IN THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

No. 04-3205

RAMON ZAMORA, Plaintiff-Appellant,

v.

ELITE LOGISTICS, INC., Defendant-Appellee.

Appeal from the Judgment of the United States District Court
For The District of Kansas, Honorable John W. Lungstrum, District Judge,
No. 03-2230 JWL

BRIEF OF AMICI CURIAE KANSAS HISPANIC & LATINO AMERICAN AFFAIRS COMMISSION; HISPANIC MINISTRY FOR THE ARCHDIOCESE OF KANSAS CITY, KANSAS; EL CENTRO, INC.; APOYO TRABAJADOR DE LAWRENCE/MIGRANT WORKER SOLIDARITY OF LAWRENCE; AND HARVEST AMERICA CORPORATION

Marielena Hincapié, California State Bar No. 188199
Anita Sinha, New York State Atty. Reg. No. 4036703
NATIONAL IMMIGRATION LAW CENTER
405 14th Street, Suite 1400
Oakland, California 94612
Telephone: (510) 663-8282

Christopher Ho, California State Bar No. 129845
William N. Nguyen, California State Bar No. 215259
The LEGAL AID SOCIETY - EMPLOYMENT LAW CENTER
600 Harrison Street, Suite 120
San Francisco, California 94107
Telephone: (415) 864-8848

Attorneys for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES AND REGULATIONS

MISCELLANEOUS

I. INTRODUCTION

Congress did not intend that there be a blanket exception to Title VII obligations for employers who merely assert that their discriminatory actions were motivated by an effort to comply with immigration laws. A blanket exception with respect to foreign-born workers' Title VII rights, however, is exactly what the district court created in this case. The court incorrectly accepted the employer Elite Logistics, Inc.'s proffered justification for discriminating against the appellant Ramon Zamora, namely, that it was merely attempting to comply with the Immigration Reform and Control Act of 1986 ("IRCA"). By uncritically accepting Elite's justification, in its Title VII analysis the district court overlooked the fact that Elite's actions actually violated IRCA's anti-discrimination provisions. Because of this fundamental error, this Court should reverse the district court's order granting summary judgement against Zamora.

The consequences of the district court's opinion in this case are extremely serious. If employers can avoid their Title VII obligations by simply claiming that they were trying to comply with select provisions of IRCA, foreign-born workers' ability to seek justice for discrimination based on race or national origin will be drastically undercut. This is antithetical not only to the core of Title VII, but also to IRCA's own anti-discrimination provisions -- provisions that were not properly considered by the district court. If the district court's opinion is allowed to stand, "IRCA compliance" will become a commonplace proxy and a convenient shield for lawbreaking employers who discriminate against immigrant workers.

II. STATEMENTS OF AMICI CURIAE[1]

The National Immigration Law Center and the Legal Aid Society - Employment Law Center are counsel for the following *amici curiae*: Apoyo Trabajador de Lawrence/Migrant Worker Solidarity of Lawrence; El Centro, Inc.; Harvest America Corporation; Hispanic Ministry for the Archdiocese of Kansas City; and Kansas Hispanic and Latino American Affairs Commissions.

The National Immigration Law Center ("NILC") is a non-profit legal organization whose mission is to protect and promote the rights of low-income immigrants. NILC has a national reputation for its expertise in the complex intersection of immigration and employment laws. Since 1990, NILC has litigated key IRCA discrimination cases, trained over 8,000 advocates, attorneys, and government officials on how to identify and combat discrimination prohibited by IRCA, and provided technical assistance to hundreds of non-profit agencies representing low-wage immigrant workers. NILC's interest in this case arises out of a concern that the district court's erroneous analysis will lead to greater national origin discrimination against immigrant workers.

The Legal Aid Society - Employment Law Center ("LAS-ELC") is a San Francisco-based non-profit, public interest law firm that litigates on behalf of underrepresented worker communities. It is nationally recognized for its expertise on Title VII issues. LAS-ELC has an interest in the outcome of this case, inasmuch as adoption of the district court's lenient analysis of an employer's obligations under

[1] Pursuant to Federal Rule of Appellate Procedure 29(a) and (b), *amici curiae* have filed a Motion for Leave to File in conjunction with the submission of their brief.

IRCA's anti-discrimination provisions would severely prejudice the ability of immigrant workers to assist in the vigorous enforcement of Title VII.

