

UNITED STATES DEPARTMENT OF JUSTICE  
 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
 OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER  
 2011 APR 15 PM 1:32  
 CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,

COMPLAINANT,

v.

JOHN JAY COLLEGE,

RESPONDENT.

8 U.S.C. § 1324b PROCEEDING

OCAHO CASE NO. 10B000074

**COMPLAINT**

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

1. This action is brought on behalf of the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("Office of Special Counsel") to enforce the provisions of the Immigration and Nationalization Act relating to immigration-related unfair employment practices pursuant to 8 U.S.C. § 1324b ("INA").
2. This suit arises out of the discriminatory conduct by John Jay College ("Respondent" or "College") in violation of the anti-discrimination provisions of the INA, 8 U.S. § 1324b(a)(6) with regard to the discriminatory treatment of certain individuals in the employment eligibility verification process.

**JURISDICTION**

3. Pursuant to 8 U.S.C. § 1324b(c)(2) and (d)(1), the Office of Special Counsel is charged with investigating charges, initiating investigations and prosecuting complaints alleging immigration-related unfair employment practices.

4. <sup>5</sup> U.S.C. Section 552(b)(6) [REDACTED] (“Charging Party”) is a lawful permanent resident and is protected under 8 U.S.C. § 1324b(a)(3).
5. Respondent a public educational institution located in New York, NY, is a person or entity within the meaning of 8 U.S.C. § 1324b(a)(1), and employed more than three employees on the date of the alleged immigration-related unfair employment practices described below.
6. On June 16, 2008, 136 days after the Charging Party was discriminatory discharged by Respondent, the Office of Special Counsel accepted as complete a charge of citizenship status discrimination from the Charging Party against Respondent.
7. On November 18, 2008, the Charging Party received notice by certified mail from OSC that it was continuing its investigation of the charge and that the Charging Party had the right to file her own complaint before an Administrative Law Judge.
8. On January 5, 2009, the parties reached an agreement that extended the United States’ complaint filing period until March 30, 2009.
9. Subsequent complaint filing extension agreements were executed on March 6, 2009, May 18, 2009, August 11, 2009, November 5, 2009, December 30, 2009, March 5, 2010 and March 18, 2010. The most recent agreement extended the United States’ complaint filing period until April 15, 2010. A copy of the agreement with the April 15, 2010, complaint filing deadline is appended hereto as Exhibit One.
10. Jurisdiction of the Office of the Chief Administrative Hearing Officer is invoked pursuant to 8 U.S.C. § 1324b(e).

### **STATEMENT OF FACTS**

11. The immigration-related unfair employment practices described below occurred in New York, NY.
12. When the Charging Party started working for Respondent in 2004 she was employed as a part-time computer lab assistant.
13. Between 2004 and 2008 the College suspended the Charging Party several times because it insisted she produce a new, unexpired employment authorization document (“EAD”), her Green Card, I-551, issued by the Department of Homeland Security (“DHS”), for employment eligibility reverification.
14. On or about January 30, 2008, the Charging Party was told by Respondent that her EAD had expired.
15. On or about January 30, 2008, Respondent refused to accept the Charging Party’s unrestricted Social Security card and driver’s license to reverify her employment eligibility.
16. On or about January 30, 2008, Respondent requested that Charging Party produce either an unexpired EAD or I-551 card.
17. On or about January 30, 2008, Respondent terminated the Charging Party when she failed to produce the documents requested by Respondent.
18. Since at least 2007, if not earlier in time, through sometime in 2009, Respondent’s policy and practice has been to require each non-U.S. citizen employee to provide an employment eligibility verification document issued by the former Immigration and Nationalization Service (“INS”) or DHS in order to verify or reverify his or her employment eligibility.

