero, Ricardo	Section 2 not completed	Violation as alleged
27	Carmona, Mario	Section 2 not completed	Violation as alleged
28	Carollo, Joseph	No employee signature in section 1; no employer signature in section 2	Violation as alleged
29	Carpenter,	No citizenship or immigration status attestation in	<b>Not established</b>

	Tasheena	section 1; no employee signature in section 1; no employer signature in section 2	
30	Ceja, Oscar	No citizenship or immigration status attestation in section 1; no employee signature in section 1; section 2 not completed	Violation as alleged
31	Chanchall, Chandradat	Section 2 not completed (missing second page of Form I-9)	Violation as alleged
32	Chavez, Victor	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
33	Cifuentes, Jean Carlo	Section 2 not completed (missing second page of Form I-9)	Violation as alleged
34	Cotto, Hiram	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
35	Cruz, Carlos	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
36	Culhane, Christopher	No employer signature in section 2	Violation as alleged
37	Damian, Jesus	No citizenship or immigration status attestation in section 1; no employer signature in section 2	Violation as alleged
38	Davis, Jeffrey	Section 2 not completed (page 2 of Form I-9 missing)	Violation as alleged
39	DeLucca, Daniel	No employer signature in section 2	Violation as alleged
40	Demetrius, James	No employer signature in section 2	Violation as alleged
41	Diabate, Abdourahaman	No employee signature in section 1; section 2 not completed	<b>Not established</b>
42	Ellis, Ramal	No documents identified under List A or Lists B and C in section 2; no employer signature in section 2	Violation as alleged
43	Enriquez, Macario	Section 2 not completed (second page of Form I-9 missing)	Violation as alleged
44	Escabosa, Josue	Section 2 not completed	Violation as alleged

45	Fallon, Wayne	Section 2 not completed (missing second page of Form I-9)	Violation as alleged
46	Farias, David	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
47	Felix, Francisco	No employer signature in section 2	Violation as alleged
48	Tineo, Fernando	No employee signature in section 1; no documents identified under List A or Lists B and C in section 2; no employer signature in section 2	Violation as alleged
49	Figueroa, Joshua	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
50	Figueroa, Jesus	No citizenship or immigration status attestation in section 1; no employee signature in section 1; section 2 not completed	Violation as alleged
51	Footman, Lechand	Section 2 not completed	Violation as alleged
52	Franciosa, John	Section 2 not completed (second page of Form I-9 missing)	Violation as alleged
53	Funes, James	No documents identified under List A or Lists B and C in section 2; no employer signature in section 2	Violation as alleged
54	Gallardo, Juan	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no documents identified under List A or Lists B and C in section 2; no employer signature in section 2	Violation as alleged
55	Galvan, Lorenzo	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
56	Garcia, Aljer	Section 2 not completed	Violation as alleged
57	Garcia, Edgar	No citizenship or immigration status attestation in section 1; no employee signature in section 1; section 2 not completed	<b>Not established</b>
58	Garcia, Martin	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged

59	Garcia, Rogelio	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
60	Garcia, Jesus	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
61	Gibbs, James	Section 2 not completed (second page of Form I-9 missing)	<b>Not established</b>
62	Gomez, Dario	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
63	Gonzalez, Gabriel	No citizenship or immigration status attestation in section 1; section 2 not completed	Violation as alleged
64	Gonzalez, Felix Eduardo	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
65	Hernandez, Faustino	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
66	Hernandez, Isidro	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
67	Hernandez, Jaime	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
68	Hoque, Shiekh	Section 2 not completed	<b>Not established</b>
69	Hyman, George	No employer signature in section 2	Violation as alleged
70	Johnson, Edward	Section 2 not completed (second page of Form I-9 missing)	<b>Not established</b>
71	Jones, Stevano	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
72	King, Ivan	Section 2 not completed (second page of Form I-9 missing)	<b>Not established</b>

		missing)	
73	Kotevski, Bobi	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
74	Lachoski, Stefcho	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
75	Lara, Mario	No employer signature in section 2	Violation as alleged
76	Loja, Angel	No employer signature in section 2	Violation as alleged
77	Loja, Byron	No citizenship or immigration status attestation in section 1; no employer signature in section 2	Violation as alleged
78	Loja, Cesar	No employee signature in section 1; no employer signature in section 2	Violation as alleged
79	Loja, Diego	No employee signature in section 1; no employer signature in section 2	Violation as alleged
80	Loja, Eucliver	No employee signature in section 1; no employer signature in section 2	Violation as alleged
81	Lup, Gheorghe	No employee signature in section 1; no employer signature in section 2	Violation as alleged
82	Mannino, Giovanni	Section 2 not completed (second page of Form I-9 missing)	<b>Not established</b>
83	Maria, Juan	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
84	Martinez, Edwin	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
85	Martinez, Kenneth	No employee signature in section 1; no employer signature in section 2	Violation as alleged
86	Martinez, Stephanie	No employer signature in section 2	Violation as alleged
87	Maturana, Manuel	No employer signature in section 2	Violation as alleged
88	Meier, Jason	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no	Violation as alleged

