

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

United States of America, Complainant, vs. Azteca Restaurant, Northgate, Respondent; 8 U.S.C. 1324A Proceeding; Docket No. #88-100087; File # SEA 274A-87-51.

ORDER RULING ON MOTION TO STRIKE

Respondent Azteca Restaurant, Northgate ('`Azteca'') has filed its answer to the complaint, raising nine affirmative defenses. Complainant, the Immigration and Naturalization Service ('`INS'') has moved to strike two of these defenses, affirmative defense #7, which claims that Count V constitutes double jeopardy, and affirmative defense #9, which states that the complaint fails to state a claim upon which relief can be granted.

Azteca agrees that I can strike the sentence in affirmative defense #7 which raises the double jeopardy defense.

Motions to dismiss a complaint for failure to state a claim upon which relief can be granted are disfavored by the courts. Only in the most extra ordinary circumstances are they granted. United States v. Redwood City, 640 F.2d 963, 966 (9th Cir. 1981). Viewing the pleadings most favorably to the INS, as I must when ruling on Azteca's affirmative defense #9, Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), I find that the Complaint sets forth the elements of a cause of action, which, if the facts pleaded are true, would justify the relief sought by the INS. Middletown Plaza Associates v. Dora Dale of Middletown, Inc., 621 F. Supp. 1163, 1164 (D.C. Conn. 1985).

Since the complaint states a claim upon which relief can be granted.

IT IS ORDERED that Azteca's affirmative defense #9 be, and it hereby is, stricken.

**IT IS FURTHER ORDERED:** That the double jeopardy claim in Azteca's affirmative defense #7 be, and it hereby is, stricken.

DATED: November 8, 1988

LEWIS F. PARKER  
Administrative Law Judge