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

June 3, 2014

UNITED STATES OF AMERICA, Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	OCAHO Case No. 14A00049
SENOX CORPORATION, Respondent.	)	

ORDER DENYING RESPONDENT'S MOTIONS TO DISMISS, FOR DISCOVERY, AND FOR TOLLING, AND ORDER GRANTING IN PART AND DENYING IN PART COMPLAINANT'S MOTION FOR SUMMARY DECISION

Appearances:

Clay N. Martin
for the Complainant

Daniel M. Kowalski
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 six counts alleging that Senox Corporation (Senox or the company) engaged in sixty-eight violations of 8 U.S.C. § 1324a(a)(1)(B). Counts I and II alleged that Senox failed to timely prepare and/or present I-9 forms for fifty-four employees. Counts III through VI alleged that the company failed to ensure that fourteen employees properly completed section 1 of Form I-9, and/or failed itself to properly complete section 2 of the form.

Senox filed a timely answer denying the material allegations and disputing the penalties ICE assessed. Prehearing procedures were undertaken, and a telephonic prehearing conference was convened at which the parties mutually agreed to nine stipulations proffered by the government and one stipulation proffered by the company. Those stipulations are adopted, and are set forth the first ten findings of fact in this matter. The government was directed to provide the company with evidence about its penalty calculation in order to facilitate settlement discussions, and a schedule was established calling for the filing of dispositive motions on or before January 15, 2014.

On January 15, 2014, Senox filed two motions, one styled as a motion to dismiss and for tolling, and the other as a motion for discovery and for tolling. Also on January 15, 2014, the government filed a motion for summary decision. ICE responded to Senox's motions, Senox responded to the government's motion, and all the motions are ready for resolution.

II. BACKGROUND INFORMATION

Senox Corporation is a private, for-profit corporation registered in Texas, where it has been in continuous operation since April 4, 1985. The company is a manufacturer and wholesaler of seamless raingutter products that has its headquarters in Austin, Texas, and additional locations in eight states.

ICE served Senox with a Notice of Inspection (NOI) on March 29, 2012, seeking I-9 forms for the company's current and terminated employees for the period from October 1, 2011 through March 29, 2012, as well as employment and payroll records, time and attendance records, tax returns, and other information. The company presented inter alia I-9 forms for fifty-six employees. ICE determined that the company failed to prepare or present I-9 forms for fifty-three employees, failed to prepare a timely I-9 form for one employee, failed to ensure that three employees properly completed section 1 of the Form I-9, and failed itself to properly complete section 2 for eleven employees. Payroll records indicate that at the time of inspection, the company had one hundred nine employees.[1]

ICE served the company with a Notice of Intent to Fine (NIF) on January 30, 2013. Senox filed a timely Request for Hearing on February 20, 2013 and all conditions precedent to the institution of this proceeding have been satisfied.

[1] No I-9 forms were required for two of these employees because they were hired prior to November 6, 1986, the effective date of the statute.

III. THRESHOLD ISSUES

A. The Company's Preliminary Motions

Senox's motion to dismiss and for tolling asserts that ICE used methodologies other than those referred to in the government's motion for summary decision to calculate the penalties in this case, and that the government failed to provide evidence of the source of its fine methodology or show that the source rises to the level of a regulation, policy guideline, policy statement, or agency guideline. The company further states that deadlines should be tolled pending resolution of its contemporaneous discovery request and pending a definitive statement that settlement discussions have failed.

Senox's motion for discovery and for tolling points out that the matrix ICE used to determine the fine levels was not published in the Federal Register, was not subject to notice and comment, is not signed by any ICE or DHS official, and should have no legal weight. Senox asks for an order compelling the production of "all DHS records relating to the creation of, and justification for, said matrix, including, but not limited to, emails, memos, proposals, reports, and analyses, and, in particular, any DHS records purporting to provide a methodology to substantiate the fine schedules and enhancements in said matrix." The company also asks for tolling of the deadlines pending completion of its discovery as well as the exhaustion of settlement prospects.

B. The Government's Response

The government points out in response that Senox provided no defense to its allegations of liability, and that the company just attacked ICE's fine methodology. ICE says it is well established that the government has broad discretion in deciding how to assess penalties, *citing United States v. Aid Maintenance Co.*, 8 OCAHO no. 1023, 321, 343 (1999),[2] and that its obligation is only to set penalties within the permissible range. ICE notes further that its penalty assessment falls within the parameters set forth in 8 C.F.R. § 274a.10(b)(2), and that while

[2] 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.