19. Since at least 2007, if not earlier in time, Respondent did not require employees who are U.S. citizens to provide documents specified by Respondent in order to verify or reverify their employment eligibility, but, instead, allowed these individuals to provide any document, or combination of documents, permitted on the Form I-9.
20. Since 2007 at least one hundred three non-U.S. citizens were required by Respondent to present their documents issued by INS or DHS in order to order to verify or reverify their employment eligibility.

### **COUNT I**

**DOCUMENT ABUSE AGAINST** <sup>5 U.S.C. Section 552(b)(6)</sup> **AND**  
**OTHER SIMILARLY SITUATED PARTIES**

21. Complainant incorporates by reference the allegations set forth in paragraphs 1 through 21 as if fully set forth herein.
22. Respondent knowingly and intentionally committed document abuse discrimination against the Charging Party, and other similarly situated individuals, when it required that they provide an employment eligibility verification document issued by INS or DHS in order to verify or reverify their employment eligibility.
23. Respondent's actions constitute an unfair immigration-related employment practice in violation of 8 U.S.C. § 1324b(a)(6).

### **COUNT II**

**PATTERN OR PRACTICE OF DOCUMENT ABUSE**  
**IN THE HIRING AND EMPLOYMENT ELIGIBILITY**  
**VERIFICATION PROCESS**

24. Complainant incorporates by reference the allegations set forth in paragraphs 1 through 24 above as if fully set forth herein.

25. Until sometime in 2009, Respondent's standard practice and regular operating procedure has been to request non-U.S. citizen new hires to produce INS or DHS-issued documents for employment eligibility verification purposes.
26. Until sometime in 2009, Respondent's standard practice and regular operating procedure has been to reject lawful documents that are sufficient for employment eligibility verification purposes that were produced by non-U.S. citizen job applicants and employees.
27. Until sometime in 2009, Respondent's standard practice and regular operating procedure has been to request that non-U.S. citizen employees reverifying their employment eligibility produce a DHS-issued document.
28. In contrast, Respondent's standard practice and regular operating procedure has been not to request specific documents for employment eligibility verification purposes from job applicants and employees who are U.S. citizens.
29. Respondent's actions constitute a pattern or practice of document abuse in violation of 8 U.S.C. § 1324b(a)(6).

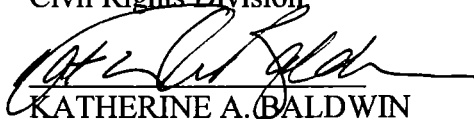
THEREFORE, Complainant respectfully requests:

- A. That the Office of the Chief Administrative Hearing Officer assign an Administrative Law Judge to preside at a hearing on this matter; and
- B. That the Administrative Law Judge grant the following relief:
  1. Order Respondent to cease and desist from the alleged illegal practices described in the Complaint;

2. Order Respondent to provide full remedial relief to make the Charging Party, and similarly situated protected individuals, whole for the losses they have suffered as a result of the discrimination alleged in this complaint.
3. Take other appropriate measures to overcome the effects of the discrimination.
4. Order Respondent to pay a civil penalty of \$1,100 for each protected individual who was discriminated against.

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

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division



KATHERINE A. BALDWIN  
Deputy Special Counsel  
Office of Special Counsel for Immigration-Related  
Unfair Employment Practices



ELIZABETH I. HACK  
Special Litigation Counsel  
Office of Special Counsel for Immigration-Related  
Unfair Employment Practices



RICHARD CRESPO  
Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Office of Special Counsel for Immigration-Related  
Unfair Employment Practices  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530  
Telephone: (202) 616-5594  
Facsimile: (202) 616-5509

Dated: April 15, 2010

## EXHIBIT 1

**STIPULATION TO EXTEND CHARGE INVESTIGATION PERIOD AND  
TO ESTABLISH COMPLAINT FILING DEADLINE**

**WHEREAS**, the Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC") is currently investigating charge number 197-52-249, filed by <sup>5</sup>U.S.C. Section 552(b)(6) ("Charging Party") alleging that John Jay College ("Respondent") engaged in activity prohibited by 8 U.S.C. § 1324b.

