

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

March 28, 1995

IN RE CHARGES OF )  
PEDRO TASEJ-CACATZUM )  
MARIANO MARCOS-FRANCISCO, )  
& BERNARDO HERNANDEZ- )  
VELAZQUEZ, )  
)  
UNITED STATES OF AMERICA, )  
Complainants, )  
)  
v. ) 8 U.S.C. 1324b Proceeding  
) Case No. 93B00182  
ROSARIO STRANO AND VITO )  
STRANO, D/B/A STRANO FARMS, )  
Respondent. )  
\_\_\_\_\_ )

DECISION AND ORDER

Appearances: Rose Briceno, Esquire, Anita J. Stephens, Esquire,  
Washington, D.C., for complainants;

Robert M. Hustead, Esquire,  
Homestead, Florida, for respondent.

Before: Administrative Law Judge McGuire

### Background

Addressed in this proceeding are the charges, among others, of three (3) migrant farm workers whose formal complaints are being prosecuted by the Department's Office of Special Counsel for Immigration-Related Unfair Employment Practices (complainant/OSC).

In the Complaint at issue, OSC alleges that in determining the employment eligibility of those three (3) charging parties, as well as other migrant farm worker applicants, respondent violated the document abuse and immigration-related employment discrimination provisions of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986), enacted as an amendment to the Immigration and Nationality Act of 1952 (INA), as amended by the Immigration Act of 1990 (INMACT), Pub. L. No. 101-649, 104 Stat. 4978 (1990).

On March 10, 1993, six (6) migrant farm workers, Pascual Tasej-Cacatzum, Pedro Tasej-Cacatzum, Mariano Marcos-Francisco, Mario Miguel Mendez, Bernardo Hernandez-Velazquez and Lucas Pascual Lucas filed employment-related discrimination charges with OSC against Rosario and Vito Strano, d/b/a Strano Farms (respondent/Strano Farms), based upon alleged document abuse in the employment eligibility verification process.

In their charges, those six (6) gentlemen alleged that on February 25, 1993, some 13 days earlier, they had applied for work as farm workers at respondent's Dade County, Florida tomato growing operation, but were refused work because Rosario Strano, one of the two (2) partners in Strano Farms, had refused to accept as valid the INS documents which he had ordered them to produce in order to establish their employment eligibility.

Following the filing of those six (6) charges on March 10, 1993, OSC began an investigation, which included expanded inquiries concerning whether respondent had engaged in a pattern or practice of document abuse and/or any other violative practices involving other migrant farm worker applicants.

On October 6, 1993, following its investigation, OSC filed the three (3)-count Complaint at issue.

In Count I, respondent is charged with having violated the document abuse provisions of 8 U.S.C. § 1324b(a)(6) by reason of having required

that the original six (6) charging parties produce more and/or different documents than those required by law to establish identity and/or work eligibility namely, that respondent had demanded to be shown INS-issued documents in order to have them establish their employment eligibility.

In Count II, it is alleged that respondent also violated the wording of 8 U.S.C. § 1324b(a)(6) by having engaged in a pattern or practice of document abuse by reason of its having routinely requested that all alien farm worker applicants produce an INS-issued document as a precondition for employment, thus adversely affecting the rights of all work-authorized applicants.

And in Count III, Strano Farms was cited for having violated the unfair immigration-related discrimination provisions of 8 U.S.C. § 1324b(a)(1)(B) by reason of its having engaged in a proscribed pattern or practice of disparate treatment resulting from the alleged practice of requiring that applying aliens, who, although not United States citizens, were authorized to work in the United States, produce specific INS-issued documents as a precondition for employment whereas United States citizen farm worker applicants were hired upon having merely produced facially acceptable Form I-9 work eligibility documentation.

On November 8, 1993, respondent filed its Answer and thereafter the parties engaged in extensive discovery activities, which included scheduling the depositions of the six (6) original charging parties.

On August 19, 1994, OSC filed an unopposed pleading captioned Motion to Dismiss, in which it requested that three (3) of the original six (6) charging parties, Pascual T. Cacatzum, Mario Mendez, and Lucas Pascual Lucas, be dismissed as parties since "Messrs. Cacatzum, Mendez, and Lucas have failed to appear for depositions scheduled by the United States and have shown little or no interest in pursuing the complaint."

On August 24, 1994, an order granting that motion was issued. Accordingly, those three (3) persons were ordered to be dismissed as charging parties, resulting in the charges of the three (3) remaining parties being prosecuted by OSC in this matter, those of Pedro Tasej-Cacatzum, Mariano Marcos-Francisco, and Bernardo Hernandez-Velazquez.

After proper notice to the parties, this matter was heard before the undersigned on September 15 and 16, 1994, in Homestead, Florida.

Summary of Evidence

Complainant's evidence consisted of the hearing testimony of six (6) witnesses in its case-in-chief, and that of a rebuttal witness, as well as placing into evidence the deposition testimony of the three (3) remaining charging parties (Complainant's Exhs. 5a, 5b, 5c) and three (3) written declarations of farm workers who had formerly worked for Strano Farms (Complainant's Exhs. 6b, 6c, 6d).

The seven (7) witnesses who testified on the behalf of OSC at the hearing were Maria Escobar, a former outreach coordinator at South Dade Immigration Association, the agency to which the original six (6) charging parties presented their grievances against respondent on February 25, 1993; Miguel Garcia, Absolan Bonilla, and Manuel Jimenez, three (3) agricultural workers who had formerly worked for respondent; Ramon Ramos, who worked for respondent intermittently from 1989 to 1993 as a foreman and farm worker; Lisa Levine, an OSC investigator; and OSC's rebuttal witness, Augustin Munoz, who worked for respondent as a contractor and as a laborer for three (3) months in 1992 and for three (3) months in 1993.

In addition, complainant's evidence included 28 documentary exhibits which were marked and entered into evidence as Complainant's Exhibits 1, 3a thru 3f, 5a thru 5c, 6b thru 6d, 7 thru 9, 10 and 10a, 11a thru 11e, 12a, 12b, and 12e, and 13.