OCAHO has no authority to review or enforce ICE policy, neither is it bound by the agency's internal guidance.

The government argues that discovery at this stage should be denied because investigation of the fine matrix is irrelevant where OCAHO follows its own precedent decisions and is not bound by ICE guidance, and the administrative law judge has authority to accept or totally disregard the government's proposed fine amount. The discovery request is accordingly not calculated to lead to admissible evidence, and it is overbroad and unduly burdensome. Tolling for the possibility of settlement should also be denied, ICE says, because the issues are not complicated, because previous settlement attempts have been unfruitful, and because settlement can still be attempted without tolling these proceedings.

C. Discussion and Analysis

Senox's motion to dismiss is denied. No grounds for dismissal of this case were articulated and none are readily apparent. The company's motion for discovery is also denied. OCAHO case law has long recognized there is no one single permissible method for calculating penalties. As the Chief Administrative Officer (CAHO) explained in affirming a final decision and order in *United States v. Filipe, Inc.*, 1 OCAHO no. 108, 726, 731-32 (1989), nothing in the statute either mandates or precludes the use of a mathematical formula to assess penalties, so long as the five factors mandated by statute are given due consideration. Legacy INS previously adopted its own methodology, *see United States v. Sunshine Bldg. & Maint., Inc.*, 7 OCAHO no. 997, 1122, 1175 (1998), and ICE in turn has done the same. This office has no independent, free-floating authority to exercise a supervisory role over these agencies or to dictate what methods the agencies should or should not use to assess penalties.

Senox cites to no legal authority requiring that the government's internal agency guidance be published in the Federal Register, promulgated as a regulation, or signed by a particular individual. Neither does it contend that the government's fine matrix is not publicly available; to the contrary, it is undisputed that ICE's "Fact Sheet: Form I-9 Inspection Overview" has been posted on the agency's ICE's website since 2009. Absent some showing that something more is required, the company's motion is denied. Tolling for additional settlement negotiations is also denied.

IV. SUMMARY DECISION CONSIDERED

A. The Government's Motion

ICE's motion for summary decision asserts that Senox offered no evidence to support its denials

of the allegations in the complaint, and that there are no genuine issues of material fact regarding liability for the violations alleged. Count I alleges that Senox failed to prepare and/or present I-9 forms for L.A. Ayers, A.C. Beasley, P.A. Benford, I.B. Borjas, L.K. Britton, D.A. Broyles, C.E. Cannon, F.A. Chavez, A.D. Clark, D.S. Craft, S.M. David, T.C. Davis, I.L. Edwards, J.D. Ellis, L. Fuentes, D.V. Galvez, S.T. Garza, E.V. Gonzalez, R. Gonzalez, D.W. Gordon, J.S. Granado, H. Hernandez, L.J. Ingerly, B.J. Maloney, J.A. Martin, E.M. Martinez, J. Martinez, M.S. Martinez, C.M. McGinnis, J.F. Minor, C. Parlee, J.T. Platt, A. Polk, P.D. Powers, B.J. Prior, D.J. Ramirez, O. Ramos, T.G. Rash, L.F. Riggs, J.I. Rios, S.G. Salas, J.R. Sanchez, S. Sanders, T.M. Showell, J.W. Smith, J. Torres, J.A. Tovar, O. Trujillo, E.E. Urban, L. Villaafranc, R.J. Wadkins, C.J. Yorek, and N.A. Zindars. Count II alleges that Senox failed to prepare an I-9 form for Dalyn Walters at the time of hire or in a timely manner. The government points out that despite its denials, Senox does not affirmatively assert that it presented I-9s for the fifty-three employees named in Count I or that it prepared a timely I-9 for the employee named in Count II.