III. THE STANDARD OF REVIEW

In reviewing a grant of summary judgment, the court must view the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party. *Albert v. Smith's Food & Drug Ctrs., Inc*., 356 F.3d 1242, 1249 (10th Cir. 2004). Moreover, to defeat summary judgment, a Title VII plaintiff is not required to present direct evidence of discrimination beyond his prima facie case. *Reeves v. Sanderson Plumbing Prods., Inc*., 530 U.S. 133, 149 (2000). To the contrary, if the plaintiff presents evidence allowing a reasonable fact-finder to disbelieve defendant's proffered non-discriminatory reason, summary judgment should be denied. *Id*. at 147.

IV. ARGUMENT

A. The District Court Erred In Its Analysis Of IRCA's Anti-Discrimination Provisions, And Thus Failed To Consider That Elite's Actions Were Clearly Illegal Under IRCA

In dismissing Zamora's claim, the district court relied solely upon the provisions of IRCA that prohibit employers from knowingly employing undocumented workers. *See* 8 U.S.C. § 1324a. Using the familiar burden-shifting framework outlined in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and having found that Zamora had established a prima facie case of discrimination, the district court next examined Elite's proffered reason for its actions against Zamora, *i.e.*, that those actions arose solely from its good faith attempts to comply with IRCA. The district court accepted this as a legitimate, nondiscriminatory reason, citing only § 1324a. *Zamora v. Elite Logistics,*

Inc., 316 F.Supp.2d 1107, 1117 (D. Kan. 2004). It also relied upon the same justification to find that Zamora had failed to raise a genuine issue of material fact that Elite's reason was pretextual. *Zamora*, 316 F.Supp.2d at 1119.

While the district court was correct in finding that an employer's failure to comply with IRCA's employer sanctions provisions can subject that employer to penalties, it fundamentally erred in not recognizing that an employer is also subject to civil penalties for violating IRCA's anti-discrimination provisions. *See* 8 U.S.C. § 1324b(g)(2)(B).[2] Employers must comply with the requirements established by IRCA as a whole (*i.e.*, 8 U.S.C. §§ 1324a and 1324b), and *not* with select ones to the exclusion of others. By overlooking this mandate, the district court failed to consider facts in the record that raise genuine issues as to the credibility of Elite's assertion that its actions against Zamora were motivated solely by a desire to comply with IRCA.

IRCA, as originally passed in 1986, prohibited employers with four or more employees from discriminating against authorized workers on the basis of their national origin or citizenship status. With respect to national origin discrimination, a worker within a workforce between four and fourteen employees now had a remedy under IRCA; workers within a workforce that is fifteen or greater still has an avenue for relief under Title VII.[3] These anti-discrimination provisions were driven by Congress' concern "that

[2] The district court's only mention of IRCA's anti-discrimination provisions was to reject plaintiff's assertion that a violation thereunder had occurred. The court's finding, however, was based on a mistake of law, as explained herein.

[3] In enacting IRCA, Congress did not intend to amend or repeal any existing workplace protections, including those afforded by Title VII. 130 Cong. Rec.15935, 15936 (1984) (statement of Rep. Frank) (stating that proposed amendment to include anti-

the system of verification and sanctions might lead employers to discriminate against 'foreign-appearing' U.S. citizens, including . . . aliens who were authorized to work."[4] The General Accounting Office ("GAO") found, in a report concerning IRCA's implementation, that one of the most common forms of discrimination was an employer's demand for more or different documents than are required to satisfy 8 U.S.C. § 1324a.[5]

After reviewing the GAO's findings and other evidence on IRCA-related discrimination, Congress passed the Immigration Act of 1990. Section 535 of the Act strengthened IRCA's anti-discrimination protections by establishing that demanding more or different documents from workers than required by IRCA when verifying

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discrimination protection "adds to but does not replace existing TitleVII remedies"). Indeed, courts have recognized that IRCA's anti-discrimination provisions enhance the objectives furthered by Title VII. *See, e.g., General Dynamics v. U.S.*, 49 F.3d 1384, 1385 (9th Cir. 1995) (explaining that Section "1324b augments the goals found in Title VII…by extending the prohibition against national origin discrimination to employers with less than fifteen, but more than three, employers"). More generally, because the provisions of § 1324b were modeled on Title VII, the Office of the Chief Administrative Hearing Office (OCAHO), an administrative body created by 8 U.S.C. § 1324b(d), considers Title VII precedent in its decisions. *See, e.g., United States v. Mesa Airlines*, 1 OCAHO No. 74, 483, 486 (1989). The OCAHO is part of the Department of Justice's (DOJ) Executive Office for Immigration Review. Its opinions can be found at http://www.usdoj.gov/eoir/OcahoMain/ocahosibpage.htm.

