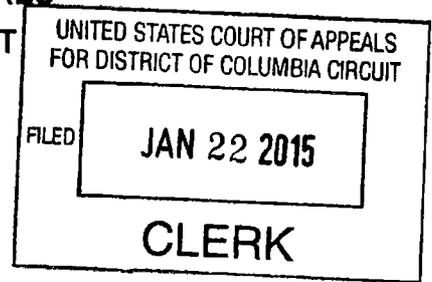


**UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT**

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530



Case Caption: Latino Express, Inc.
Petitioner

v.

Case Number: 15-1019

National Labor Relations Board
Respondent

2015/1/22

PETITION FOR REVIEW OF AN AGENCY, BOARD, COMMISSION, OR OFFICER

Notice is hereby given this the 20th day of January 2015 that petitioner(s)
Latino Express, Inc. hereby petitions the United States Court of Appeals for the District
of Columbia Circuit for review of the order of the respondent(s) National Labor Relations Board entered
the 15th day of December 2015.

Attorney for Petitioner(s)/Pro Se Party,

Zane D. Smith - Zane D. Smith & Associates, Ltd.

Address: 415 N. LaSalle

Suite 501

Chicago, Illinois

Telephone: (312) 245-0031

USCA Case #15-1019
JAN 22 2015

Document #1534398

Filed: 01/22/2015

Page 2 of 2

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

FILED
JAN 22 2015

15-1019

CLERK

United States Court of Appeals
District of Columbia Circuit

Short Caption: Latino Express, Inc. v. National Labor Relations

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Latino Express, Inc.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Zane D. Smith & Associates, Ltd.

Law Office of Sheila A. Genson

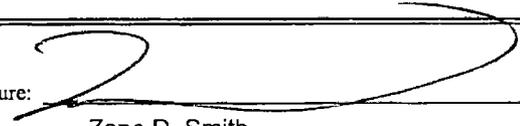
(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

Attorney's Signature: 

Date: January 20, 2015

Attorney's Printed Name: Zane D. Smith

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes No

Address: 415 N. LaSalle - Suite 501, Chicago, Illinois 60654

Phone Number: 312-245-0031

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NOTICE This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Latino Express, Inc. and Carol Garcia and Pedro Salgado and International Brotherhood of Teamsters, Local 777. Cases 13–CA–046528, 13–CA–046529, and 13–CA–046634

December 15, 2014

DECISION AND ORDER

BY MEMBERS HIROZAWA, JOHNSON,
AND SCHIFFER

On July 31, 2012, the Board issued a Decision and Order and Notice and Invitation to File Briefs in this proceeding, which is reported at 358 NLRB No. 94. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order and Notice and Invitation to File Briefs, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and Notice and Invitation to File Briefs and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order and Notice and Invitation to File Briefs, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt judge's recommended Order to the extent and for the reasons stated in the Decision and Order and Notice and Invitation to File Briefs reported at 358 NLRB No. 94, which is incorporated herein by reference and as amended below.¹

¹ In its now-vacated decision, the Board invited interested parties to file briefs addressing whether, in connection with an award of backpay, the Board should routinely require a respondent to (1) submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it is allocated to the appropriate calendar quarters, and (2) reimburse a discriminatee for any excess Federal and State

ORDER

The National Labor Relations Board orders that the Respondent, Latino Express, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Discharging or otherwise discriminating against employees because they engage in protected union or concerted activities, including supporting the International Brotherhood of Teamsters, Local 777, or any other labor organization.
 - (b) Coercively interrogating employees about their union membership, activities, sympathies, or support.
 - (c) Prohibiting employees from discussing their terms and conditions of employment.
 - (d) Creating the impression that it is engaged in surveillance of its employees' union or other protected concerted activities.
 - (e) Soliciting grievances from employees and promising to remedy them in order to discourage employees from selecting union representation.
 - (f) Promising improved benefits to employees in order to discourage employees from selecting union representation.

