

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

UNITED STATES OF AMERICA,	)	
	)	
COMPLAINANT,	)	
	)	
v.	)	8 U.S.C. § 1324b PROCEEDING
	)	
ROSE ACRE FARMS, INC.,	)	OCAHO CASE NO. 12B00088
	)	
RESPONDENT.	)	Hon. Ellen K. Thomas
	)	
	)	

**FIRST AMENDED COMPLAINT**

Complainant, the United States of America, alleges as follows:

1. This action is brought pursuant to 8 U.S.C. § 1324b on behalf of the Office of Special Counsel for Immigration Related Unfair Employment Practices (the “Office of Special Counsel”) to enforce the provisions of the Immigration and Nationality Act (“INA”) relating to immigration-related unfair employment practices.
2. In 1986, as part of an effort to advance new immigration policy, Congress amended the INA to require every employer to ensure that each employee is eligible to work in the United States through the review of one or more designated documents establishing an employee’s identity and employment authorization. This employment eligibility verification process is codified at 8 U.S.C. § 1324a(b).
3. Having created an employment eligibility verification requirement through 8 U.S.C. § 1324a(b), Congress also amended the INA to protect all employees from employment discrimination based on citizenship status or national origin in the hiring, firing, referral

or recruitment for a fee of employees, and in connection with the employment eligibility verification process. This anti-discrimination provision is codified at 8 U.S.C. § 1324b.

4. Consistent with Congress' purpose in 1986 that employers should apply the employment eligibility verification process equally to all employees, the INA's anti-discrimination provision prohibits employers from subjecting applicants or employees to citizenship or national origin status discrimination in, among other things, the hiring process or from subjecting applicants or employees to different employment eligibility verification documentary policies or practices based on citizenship status or national origin. 8 U.S.C. § 1324b(a)(1)(B), (a)(6).
5. During the initial employment eligibility verification process, employees have a choice with respect to which documents to present in order to establish their employment eligibility: "The individual may present either an original document which establishes both employment authorization and identity, or an original document which establishes employment authorization and a separate original document which establishes identity." 8 C.F.R. § 274a.2(b)(1)(v). Thus, employees may present any document that establishes identity and employment authorization (List A document) or a combination of an identity document (List B document) and an employment authorization document (List C document). *U.S. Citizenship and Immigration Services, Form I-9, Employment Eligibility Verification (Form I-9, Rev. 08/07/09), p. 1.*
6. Respondent, Rose Acre Farms, Inc. ("Rose Acre"), engaged in a pattern or practice of discriminatory employment eligibility verification practices against non-U.S. citizen employees when it required non-U.S. citizens to produce specific List A documents for completion of the Form I-9, while not making this request of U.S. citizens.

## JURISDICTION

7. Respondent, a privately-held Indiana corporation with headquarters in Seymour, Indiana, produces and processes eggs and egg-related products in over forty locations in six states, and employs approximately 1,850 workers.
8. Respondent is a person or entity within the meaning of 8 U.S.C. § 1324b(a)(1) and employed more than three employees on the dates of the alleged immigration-related unfair employment practices described below.
9. On December 14, 2011, the Office of Special Counsel opened an independent investigation against Rose Acre, pursuant to 8 U.S.C. § 1324b(d)(1) and 28 C.F.R. 44.304(a), because it had a reason to believe that Rose Acre utilized documentary policies and practices that potentially constituted a pattern or practice of document abuse under 8 U.S.C. § 1324b(a)(6).
10. The Office of Special Counsel's independent investigation established reasonable cause to believe that Respondent engaged, at least until December 22, 2011, in a pattern or practice of discrimination against non-citizen new hires in connection with satisfying its employment eligibility verification requirements under 8 U.S.C. § 1324a(b).
11. Jurisdiction of the Office of the Chief Administrative Hearing Officer is invoked pursuant to 8 U.S.C. § 1324b(e)(1).