Count III alleges that the company failed to ensure that the employee properly completed section 1 of the I-9 form where the employee attestation is not marked for Justo Martinez, Ruben Moreno, and Sabino Ramirez. Count IV alleges that the company failed to properly complete section 2 of the I-9 form for Kimberly Larvin, because improper list A, B, or C documents were reviewed. Count V alleges that the company failed to sign the employer attestation on the I-9 forms for Javier Celestino, Leslie Clark, Ricky Coffelt, Curt Dyer, Jeffrey Hartmann, Noe Hernandez, Nicholas Jung, Clint Morgan, and Harry Wendt. Finally, Count VI alleges that the company's authorized representative failed to print its name in section 2 of the I-9 form for Eloy Vilchis.

ICE states that visual examination of the I-9s the company presented demonstrates the substantive violations complained of in Counts III-VI. The government says further that Senox is not entitled to the affirmative defense of good faith provided by 8 U.S.C. § 1324a(b)(6) because the company's violations are substantive in nature, and the defense is available only for technical or procedural violations. Finally, ICE's motion says that it duly considered the five statutory factors in calculating the penalties, and that its assessment was made in accordance with Department of Homeland Security (DHS) guidelines at the rate of $935 for each violation based on an error rate of 64%.

The penalties were then aggravated based on the large size of the company, but the remaining factors were treated neutrally,[3] so the final rate was $981.75 for each violation, or a total of

3 The government says that twenty of the fifty-six employees for whom I-9 forms were not produced were suspected of being unauthorized. ICE did not enhance the penalty for this factor, however, and did not identify which employees it suspected.

$66,759. ICE's forensic auditor considered Senox to be a large corporation because it had locations in eight states, one hundred and fifty-eight employees, and annual sales as of July, 2011 totalling $7,700,000. The company was sufficiently large to employ a human resources director who is responsible for employment paperwork.

Exhibits accompanying ICE's motion include G-1) Notice of Inspection and Subpoena (3 pp.); G-2) Employee List provided by Senox (2 pp.); G-3) Employee List from Texas Workforce Commission Report (3 pp.)[4]; G-4) I-9 Forms with supporting documentation (24 pp.); G-5) Certificate of Incorporation of Senox Corp. (3 pp.); G-6) Notice of Intent to Fine (11 pp.); G-7) Declaration of Forensic Auditor Janet St. Michael (3 pp.); Memorandum to Case File Determination of Civil Money Penalty (4 pp.).

B. Senox's Response

The company's response reiterates its position that ICE improperly calculated both the base fine, and the total penalty. Senox also says that ICE failed to identify its Form I-9 Inspection Overview document as "one of its ***official*** sources" and failed to show the basis of its authority and methodology, thereby casting doubt on the validity of the calculation. Senox concludes that the government should not be permitted to utilize its Form I-9 Fine Matrix because it has failed to provide evidence of the matrix's basis of authority or its methodology, and because the government's matrix was not referenced in ICE's exhibit G-8, a Memorandum to Case File Determination of Civil Money Penalty. The company also argues that the fine is excessive because the sixty-eight violations were categorized as one single type of violation, with the same fine amount being assessed for each.

Senox's opposition to ICE's motion was not accompanied by exhibits.

C. Standard Applied

Summary decision is appropriate where the pleadings and other materials show that there is no genuine issue as to any material fact, and that a party is entitled to summary decision. 28 C.F.R. § 68.38(c) (2012). This rule is similar to and based upon Federal Rule of Civil Procedure 56(c), which provides for summary judgment in federal cases. *See United States v. New China Buffet Rest.*, 10 OCAHO no. 1132, 2 (2010). Accordingly, OCAHO jurisprudence looks to federal case

[4] ICE's Index of Supporting Documents attached to its motion labels Exhibit G-2 as the Employee List from Texas Workforce Commission, and Exhibit G-3 as the Employee List Provided by Respondent. The exhibits themselves appear to be labeled differently, as the Texas Commission list is labeled G-3, and the Employer's list is G-2. For clarity, exhibits will be referred to as listed above.

law for guidance in determining when summary decision is appropriate. *Id*.

A party seeking summary decision bears the initial burden of demonstrating the absence of a genuine issue of material fact. *United States v. DJ Drywall, Inc.*, 10 OCAHO no. 1136, 2 (2010), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The party opposing the motion must set forth specific facts showing that there is a genuine issue of fact for a hearing. 28 C.F.R. § 68.38(b). All facts and reasonable inferences therefrom are viewed in the light most favorable to the non-moving party. *United States v. Primera Enters*., 4 OCAHO No. 615, 259, 261 (1994).