Respondent's evidence was comprised of the testimony of Rosario T. Strano, who with his brother, Vito Strano, form the two (2)-person partnership doing business as Strano Farms; Dr. Victor Pestien, an Associate Professor of Mathematics and Computer Science at the University of Miami; Thomas Vaughn, foreman and maintenance man at Strano Farms for 10-11 years; T.J. Price, another employee of Strano Brothers, who was present on the morning of February 25, 1993, at the tomato field identified only as 320, which is located on North Krome Avenue, in the City of Homestead, in Dade County, Florida; and Pasqual Bermudez, a farm labor contractor and 28-year employee of Strano Farms, whose duties included the supervision of tomato pickers.

By way of background, and prior to summarizing the disputed facts, it might be well to discuss the operations of the business entity known as Strano Farms. Through the testimony of Rosario Strano, it was

determined that he and his brother, Vito Strano, operate two (2) businesses. The first is the named respondent entity, which is a 50/50 partnership in which he and his brother Vito are engaged in growing tomatoes, pumpkins, yellow squash, green squash, beans, sweet corn, and zucchini on some 3,000 acres of farmland in Dade County, Florida. The respondent partnership owns four (4) or five (5) areas of farmland, consisting of some 1,000 acres in total, including a tomato growing area known only as 320, which are located within an eight (8)-mile radius of the firm's headquarters in Florida City, Florida. The partnership also leases about 2,000 acres of farmland positioned within a 19-mile radius of its headquarters (T. 88 - 97).

Rosario Strano also testified that he and his brother Vito are the sole and equal shareholders of a closely-held corporation known as Homestead Tomato Packing Company, which receives the harvested tomatoes for processing, packing and interstate marketing. During the six (6) to seven (7)-month annual harvest period, that corporation employs upwards of 200 to 300 employees, only three (3) of whom comprise the office staff, Soni Kearson, Nona Jo Long and Phyllis Ernst, the office manager. The operations of the Homestead Tomato Packing Company are housed in a two (2)-story building measuring 300-feet in length and 120-feet in width.

The Stranos have operated those two (2) family businesses for some 40 years (T. 102). They are fairly capital intensive operations, requiring an investment of \$5,000 to 6,000 an acre to produce a crop (T. 102), and extensive crop growing, harvesting and storage equipment, as well as some 12 tractor-trailer units, manned by six (6) drivers, plus a supervisory and maintenance work force.

The combined gross annual sales of the Stranos' two (2) operations were impacted negatively by Hurricane Andrew, which struck the Homestead area on August 24, 1992. Prior to that weather event, gross annual sales were \$11 to 11.5-million and resulted in a net annual profit of \$1.1-million, less undisclosed salary sums paid to each of the Strano brothers (T. 104). In 1993, following that tropical storm, annual gross sales had been reduced to about \$3-million.

Although many facts have been placed in controversy, as demonstrated by the protracted and spirited discovery efforts of both parties, by the 629-page hearing transcript, and by the voluminous documentary evidence available to the fact finder, the happenings upon which we can most productively focus our decisional attention are those which took place on the morning of Thursday, February 25, 1993, on or close

by one of Strano Farms' tomato growing fields which, as noted previously, has been described simply as 320, and is located on North Krome Avenue, in the City of Homestead, Dade County, Florida.

Rosario Strano, in the company of several of respondent's supervisory employees, had gone to that tomato field on that morning to oversee the hiring and work efforts of migrant farm workers who were to pick a predetermined quantity of tomatoes that day.

In order to ensure that the required number of migrant farm workers would be assembled at that field on that date to pick the tomatoes, Strano had previously contacted Augustin Munoz, a crew leader/farm labor contractor, and requested that Munoz assemble the requested number of tomato pickers. Munoz did so, and apparently received an agreed upon sum from Strano for each worker who spent the day picking tomatoes. Counsel agree that it was Munoz' responsibility to prepare the Form I-9s for those tomato harvest workers.

Concerning the document abuse allegations in Count I, it was learned that on the morning of Thursday, February 25, 1993, an undetermined, but presumably a significant number, of upwards to 100, migrant farm workers came to the field known as 320 at Munoz' behest, in order to pick tomatoes. Before being allowed to do so, however, Rosario Strano checked the "papeles", or immigration papers, of all the aspirant tomato pickers in order to determine whether they had the specific INS-issued documents which Strano felt was required of each in order to satisfy the work eligibility requirements of IRCA. Only those farm workers whose documents met his standards were permitted to board a bus parked nearby for transport to the working areas of that field, and all of their tomato gathering efforts were closely directed and supervised by Strano and his supervisors.

It was shown that earlier, in 1992, Strano Farms had paid a civil penalty of some \$100,000 for alleged IRCA violations involving the hiring of illegal immigrants and paperwork violations (T. 106, 107). Perhaps with that experience in mind, Strano demanded that each migrant field worker produce specified documentation and refused to hire those whose INS-issued documents he felt were either fraudulent or had expired. Strano rejected the work eligibility documentation proffered by the six (6) original charging parties, as well as 30 or 40 others on that date, all of whom resultingly left the field, and six (6) of whom went to the South Dade Immigration Association to complain about not having been hired on that date by Rosario Strano.

The deposition testimony of the three (3) remaining charging parties, discloses the following facts as they relate to the document abuse allegations in Count I. Pedro Tasej-Cacatzum testified on May 11, 1994, that Strano asked to see his work permit and that he produced his driver's license and Social Security card, which Strano refused to accept. He then offered his INS work permit, A07200916, which Strano also refused to accept and was ordered to leave the field. (Complainant's Exh. 5a, at 8, 9). He attempted to board the bus to join those whose documents Strano had found to be acceptable, but was confronted at the door of the bus by two (2) of Strano's employees, who also asked to see his work permit, which they also felt was not valid. He then left the field and later that day visited the office of Maria Escobar, of South Date Immigration Association, to file a complaint. He also testified that he used the same documentation which Strano had refused to accept on February 25, 1993, to secure farm work elsewhere since that time. He also stated that his rate of pay for picking tomatoes was forty (\$0.40) cents for each bucket and that he could pick between 150 to 180 buckets daily, for a total gross daily wage of \$60 to \$72. Finally, he testified that he filed his charge with Maria Escobar because he felt that Strano had treated workers abusively, that he did not wish "to win from this case", and that he only wanted Strano to be told to discontinue that practice (Complainant's Exh. 5a, at 8, 9, 17, 18, 23).