[4] "IRCA-Related Discrimination: Actions have Been Taken to Address IRCA-Related Discrimination, but More is Needed," GAO/GGD-92-21, pp. 1-2 (Apr. 3, 1992).

[5] *Id*. at 53, 59.

employment eligibility is in an unfair employment practice.[6] This section, codified as 8 U.S.C. § 1324b(a)(6), prohibits a practice known as "document abuse."[7]

To comply with IRCA, an employer must complete and keep on file an I-9 Employment Eligibility Verification Form ("I-9 Form") for each employee hired. 8 C.F.R. § 274a.2(a). IRCA also requires employers to "reverify" an employee's employment authorization when the information provided by the worker on the I-9 Form indicates that her work authorization will be expiring. 8 C.F.R. § 274a.2(b)(1)(vii).[8] Just

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[6] *See Werline v. Pub. Serv. Elec. & Gas Co.*, 7 OCAHO No. 935, 244 (May 29, 1997) (explaining that document abuse provision was "added by the Immigration Act of 1990…to address concerns that employers were rejecting valid work documents, and to ensure that the choice among the documents on the approved list would be the employee's choice, not the employer's").

[7] *See In Re Khatami USA v. Guardsmark, Inc*., 3 OCAHO No. 572, 1724 (Nov. 2, 1993) (finding that document abuse is one of three distinct types of claims that may be brought under 8 U.S.C. § 1324b).

[8] The only other situation where employers *must* reverify workers' I-9 documentation is when the Department of Homeland Security ("DHS") has audited and has informed the employer of problems with an employee's documentation. Importantly, this only applies to DHS. An employer's duty to reverify is *not* triggered by information received from other government agencies or, as was the case here, from private entities. *See*, *e.g.*, Letter from Sarah DeCosse, Senior Trial Attorney, Office of Special Counsel for Immigration-Related Unfair Employment Practices, to Ana Avendano Denier, Associate General Counsel, American Federation of Labor and Congress of Industrial Organizations (Apr. 1, 2004), **Addendum A**.

Employers are permitted (but *not* required) to conduct self-audits *only* if they subject the entire workforce to the same reverification process. *See* Letter from William Ho-Gonzalez, Special Counsel, Office of Special Counsel for Immigration-Related Unfair Employment Practices (Apr. 18, 1994) (emphasizing "that whatever procedures an employer adopts for reverification, that he treat all employees alike, regardless of their national origin and/or citizenship status"), **Addendum B**. 8 U.S.C. § 1324b(d) created the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"), within the DOJ's Civil Rights Division, to investigate and enforce IRCA's anti-discrimination provisions.

as with the initial completion of the I-9 Form, it is the employee's choice of which of the listed documents to present when the employer reverifies her work authorization.[9]

In the present case, however, the district court stated that "an employer must accept specific documents only for initial employment purposes, not for purposes of continuing employment." *Zamora*, 316 F.2d at 1119. This conclusion clearly was erroneous.[10] First, the court cited to the "continuing employment" definition but overlooked the pertinent regulations, *i.e.* 8 C.F.R. § 274a.2(b)(1)(vii)-(viii) (explaining when reverification is and is not required).

Second, the I-9 Form itself shows that the district court's holding that IRCA anti-discrimination protections do not apply when employers reverify is incorrect. The Instructions provided with the I-9 Form commence with an "Anti-Discrimination Notice" that precedes the entire document, including the section concerning when the employer must reverify an employee's documentation. Moreover, the Instruction's Section 3 on "Updating and Reverification" explicitly states that "[e]mployers **CANNOT** specify which document(s) they will accept from an employee." *See* **Addendum C**. Lastly, the Office of the Chief Administrative Hearing Officer ("OCAHO"), has held that IRCA's protection against document abuse does in fact apply to employer's work verification practices *after* initial employment. *U.S. v. Townsend Culinary, Inc.*, 8 OCAHO No. 1032, 496 (1999) (finding "that IRCA's document provisions also apply. . .to the

[9] *See Werline*, 7 OCAHO No. 935, *supra* n.6.
[10] Appellant's counsel in his brief does not correct this error, but instead submits that "IRCA does not specifically prohibit an employer from endless requests for documents." Appellant Brief at 21. This, too, is clearly incorrect.

employer's reverification of the work authorized status of its employees . . .").[11] As such, the district court erred as a matter of law by finding that IRCA's anti-discrimination provisions do not apply to when an employee's work documentation is reverified.

