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

December 19, 2013

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	OCAHO Case No. 13A00010
METROPOLITAN WAREHOUSE, INC., Respondent.	)	

FINAL DECISION AND ORDER

Appearances:

Marvin J. Muller
For the complainant

Julie Kruger
For the respondent

I. PROCEDURAL HISTORY

This is an action pursuant to 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), in which the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint in three counts alleging that Metropolitan Warehouse, Inc. (Metropolitan or the company) engaged in seventeen violations of 8 U.S.C. § 1324a(a)(1)(B). Count I alleges that the company hired twelve named individuals for whom it failed to present I-9 forms after being requested by the government to do so, Count II alleges that the company hired Jolene Stermer and failed to timely

prepare an I-9 for her within three business days, and Count III alleges that the company hired four named individuals and failed to properly complete section 2 of their I-9 forms. The total penalty requested is $15,895.

Metropolitan filed an answer to the complaint admitting eleven of the twelve violations alleged in Count I and all of the violations alleged in Counts II and III. Prehearing procedures were undertaken, pursuant to which the parties filed their respective prehearing statements, and a telephonic prehearing conference was thereafter conducted. The company accepted the government's proposed stipulations numbered 1-14, and the parties' prehearing statements, together with the attachments, were treated as requesting summary resolution of the matter.

The stipulations agreed to are more fully set forth as the first fourteen findings of fact in this decision. The stipulations, together with the exhibits accompanying the prehearing statements, were sufficient to establish liability for the violations in Count I involving failure to present I-9 forms for Joshua Annis, Benjamin Boyea, Christian Diaz, Brent Gross, Antoinette Ladue, Christi Leister, Steven Manion, Brittany Sharon, Melody St. Louis, Niki Timmons, and Kimberly Yelle, for the single violation in Count II involving failure to prepare a timely I-9 for Jolene Stermer, and for the violations in Count III involving failure to properly complete section 2 of the forms for Sue Duval, Dana Green, Kristina Kennedy and Nadine Paige. The violation alleged in Count I involving failure to present an I-9 for Barbara Goddeau remains in need of resolution.

The parties were given the opportunity to file supplemental evidence and both did so. The matter is ripe for resolution.

II. BACKGROUND INFORMATION

Metropolitan Warehouse, Inc. is a warehouse and storage business with an office in Plattsburgh, New York. ICE served Metropolitan with a Notice of Inspection (NOI) on February 17, 2011, and subsequently served the company with a Notice of Intent to Fine on October 2, 2012. Metropolitan made a timely request for hearing on October 26, 2012, and ICE filed its complaint with this office on November 1, 2012. All conditions precedent to the institution of this proceeding have been satisfied.

III. EVIDENCE CONSIDERED

Exhibits accompanying the government's prehearing statement included G-1) Notice of Inspection dated February 17, 2011(2 pp.); G-2) Metropolitan Warehouse, Inc. Personnel Register dated February 18, 2011 (5 pp.); G-3) Report of Investigation dated March 8, 2011

(3 pp.); G-4) Blank copy of Form I-9 provided by the Respondent; G-5) eleven I-9 forms with attachments (22 pp.); and G-6) a Notice of Intent to Fine (2 pp.). The government subsequently presented supplemental exhibits consisting of G-7) a Memorandum from Jeanne Vandenberg dated April 17, 2013 (3 pp.); and G-8) a Dun & Bradstreet report last updated October 17, 2012 (5 pp.).

Metropolitan's prehearing statement was accompanied by exhibits consisting of R-1) 2011 U.S. Corporation Income Tax Return (11 pp.); R-2) 2010 U.S. Corporation Income Tax Return (10 pp.); R-3) 2009 U.S. Corporation Income Tax Return (7 pp.); R-4) the Affidavit of Dana Green, Warehouse Manager (2 pp.); and R-5) an I-9 Form for Barbara Goddeau. The company also presented supplemental exhibits including R-6) Report of Inaccuracy of Findings dated April 23, 2013 (2 pp.); R-7) Metropolitan Warehouse, Inc. financial statements dated December 31, 2012 (5 pp.); R-8) Canada, Inc. draft financial statements dated December 31, 2012 (5 pp.); and R-9) state of New York filing receipt.