The second remaining charging party, Bernardo Hernandez-Velazquez, testified in his May 11, 1994, deposition that he is a permanent resident and that he had worked for Strano Farms on two (2) or three (3) occasions in 1993, using as work eligibility documents the same ones Strano had rejected on February 25, 1993. He stated that on that date he had been brought to the field by Augustin Munoz, and was there with about 80 others seeking work as tomato pickers. At Strano's request, he produced his INS document, Temporary Resident permit, A91773378, which Strano refused to accept. He then told Strano, to no avail, that as a permanent resident alien, he was eligible to work. He also futilely informed Strano that those documents had allowed him to work for Strano previously, as well as for other growers. He also then went to see Maria Escobar later that day and she in turn spoke to Strano. He also testified that he can pick 200 to 250 buckets of tomatoes in a workday involving the first picking and is paid at the rate of \$0.40 per bucket. His wish is that Strano be reprimanded, as opposed to an expectation that he "win from this case" (Complainant's Exh. 5b).

The third remaining charging party, Mariano Marcos-Francisco, gave his deposition testimony on April 15, 1994 (Complainant's Exh. 5c). He went to Strano's tomato field on February 25, 1993, and asked Augustin Munoz for work. Later, Strano asked him to produce work eligibility documentation, and he produced his INS Resident Alien card, A91902873, containing his photograph and Social Security number. Strano refused to accept that document and declined to hire him whereupon he went to Maria Escobar's office later that day. He found other work some seven (7) days later. Strano's pay rate was \$0.40 per bucket for tomato picking and he stated that he can pick about 150 buckets daily. The INS document which Strano refused to accept on February 25, 1993, was the same one he had provided to other employers in securing work before and after that date. In fact, he worked in Munoz' crew on Strano's fields on February 23 and 24, 1993, or immediately prior to Strano's refusal to hire him on February 25, 1993. He also testified that Strano had also refused to hire 25 or 30 others on that date.

All three (3) of these remaining charging parties testified that they saw none of the migrant farm workers exchange their valid INS work eligibility documents with other migrant workers who may not have possessed such valid documentation on the morning of February 25, 1993. That fact was disputed by the testimony of Strano employees Thomas Vaughn and T. J. Price, who stated that such documents were being exchanged behind the bus which was parked nearby, and that they had advised Strano of that fact.

Moving to the allegations contained in Count II, those involving an alleged pattern or practice of document abuse, complainant relies primarily upon the testimony of Ms. Lisa Levine, its investigator, and the pertinent documentary exhibits identified as Complainant's Exhs. 10 and 10a. The former is the single-page summary and analysis of the information contained in the 242 Forms I-9 copies prepared by Strano Farms personnel between October 10, 1992, and September 7, 1993, which were provided to OSC by Strano Farms, and Complainant's Exh. 10a consists of the photocopies of those 242 Forms I-9.

An analysis of that documentation reveals that 204 of the 242 Forms I-9, or 84 per-cent, involved alien, or non-citizen, farm worker applicants, and the remaining 38, or 16 per-cent, had been prepared by farm worker applicants who were United States citizens. And that analysis also clearly discloses that when requesting Form I-9 employment eligibility verification documents from all migrant farm worker applicants, Strano's employees had requested INS-issued documents from the 204



non-citizens on 193 occasions, or at a 95 percent frequency rate, and had accepted other facially acceptable documents from the remaining 11 alien applicants, or at only a 5 percent frequency rate.

But when requesting employment eligibility documentation from the 38 farm worker applicants who were United States citizens, no INS-issued documents had been supplied. Instead, and without exception, the more conventional and frequently utilized qualifying document combinations were presented and/or requested or accepted, those being predominantly State-issued drivers licenses, or State-issued I.D. cards and Social Security cards, among other combinations.

Ms. Levine testified that as an OSC investigator, she assists in the investigations of unfair immigration-related employment practices, including alleged document abuse, and has examined and analyzed thousands of completed Forms I-9 in connection with those duties.

Her routine work assignments include interviewing and securing sworn statements from charging parties and witnesses in IRCA- related matters, and she regularly examines and analyzes various INS forms, Forms I-9, and INS alien status reports (T. 298).

She stated that in this investigation, Strano Farms had originally provided 53 Forms I-9 for the period March to September, 1993, and she later received some 230 additional Forms I-9 for the period from October 10, 1992 to September 7, 1993, or seemingly a total of 283 Forms I-9 copies (T. 302). However, after comparing those two (2) sets of documents, she noted that 41 of the original 53 Forms I-9 had been included in the 230-form delivery but that the remaining 12 forms copies included in the original number had not been included in that group. In order to isolate and distinguish those 12 forms, she simply made copies of those 12 on green paper, as opposed to the regular white photocopy paper.

After reviewing all of the 242 Forms I-9 copies provided by Strano Farms, several form completion errors were noted. In addition, those forms did not have the usual copies of work eligibility documents attached, despite there having been staple marks on some 80 of the 242 Forms I-9 copies, raising the inference that the preparer had utilized documentation received from the applicant but had chosen to remove those document copies from the Forms I-9 copies prior to furnishing those copies to OSC, as requested. In addition, the handwriting in section 1 of the Forms I-9, or that section to be completed by either the job applicant or a preparer, appeared to be similar on some 80 of the

Forms I-9, but no one had signed any of those forms to show that a preparer had assisted the applicant (T. 311, 319).

Ms. Levine reasoned, and correctly so, given those circumstances, that if a person other than the job applicant had completed section 1 of the Form I-9 and had provided the pertinent numbers and expiration dates contained on INS-issued documents, such information could only have been obtained by having practiced document abuse by having improperly requested that the migrant farm worker applicant supply specific work eligibility documentation to the preparer.

She also believes, with an equal measure of logic, that the violative document abuse practice was confirmed by the July 29, 1993, deposition of Phyllis Ernst, respondent's office manager, to the effect that, as the person responsible for completing all Forms I-9 at Strano Farms, she routinely requested that all alien farm worker applicants produce INS-issued documents which contained that person's alien number and the work authorization expiration date (T. 123, Complainant's Exh. 19).

Ms. Levine concluded that based upon her analysis of the 242 Forms I-9 copies provided by Strano Farms, together with the admitted improper documentation practices in which Phyllis Ernst and/or her subordinates had engaged on respondent's behalf, clear patterns or practices of document abuse and citizenship status discrimination have been demonstrated.