		employer signature in section 2	
89	Valencia Mendoza, Juan	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
90	Mercado, Angel	Section 2 not completed (second page of Form I-9 missing)	Violation as alleged
91	Mihut, Sorin	No employer signature in section 2	Violation as alleged
92	Monaco, Robert	No employee signature in section 1; no employer signature in section 2	Violation as alleged
93	Montesdeoca, Manuel	No employee signature in section 1; no employer signature in section 2	Violation as alleged
94	Morales, Cesar	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
95	Alvares, Marcos	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	<b>Not established</b>
96	Morfin, Hector	No citizenship or immigration status attestation in section 1; no employer signature in section 2	Violation as alleged
97	Moss, Damion	No employer signature in section 2	Violation as alleged
98	Munguia, Juan	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
99	Munoz, Raul	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	<b>Not established</b>
100	Mutafov, Iosif	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
101	Naso, Anthony	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	<b>Not established</b>
102	Navarro, Jose Luis	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no	Violation as alleged

		employer signature in section 2	
103	Newton, Kaseam	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
104	Nunez, Luis	No employer signature in section 2	Violation as alleged
105	Nunez, Ricardo	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
106	O'Connell, Terrence	No employee signature in section 1; no employer signature in section 2	Violation as alleged
107	Olumuyiwa, Olatunji	No employee signature in section 1; no employer signature in section 2	Violation as alleged
108	Ortiz, Jason	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	<b>Not established</b>
109	Panama, Nathud	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	<b>Not established</b>
110	Parra, Jose	No employer signature in section 2	Violation as alleged
111	Partida, Juan	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
112	Pena Mercado, Francisco	No employee signature in section 1; no employer signature in section 2	Violation as alleged
113	Perez, Jay Refugio	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
114	Phillips, John	Section 2 not completed (missing second page of Form I-9)	Violation as alleged
115	Placa, Suzanne	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
116	Quituzaca, Adrian	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no	<b>Not established</b>

		employer signature in section 2	
117	Quituzaca, Manuel	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
118	Rainey, Jonel	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
119	Ramdeo, Davendra	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
120	Ramirez, Yowy	No citizenship or immigration status attestation in section 1	Violation as alleged
121	Reese, Thomas	Section 2 not completed (missing second page of Form I-9)	Violation as alleged
122	Rivas, Juan	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
123	Robinson, Michael	No citizenship or immigration status attestation in section 1; no employer signature in section 2	Violation as alleged
124	Ruiz, Alejandro	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
125	Ruiz, Ignacio	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
126	Santiago, Javier	No citizenship or immigration status attestation in section 1; no employer signature in section 2	Violation as alleged
127	Santizo, William	No employer signature in section 2	Violation as alleged
128	Siguencia, Luis	No employer signature in section 2	Violation as alleged
129	Silva, Sergio	No employer signature in section 2	Violation as alleged
130	Simpson, Rudygard	No employee signature in section 1; section 2 not completed	Violation as alleged

131	Singh, Infan	Section 2 not completed	Violation as alleged
132	Sisalima, Victor	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
133	Soto, Ivan	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged
134	Thandi, Tony	Section 2 not completed	Violation as alleged
135	Torella, Fernando	No citizenship or immigration status attestation in section 1; no employee signature in section 1; section 2 not completed	Violation as alleged
136	Torres, Franklin	No citizenship or immigration status attestation in section 1	Violation as alleged
137	Torres, Roberto	Section 2 not completed	Violation as alleged
138	Torres, Jose	No citizenship or immigration status attestation in section 1	Violation as alleged
139	Urena, Jose	Section 2 not completed	Violation as alleged
140	Urquhart, Alex	No employer signature in section 2	Violation as alleged
141	Urquhart, Patrick	No employee signature in section 1; section 2 not completed	Violation as alleged
142	Uyaguari, William	Section 2 not completed	Violation as alleged
143	Valdes, Anthony	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	<b>Not established</b>
144	Valencia, Omar	Section 2 not completed	Violation as alleged
145	Valencia, Cristobal	No citizenship or immigration status attestation in section 1; no employee signature in section 1; section 2 not completed	Violation as alleged
146	Vega, Filiberto	No citizenship or immigration status attestation in section 1; no employee signature in section 1; section 2 not completed	<b>Not established</b>
147	Villanueva, Juan	No citizenship or immigration status attestation in section 1; no employee signature in section 1;	Violation as alleged

		section 2 not completed	
148	Walker, Robert	No employer signature in section 2	Violation as alleged
149	Weretka, Krzystof	No citizenship or immigration status attestation in section 1; no employer signature in section 2	Violation as alleged
150	Zaragoza, Juan	No employee signature in section 1; section 2 not completed	Violation as alleged
151	Zeleny, Michael	No employee signature in section 1; section 2 not completed	Violation as alleged