IV. LIABILITY

Metropolitan acknowledged all but one of the violations alleged. In support of its assertion that the company did produce an I-9 form for Barbara Goddeau, Metropolitan pointed to its exhibit R-5, an I-9 reflecting that Goddeau completed section 1 of the form on February 18, 2011. No date is shown in section 2 of the form and it is not among those included in ICE's exhibit G-5. The Affidavit of Dana Green, Warehouse Manager, says that until ICE informed the company of the I-9 requirement, Green was unaware of the need to prepare I-9s. Green says that when she was told of the requirement, she took prompt steps to prepare the forms for current employees, including Barbara Goddeau, but was unable complete them for former employees who were no longer working at Metropolitan.

Assuming arguendo that the company did present Barbara Goddeau's I-9 at the time of inspection, there are multiple violations apparent on the face of the form. No date of hire is reflected on the form and section 2 is incomplete. The only document entry is the cryptic notation "NYS#597149417" under List B. There are no entries for List A or List C documents, there is no signature or date of attestation, and there are no entries for the name and address of the employer. It is apparent that section 2 is not properly completed and the violation involving this I-9 will be moved from Count I to Count III.

V. PENALTY ASSESSMENT

Civil money penalties are assessed for paperwork violations according to the parameters set forth at 8 C.F.R. § 274a.10(b)(2) (2013): the minimum penalty for each individual with respect to whom a violation occurred after September 29, 1999, is $110, and the maximum is $1100. The government has the burden of proof with respect to the penalty, *United States v. March Constr., Inc.*, 10 OCAHO no. 1158, 4 (2013),[1] 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).

In assessing an appropriate penalty, the following 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). The statute does not require that equal weight be given to each factor, nor does it rule out consideration of additional factors. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000). OCAHO case law has often considered a respondent's ability to pay a proposed fine, for example, as a nonstatutory factor to be weighed in assessing the amount of the penalty. *See United States v. Pegasus Rest. Inc.*, 10 OCAHO no. 1143, 7 (2012).

A. The Government's Position

ICE assessed a baseline penalty of $935 for each violation using internal agency guidance. First, the government divided the number of substantive violations by the total number of employees for whom an I-9 was required, and determined that Metropolitan's error rate was sixty-eight percent. The government then mitigated the penalty by five percent based on the small size of Metropolitan's business, and by another five percent based on the absence of unauthorized workers on Metropolitan's payroll. The penalty was aggravated by five percent based on Metropolitan's bad faith, and by another five percent based on the seriousness of the violations. The resulting proposed civil money penalty is $15,895.

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[1] 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.

The government argues that Metropolitan's bad faith is evidenced by the fact that all the I-9 forms presented to ICE for inspection were prepared after the service of the NOI. ICE states that it knows the forms were backdated because all the blank I-9 forms it gave to Metropolitan had been surreptitiously marked in order to prevent backdating, and that backdating nevertheless appears on the I-9s of eight employees, Nadine Paige, Kristina Kennedy, Sue Duval, Howard Brandon, Jennifer Avery, Mary Brandon, Samantha Fountain, and Benjamin Stermer.

The government's exhibit G-7, the Vandenberg memorandum, reflects that the author is an auditor for the Department of Homeland Security (DHS), who concludes that the tax returns submitted by Metropolitan contain discrepancies and do not conclusively demonstrate the company's financial position. The auditor states that Metropolitan has available working cash in the amount of $3033 and accounts payable in the amount of $448,999. Vandenberg also states, however, that if a financial report were created for the company, it would reflect that Metropolitan is "in danger of going bankrupt within the year." Vandenberg questions a number of the company's expenses, such as interest with no corresponding loans on the books, and travel expenses that appear overstated in light of the number of employees. She points to a Dun and Bradstreet report updated on October 17, 2012 reflecting that Metropolitan's gross revenue is $18,287,316.

B. Metropolitan's Position

Metropolitan states in its answer that it is a small business that currently employs only six people and that it was not aware of the employment verification requirements until advised of them at the inspection. Attached corporate tax returns reflect that in 2009 the company had a net income of $40, in 2010 it had a net loss of $4006, and in 2011 it had a net loss of $3311.

Metropolitan's prehearing statement requests that the seriousness of the violations be treated as a neutral or a mitigating factor because once it became aware of the I-9 requirement, the company immediately prepared I-9 forms for all the employees it had as of the date of the inspection. The Affidavit of Dana Green attests that Green was unaware of the need to prepare I-9s prior to the NOI, and that when notified she prepared them for all the current employees. Metropolitan emphasizes that it did not act in bad faith, and that it was simply unaware of the requirement to prepare I-9 forms. The company also asserts that the backdated I-9s reflect the company's misunderstanding of how to properly complete I-9s and are not indicative of bad faith. Metropolitan points out that the proposed fine is eighty-five percent of the maximum and that a fine so near the maximum is disproportionate to the company's size. Finally, Metropolitan argues that its tax returns reflect that the company does not have the ability to pay a fine as large as that proposed by the government and that if forced to do so, it may have to substantially reduce its workforce or close its operations entirely.