In addition to Ms. Levine's testimony and analysis, OSC also elicited the hearing testimony of three (3) former Strano Farms migrant farm workers upon whom it alleges respondent also practiced document abuse. Absalon Bonilla testified that in 1988, in the course of applying for work at Strano Farms, Strano required him to produce an INS-issued immigration card as a precondition (T. 138). He did so again in 1992 when Bonilla returned to work at Strano Farms (T. 140, 142). Miguel Garcia testified that prior to working at Strano Farms in 1992 and again in 1993 Strano requested that he produce INS documents and his Social Security card (T. 115, 125, 126, 128). And Manuel Jimenez also testified that over the course of working at Strano Farms for three (3) days in late February, 1993, presumably on or close on to the dates concerning the events at issue, he witnessed Strano instruct the field worker applicants to produce certain INS documentation (T. 154).

In order to lend further support to its Count II charge of a pattern or practice of document abuse, OSC has also provided three (3) written

declarations from Jesus Jimenez, Rosa Calderon, and Ovino Calderon, which were identified and entered into evidence as Complainant's Exhs. 6b, 6c, and 6d, respectively.

Jesus Jimenez declared that he had jointly worked for Augustin Munoz and Strano Farms in January, February, and March, 1993, and that Strano had demanded and examined his immigration papers as a precondition of employment. He further advised that he had not completed any Forms I-9 on those occasions (Complainant's Exh. 6b).

Rosa Calderon worked for Rosario Strano in November, 1991, in January, 1994, and again in April, 1994. On the first occasion he was requested to produce a Social Security and an immigration card. In January, 1994, he sought work at Homestead Tomato Packing Company and was requested to furnish an INS work authorization card by a woman named "Betty" (Complainant's Exh. 6c).

Ovino Calderon recited in his declaration that he became an alien authorized to work in the United States in 1988 and that he worked for Rosario Strano in that year, as well as in 1990 and 1991. In February, 1991, one of respondent's Spanish-speaking secretaries requested to see his immigration and Social Security cards (Complainant's Exh. 6d).

In order to challenge OSC's evidence in this area, respondent elicited testimony from its expert witness, Dr. Victor Pestien, an Associate Professor of Mathematics and Computer Science at the University of Miami, where he teaches and conducts research in the areas of probability and statistics (T. 60).

Upon reviewing the 242 Forms I-9 copies which comprise Complainant's Exh. 10a, Dr. Pestien testified quite oppositely to Ms. Levine. Based upon his review of those same forms he testified that he could not "reach any conclusions with regard to the hiring practices or patterns at Strano Farms" (T. 63). That because the information available from that source is insufficient "to form a basis for a proper statistical investigation.", and that in order to do so he would also "need information about a population, a population from which this collection of numbers forms a random sample. I would need information about values of parameters in a population so that I could calculate, calculate confidential intervals, standard deviations, use standard statistical methods to form a hypothesis." (T. 64).

When asked a follow-up question concerning the population, or pool of people, to whom that information applied, he testified that he would

"Need information about job applicants and information about which categories, noncitizen, citizen, INS-issued documents, other documents, numerical proportions of categories in large populations to which I could compare these specific sample number." (T. 64).

Upon having been requested to assume that that information had been made available, he further testified that "If I had that information I would be able to compare sample proportions with population proportions and then make statistical inferences about how extreme this data is compared to certain standards." And when queried as to the manner in which he would "make that analysis with regard to the extremity of the data", Dr. Pestien replied, "There are standard statistical methods. We calculate differences between the numbers of appropriate samples and population proportions and on that basis measure standard deviation and measure likelihood that a certain random interval would contain the true mean if these numbers had been obtained." (T. 65).

In summary, Dr. Pestien testified that given the paucity of data in the 242 Forms I-9 copies comprising Complainant's Exh. 10a, he was unable to "make any statistical inferences based on those numbers" (T. 78).

Dr. Pestien's testimony on cross-examination provided the following facts. He stated that he has testified only once previously in the last four (4) years, in a case involving Medicaid fraud, in which his role consisted of examining and rendering an opinion concerning the statistical aspects of pharmacy records for Medicaid eligibility purposes (T. 70, 71). His knowledge of employment discrimination law consists of that which he has learned "over the years in watching television and in reading documents.", together with having "learned something from this case." (T.71). He has not performed statistical analyses or testified previously in employment Title VII discrimination cases and knows nothing about IRCA or the Form I-9 employment verification process, except "the little bit that I have learned during this case." (T. 72).

In addition to the foregoing evidence relating to the alleged pattern or practice of document abuse in Count II, respondent has also provided the hearing testimony of Rosario Strano, who testified that on the morning in question Augustin Munoz had provided some 30 additional farm worker applicants who had presented "some asylum papers" which he felt were not valid (T. 30). Munoz, however, felt that those documents were valid. As a result, Strano used the cellular telephone in his truck parked nearby to call the Washington, D.C. office of his law firm and was advised not to hire those applicants. Strano testified

that it was his understanding that no one could be hired without providing one of three (3) or four (4) specific documents, such as a passport, a driver's license, a Social Security card with a driver's license, or a current temporary or permanent resident card (T. 37, 38).

Turning now to that evidence which relates to OSC's allegation in Count III. OSC has alleged in that count that respondent violated the provisions of 8 U.S.C. § 1324b(a)(1)(B) by having engaged in a practice which resulted in unfair immigration-related discrimination resulting from having engaged in a pattern or practice of disparate treatment in the hiring of aliens who were authorized to work in the United States.

OSC's evidence demonstrates that the three (3) remaining charging parties had been improperly required to produce specific INS-issued employment verification documents in order to obtain work at Strano Farms, but that United States citizens could successfully apply for work there by merely and routinely presenting only facially acceptable Form I-9 work eligibility documentation.

Complainant's evidence also discloses that at all times relevant the citizenship status of Pedro Tasej-Cacatzum was that of a work-authorized political asylee applicant, that Mariano Marcos-Francisco was a permanent resident, and that Bernardo Hernandez-Velazquez was a work-authorized temporary resident. Accordingly, all of the remaining three (3) charging parties were "protected individuals" within the definition set forth at 8 U.S.C. § 1324b(a)(3), against whom immigration-related employment citizenship status discrimination is prohibited under the provisions of 8 U.S.C. § 1324b(a)(1)(B).