**COUNT I, ¶ B**

<b>No.</b>	<b>Employee Name</b>	<b>Violation(s) Alleged</b>	<b>Finding</b>	<b>Did ICE Establish Unauthorized Status?</b>
1	Abreu Merca, Federico Alberto	No citizenship or immigration status attestation in Section 1; no employer signature in Section 2	Violation as alleged	N
2	Barajas, Jose	Section 2 not completed	Violation as alleged	N
3	Garcia, Marco	No employer signature in section 2	Violation as alleged	N
4	Sandoval, Luis	No citizenship or immigration status attestation in section 1; no employee signature in section 1; no employer signature in section 2	Violation as alleged, or alternatively in Count II	N
5	Velez, Jose	No employee signature in section 1; no employer signature in section 2	Violation as alleged	N

**COUNT II**

1	Angel, Daniel	Failure to prepare and/or present I-9	Violation as alleged
2	Vladimir, Augustin	Failure to prepare and/or present I-9	<b>Not established</b>

3	Besada, Joseph	Failure to prepare and/or present I-9	Violation as alleged
4	Besada, Madeline	Failure to prepare and/or present I-9	Violation as alleged
5	Bobelea, Marian	Failure to prepare and/or present I-9	Violation as alleged
6	Calise, Andrew	Failure to prepare and/or present I-9	Violation as alleged
7	Cintron, Miguel	Failure to prepare and/or present I-9	Violation as alleged
8	Cordero, Jose	Failure to prepare and/or present I-9	Violation as alleged
9	Coyago, Jorge	Failure to prepare and/or present I-9	Violation as alleged
10	Espinoza, Alejandro	Failure to prepare and/or present I-9	Violation as alleged
11	Espinoza, Jose	Failure to prepare and/or present I-9	Violation as alleged
12	Espinoza, Manuel	Failure to prepare and/or present I-9	Violation as alleged
13	Frobin, Michael	Failure to prepare and/or present I-9	Violation as alleged
14	Gonzalez, Alvaro	Failure to prepare and/or present I-9	Violation as alleged
15	Graniela, Felix	Failure to prepare and/or present I-9	Violation as alleged
16	Guzman, Andres	Failure to prepare and/or present I-9	Violation as alleged
17	Harris, George	Failure to prepare and/or present I-9	Violation as alleged
18	Holley, James	Failure to prepare and/or present I-9	Violation as alleged
19	Hoyle, Todd	Failure to prepare and/or present I-9	Violation as alleged
20	Jimenez, Leonardo	Failure to prepare and/or present I-9	Violation as alleged
21	Levasseur, Jean	Failure to prepare and/or present I-9	Violation as alleged
22	Loja, Cesar	Failure to prepare and/or present I-9	Violation as alleged
23	Lopez, Hector	Failure to prepare and/or present I-9	Violation as alleged
24	Lua, Leonardo	Failure to prepare and/or present I-9	Violation as alleged

25	Lupu, Virgil	Failure to prepare and/or present I-9	Violation as alleged
26	Maldonado, Marlon	Failure to prepare and/or present I-9	Violation as alleged
27	Malloy, Patrick	Failure to prepare and/or present I-9	Violation as alleged
28	Marotta, Patrick	Failure to prepare and/or present I-9	Violation as alleged
29	Mejia, Osvaldo	Failure to prepare and/or present I-9	Violation as alleged
30	Melero, Jimmy	Failure to prepare and/or present I-9	Violation as alleged
31	Morales, Jose	Failure to prepare and/or present I-9	Violation as alleged
32	Ndjom, James Nlend	Failure to prepare and/or present I-9	Violation as alleged
33	Nolan, Denis	Failure to prepare and/or present I-9	Violation as alleged
34	Ortiz, Alberto Fonseca	Failure to prepare and/or present I-9	Violation as alleged
35	Ortiz, Orlando	Failure to prepare and/or present I-9	Violation as alleged
36	Patterson, Dale	Failure to prepare and/or present I-9	Violation as alleged
37	Ramirez, Hiran	Failure to prepare and/or present I-9	Violation as alleged
38	Ramirez, Norman	Failure to prepare and/or present I-9	Violation as alleged
39	Rivas, Juan	Failure to prepare and/or present I-9	Violation as alleged
40	Rodriguez, Jose Vargas	Failure to prepare and/or present I-9	Violation as alleged
41	Ruiz, Edgardo	Failure to prepare and/or present I-9	Violation as alleged
42	Shuster, Nick	Failure to prepare and/or present I-9	Violation as alleged
43	Smith, Mark	Failure to prepare and/or present I-9	Violation as alleged
44	Torres, Raul	Failure to prepare and/or present I-9	Violation as alleged
45	Trinidad, Juan	Failure to prepare and/or present I-9	Violation as alleged
46	Valencia, Eduardo	Failure to prepare and/or present I-9	Violation as alleged

47	Vargas, Jorge	Failure to prepare and/or present I-9	Violation as alleged
48	Vargas, Luis	Failure to prepare and/or present I-9	Violation as alleged
49	Vasil, Marcel	Failure to prepare and/or present I-9	Violation as alleged
50	Velyanov, Metodi	Failure to prepare and/or present I-9	Violation as alleged
51	Voicu, Dumitru	Failure to prepare and/or present I-9	Violation as alleged
52	Voicu, Ion	Failure to prepare and/or present I-9	Violation as alleged
53	Zambrana, Rider	Failure to prepare and/or present I-9	Violation as alleged