The OCAHO has opined that IRCA's anti-discrimination provisions was enacted due to the "fear[ ] that because of the sanctions imposed by IRCA, employers would become *overly cautious* and would refuse to hire foreign-looking or foreign-sounding individuals as a sure method of not violating 8 U.S.C. 1324a(a)."[12] This, however, is the precise conduct approved by the district court when it conceded that Elite

> may have been *overly stringent* in rejecting certain documents as adequate, instead demanding documentation from the Social Security Administration. . . . The evidence reflects that the sole impetus behind [Elite's] actions, *cautious as they were,* was a concern about the validity of plaintiff's right-to-work documents.

Zamora, 316 F.Supp.2d at 1118 (emphasis added).[13] But as shown by the legislative history of IRCA, its statutory provisions, the regulations, instructions, and interpretations

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[11] *See also supra* n.8, Letter from William Ho-Gonzalez, **Addendum B** (stating "an employee may be able to assert document abuse, alleging the employer is requiring more documents than are required to complete…reverification…).

[12] *In re Khatami USA v. Guardsmark, Inc.*, 3 OCAHO No. 572,1719 (1993), *citing Ryba v. Tempel Steel Co.*, 1 OCAHO No. 289 (1991) (emphasis added).

[13] The district court's interpretation of IRCA not only ignores the anti-discrimination provisions protecting workers, it also places an extra burden on *employers* contrary to the plain language of the statute. The district court's opinion, if allowed to stand, would create uncertainty for employers vis-à-vis how rigorously they must inspect and investigate employees' work authorization documentation. Such uncertainty is precisely what Congress intended to avoid when it laid out the specific documents employers could accept under IRCA, and when it specified that employers were in compliance if the documents it accepted "reasonably appear[] on [their] face to be genuine." 8 U.S.C. § 1324a(b)(1)(A). By holding that defendant's "overly stringent" interpretation of its requirements under IRCA was valid, the district court's opinion signals to other

provided by the administrative agencies vested with the authority to interpret IRCA, these "overly stringent" and "cautious" acts in the name of IRCA compliance are exactly the types of employer actions that Congress intended to prohibit. To uncritically accept Elite's justification of IRCA compliance, as the district court did, is to legitimize the most overzealous actions of document abuse, as long as the employer claimed it undertook its actions in good faith. This is directly counter to the plain language of and Congressional intent motivating the enactment of IRCA's anti-discrimination provisions.[14]

B. The District Court's Erroneous Analysis Of IRCA Rendered Infirm Its Analysis Of Elite's "Legitimate, Non-Discriminatory Reason."

Once a plaintiff establishes a prima facie case of disparate treatment under Title VII, the burden of production shifts to the defendant to show a legitimate, non-discriminatory reason for its adverse action against plaintiff. *See Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981) (stating that if "the trier of fact believes the plaintiff's evidence, and if the employer is silent in the face of the presumption, the court must enter judgment for the plaintiff because no issue of fact remains in the case"). In the present case, however, Elite's proffered aspiration to "IRCA compliance" cannot suffice as a legitimate, non-discriminatory reason for the simple reason that it is not "non-discriminatory." *See, e.g., George v. Farmers Electric*

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employers that their attempts to comply with IRCA by observing what Congress had explicitly laid forth in IRCA may not be enough to shield them from liability.

[14] Indeed, early OCAHO case law "established the general principle that an employer's claimed good faith effort to comply with the requirements of § 1324a is not a sufficient reason to exempt the employer from liability for violations of § 1324b." *USA v. Diversified Tech. & Serv. of Virginia*, 9 OCAHO No. 1095, 2 (2003) (*citing U.S.v.*

Cooperative, Inc., 715 F.2d 175 (5th Cir. 1983) (finding that proffered reasons for adverse employment treatment are not valid if they are themselves discriminatory). Rather than rebutting Zamora's prima facie case of discrimination, its actions constitute a *violation* of the anti-discrimination provisions of IRCA, as explained in *supra* Section III.A. As such, Elite's submitted justification actually strengthens Zamora's case of national origin discrimination under Title VII.[15]

Even if Elite's actions were based merely on a misinterpretation of IRCA, such a misinterpretation cannot provide Elite with a safe haven if its conduct violated Title VII.[16] Elite's misinterpretation of IRCA cannot constitute a legitimate, non-discriminatory reason for its adverse employment actions against Zamora.[17] Because Elite has failed to produce a legitimate, non-discriminatory reason that specifically rebuts Zamora's prima facie case of discrimination, the trial court's grant of summary judgment against Zamora was improper.[18]

Marcel Watch Corp., 1 OCAHO No. 143, 988, 1006-07 (1990); *U.S. v. Lasa Mktg. Firms*, 1 OCAHO No. 141, 950, 968-72 (1990)).