D. Discussion and Analysis

1. Liability

ICE's Exhibits G-2 and G-3 show that the fifty-three individuals named in Count I of the complaint were employees of the company. Notwithstanding its denials, Senox has neither argued nor shown that I-9 forms were prepared and presented for any of these individuals. Senox offered no evidence to support its denial of liability for the alleged violations. OCAHO rules[5] expressly provide that a party opposing a motion for summary decision may not rest on mere allegations or denials in a pleading, but must set forth specific facts showing that there is a genuine issue for trial. 28 C.F.R. § 68.38(b); *see United States v. Curran Eng'g Co*., 7 OCAHO no. 975, 874, 878 (1997). ICE established liability for all fifty-three violations in Count I. Visual inspection of the I-9 form for Dalyn Walters, Exh. G-4, p. 1 shows that Walters was hired on April 4, 2001, but that Senox prepared the I-9 for this individual on August 30, 2010. An I-9 form is timely prepared if section 1 is completed by the employee at the time of hire and the employer completes the attestation in section 2 within three days of the hire. 8 C.F.R. § 274a.2(b)(1)(ii)(B), *United States v. Pharaoh's Gentlemen's Club, Inc.*, 10 OCAHO no. 1189, 7 (2013). Because Walters' I-9 form was not completed until more than nine years after the date of hire, ICE established liability for the violation in count II.

Inspection of the I-9 forms for the individuals named in count III reflects that none of the three checked a box in section 1 attesting to a particular immigration status, as required by 8 C.F.R 274.2(a)(3). *See United States v. Ketchikan Drywall Servs., Inc.*, 10 OCAHO no. 1139, 4-5 (2011). ICE thus established substantive paperwork violations on the forms for Justo Martinez, Ruben Moreno, and Sabino Ramirez. Count IV alleges that an improper document was accepted for purposes of verifying the employment eligibility of Kimberly Larvin, and Exhibit G-4, p. 5 reflects that the document Senox examined on February 22, 2010 had already expired on May 15, 2009. Only unexpired documents are acceptable for verification purposes. 8 C.F.R. § 274a.2(b)(1)(v). ICE established the violation alleged in count IV for the I-9 form of Kimberly

[5] Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2013).

Larvin.

Count V alleges that the employer did not sign the attestation in section 2 of the I-9 forms for nine individuals, and examination of these forms shows the absence of the signatures, as alleged. Exhibit G-4, pp. 6-13, 15. An employer is obligated to attest to the examination of an employee's employment verification documents, 8 C.F.R. § 274a.2(b)(1)(ii), and failure to do so is a serious substantive error. *United States v. New Outlook Homecare, LLC*, 10 OCAHO no. 1210, 2 (2014). The government established liability for violations related to the I-9 forms of Javier Celestino, Leslie Clark, Ricky Coffelt, Curt Dyer, Jeffrey Hartmann, Noe Hernandez, Nicholas Jung, Clint Morgan, and Harry Wendt, as alleged in count V. Finally, the I-9 form for Eloy Vilchis shows that employer's authorized representative did not complete the "print name" section. Visual examination shows that section 2 of Vilchis' I-9 form was not properly completed,[6] and the government has established liability for the violation.

2. Penalties

The parameters for assessing civil money penalties for paperwork violations are set forth in 8 C.F.R. § 274a.10(b)(2). The minimum penalty for each individual with respect to whom the violation occurred after September 29, 1999, is $110, and the maximum penalty is $1,100. *Id*. The penalties available for the sixty-eight violations in this case range from a minimum of $7,480 to a maximum of $74,800. Five factors are set out in the governing statute, to which due consideration must be given in assessing the appropriate penalties. These include 1) the size of the business of the employer, 2) the good faith of the employer, 3) the seriousness of the violation(s), 4) whether or not the individuals involved were unauthorized aliens, and 5) any history of previous violations by the employer. 8 U.S.C. § 1324a(e)(5). The statute does not require that equal weight be given to each factor. *United States v. Hernandez*, 8 OCAHO no. 1043, 660, 664 (2000).

The gravamen of Senox's opposition to the government's motion is that the government's baseline fine calculation was made using the ICE matrix, but the matrix was not referenced in the government's memorandum to case file. Those guidelines have no binding effect in this forum, *see United States v. Ice Castles Daycare Too, Inc.*, 10 OCAHO no. 1142, 6 (2011), and penalties at this stage may be examined de novo. *Id*. (citing *Aid Maint.*, 8 OCAHO no. 1023 at 344).