More specifically, through the testimony of Maria Escobar (T. 65), as well as those facts provided in her February 25, 1993, letter to OSC (Complainant's Exh. 1), complainant has offered evidence that Rosario Strano had told her that only those farm worker applicants possessing permanent resident cards were permitted to work on the morning of February 25, 1993. And as noted earlier, Messrs. Bonilla, Garcia and Jimenez had been required by Rosario Strano to produce an INS-issued document in order to work. In addition, and as mentioned previously, also, Ms. Lisa Levine, OSC's investigator, testified that her examination and analysis of the 242-Forms I-9 copies furnished to her by Strano Farms had resulted in her concluding that only the 193 non-citizen farm worker applicants had been routinely required to produce INS-issued documentation which met Rosario Strano's subjective standards.

### Issues

Of the three (3) issues to be addressed, the first is that of evaluating OSC's charge in Count I that Strano Farms violated the provisions of 8 U.S.C. § 1324b(a)(6) by having practiced document abuse against the six (6) original injured parties, including the three (3) remaining charging parties. The allegedly violative conduct consisted of Strano Farms' having required that those individuals produce more and/or different work eligibility documents than those required by law in order to pick tomatoes on field 320 on Thursday, February 25, 1993.

Should OSC prevail on that issue, a civil penalty of not less than \$100 and not more than \$1,000 may be ordered for each individual against whom OSC's evidence has disclosed that such document abuse was practiced. 8 U.S.C. § 1324b(g)(2)(B)(iv)(IV). OSC requests that the maximum \$1,000 civil money penalty sum be assessed for each violation under this count. In addition, OSC requests that five (5) of the six (6) original charging parties, with the exception of Bernardo Hernandez-Velazquez, be paid back pay, less interim earnings, with interest from February 25, 1993, to the date of this Decision and Order.

The second issue to be considered is that of determining, as OSC has alleged in Count II, whether respondent engaged in a proscribed pattern or practice of document abuse, beyond that which was directed at the six (6) original charging parties involved in Count I, by reason of its having routinely requested that all non-citizen migrant farm worker applicants produce an INS-issued document in order to be considered for employment, in violation of the provisions of 8 U.S.C. § 1324b(a)(6).

In the event that that issue is resolved in favor of OSC, consideration will be extended to complainant's request that Strano Farms be ordered to pay the maximum \$1,000 civil money penalty for each individual against whom that violative practice was initiated.

The third and final issue consists of reviewing OSC's charges in Count III namely, that respondent violated the unfair immigration-related discrimination provisions of 8 U.S.C. § 1324b(a)(1)(B) in the course of having conducted a violative pattern or practice of disparate treatment in its hiring process owing to its requirement that only alien farm worker applicants, who were authorized to work in the United States, provide specific INS-issued documents as a precondition for employment, whereas farm worker applicants who held United States citizenship were routinely hired after having merely provided facially acceptable Form I-9 work eligibility documentation.

The civil penalty sums to be assessed for those § 1324b(a)(1)(B) infractions are greater than those provided for document abuse violations. The § 1324b(a)(1)(B) civil penalties range from not less than \$250 and not more than \$2,000 for each individual against whom such discrimination was practiced. 8 U.S.C. § 1324b(g)(2)(B)(iv)(I).

And unlike the civil penalty sums for individual document abuse as well as document abuse pattern and practice infractions, the civil penalty sums dealing with violations of § 1324b(a)(1)(B), involving unfair immigration-related discrimination, are tiered, so that repeat violations will result in larger civil penalty assessments. For persons or entities involved in a single prior violation that is the subject matter of an order such as this, the civil penalty for each repeat violation ranges from \$2,000 to \$5,000 and persons or entities involved in more than one such prior violation and order must be assessed a civil penalty of \$3,000 to \$10,000 for each violation and order. 8 U.S.C. § 1324b(g)(2)(B)(iv)(II), (III).

Because OSC has not offered any evidence to show that Strano Farms has been involved in prior violations of this type which were part of an order of this type, the lowest civil penalty range of \$250 to \$2,000 will be applied.

Should a finding be entered on that issue in its favor, OSC requests that respondent be ordered to pay the maximum \$2,000 civil money penalty for each individual to whom Strano Farms improperly applied this discriminatory policy of disparate treatment in the employment eligibility verification phase of its hiring process.

#### Discussion, Findings and Conclusions

In support of its document abuse and unfair immigration-related discrimination allegations, complainant relies upon these provisions of IRCA:

"Unfair Immigration-Related Employment Practices"

Sec. 274B. {8 U.S.C. 1324b} (a) Prohibition of Discrimination Based on National Origin or Citizenship Status.-

(1) General Rule.-It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in Section 274A(h)(3)) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment-

(A) because of such individual's national origin, or

(B) in the case of a protected individual (as defined in paragraph (3)), because of such individual's citizenship status. (emphasis added) \* \* \* \* \*

\* \* \* \* \*

(3) Definition of protected individual.-As used in paragraph (1), the term "protected individual" means an individual who- (A) is a citizen or national of the United States, or (B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 210(a), 210A(a), or 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

\* \* \* \* \*

(6) Treatment of Certain Documentary Practices as Employment Practices.-For purposes of paragraph (1), a person's or other entity's request, for purposes of satisfying the requirements of section 274A(b), for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.

\* \* \* \* \*

(IV) in the case of an unfair immigration-related employment practice described in subsection (a)(6), to pay a civil penalty of not less than \$100 and not more than \$1,000 for each individual discriminated against; (emphasis added)

\* \* \* \* \*

The wording of these pertinent IRCA provisions clearly establishes that OSC has shown that the three (3) remaining charging parties, as work-authorized aliens, or non-citizens, were eligible for work at Strano Farms on February 25, 1993, upon their having presented facially acceptable employment eligibility documentation to Rosario Strano on that date.

In addition, the provisions of 8 U.S.C. §§ 1324a(a)(1) and 1324a(b), provide that any person or entity may not hire any individual without complying with certain employment eligibility verification requirements. Such person or entity must check all documentation presented for the purposes of establishing the applicant's identity and work authorization and must also prepare a Form I-9 within three (3) days of hire.



The preparation of the Form I-9, officially known as the INS Employment Eligibility Verification Form, is a single-page, two-sided document which is utilized by the hiring person or entity to determine the work eligibility of job applicants.

This is accomplished by requiring that all job applicants present documents which establish both their identity and their work eligibility.