[15] This Court should keep in mind that, while Elite's conduct is being characterized as violating IRCA, Zamora's claim of national origin discrimination can only be made under Title VII. This is because IRCA's anti-discrimination provisions applies only to employers with 4 to 14 employees, since at the time these provisions were enacted, Title VII already provided remedies for violations by employers with 15 or more employees. *See supra* n.3.

[16] *See Welborn v. Reynolds Metals Co*., 810 F.2d 1026, 1029 (11th Cir. 1987) (finding that defendant's and district court's reasoning was based on misinterpretation of EEOC settlement agreement "and therefore cannot supply a legitimate, nondiscriminatory reason" for defendant's adverse action against plaintiff").

[17] *See id.*

[18] *See Saunders v. Hercules, Inc*., 510 F. Supp. 1137, 1140 (W. Dist. VA, 1981) (finding that defendant failed to meet its burden in providing a legitimate non-discriminatory reason, and stating that "clearly, just any reason will not suffice to dispel a prima facie

C. The District Court's Misunderstanding Of IRCA Likewise Undermined Its Conclusion that Elite's Proffered Reasons Could Not Possibly Be Seen As Pretextual.

Even if this Court finds that Elite offered a legitimate, non-discriminatory reason for its actions against Zamora, substantial questions of fact still exist as to whether its proffered reasons were pretextual. This Court has found that

> Pretext can be shown by such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons.

Danville v. Reg'l Lab Corp., 292 F.3d 1246, 1250 (10th Cir. 2002) (*quoting Morgan v. Hilti, Inc.*, 108 F.3d 1319, 1323 (10th Cir. 1997)).

A reasonable fact-finder could readily determine, based on the record in the present case, that Elite's actions rendered its stated reasons for suspending Zamora implausible and false. Among other things, the record reflects that Elite: (1) inconsistently and selectively chose to comply with IRCA; (2) was not actually complying with IRCA in his actions toward Zamora; (3) refused to accept Zamora's naturalization certificate as proof of work authorization; (4) continued to bear an un-founded belief that Zamora was an undocumented worker. Consequently, the record contains ample facts that could lead a reasonable fact-finder to conclude that Elite's "legitimate, non-discriminatory reason" for suspending Zamora was in fact pretextual.

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case of employment discrimination"); *see also EEOC v. Safeway Stores, Inc.*, 634 F.2d 1273, 1282 (10th Cir. 1980) (declining to continue the *McDonnell Douglas* analysis after determining that defendant's proffered reason was unconvincing).

Take, for example, Elite's inconsistent and selective compliance with IRCA. Elite selectively (and erroneously) determined how to comply with IRCA. Elite first disregarded the statute by hiring three hundred workers without inspecting their documents. Then it alleged it was trying to follow IRCA by demanding more documentation from its employees. *Then* it ignored which documents were actually required under IRCA with respect to Zamora. Additionally, Elite blatantly disregarded the statute by suggesting to Zamora that he go get "another social security number." *See Zamora*, 316 F.Supp.2d at 1113. This selective observance of immigration laws obviously raises serious questions of material fact as to whether Elite was genuinely attempting to comply with the law. *C.f. Beaird v. Seagate Tech.,* 145 F.3d 1159, 1168 (10th Cir., 1998) (holding that although not dispositive, defendant's failure to comply with its own reduction in force policy could contribute to showing that reduction in force was pretextual); *McAlester v. United Air Lines, Inc*., 851 F.2d 1249, 1261 (10th Cir. 1988) (finding pretext where minority employee was terminated for violating work rule, but non-minority violators had only been suspended).