Metropolitan's supplemental evidence includes a report by the company's accountant, Richard Birbeck, that takes direct issue with the Vandenberg memorandum. The accountant's report states, inter alia, that the company's tax returns are the correct source for understanding the company's profits and losses and that the Dun and Bradstreet report reflecting the company's gross revenue as $18,287,316 is incorrect and should not be relied upon. Birbeck states that the report is obviously incorrect and the company has no idea where the amounts in the report came from. Metropolitan's statement of loss and deficit shows a net loss of $26,756 for 2012.

C. Discussion and Analysis

It is undisputed that Metropolitan is a small business, that it did not employ unauthorized workers, and that it has no history of previous violations. The parties do have differences of opinion about whether Metropolitan lacked good faith and whether the violations were serious.

To support a finding of bad faith, the government must point to evidence that the respondent engaged in culpable conduct going beyond mere failure to comply with the verification requirements. *See United States v. La Hacienda Mexican Cafe*, 10 OCAHO no. 1167, 3 (2013) (citing *United States v. Karnival Fashion, Inc.*, 5 OCAHO no. 783, 477, 480 (1995) (modification by the Chief Administration Hearing Officer)). A poor rate of I-9 compliance alone is insufficient to make such a showing. *Id.* ICE relies on the fact that all the I-9s were prepared after the NOI and backdated to support its assertion of bad faith, but the government has not presented evidence leading to an inference that the backdating in this case was intended to purposefully mislead the government as to when the I-9s were actually created.

Unlike the circumstances in *United States v. Kobe Sapporo*, 10 OCAHO no. 1204, 5 (2013), where ICE's Forensic Auditor specifically instructed the company's manager not to backdate any documents and the company was therefore on notice of this prohibition, the record here reflects no such instruction. Instead, the government's report of investigation (exhibit G-3) reflects that on February 17, 2011, the manager, Dana Green, was not even present at the worksite and the NOI had to be served on a regular worker and acting manager, Sue Duval, together with the Handbook for Employers and I-9 forms.[2] Apart from giving Duval the Handbook and forms, there is no indication that any specific instructions were given to Duval or to anyone else at Metropolitan as to how to go about completing the forms. Dana Green thereafter provided the I-9s to the government on February 25, 2011. Metropolitan says the backdating resulted from a misunderstanding of how to properly prepare the forms and the record as a whole is consistent

[2] Although page three of the government's report makes reference to the marked I-9 forms "that were provided to Dana Green on February 17, 2011," it is evident from page one of the report that the marked forms were provided to Sue Duval, not to Dana Green.

with that explanation. *See United States v. Siwan & Sons, Inc.*, 10 OCAHO no. 1179, 3, 6 (2013) (finding that a confused employer's backdated forms did not indicate an attempt to frustrate the inspection process).

Absent some indication of what instructions were given to the company at the time of the NOI, backdating alone is insufficient to support a finding by a preponderance of the evidence that good faith was lacking. *See United States v. Pharaoh's Gentleman's Club*, 10 OCAHO no. 1189, 4-5 (2013). No facts and circumstances have been offered in evidence that would suggest an intent to deceive, and bad faith will not be assumed based solely on the fact that the forms were backdated. *See United States v. New Star at Niagara Fall, Inc.*, 10 OCAHO no. 1192, 5-6 (2013) (finding that preparation of I-9s after the NOI did not alone indicate bad faith without evidence of culpable conduct or culpable state of mind). Absent evidence of intent, this does not appear to be a case in which the employer backdated the forms in order to mislead ICE or otherwise conceal information. *Cf. United States v. Occupational Res. Mgmt.*, 10 OCAHO no. 1166, 13, 27 (2013) (finding bad faith where two of the employer's agents signed multiple I-9s that were dated prior to the agents' own dates of hire); *United States v. Cafe Camino Real, Inc.*, 2 OCAHO no. 307, 29, 42, 46 (1991) (observing that the employer's production of a second set of I-9s with patently forged signatures deprives respondent of any claim of good faith). In the absence of some evidence of culpable conduct or intent to deceive that goes beyond failure to comply with the verification requirements, the government does not meet its burden of aggravating the penalty based on the factor of bad faith.