## STATEMENT OF FACTS

12. From at least June 2009 to December 22, 2011, Respondent implemented a routine practice of requiring all non-citizen new hires to present a List A document during the initial employment eligibility verification process as a condition of employment.
13. Respondent had no policy or practice of demanding List A documents from U.S. citizen new hires during the employment eligibility verification process.
14. Since at least July 2008, and in connection with Respondent's enrollment in E-Verify, Respondent implemented an electronic I-9 process. After it began using the new electronic process, Respondent's human resources personnel filled in all sections of the Form I-9.
15. In or around June 2009, Respondent purchased and implemented a commercially-available employment eligibility verification software program that integrated both the process of generating an electronic Form I-9 and access to the E-Verify program.
16. When using the new software, Rose Acre's human resources personnel fully controlled the input of information into the software, and input information for all sections of the Form I-9 for all new hires.
17. When new hires were identified as non-U.S. citizens, Respondent requested they produce List A documents, rather than permitting them to choose from among all of the List A, List B, and List C documents acceptable to establish identity and work authority in Section 2 of the Form I-9, while not making this request of citizens.
18. From June 30, 2009, through December 31, 2011, 333 out of 336 of Rose Acre's non-citizen hires nationwide, or 99.1 percent, produced a List A document to establish their work authority. During the same period, only 0.63 percent (17 out of 2206) of U.S.

citizens hired produced a List A document to establish their work authority. From at least June 2009 through December 2011, Respondent knowingly treated individuals differently in the employment eligibility verification process on account of their citizenship status.

## COUNT I

### PATTERN OR PRACTICE OF DOCUMENT ABUSE IN THE EMPLOYMENT ELIGIBILITY VERIFICATION PROCESSES

19. Complainant incorporates by reference the allegations set forth in paragraphs 1 through 18 as if fully set forth herein.
20. Respondent's standard practice, from at least June 2009 to December 2011, was to require non-U.S. citizen employees to provide more, different, or specific documents than required of U.S. citizens to establish work authority in connection with the Form I-9 employment eligibility verification process. U.S. citizen employees were not subjected to the same requirements imposed on non-citizen employees to provide more or specific documents during the Form I-9 employment eligibility verification process.
21. Respondent's differential treatment of non-U.S. citizen employees, as compared to similarly situated U.S. citizen employees in the Form I-9 employment eligibility verification process, was knowing, intentional and based on an employees' status as non-citizens.
22. Respondent's actions were committed with the purpose or with the intent of discriminating against non-U.S. citizen employees on the basis of their citizenship status and constitute a pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(6).

## REQUEST FOR RELIEF

THEREFORE, Complainant respectfully requests:

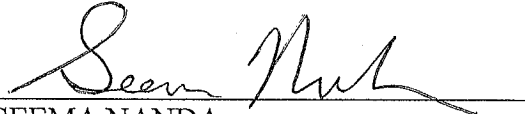
- A. That the Office of the Chief Administrative Hearing Officer assign an Administrative Law Judge to preside at a hearing on this matter as soon as practicable; and
- B. That the Administrative Law Judge grant the following relief:
  1. Order Respondent to provide full remedial relief to any work-authorized non-U.S. citizens shown at hearing to have suffered economic injury as a result of Respondent's pattern or practice of discrimination alleged in this Complaint, including back pay, front pay and/or reinstatement;
  2. Take other appropriate injunctive measures to overcome the effects and prevent the recurrence of the discriminatory practices, including, but not limited to, ordering Respondent to cease or limit its use of any process for completing Form I-9 and verifying employment eligibility in which Respondent does not permit employees to choose from among the documents that are acceptable to establish work authority, in accordance with the requirements of 8 U.S.C. § 1324b;
  3. Order Respondent to pay an appropriate civil penalty as determined by the Administrative Law Judge for each work-authorized non-U.S. citizen who is found to have been subjected to the pattern or practice of discriminatory employment eligibility verification practices alleged in this Complaint.

4. The Complainant prays for such additional relief as justice may require.

Respectfully Submitted,

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By:



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