By use of the instructions located on the face sheet of the Form I-9, the hiring person or entity is clearly informed of which documents may be used for those purposes, and a description of those documents is set forth in columnar Lists A, B, and C.

List A documents serve the dual purpose of demonstrating the applicant's identity and work eligibility, while the documents listed in List B only establish identity and those in List C simply verify the applicant's work eligibility.

Since December 1, 1986, this system of work eligibility verification has been utilized by all of the nation's employers having four (4) or more employees. Resultingly, literally millions of Forms I-9 have been and are being routinely prepared by countless thousands of hiring persons or entities throughout the nation, utilizing the previously-described preparation information which INS provides to those users on the face sheet of the Form I-9.

Strano Farms, however, as this hearing record demonstrates, has experienced an inordinate measure of difficulty in preparing its Forms I-9. As discussed previously, it paid \$100,000 in civil penalties for IRCA violations for similar violations in 1992 and OSC placed into evidence the fact that Strano Farms had inextricably refused to accept INS' offer on that occasion to train its personnel in the proper preparation of its Forms I-9 in order to place Strano Farms in the position of avoiding the very predicament which it now occupies namely, having been cited once again for IRCA violations arising out of its work eligibility verification practices (Complainant's Exhs. 8, 9).

The choice of documents which a job applicant, without regard to that person's citizenship status, may present to a hiring person or entity in order to establish identity or work eligibility, or both, is exclusively that of the job applicant and not that of the hiring person or entity. At the risk of engaging in an unfair immigration-related employment practice, that of document abuse, the hiring person or entity may not refuse to accept documents which are facially valid nor may they insist, as

alleged herein, that a job applicant provide a specific document in order to establish employment eligibility. U.S. v. A.J. Bart, Inc., 3 OCAHO 538 (July 15, 1993).

By the use of these parameters, it can be seen that the three (3) remaining charging parties were eligible for employment at Strano Farms on February 25, 1993, and that on that date, also, all had presented to Rosario Strano work eligibility documents which were entirely acceptable for that purpose. His refusal to accept the proffered documents, as well as his requirement that all provide him with certain INS-issued documents which he felt would satisfy the requirements of IRCA, were obviously violative actions on his part. Accordingly, it is found that complainant has shown by the preponderance of the relevant and credible evidence that Strano Farms violated the document abuse provisions of 8 U.S.C. § 1324b(a)(6) in the manner alleged in Count I.

The civil penalty sum for a § 1324b(a)(6) violation, as noted previously, ranges from the statutorily mandated minimum amount of \$100 to the maximum sum of \$1,000 for each individual against whom the person or entity has discriminated in that manner. § 1324b(g)(2)(B)(iv) (IV).

OSC's evidence discloses that three (3) violations of individual document abuse have been shown, those which involve the three (3) remaining charging parties.

However, no civil penalty assessments are in order for the other three (3) original charging parties because of their failure to appear at their scheduled depositions during the summer of 1994, because in OSC's opinion, as expressed in its August 19, 1994, motion, they had "shown little or no interest in pursuing the complaint.". In having failed to appear for those scheduled depositions, they have effectively precluded OSC from having offered the supporting evidence required to prove those alleged infractions, also.

The Count II allegations concern the alleged pattern or practice of document abuse violations which Strano Farms directed towards farm worker applicants other than those six (6) involved in Count I. Upon reviewing the evidence which addressed those Count II charges, I also find in favor of OSC for the following reasons.

In charging in Count II that respondent had engaged in a pattern or practice of document abuse, OSC was required to show, again by the

preponderance of the evidence, that respondent also violated the provisions of 8 U.S.C. § 1324b(a)(6) by having demanded that all farm worker applicants produce more or different documents than those required by law to demonstrate their work eligibility and that Strano Farms also refused to honor documents presented by those applicants which on their face reasonably appeared to be genuine.

Complainant successfully carried its evidentiary burden by way of the testimony of its investigator, Ms. Lisa Levine, whose detailed testimony and analysis concerning respondent's preparation of the 242 Forms I-9 at issue has been summarized previously. Strano Farms attempted to dispute her conclusions through the testimony of its expert witness, Dr. Victor Pestien, whose testimony was reviewed earlier, also. Upon comparing those varying testimonial accounts of these disputed facts, and assigning to the witness' conclusions the credibility which their respective testimony and demeanor warrant, I credit the testimony of Ms. Levine over that of Dr. Pestien on this issue.

Even in the event that OSC had not adduced Ms. Levine's expert opinions, the hearing testimony of Messrs. Bonilla, Garcia, and Jimenez, as well as the facts made available in the documentary declarations of Messrs. Jesus Jimenez, Rosa Calderon, and Ovino Calderon, entered into evidence as Complainant's Exhs. 6b, 6c, and 6d, respectively, and all of which were abstracted previously, also, provide more than ample evidence that Strano Farms had in fact engaged in a pattern or practice of document abuse involving at least those six (6) farm worker applicants, and did so over the five (5)-year period from 1988 to 1993.

Having found that respondent engaged in a pattern or practice of document abuse, in violation of the provisions of 8 U.S.C. § 1324b(a)(6), civil penalties must be assessed, ranging from the statutory minimum of \$100 to the maximum sum of \$1,000 for each violation.

Complainant's evidence demonstrates that a total of 202 document abuse violations have been shown, based upon the deposition testimony of the remaining three (3) charging parties, as well as the hearing testimony of Messrs. Bonilla, Garcia, and Manuel Jimenez, and on the information furnished by way of the declarations of Messrs. Jesus Jimenez, Rosa Calderon, and Ovino Calderon (Complainant Exhs. 6b, 6c, 6d), as well as the analysis of the 242 Forms I-9 copies furnished to OSC by Strano Farms, in which some 193 non-citizen farm worker applicants, who had been perceived to be aliens, had been improperly requested to furnish specific work eligibility documentation.

In addition to the supportive deposition testimony of the three (3) remaining charging parties on this issue, OSC placed into evidence the February 25, 1993, correspondence of Ms. Maria Escobar, in which she summarized the happenings on or near the tomato field known as 320 earlier that date, together with Rosario Strano's apparently sincere, albeit erroneous, reasoning for having required that all farm worker applicants provide specific INS-issued documentation.