ICE did, on the other hand, satisfy its burden with respect to the seriousness of the violations. Violations may be evaluated on a continuum because they are not all equally serious. *See United States v. Snack Attack Deli, Inc.*, 10 OCAHO no. 1137, 8 (2010) (citing *Carter*, 7 OCAHO no. 931 at 169)). Failure to prepare an I-9 at all is among the most serious of paperwork violations, *see United States v. Reyes*, 4 OCAHO no. 592, 1, 10 (1994), and while not as serious as a total failure to prepare the form, failure to prepare an I-9 within three business days of hiring an employee is still a serious violation. *See United States v. Anodizing Indus., Inc.*, 10 OCAHO no. 1184, 4 (2013) (reasoning that failure to timely prepare an I-9 is serious "because an employee could potentially be unauthorized for employment during the entire time his or her eligibility remains unverified").

The violations in Count III are also serious; visual inspection of the I-9s involved shows that for the most part the employer certification portion of section 2 is blank. Section 2 of the I-9 for Barbara Goddeau is unsigned and virtually blank as well, containing only one cryptic entry. Failure to attest that the employer reviewed documents establishing an individual's identity and authorization to work in the United States, is a very serious violation. *See Reyes*, 4 OCAHO no. 592 at 10; *United States v. J.J.L.C., Inc.*, 1 OCAHO no. 154, 1089, 1098 (1990).

The company's financial struggles are documented in its tax returns from 2009 to 2011, which lend support to Metropolitan's assessment that it would have to lay off employees or close if it had to pay the penalty proposed. Notwithstanding the issues of concern raised by the Vandenberg memorandum, Vandenberg herself acknowledged that the company will likely go bankrupt within the next year and has a high amount of debt. The Dun and Bradstreet report is given minimal weight because it unclear as to the time frame covered and does not appear to describe the company accurately: the report says Metropolitan has 175 employees, but the record reflects that while this small warehouse and storage business did at one time have up to twenty-five employees, there is no other suggestion in the record that the company ever had more than twenty-five. Metropolitan's accountant notes that since the company's inception, its total income "would be hard pressed to even approach half the amount as determined by D&B," and it appears that the company's tax returns are a more reliable indicator of Metropolitan's financial status than is the Dun and Bradstreet report.

Proportionality is essential in setting penalties, *Pegasus*, 10 OCAHO no. 1143 at 7. The goal is to reach a result that is sufficiently meaningful to accomplish the purpose of deterring future violations, *United States v. Jonel, Inc.*, 8 OCAHO no. 1008, 175, 201 (1998), without being "unduly punitive" in light of the respondent's resources, *United States v. Minaco Fashions*, Inc., 3 OCAHO no. 587, 1900, 1909 (1993). The record as a whole suggests that the proposed penalty is disproportionate in light of Metropolitan's resources: this company employs only six people and has net losses in 2010, 2011, and 2012. Eighty-five percent of the maximum permissible penalty is excessive in this case because fines this close to the maximum should ordinarily be reserved for more egregious violations than have been shown here. *See United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013).

V. CONCLUSION

Most of the statutory factors weigh in Metropolitan's favor: the company is small, has no history of previous violations, did not employ unauthorized workers, and did not lack good faith. While the violations are serious, the proposed penalty is disproportionate in light of the company's resources. Based on the record as a whole, the penalty will be adjusted to an amount closer to the midrange of permissible penalties. The penalty will be assessed at $450 each for failure to prepare or present I-9s for Joshua Annis, Benjamin Boyea, Christian Diaz, Brent Gross, Antoinette Ladue, Christi Leister, Steven Manion, Brittany Sharon, Melody St. Louis, Niki Timmons, and Kimberly Yelle, $400 for the failure to prepare a timely I-9 for Jolene Stermer, and $400 each for failure to properly complete section 2 of the form for Sue Duval, Dana Green, Kristina Kennedy, Nadine Paige, and Barbara Goddeau. The total penalty is $7400.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Metropolitan Warehouse, Inc. was incorporated as a domestic business in the County of Clinton in the State of New York on or about July 16, 2003.

2. A Notice of Inspection ("NOI") was served upon Respondent on February 17, 2011 which requested, among other items, the presentation of a list of all current employees as well as all Forms I-9 for those employees.

3. The Respondent was requested to present all documentation to DHS no later than February 25, 2011.

4. The NIF was served on the Respondent on October 2, 2012 alleging seventeen violations of the Immigration and Nationality Act § 274A(a)(1)(B) and seeking a total of $15,895.00 in civil money penalties.

5. The Respondent filed a timely request for hearing on October 26, 2012.

6. The Complaint was filed with the Office of the Chief Administrative Hearing Officer and served on Respondent on November 1, 2012.