Senox did not dispute the auditor's classification of it as a large business. Neither did it specifically address the remaining statutory factors. It did, however, challenge the government's

[6] The form also reflects that an incorrect box was checked in section 1, and an improper document, a Mexican consular ID, was entered as a List A document on this I-9.

treating all the violations equally and imposing a penalty of $981.75 for each of the sixty-eight violations. Our case law directs that the seriousness of violations may be evaluated on a continuum, because not all violations are equally serious. *United States v. Snack Attack Deli, Inc.*, 10 OCAHO no. 1137, 8 (2010) (citing *United States v. Carter*, 7 OCAHO no. 931, 113, 169 (1997)). *See, e.g.*, *United States v. M&D Masonry, Inc.*, 10 OCAHO no. 1211, 11-12 (2014) (setting the fine amount higher for failures to prepare employment verification forms than for substantive paperwork violations). Here, as in *M&D Masonry*, the violations for failure to prepare I-9 forms for the fifty-four individuals in counts I and II are more serious than are the paperwork violations for fourteen individuals in counts III-VI because the failure to prepare the forms completely subverts the purpose of the law. *United States v. Skydive Acad. of Hi. Corp.*, 6 OCAHO no. 848, 235, 246 (1996).

ICE's proposed penalty is almost ninety percent of the maximum permissible. Penalties at or near the maximum, however, should be reserved for the most egregious violations. *See New Outlook Homecare,* 10 OCAHO no. 1210 at 4 (holding that a penalty consisting of eighty-five percent of the maximum permissible was unduly harsh). While the record is somewhat sparse, there are several factors favoring the employer in that there is no claim of bad faith or history of previous violations, and no showing beyond suspicion that any particular individual was unauthorized for employment. A penalty should be sufficiently meaningful to deter future violations, *United States v. Jonel, Inc.*, 8 OCAHO no. 1008, 175, 201 (1998), but should not be unduly punitive; proportionality is key. *United States v. Pegasus Rest., Inc.*, 10 OCAHO no. 1143, 7 (2012).

Considering the record as a whole, limited as it may be, the penalties will be adjusted as a matter of discretion to an amount closer to the midrange of permissible penalties. For the fifty-four violations involving the company's failure to timely prepare or present I-9 forms (Counts I and II) the penalties will be assessed at $700 per violation. For the fourteen defective I-9 forms (Counts III-VI) the penalties will be assessed at $500. The penalties total $44,800.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Senox Corporation is a private, for-profit corporation duly registered under the laws of the State of Texas on April 5, 1985.

2. A Notice of Inspection ("NOI") and an administrative subpoena was (sic) served on Senox Corporation March 29, 2012.

3. In the NOI and the subpoena, Senox Corporation was requested to present to DHS employment records and all forms I-9 for current and terminated individuals for the period from October 1, 2011 to present (March 29, 2012) who were employed by Senox Corporation.

4. On April 3, 2012, the Respondent's counsel provided Forms I-9, along with supporting documentation and an employee roster for all employees working for Senox to the HIS Austin Office.

5. On April 26, 2012, the Respondent was served with a Notice of Suspect Documents, Notice of Technical or Procedural Failures, Notice of Discrepancy, and Employee Discrepancy Notices. The Respondent was given 10 days to correct the errors in noted in the Notice of Technical or Procedural Errors.

6. On April 30, 2012, May 8, 2012, and May 11, 2012, the Respondent provided documentation in response to the Notice of Technical or Procedural Failures, Notice of Discrepancies, and Notice of Suspect Documents, and explaining the actions that had been taken by Senox to correct the deficient I-9s.

7. A Notice of Intent to Fine (NIF) was served on the Respondent on January 30, 2013, in the amount of $66,759.00.

8. The employees named in the complaint were employees of Senox Corporation during some or all of the period from October 1, 2011 until March 29, 2012.

