

**Amicus Invitation No. 25-10-09**

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

**UNITED STATES OF AMERICA,  
Complainant,**

**v.**

**8 USC § 1324c Proceedings  
OCAHO Case No. 2025C00032**

**ADIBAHON JURAYEVA,  
Respondent.**

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**Judge: Andrea R. Carroll-Tipton**

**BRIEF OF AMICI CURIAE AMERICAN IMMIGRATION COUNCIL AND  
AMERICAN IMMIGRATION LAWYERS ASSOCIATION**

## INTEREST OF AMICI CURIAE

The American Immigration Council (Council) is a nonprofit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of immigrants in the United States. The Council regularly litigates and advocates around issues involving access to immigration benefits, including submitting amicus briefs to administrative agencies and federal courts.

The American Immigration Lawyers Association (AILA), founded in 1946, is a national, nonpartisan, nonprofit association with more than 18,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration and nationality law and practice. AILA's members practice regularly before the Department of Homeland Security, immigration courts, the Board of Immigration Appeals, and the Office of the Chief Administrative Hearing Officer, as well as before the federal courts. AILA has participated as amicus curiae in numerous cases before the U.S. Courts of Appeals and the U.S. Supreme Court.

## ISSUE PRESENTED

What does the term “action” in 28 U.S.C. § 2462 mean in the context of 8 U.S.C. § 1324c(a)(5) proceedings?

Except as otherwise provided by Act of Congress, *an action*, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

28 U.S.C. § 2462 (emphasis added).

## FACTS PROVIDED

On September 14, 2018, Ms. Jurayeva, the Respondent, filed an application for a benefit under the Immigration and Nationality Act.

On March 3, 2020, U.S. Citizenship and Immigration Services (USCIS) denied the application.

On August 25, 2023, U.S. Immigration and Customs Enforcement (ICE) served a Notice of Intent to Fine (sometimes referred to as a NIF) on Respondent citing an apparent violation of 8 U.S.C. § 1324c(a)(5).

On February 24, 2025, the United States filed an administrative complaint.

## ARGUMENT

### **In the context of 8 U.S.C. § 1324(a)(5) proceedings, an “action . . . [is] commenced” by the filing of an administrative complaint**

All parties in this case agree that § 2462, a general statute of limitations, applies to the government’s pursuit of civil penalties administratively for claimed violations of 8 U.S.C. § 1324c(a)(5). *United States v. Davila*, 7 OCAHO no. 936, 16 (1997). The United States does well to make that concession. As the U.S. Court of Appeals for the District of Columbia Circuit has explained, “there is no discernible rationale for applying § 2462 when the penalty action or proceeding is brought in a court, but not when it is brought in an administrative agency.” *3M Co. (Minn. Mining & Mfg.) v. Browner*, 17 F.3d 1453, 1457 (D.C. Cir. 1994). “Civil penalty proceedings,” after all, “emulate judicial proceedings: a complaint is brought, the defendant answers, motions and affidavits are filed, depositions are taken, other discovery pursued, a hearing is held, evidence is introduced, findings are rendered and an order assessing a civil penalty is issued.” *Id.* at 1456. That sequence of events was appropriately deemed a

“prosecution” under § 2462’s predecessor statute, and it is appropriately deemed an “action, suit or proceeding” under the current statute. *Id.* at 1456-57.

The question remains, though, when that administrative “action” should be deemed to have “commenced.” This body held, after extensive and scholarly discussion, in *United States v. Curran Eng’g Co.*, 7 OCAHO no. 975, 888 (1997), that in a civil proceeding like this one, the “action . . . [is] commenced” by the United States’ filing of an administrative complaint, not by its service of a notice on the private party.<sup>1</sup> Several federal courts of appeals have said the same. That result is plainly the correct one.

We can start with the words of the statute. As Judge Barton noted in *Curran Eng’g*, “‘Action,’ ‘suit,’ and ‘proceeding’ all generally refer to an adversarial, adjudicative process before a judge . . .” *Id.* Legal dictionaries confine those terms to formal adjudicative processes. *Id.* at 887-88. All the more, the modifying phrase that the “action, suit, or proceeding” must be “for the enforcement of” a civil penalty underlines the adversarial, adjudicative nature of the proceedings that § 2462 contemplates. As such, “it is the beginning of the adjudicative process that marks the commencement of proceedings . . .” and “it is the filing of the complaint, not the issuance of the NIF, that initiates the adjudicative process.” *Id.* at 888.

Several courts of appeals have reached the same result. In *Axalta Coating Systems LLC v. FAA*, for example, the Federal Aviation Administration served notice on the private party under 14 C.F.R. § 13.16(f). *See* 144 F.4th 467, 472 n.1 (3d Cir. 2025). Section 13.16(f) establishes a scheme similar to the one in this case: “[a] civil penalty action is initiated by sending a notice of proposed civil penalty to the person charged with a violation,” after which the person may request a hearing. The private party responded by requesting a hearing on March 3, and the FAA

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<sup>1</sup> The decisions in *Curran Eng’g* and *Davila* were both issued by Judge Robert L. Barton, Jr.

then filed its administrative complaint on March 9. 144 F.4th at 472 n.1. The Third Circuit stated that the action was commenced for purposes of § 2462 on March 9, when the administrative complaint was filed. *Id.* at 480.