**WHEREAS**, 8 U.S.C. § 1324b(d)(1) provides an initial 120-day period from the date OSC receives a complete charge of discrimination for OSC to investigate the charge, determine whether there is reasonable cause to believe the charge is true, and decide whether to file a complaint with an administrative law judge with the Office of the Chief Administrative Hearing Officer ("OCAHO").

**WHEREAS**, 8 U.S.C. § 1324b(d)(2) provides that if OSC has not filed a complaint with an OCAHO administrative law judge within the initial 120-day charge investigation time period, OSC shall notify the Charging Party of OSC's determination not to file a complaint during that 120-day period, and that the Charging Party may file a complaint directly with an OCAHO administrative law judge within 90 days following the Charging Party's receipt of the notice.

**WHEREAS**, the Charging Party received such notice from OSC regarding the above-referenced charge on November 18, 2008. The Charging Party's complaint filing deadline is therefore February 16, 2009.

**WHEREAS**, OSC and the Respondent agree that extending the charge investigation time period identified and described in the preceding paragraphs will increase judicial efficiency by allowing additional time to resolve the charge.

**NOW, THEREFORE**, OSC and the Respondent stipulate and agree to extend the charge investigation time period identified and discussed above until April 15, 2010. Consequently, OSC and the Respondent agree that OSC may file a complaint with an OCAHO administrative law judge on or before April 15, 2010.

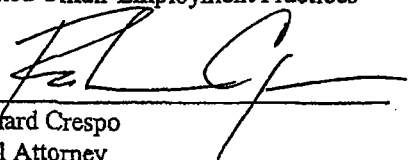
OSC and the Respondent agree that this stipulation to extend the charge investigation time period and to establish a complaint filing deadline does not result in any harm or prejudice to the Respondent. In addition, the Respondent will not assert that any complaint filed on or before April 15, 2010 is untimely.



This Stipulation may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. OSC and the Respondent agree to be bound by facsimile signatures.

Office of Special Counsel for Immigration  
Related Unfair Employment Practices

By:

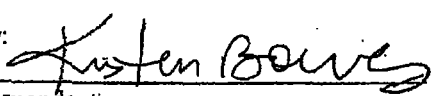
  
Richard Crespo  
Trial Attorney

Date:

3/18/10

John Jay College

By:

  
Respondent

Date:

3/18/10

## EXHIBIT 2

RECEIVED  
CIVIL RIGHTS DIVISION

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U.S. Department of Justice  
Office of Special CounselCharge Form for Unfair Immigration-Related  
Employment Practices Instructions

## Instructions

COUNSEL (I.R.U.E.P.)

This charge form is to be used only to file a charge alleging an unfair immigration-related employment practice in violation of 8 U.S.C. §1324b. This charge form must be filed with the Office of Special Counsel for Immigration Related Unfair Employment Practices.

U.S. Department of Justice  
Civil Rights Division  
Office of Special Counsel for Immigration Related Unfair Employment Practices  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

On the form, "Injured Party" means a person who claims to have been adversely affected directly by an unfair immigration-related employment practice or, in the case of a charge filed by an officer of the Immigration and Naturalization Service or by a Charging Party other than the Injured Party, is alleged to be so affected.

On the form, "Charging Party" means: (1) an individual who files a charge with the Special Counsel that alleges that he or she has been adversely affected directly by an unfair immigration-related employment practice; or (2) an individual or private organization who is authorized by an individual to file a charge with the Special Counsel that alleges that the individual has been adversely affected directly by an unfair immigration-related employment practice; or (3) an officer of the Immigration and Naturalization Service who files a charge with the Special Counsel that alleges that an unfair immigration-related practice has occurred.

The "Charging Party" should complete the charge form in its entirety by typing, or neatly printing, the information requested. If a question is not applicable, it should be left blank.

This charge form must be delivered or mailed to the Office of Special Counsel within 180 days of the alleged discrimination.