We now examine OSC's allegations, as set forth in Count III, that Strano Farms engaged in acts of unfair immigration-related employment discrimination practices. That conduct was occasioned by respondent's practice of treating work-authorized alien, or non-citizen, farm worker applicants differently, or disparately, than their United States citizen counterparts based upon Strano Farms' policy, as effectuated by Rosario Strano, one of its partners, that because those applicants were aliens, they could only be hired if they presented only those specific INS-issued documents which Strano had improperly demanded of all farm worker applicants in the pre-employment documentation process. For the following reasons, I find in favor of OSC on this concluding issue, also.

The prior detailed summary of evidence relating to OSC's discrimination allegations in Count III reveals that the three (3) remaining charging parties, although aliens, were clearly work-authorized and had presented facially acceptable work eligibility documents to Strano on February 25, 1993. In having done so, they furnished sufficient documentation to have been hired and, in having refused to hire them because of his erroneous opinions about the efficacy of those documents, Strano, acting on behalf of the respondent partnership, committed a classic example of an unfair immigration-related discrimination practice which violates the provisions of 8 U.S.C. § 1324b(a)(1)(B).

OSC's evidence has disclosed that there were 202 violations of this type, also. Besides those of the three (3) remaining charging parties, there were also 193 non-citizen farm worker applicants against whom it has been shown that Strano Farms had similarly discriminated, as discussed previously in the analysis of the 242 Forms I-9 furnished to OSC. In addition, the three (3) former Strano Farms workers who testified at the hearing and the three (3) other former employees whose sworn declarations were received in evidence were also discriminated against in a manner proscribed under the provisions of 8 U.S.C. § 1324b(a)(1)(B).

As was the case concerning its evidence addressed to the allegations in Counts I and II, OSC has more than amply provided a preponderance of credible and reliable evidence in support of its unfair immigration-related discrimination charges in Count III.

Having found that Strano Farms violated the provisions of IRCA in the manners alleged in Counts I, II, and III, consideration will now be given to those remedies being sought by OSC, as well as the civil penalty sums, totaling upwards to \$617,000, which it has requested. In addition, OSC requests back pay sums, together with interest, where appropriate.

It might be well to summarize the remedies which OSC feels are in order under these facts:

1. Pay Mr. Pedro Tasej-Cacatzum back pay less interim earnings, together with interest and other benefits;
2. Pay Mr. Marcos-Francisco back pay less interim earnings, together with interest and other benefits;
3. Pay Mr. Pascual Tasej-Cacatzum back pay less interim earnings, together with interest and other benefits;
4. Pay Mr. Lucas Pascual Lucas back pay less interim earnings, together with interest and other benefits;
5. Pay Mr. Mario Miguel Mendez back pay less interim earnings, together with interest and other benefits;
6. Pay a \$1,000 civil penalty for each person listed in above paragraphs (1) through (5);
7. Pay a \$1,000 civil penalty for Messrs. Hernandez- Velazquez, Bonilla, Manuel Jimenez, Jesus Jimenez, Garcia, Rosa Caldero, and Ovino Caldero;
8. Pay a \$1,000 civil penalty for each person in the group of 193 aliens who submitted I-9s to Strano Farms, who file claim forms and who this Court determines were subject to document abuse and/or citizenship status;
9. For a period of three years, order Strano Farms to pay for ten "drive time" (6:00 to 9:00 a.m.; 4:00 to 7:00 p.m. weekdays) announcements per month on a local Spanish-speaking radio station during the growing season (December through April) informing individuals that if they believe they were victims of document abuse discrimination by Strano Farms to contact the Office of Special Counsel to file a claim. All claimants who establish that they were available for employment with Strano Farms during the period 1988 to 1994 would be entitled to a presumption of eligibility for purposes of back pay and a civil penalty;

10. Pursuant to the claims procedure identified in paragraph (7), supra, pay each individual found to have been a victim of Strano Farms' pattern or practice of document abuse during the three year period, back pay less interim earnings;
11. Pay a civil penalty of \$1,000 for each instance of document abuse established through the proposed claims procedure;
12. Any other remedies the ALJ deems appropriate in this case, including requirements to educate personnel or report periodically to the ALJ;
13. Back pay for the first remaining charging party, Pedro Tasej-Cacatzum, in the amount of \$60 to \$72 daily, or \$300 to \$360 weekly for 47 days, or a gross salary loss of \$2,820 to \$3,384, plus interest at the rates of 7 to 9 percent from February 25, 1993 to the date of this Decision and Order;
14. Back pay for the second remaining charging party, Mariano Marcos-Francisco, in the amount of \$2,820, with interest at the same varying rates utilized by the Internal Revenue Service for use in setting the short-term rate for underpayment of taxes, from February 25, 1993, to the date of this Decision and Order; and
15. In summary, that Strano Farms be ordered to pay the sum of \$3,000, or the maximum civil penalty of \$1,000 to each of the three (3) remaining charging parties, against whom it practiced document abuse; that Strano Farms be ordered to pay the sum of \$202,000, or the maximum civil penalty of \$1,000 to each of the following groups of 202 persons upon whom it practiced a pattern or practice of document abuse, the three (3) remaining charging parties, to each of the three (3) original charging parties who were dismissed following their failure to appear for depositions in this proceeding, the three (3) former employees of Strano Farms who testified at the hearing, and the three (3) former Strano Farms employees whose sworn declarations were placed into evidence by OSC; and civil penalty sums of undetermined amounts resulting from Strano Farms' pattern and practice of citizenship status discrimination involving the three (3) remaining charging parties and over 202 other individuals, ranging from \$250 to \$2,000 per violation, or a total civil penalty of some \$51,250 to \$410,000 for the violations alleged in Count III.

It can be seen that OSC seeks to impose civil penalties totaling \$6,000 in Count I, \$193,000 in Count II, and between \$51,250 and \$410,000 in Count III, plus back pay for two (2) of the three (3) original charging parties totaling between \$5,640 and \$6,204, with interest at the average rate of 8 percent from February 25, 1993, to the date of this Decision and Order.

The appropriate total civil penalty being assessed to the three (3) violations which OSC has proven in Count I is \$750, or \$250 for each of the three (3) document abuse violations involving the three (3) remaining charging parties.