income taxes the discriminatee may owe in receiving a lump-sum backpay award covering more than 1 year. 358 NLRB No. 94, slip op at 2–3. After receiving supplemental briefs, the Board answered those questions in the affirmative. *Latino Express, Inc.*, 359 NLRB No. 44 (2012), reaffirmed in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014). Accordingly, we shall modify the judge's recommended Order to conform with *Tortillas Don Chavas*. We shall also substitute a new notice to conform to the Order as modified and in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

In addition, we find merit in the General Counsel's exception to the judge's failure to recommend that the notice be read aloud to employees by the Respondent or a Board agent. Specifically, we find that this case merits a public reading of the notice by coowner and vice president, Henry Garduño, or by a Board agent in the presence of Garduño, to employees assembled on company time because "[t]he Respondent's violations of the Act are sufficiently serious and widespread that the reading of the notice is necessary to enable employees to exercise their Section 7 rights free of coercion." *Carey Salt Co.*, 360 NLRB No. 38, slip op at 2 (2014). See, e.g., *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007) (notice-reading remedy ordered where respondent's senior manager threatened plant closure and job loss at meetings if employees voted for union representation), enfd mem 273 Fed Appx 32 (2d Cir 2008). Garduño was personally involved in the unlawful discharges of Carol Garcia and Pedro Salgado, and engaged in a number of other violations of the Act during the union organizing campaign by soliciting grievances from employees, interrogating an employee about his union support, and creating an impression of surveillance of union supporters. In those circumstances, we find that a reading of the notice by Garduño, or in his presence, is appropriate "to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices," and will allow the employees to "fully perceive that the Respondent and its managers are bound by the requirements of the Act." *Homer D. Bronson Co.*, supra (citations omitted). If Garduño is no longer an owner or officer of the Respondent, then the Respondent shall designate another owner or officer to conduct or be present for the reading.

(g) Granting wage increases to employees in order to discourage employees from selecting union representation.

(h) Threatening employees with discharge if they select the Union or any other labor organization as their bargaining representative.

(i) Threatening employees with closure of their work facility if they select the Union or any other labor organization as their bargaining representative.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Carol Garcia and Pedro Salgado full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Carol Garcia and Pedro Salgado whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Compensate Carol Garcia and Pedro Salgado for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and, within 3 days thereafter, notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Chicago, Illinois facility copies of the attached notice marked "Appendix."² Copies of the notice in English

and Spanish, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 20, 2010.

(g) Within 14 days after service by the Region, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to the employees by Respondent's coowner and vice president, Henry Garduño, or at the Respondent's option, by a Board agent in the presence of Henry Garduño, with translation available. If Garduño is no longer an owner or officer of the Respondent, then the Respondent shall designate another owner or officer to conduct or be present for the reading.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 15, 2014

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

Nancy Schiffer, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

LATINO EXPRESS, INC.

3

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected union or concerted activities, including supporting International Brotherhood of Teamsters, Local 777 (the Union), or any other labor organization.

WE WILL NOT coercively question you about your union membership, activities, sympathies, and/or support.

WE WILL NOT prohibit you from discussing your terms and conditions of employment.

WE WILL NOT create the impression that we are engaged in surveillance of your union or other protected concerted activities.

WE WILL NOT solicit grievances from you and promise to remedy them in order to discourage you from selecting union representation.

WE WILL NOT promise you improved benefits in order to discourage you from selecting union representation.

WE WILL NOT give you wage increases in order to discourage you from selecting union representation.

WE WILL NOT threaten to discharge or otherwise discriminate against any of you if you select the Union or any other labor organization as your bargaining representative.

WE WILL NOT threaten you with closure of your work facility if you select the Union or any other labor organization as your bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Carol Garcia and Pedro Salgado full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Carol Garcia and Pedro Salgado whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL compensate Carol Garcia and Pedro Salgado for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Carol Garcia and Pedro Salgado, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

LATINO EXPRESS, INC.

The Board's decision can be found at www.nlr.gov/case/13-CA-046528 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