Questions concerning this charge form can be directed to the Office of Special Counsel by mail at the above address or by telephone at (202) 616-5594 or 1-800-255-7688 (toll free), TDD (202) 616-5525 or 1-800-237-2515 (toll free).

## 1. Charging Party

Full Name: 5 U.S.C. Section 552(b)(6) 5 U.S.C. Section 552(b)(6)

Other Names Ever Used:

Street Address: 5 U.S.C. Section 552(b)(6)

City: 5 U.S.C. Section 552(b)(6)

Zip Code: 5 U.S.C. Section 552(b)(6)

Injured Party (IF INJURED PARTY is same as CHARGING PARTY, write "same")

Full Name: Same

Telephone:  
( )

Other Names Ever Used:

Street Address:

City:

State:

Zip Code:

## 2. Individual, Business or Entity Which You Believe Has Committed Unfair Employment Practice:

Full Name: John Jay College of Criminal Justice 5 U.S.C. Section 552(b)(6)

Street Address: 899 Tenth Avenue

City: New York

State: NY

Zip Code: 10019

Form OSC-1  
Nov. 01

Formerly Form CRT-37 which is obsolete.

**3. Individual, Business or Entity Has (check one):**☐ Less than 15 employees, but more than 3 employees.☒ 15 or more employees.☐ Unable to estimate number of employees.**4. Injured Party Has Suffered an Unfair Immigration-Related Employment Practices (check one or more)**☐ National Origin Discrimination (with respect to the hiring, recruitment or referral, or discharging of the Injured Party)☐ Citizenship Status Discrimination (with respect to the hiring, recruitment or referral, or discharging of the Injured Party)☐ Retaliation for Asserting Rights Protected Under 8 U.S.C. §1324b☒ Document Abuse (The individual, business, or organization refused to accept a valid document or demanded more or different documents that are required for completing the INS Form I-9)**5. Injured Party Is:**☐ Citizen or National of the United States (if this box is marked continue on to #6)☒ Alien Authorized to Work in the United States (if this box is marked you must complete the rest of #5)**If INJURED PARTY is an alien authorized to work in the United States:**

Alien Registration Number (s):

Date of Birth: 5 U.S.C. Section 552(b)(6) (day) 5 U.S.C. Section 552(b)(6) (month) 5 U.S.C. Section 552(b)(6) (year)

**If INJURED PARTY is an alien authorized to work in the United States:****Injured Party (check one if applicable):**☐ Is lawfully admitted for permanent residence  
date granted: \_\_\_\_\_☐ Has status of an alien lawfully admitted for temporary residence  
under 8 U.S.C. §1160(a), 8 U.S.C. §1161(a), or 8 U.S.C.  
§1255(a)(1)☐ Is admitted as refugee under 8 U.S.C. §1157☐ Has been granted asylum under 8 U.S.C. §1158☒ Is Otherwise Authorized to work**Injured Party (check one):**☐ Has applied for naturalization☐ Has not applied for naturalization

Date of Application: \_\_\_\_\_

**6. When did the unfair practice occur: (date)** Jan. 30, 2008**7. Where did the unfair practice occur: (Place)** New York, NY**8. Has a charge based on this set of facts been filed with the Equal Employment Opportunity Commission, or other**

governmental agency?

☐ Yes

If yes, which office?

☒ No

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Date Filed: \_\_\_\_\_

File No (if known): \_\_\_\_\_

9. Describe the Unfair Employment Practice (use additional sheets if necessary)

As employment eligibility verification documents for the Form I-9, the employer refused to accept my social security card (unrestricted) and driver license. The employer demanded to see a green card or employment authorization card issued by immigration and suspended me from the work.

10. Affirmation and Signature of Charging Party

(a) If this charge is being filed by the Injured Party:

As a person alleging that I have been injured by an unfair immigration-related employment practice, I understand that the Office of Special Counsel may find it necessary to reveal my identity and other information during the conduct of the investigation of my charge, during any hearing or other proceeding as result of my charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent. I affirm that, to the best of my knowledge, the information provided on this form is true.