7. The Respondent filed a timely Answer to Complaint on December 4, 2012.

8. The Respondent hired all employees listed in the Complaint after November 6, 1986.

9. The Respondent failed to present Forms I-9 for the eleven of the twelve workers listed in Count I of the Complaint.

10. The Respondent failed to prepare Form I-9 for Jolene Stermer within three business days of employment as stated in Count II of the Complaint.

11. The Respondent failed to ensure the proper completion of Sections 1, 2, and/or 3 of the Forms I-9 for the four employees listed in Count III of the Complaint.

12. The Respondent should be considered to be a small business for the purpose of calculating the penalties to be imposed.

13. The audit of the Respondent's Forms I-9 did not reveal the employment of unauthorized aliens.

14. The Respondent has no history of previous violations of INA §274A(a)(1)(B).

15. Metropolitan Warehouse, Inc. failed to present Forms I-9 for Joshua Annis, Benjamin Boyea, Christian Diaz, Brent Gross, Antoinette Ladue, Christi Leister, Steven Manion, Brittany Sharon, Melody St. Louis, Niki Timmons, and Kimberly Yelle.

16. Metropolitan Warehouse, Inc. failed to prepare the Form I-9 for Jolene Stermer within three business days of the employee's date of hire.

17. Metropolitan Warehouse, Inc. failed to properly complete the section 2 certification on the I-9s for Sue Duval, Kristina Kennedy, Nadine Paige, Dana Green, and Barbara Goddeau.

B. Conclusions of Law

1. Metropolitan Warehouse, Inc. is an entity within the meaning of 8 U.S.C. § 1324a(a)(1) (2006).

2. All conditions precedent to the institution of this proceeding have been satisfied.

3. Metropolitan Warehouse, Inc. committed seventeen violations of 8 U.S.C. § 1324a(a)(1)(B).

4. In assessing an appropriate penalty, the following 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). The statute neither requires that equal weight be given to each factor, nor rules out consideration of additional factors. *See United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

5. A respondent's ability to pay a proposed fine is an appropriate factor to be weighed in assessing the amount of the penalty. *See United States v. Pegasus Rest. Inc.*, 10 OCAHO no. 1143, 7 (2012).

6. A poor rate of I-9 compliance is insufficient to show a lack of good faith absent some culpable conduct going beyond mere failure to comply with the verification requirements. *See United States v. La Hacienda Mexican Cafe*, 10 OCAHO no. 1167, 3 (2013) (citing *United States v. Karnival Fashion, Inc.*, 5 OCAHO no. 783, 477, 480 (1995) (modification by the Chief

Administration Hearing Officer)).

7. Failure to present an I-9 is among the most serious of paperwork violations. *See United States v. Reyes*, 4 OCAHO no. 592, 1, 10 (1994).

8. Failure to prepare an I-9 within three business days of an employee's date of hire is a serious violation. *See United States v. Anodizing Indus., Inc.*, 10 OCAHO no. 1184, 4 (2013) (reasoning that failure to timely prepare an I-9 is serious "because an employee could potentially be unauthorized for employment during the entire time his or her eligibility remains unverified").

9. Failure to complete the section 2 certification, which is where the employer attests that it reviewed documents that establish the employee is authorized to work in the United States, is a very serious violation. *See United States v. Reyes*, 4 OCAHO no. 592 at 10; *United States v. J.J.L.C., Inc.*, 1 OCAHO no. 154, 1089, 1098 (1990).

10. Proportionality is critical in setting penalties. *See United States v. Pegasus Restaurant, Inc.*, 10 OCAHO no. 1143, 7 (2012).

11. A penalty should be sufficiently meaningful to accomplish the purpose of deterring future violations, *United States v. Jonel, Inc.*, 8 OCAHO no. 1008, 175, 201 (1998), without being "unduly punitive" in light of the respondent's resources, *United States v. Minaco Fashions*, Inc., 3 OCAHO no. 587, 1900, 1909 (1993).

12. Penalties close to the maximum permissible should be reserved for the most egregious violations. *See United States v. Fowler Equip. Co.*, 10 OCAHO no. 1169, 6 (2013).

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

Metropolitan Warehouse, Inc. committed seventeen violations of 8 U.S.C. § 1324a(a)(1)(B) and is ordered to pay a civil money penalty of $7400. The parties are encouraged to discuss installment payments to alleviate the impact on Metropolitan's business.

SO ORDERED.

Dated and entered this 19th day of December, 2013.

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Ellen K. Thomas
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 (2013). 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.