

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

United States of America, Complainant, v. Florencio Govea, Respondent; 8 USC 1324a Proceeding; Case No. 88100162.

**JUDGMENT BY DEFAULT**

On October 24, 1988, Complainant, the Immigration and Naturalization Service (INS), filed a complaint (8 USC 1324a Proceeding) with the Office of the Chief Administrative Hearing Officer (OCAHO) against Florencio Govea, the Respondent. OCAHO docketed the complaint as Case No. 88100162. By date of October 31, 1988 the Chief Administrative Hearing Officer issued a notice of hearing on the INS's complaint, attached a copy of the complaint to the notice of hearing, and mailed both by certified mail to Respondent Govea's attorney of record, Lewis Cook.

Among other provisions, the notice of hearing informed Respondent Govea that an answer to the complaint must be filed within 30 days after receipt of the complaint. I take official notice that the records on file with OCAHO reflect that the Respondent, by attorney Cook, received the notice of hearing and copy of the complaint on November 2, 1988. paragraph 3 of the notice of hearing warned Respondent Govea:

3. If the Respondent fails to file an Answer within the time provided, the Respondent may be deemed to have waived his/her right to appear and contest the allegations of the Complaint, and the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief.

Alleging that Respondent Govea has violated provisions of 8 USC 1324a, the complaint incorporates a September 1, 1988 notice of intent to fine (NIF) issued by the INS and served personally on Govea on September 12, 1988.

The NIF alleges one KNOWLEDGE violation on or about November 6, 1986 of Section 274A(a)(1)(A) of the Act,<sup>1</sup>and two VERI-

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<sup>1</sup>Section 274A(a)(1)(A) of the Immigration and Nationality Act (the Act) [8 USC 1324a(A)(1)(A)] makes it unlawful after November 6, 1986 for a person or other

FICATION violations of Section 274A(a)(1)(B)<sup>2</sup>after November 6, 1986.

The NIF warns that the INS will seek an order fining Respondent Govea \$500 for one (1) violation of Section 274A(a)(1)(A) and \$600 for two (2) violations of Section 274A(a)(1)(B) of the Act for a total of \$1,100. The complaint, which incorporates the NIF, requests an order directing Respondent Govea to cease and desist from such violations and to pay the civil money penalty of \$1,100 as specified in the NIF. By his notice dated October 3, 1988 to the INS, Respondent Govea, by attorney Cook, denies the allegations of the NIF and requests a hearing before an administrative law judge.

Although Govea so responded to the NIF, he did not file an answer to the complaint as required by law. 28 CFR 68.6(a). Respondent Govea's answer was due 30 days after Respondent's receipt on November 2, 1988. 28 CFR 68.3(d)(3) and 28 CFR 68.6(a). Thus, the due date was Friday, December 2, 1988.

Respondent Govea having filed no answer to the complaint, the INS filed a motion, served on Govea by mailing a copy to counsel of record on January 5, 1989, seeking a default judgment. Respondent Govea has not filed an opposition to Complainant's motion for default judgment within either the 10 days allowed by 28 CFR 68.7(b) or the additional 5 days granted (to Friday, January 20, 1989) by 28 CFR 68.5(d)(2).

The formal hearing specified by the Act, 8 USC 1324a(e)(3), is a hearing conducted before an administrative law judge in accordance with the requirements of the Administrative Procedure Act (APA), 5 USC 554. Pursuant to 8 USC 1324a, the rules promulgated for governing such formal hearings are those to be codified as 28 CFR part 68. Under the rules, a complaint (not the NIF) is the formal document initiating an adjudicatory proceeding, 28 CFR 68.2(g). As already noted, an answer must be filed to the complaint, and failure to file an answer may result in a default judgment. 28 CFR 68.6.

Respondent Govea having failed to file an answer to the complaint, and the time for filing an answer having expired, I find Respondent Govea has waived his right to appear and contest the al-

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entity to hire, or to recruit or refer for a fee, an alien for employment in the United States, knowing the alien is unauthorized to work in the United States.

<sup>2</sup>Section 274A(a)(1)(B) [8 USC 1324a(a)(1)(B)] makes it unlawful to hire an individual for employment in the United States without complying with the verification requirements (on Form I-9) of 8 USC 1324a(b), and 8 CFR 274a.2(b) or 274a.2(b)(2). Section 274A(b)(3) [8 USC 1324a(b)(3)] requires the employer or referring entity to retain, for a specified period, the verification form (Form I-9) and to make it available for inspection by officers of the INS or the Department of Labor.

legations of the complaint and that a judgment by default is appropriate. 28 CFR 68.6(b). ACCORDINGLY,

I FIND the Respondent, Florencio Govea, in default. I THEREFORE FIND Respondent Govea committed the knowledge and verification violations alleged in the NIF, incorporated in the complaint, and I CONCLUDE that, by so doing, Respondent Govea violated Section 274A of the Act, 8 USC 1324a. CONSEQUENTLY,

I ORDER Florenico Govea to:<sup>3</sup>

1. CEASE AND DESIST from violating Section 274A(a)(1)(A), 8 USC 1324a(a)(1)(A), of the Immigration and Nationality Act, which renders it unlawful after November 6, 1986 for a person or other entity to hire an alien for employment in the United States knowing the alien is unauthorized to work in the United States.

2. COMPLY WITH the employment eligibility verification requirements of the Act, Section 274A(b), 8 USC 1324a(b), respecting individuals hired, recruited or referred for a fee, for employment in the United States, for a period of 3 years.

3. PAY A CIVIL MONEY PENALTY, within 21 days from the date of this Judgment By Default, in the amount of \$1,100 in the form of cash or a cashier's check, certified check, money order, or bank check made payable to the ``Immigration and Naturalization Service,`` and deliver same to: Supervisory Special Agent, Immigration and Naturalization Service, 509 North Belt Drive, East, 3rd Floor, Houston, Texas 77060.

The hearing scheduled to begin March 28, 1989, in or around Houston, Texas is canceled.

**SO ORDERED.**

Dated at Atlanta, Georgia this February 3, 1989.

RICHARD J. LINTON  
Administrative Law Judge.

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<sup>3</sup>Review of this final order may be obtained by complying with the provisions of 28 CFR 68.52.