5 U.S.C. Section 552(b)(6)

July 16, 2008  
(Date)

(b) If this charge is being filed by an authorized representative of the Injured Party:

I affirm that, to the best of my knowledge, the information provided on this form is true and that I am authorized to file this charge on behalf of the Injured Party. I understand that the Office of Special Counsel may find it necessary to reveal my identity during the conduct of the investigation of this charge, during a hearing or other proceeding as a result of this charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent.

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Date)

(c) If this charge is being filed by an INS officer:

I affirm that, to the best of my knowledge, the information provided on this form is true. I understand that the Office of Special Counsel may find it necessary to reveal my identity during the conduct of the investigation of this charge, during a hearing or other proceeding as a result of this charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent.

\_\_\_\_\_  
(Signature of INS Officer)

\_\_\_\_\_  
(Date)

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

**UNITED STATES OF AMERICA,**

**COMPLAINANT,**

**v.**

**JOHN JAY COLLEGE,**

**RESPONDENT.**

**8 U.S.C. § 1324b PROCEEDING**

**OCAHO CASE NO. \_\_\_\_\_**

**STATEMENT PURSUANT TO 28 C.F.R. §§ 68.3, 68.7(b)(5)**

Pursuant to 28 C.F.R. §§ 68.3 and 68.7(b)(5), the United States hereby provides the  
Office of the Chief Administrative Hearing Office the following service information in the  
above-captioned matter:

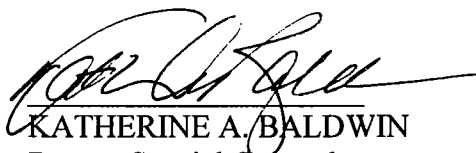
Katherine A. Baldwin, Esq.  
Deputy Special Counsel  
Elizabeth I. Hack, Esq.  
Special Litigation Counsel  
Richard Crespo, Esq.  
Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Office of Special Counsel for Immigration-Related  
Unfair Employment Practices  
950 Pennsylvania Ave., N.W  
Washington, DC 20530  
Tel: (202) 616-5594  
Fax: (202) 616-5509  
Counsel for the Complainant, United States of America

Rosemarie Maldonado, Esq.  
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John Jay College  
899 10<sup>th</sup> Avenue  
New York, NY 10019  
Tel: (212) 237-8911  
Fax: (212) 237-8607

Counsel for the Respondent, John Jay College

Respectfully submitted,

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division



KATHERINE A. BALDWIN  
Deputy Special Counsel  
Office of Special Counsel for Immigration-Related  
Unfair Employment Practices



ELIZABETH I. HACK  
Special Litigation Counsel  
Office of Special Counsel for Immigration-Related  
Unfair Employment Practices



RICHARD CRESPO  
Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Office of Special Counsel for Immigration-Related  
Unfair Employment Practices  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530  
Telephone: (202) 616-5594  
Facsimile: (202) 616-5509

Dated: April 15, 2010



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration Related  
Unfair Employment Practices - NYA  
950 Pennsylvania Avenue, NW  
Washington, DC 20530*

April 15, 2010

**Resent April 16, 2010**

VIA HAND-DELIVERY

Office of the Chief Administrative Hearing Officer  
U.S. Department of Justice  
5107 Leesburg Pike, Suite 2519  
Falls Church, Virginia 22041

Re: Discrimination Charge Filed by 5 U.S.C. Section 552(b)(6) against John Jay College  
Charge Number 197-52-249

Dear Sir or Madam:

Please find enclosed original, and three copies of the United States' complaint, charge form, and all service information. Please return the file-stamped copy in the attached envelope. If you need further information, please call me at (202) 514-6181.

Sincerely,

Katherine A. Baldwin  
Deputy Special Counsel

By:

Richard Crespo  
Trial Attorney

Enclosures