

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

United States of America, Complainant v. American McNair, Inc.,  
Respondent; 8 U.S.C. 1324a Proceeding; Case No. 89100507.

ORDER DENYING MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

An evidentiary hearing was held in the above-entitled matter on August 21, 1990. At that time I indicated that I would grant the parties time to submit written briefs after they received copies of the hearing record. On September 25, 1990, I issued an Order which dictated that post-hearing briefs would be due in my office on October 26, 1990. This date was extended to November 9, 1990, in my Order of October 19, 1990, following a request by Complainant for additional time in which to submit its brief.

On October 23, 1990, I received a Motion for Leave to File Brief Amicus Curiae of the Mexican American Legal Defense and Educational Fund (MALDEF). In its Motion, MALDEF explained that it is ``interested in this action because it believes the constructive knowledge standard applied to employer sanctions actions can potentially violate IRCA's antidiscrimination provisions. . . .' On November 5, 1990, I received Complainant's response in opposition to MALDEF's request.

After carefully considering the documents provided on this issue, I DENY the Motion to File Brief Amicus Curiae filed by MALDEF, for the following reasons:

1. The tardiness of MALDEF in the submission of its request places all parties, including the Administrative Law Judge, at a disadvantage. I understand that a representative of MALDEF was present at the hearing on the merits of this case. However, the request to file an amicus brief did not come until two months later, shortly before the date upon which the briefs were due.

2. MALDEF's request does not spell out how its alleged expertise will assist the Administrative Law Judge in this particular case. As Complainant's response indicates, the issue in which MALDEF ex-

pressed an interest has already been decided in previous IRCA cases, and has been ruled upon by the Ninth Circuit Court of Appeals in the case of Mester Manufacturing Co. v. INS, 879 F.2d 561 (9th Cir. 1989).

3. MALDEF's request does not contain any legal authority or memoranda which support its request to provide an amicus brief in this case. I have considered providing MALDEF with an opportunity to elaborate upon its Motion and to provide a more detailed request, however that would necessitate an even greater delay which would burden and inconvenience the parties. If MALDEF had been more timely with their request, I might have provided them that opportunity, however I will not unduly delay the matter with no guarantee that MALDEF will be able to provide a more definite reason for its interest in this matter.

4. MALDEF's concerns appear to be based upon the potential discrimination which could once about from the application of the constructive knowledge standard. As Complainant points out, MALDEF is participating before the Ninth Circuit in a case regarding that very issue, U.S. v. New El Rey Sausage Co., Inc., Case No. 89-70349, (9th Cir. CA) Appeal Pending. The case currently before me contains a specific issue for my determination, i.e. whether American McNair employed or continued to employ an individual knowing that the individual was unauthorized to work in the United States. MALDEF has not persuaded that it has any new or significant information regarding that issue which would assist in my determination of this case on the merits. I agree with Complainant that another forum would be better suited for the broad policy goals sought by MALDEF regarding the issue of constructive knowledge.

**SO ORDERED:** This 5th day of November, 1990, at San Diego, California.

E. MILTON FROSBURG  
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