OSC has not demonstrated by the required preponderance of the evidence that document abuse had been practiced upon the other three

(3) original charging parties, Messrs. Pascual Tasej-Cacatzum, Lucas Pascual Lucas, and Mario Miguel Mendez. That because OSC advised on August 19, 1994, that they had "failed to appear for depositions scheduled by the United States and have shown little or no interest in pursuing the complaint". In the absence of having secured their deposition testimony, OSC was forced to present evidence of only three (3) violations, those which involve the remaining three (3) charging parties, who also received subpoenas and appeared for their depositions, as ordered.

In Count II, the appropriate civil penalty for the 202 proven pattern and practice document abuse infractions is \$50,500, or \$250 for each of those 202 violations.

And the appropriate civil penalty sum to be assessed for each of the 202 unfair immigration-related discrimination violations in Count III is \$250, or a total civil penalty sum of \$50,500 for that count.

In addition, to the civil penalty amounts in Counts I, II, and III, which total \$101,750, Strano Farms' total liability for back pay and interest for the 25-month period between February 25, 1993 and the date of this Decision and Order is \$6,919, computed in the following manner.

The total back pay sum due Pedro Tasej-Cacatzum is \$3,619, or \$66 daily, or .40 per bucket for the 165 buckets of tomatoes he testified that he picks in a workday, multiplied by 47 work days, or \$3,102, plus \$517 interest, computed at the average rate of 8-percent annual interest for the 25-month period commencing on February 25, 1993, to the date of this Decision and Order.

In the case of the only other of the three (3) remaining charging parties for whom OSC is seeking back pay, Mariano Marcos- Francisco, the total back pay sum is \$3,300, or .40 per bucket for the 150 buckets of tomatoes which he stated that he picks in a workday, multiplied by 47 days, or \$2,820, plus \$480 interest, figured at the average annual interest rate of 8-percent for the 25-month period commencing February 25, 1993, and the date of this Decision and Order.

In its post-hearing brief, OSC has advised that it seeks no award of back pay on behalf of one of the three (3) remaining charging parties, Bernardo Hernandez-Velazquez, since it was subsequently determined that he had presented an expired INS- issued document on February 25, 1993.

Before addressing the provisions which will be included in the order to be entered in this proceeding, other matters covered in OSC's post-hearing brief merit attention.

OSC, as noted previously, has requested that Strano Farms be ordered to pay for 10 "drive time" announcements each month during the December thru April growing season on a local Spanish-speaking radio station in the Homestead, Florida area in order to alert those individuals upon whom Strano Farms may also have practiced document abuse between 1988 and 1994. In that manner, OSC wishes to have those individuals file claims against Strano Farms, also.

These time-specific and season-targeted radio announcements would air between 6 am and 9 am and 4 pm to 7 pm daily and OSC has also furnished, for the benefit of Strano Farms apparently, a specimen 113-word message, which also provides a toll-free "800" telephone number for the use of responding persons.

As authority for that request, OSC invites to my attention the August 12, 1992, ruling of the United States District Court in United States v. City of Warren, Michigan, 61 Empl. Prac. Dec. (CCH) ¶ 42,269 (E.D. Mich. 1992), involving a disparate impact case under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. concerning pre-October 1986 recruitment practices for police and firefighter positions, among others, by that defendant municipality. In issuing that ruling, U.S. District Court Judge Duggan utilized the injunctive relief provisions of Title VII to effectuate the appropriate release.

OSC's reliance upon that ruling to support its request that "drive time" radio announcements be ordered herein is misplaced since IRCA contains no parallel provisions to those found in Title VII, at 42 U.S.C. § 2000e-5(g). As OSC has pointed out elsewhere in its post-hearing brief, the parameters for the contents of an order of an administrative law judge finding violations under 8 U.S.C. § 1324b(g)(2)(A) simply do not contain any authority, either express or implied, which would accommodate that request for equitable relief. That because Congress, in enacting IRCA, decided that its provisions could be enforced without providing this Office with the broad equitable powers contained in the Title VII provisions.

OSC has also submitted other novel and unique requests in its brief namely, that the personnel of Strano Farms be required to report periodically to this administrative law judge on its obligation to educate its personnel on proper Form I-9 preparation procedures, and secondly,



that I also "order the implementation of a claims procedure that will be carried out over several years."

It might be well, in view of those requests, to examine the role of the undersigned in this matter. It is that, as expressed in the provisions of 8 U.S.C. § 1324a(e)(3)(B), of conducting a hearing "in accordance with the requirements of section 554 of Title 5, United States Code" and to enter findings of fact and issue appropriate orders in the manner prescribed.

Since there is no statutory authority which would allow an administrative law judge to implement the ongoing claims filing procedure and/or oversight role which OSC has quite gratuitously extended, those requests must and are also being firmly denied.

#### Order

Having found that Strano Farms has violated the document abuse provisions of 8 U.S.C. § 1324b(a)(6) in the manners alleged in Counts I and II, as well as the immigration-related employment discrimination provisions of 8 U.S.C. § 1324b(a)(1), in the manner alleged in Count III, it is hereby ordered that Strano Farms cease and desist from further violations of U.S.C. §§ 1324b(a)(1)(B) and 1324b(a)(6).

It is further ordered that Strano Farms pay the sum of \$101,750 as the total civil penalty amounts for the 407 violations contained in Counts I, II, and III and respondent is further ordered to pay back pay amounts, including interest, totally \$6,919, or a total amount of \$108,669, allocated in the following manner.

In Count I, Strano Farms is ordered to pay civil penalty sums of \$250 for each of the three (3) proven violations or, a total civil penalty of \$750 on that count.

In addition, respondent is ordered to pay Pedro Tasej-Cacatzum the sum of \$3,619, representing a back pay award of \$3,102, plus \$517 in interest, computed at the average rate of 8-percent annual interest for the 25-month period beginning on February 25, 1993, to the date of this Decision and Order.

Strano Farms is also ordered to pay to Mariano Marcos-Francisco the total sum of \$3,300, which represents the amount of \$2,820 in back pay plus \$480 in interest for the same 25-month period, figured at an average annual rate of 8-percent.

In Count II, Strano Farms is ordered to pay civil penalty sums of \$250 for each of the 202 violations found, or a total civil penalty of \$50,500 on that count.

In Count III, Strano Farms is also ordered to pay civil penalty sums of \$250 for each of the 202 violations which have been proven, or a total civil penalty of \$50,500 on that count.

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JOSEPH E. MCGUIRE  
Administrative Law Judge

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order seeks a timely review of this Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of this Order.