The record is replete with still further evidence that could lead a reasonable fact-finder to conclude that Elite's proffered justification for its conduct was pretextual. As required by IRCA, Zamora had initially provided Elite proof that he was authorized to work in the United States by showing proof that he was a lawful permanent resident (LPR) -- a category of immigrants for whom work authorization is permanent and an

implied characteristic of their immigration status.[19] And by the time Elite reverified plaintiff's work documentation, Zamora had already become a United States citizen and accordingly, presented a naturalization certificate issued by DHS. Elite, however, inexplicably refused to accept Zamora's I-9 Form already on file (documenting that he was an LPR at the time of hire) or his naturalization certification as proof of his authorization to work in this country. Instead, Elite demanded that Zamora produce documentation specifically from the Social Security Administration. This was a clear violation of IRCA's document abuse provision, as well as potentially national origin discrimination violating Title VII. All of these actions severely undermine any argument that Elite was actually concerned with IRCA compliance.[20] Given that Elite's actions violated IRCA, a fact-finder could conclude that because Elite's actions were plainly against the law, its professed concern for IRCA compliance was no more than pretextual.

D. Because Elite Had No Evidence To Believe Zamora Was Unauthorized To Work, That Belief Could Only Have Been Based on Zamora's Race and National Origin.

Elite had no evidence that Zamora was unauthorized to work in the United

[19] Query as to whether the fact that Zamora also provided his Social Security card at this time shows that Elite was engaging in national origin discrimination against him from the beginning, since LPRs who provide their alien registration cards (*i.e.* "green cards") do not have to provide any other documentation of work authorization under IRCA. A green card is a "List A" document on the I-9 Form, which means that it by itself establishes both identity and employment authorization. See **Addendum C**. Moreover, the fact that Zamora provided a green card is relevant to whether Elite had to reverify his work authorization at all, since "[a]n expiration date on the [green card] reflects only that the card must be renewed, not that the bearer's work authorization has expired." 8 C.F.R.§ 274a.12(a)(1).

States.[21] The information it received from the private agencies it hired regarding Zamora's Social Security number proved nothing other than the fact that Zamora may have been a victim of identity fraud, as his number was used in another state by someone else. There was no direct evidence that the number was not his. Elite nonetheless continued to believe that Zamora was unauthorized to work in the United States, although his work authorization documents were in his personnel file and even after he presented a naturalization certificate. Elite's proffered legitimate, non-discriminatory reason of complying with IRCA assumes a belief that Zamora might pose a threat of non-compliance simply because of his physical appearance and other traits suggestive of a foreign national origin.

The Second Circuit, in *Taggart v. Time, Inc.*, 924 F.2d 43 (2d Cir. 1991), addressed the issue of pretext regarding facially legitimate reasons for adverse action that masks discriminatory animus. The *Taggart* court noted that the term "overqualified" could sometimes be used as a legitimate, non-discriminatory reason, especially when applied to younger job applicants; but when used in the context of age discrimination, it gives the inference that the term is used as a euphemism. *Id*. at 47-48. In the present

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[20] *Elhajomar v. City and County of Honolulu*, 1 OCAHO No. 246 (1990) (holding that discriminatory intent includes failure to exercise reasonable care to acquire knowledge of legal significance of immigration-related employment documents).

[21] Indeed, the record shows that Elite had in fact fully complied with IRCA when it hired plaintiff. Zamora was not among the approximately 300 employees whom Elite had hired without checking work documents. *See Zamora*, 316 F.Supp.2d at 1111. Rather, he was hired a year after those employees, and presented his alien registration card and his social security card as part of the I-9 process. *Id*. Thus, while Elite may have had concerns regarding the work authorization of the 300 employees whom it hired during a specific period of time, such concerns were inapplicable to Zamora.

case, the phrase "complying with IRCA" could be used as a legitimate, non-discriminatory reason when the employer has knowledge that an employee is unauthorized to work. However, in the context of national origin discrimination against an employee whose authorization to work had already been established at the time of hire and then re-*established* when the employer reverified the employee's work authorization, the phrase "complying with IRCA" could also be used as a euphemism for workers such as Zamora in the present case based on his national origin.

This is an issue in the present case that a fact-finder should resolve, given that Elite had evidence that Zamora was authorized to work, but choose to disregard that evidence at least partially because of Zamora's national origin. To grant summary judgment without taking this into account, as the district court did, severely undermines the ability of foreign-born workers like Zamora from bringing claims under Title VII.

V. CONCLUSION

For the reasons and the authorities presented above, *amici* respectfully submit that the district court's order granting summary judgment be reversed and remanded.

Dated: October 25, 2004

Marielena Hincapié
Anita Sinha
NATIONAL IMMIGRATION LAW CENTER

Christopher Ho
William N. Nguyen
THE LEGAL AID SOCIETY
-- EMPLOYMENT LAW CENTER

By:_____
ANITA SINHA