9. The employees named in the complaint were hired after 1986.

10. Senox has been a participant in the E-Verify program since May 17, 2012, Company ID Number 558558.

11. Senox Corporation filed a request for hearing on February 20, 2013.

12. The Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer on June 19, 2013.

13. Senox Corporation hired A. Ayers, A.C. Beasley, P.A. Benford, I.B. Borjas, L.K. Britton, D.A. Broyles, C.E. Cannon, F.A. Chavez, A.D. Clark, D.S. Craft, S.M. David, T.C. Davis, I.L. Edwards, J.D. Ellis, L. Fuentes, D.V. Galvez, S.T. Garza, E.V. Gonzalez, R. Gonzalez, D.W. Gordon, J.S. Granado, H. Hernandez, L.J. Ingerly, B.J. Maloney, J.A. Martin, E.M. Martinez, J. Martinez, M.S. Martinez, C.M. McGinnis, J.F. Minor, C. Parlee, J.T. Platt, A. Polk, P.D. Powers, B.J. Prior, D.J. Ramirez, O. Ramos, T.G. Rash, L.F. Riggs, J.I. Rios, S.G. Salas, J.R. Sanchez, S.

Sanders, T.M. Showell, J.W. Smith, J. Torres, J.A. Tovar, O. Trujillo, E.E. Urban, L. Villaafranc, R.J. Wadkins, C.J. Yorek, N.A. Zindars, and Dalyn Walters, and failed to timely prepare or present I-9 forms for them.

14. Senox Corporation hired Justo Martinez, Ruben Moreno, Sabino Ramirez, Kimberly Larvin, Javier Celestino, Leslie Clarke, Ricky Coffelt, Curt Dyer, Jeffrey Hartmann, Noe Hernandez, Nicholas Jung, Clint Morgan, Harry Wendt, and Eloy Vilchis, and either failed to ensure that the employee properly completed section 1 of the I-9 form, of failed itself to complete section 2 or section 3 of the form.

B. Conclusions of Law

1. Senox Corporation is an entity within the meaning of 8 U.S.C § 1324a(a)(1) (2012).

2. Senox Corporation filed a timely request for hearing.

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

4. Senox corporation is liable for sixty-eight violations of 8 U.S.C. § 1324a(a)(1)(B).

5. 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).

6. There is no one single permissible method for calculating penalties. *See United States v. Filipe, Inc.*, 1 OCAHO no. 108, 726, 731 (1989). ICE has broad discretion in assessing civil money penalties. *See United States v. Aid Maint. Co.*, 8 OCAHO 1023, 321, 343-44 (1999).

7. ICE's internal guidelines for assessing civil money penalties have no binding effect in this forum. *See United States v. Pegasus Rest., Inc.*, 10 OCAHO no. 1143, 6 (2012). OCAHO may exercise its authority to review the penalty assessment de novo. *United States v. Aid Maint. Co.*, 8 OCAHO 1023, 321, 344 (1999).

8. 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).

9. 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).

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

Senox Corporation's motions to dismiss, for discovery, and for tolling are denied. The government's motion for summary decision is granted as to liability and Senox Corporation is found liable for sixty-eight violations of 8 U.S.C. § 1324a(a)(1)(B). The government's motion for summary decision is denied as to the penalty amount, and Senox Corporation is ordered instead to pay civil money penalties totalling $44,800. The parties are encouraged to work out a schedule for installment payments if necessary to alleviate any impact on the business.

SO ORDERED.

Dated and entered this 3rd day of June, 2014.

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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. 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.

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

June 5, 2014

UNITED STATES OF AMERICA, Complainant, v. SENOX CORPORATION, Respondent.	))))))))	8 U.S.C. § 1324a Proceeding OCAHO Case No. 13A00083

ERRATA

In the Order Denying Respondent's Motions to Dismiss, for Discovery, and for Tolling, and Order Granting in Part and Denying in Part Complainant's Motion for Summary Decision issued on June 3, 2014:

1. The case caption on page 1 reading "OCAHO Case No. 14A00049" is hereby corrected to read "OCAHO Case No. 13A00083".

2. In paragraph 2 on page 4, the case citation reading as follows, "*United States v. Filipe, Inc.*, 1 OCAHO no. 108, 726, 731-32 (1989)" is hereby corrected to read "*United States v. Felipe, Inc.*, 1 OCAHO no. 108, 726, 731-32 (1989)".

SO ORDERED.

Dated and entered this 5th day of June, 2014.

Ellen K. Thomas
Administrative Law Judge