In *Capozzi v. United States*, 980 F.2d 872 (2d Cir. 1992), the Second Circuit held that an ex parte IRS tax penalty assessment notice did not commence an action, suit or proceeding within the meaning of § 2462. Those terms, the court held, apply to the initiation of an adversarial proceeding, not to an ex parte penalty assessment like the one in this case. *Id.* at 874.<sup>2</sup>

And as we have already noted, this court said the same thing, after extensive discussion, in *United States v. Curran Eng'g Co.*, 7 OCAHO no. 975, 888 (1997).

An understanding of the nature of a NIF makes the correctness of this result plain. A NIF is not analogous to a judicial complaint; it is more nearly analogous to a demand letter. The NIF in a case such as this informs a respondent of the alleged statutory violations; “the amount of civil penalty [the government] *intends* to have Respondent pay for the alleged violations”; and the government’s intent to issue a cease and desist order. *See United States v. Villatoro-Guzman*, 3 OCAHO no. 540, 1403 (1993) (procedure for civil document fraud case) (emphasis added). It notifies the respondent of its ability to request a hearing before an administrative law judge. 8 C.F.R. § 1270.2(e)(2)(iii); Attachment A to Complaint in this case. If the respondent does request a hearing, then it is up to the agency to initiate a formal hearing by filing a complaint.

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<sup>2</sup> In *Fed. Election Comm’n v. Williams*, similarly, the Federal Election Commission issued Williams a written finding of probable cause of law violation [under 11 C.F.R. § 111.17], and later filed a judicial complaint on October 19, 1993. 104 F.3d 237, 239 (9th Cir. 1996). The court held that the action was commenced for § 2462 purposes on October 19, 1993, when its complaint was filed, not on the earlier date when it transmitted its notice that it had found a violation. *Id.* at 241.

See 28 C.F.R. § 68.2 (the complaint is “the formal document initiating [the] adjudicatory proceeding”).

When the Immigration and Naturalization Service (INS) established this regulatory scheme, the agency agreed with commenters that the regulation should not provide that the NIF sets out “the penalty that will be imposed”; rather, the NIF sets out “the monetary amount of the penalty the Service *intends* to impose” (emphasis added). *Penalties for Document Fraud*, 57 Fed. Reg. 33862, 33864 (July 31, 1992). The agency recognized “that the phrase ‘will be imposed’ implies that a decision has been made.” *Id.* But that is not the case at the time a NIF is issued.

At the time of the NIF issuance, the penalty amount listed in the Notice is only an intention. A NIF does not initiate a judicial or a quasi-judicial proceeding. Rather, it is an invitation to engage in settlement negotiations. See 28 C.F.R. § 68.14. A NIF alerts the respondent to the fact that if the government and the respondent cannot come to terms, the government will seek to impose a fine through a formal adjudicatory proceeding. In short, it is a demand letter. And it is well-settled that a party does not act within the limitations period merely by transmitting a letter announcing its *intention* to initiate a judicial or administrative proceeding if the parties are unable to settle their dispute.

Judge Barton recognized all of this in his *Curran Engineering* decision, in which he considered this matter carefully and at length, concluding that a NIF does not commence an action for section 2462 purposes.<sup>3</sup> In addition to the considerations already discussed, he explained, “[f]inding that the issuance of the NIF, rather than the filing of the complaint, stops

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<sup>3</sup> While *Curran Eng’g* involved claims for violations of 8 U.S.C. § 1324a, the court’s analysis is applicable to this case, as a NIF was issued before an administrative complaint was filed. The court also pointed out that § 2462 “would apply equally” to actions brought under either § 1324a or § 1324c, since no other limitations period is specified for such actions. 7 OCAHO no. 975, at 880.

the running of the statute of limitations would defeat the purposes of having a statute of limitations.” 7 OCAHO no. 975, at 890. That is because once the agency issues a NIF and the respondent requests a hearing, “the decision when and if to file a complaint is solely within the discretion” of the agency. *Id.* “If the NIF halted the running of the limitations period, the INS could issue a NIF and then wait for several years to file a complaint. In that situation, the statute of limitations would not prevent the problems of lost evidence, faded memories, inability to locate witnesses, and disruption of settled expectations.” *Id.* A delayed complaint could take the private party by surprise, after the passage of time had caused it to “reasonably assume that no complaint would be forthcoming.” *Id.* at 890-91.

By contrast, the correct rule – that the agency does not stop its five-year clock until it files an administrative complaint – properly puts “the pace of the proceeding . . . in the control of the judge.” *Id.* at 891. It does not leave it “solely at the whim of the complainant.” *Id.* (footnote omitted). *See also United States v. Leed Construction*, 11 OCAHO no. 1237, 6 (2014) (“Pursuant to 28 U.S.C. § 2462, a complaint [for § 1324a violations] is timely if filed within five years of the date a violation accrues.”); *United States v. DeLeon Valenzuela*, 8 OCAHO no. 1004, 4 (1998) (“This action [for § 1324c violations] was commenced by the filing of a complaint . . .”), *aff’d*, *DeLeon Valenzuela v. OCAHO*, 182 F.3d 914 (5th Cir. 1999) (per curiam) (“[I]t is uncontested that the INS commenced proceedings against Valenzuela by filing a complaint within five years of the violations.”); *United States v. Ojeil*, 7 OCAHO no. 984, 983 (1998) (“I hold that . . . the statute [28 U.S.C. § 2462] is satisfied by filing a complaint [for § 1324a violations], not by issuing a Notice of Intent to Fine”).

There remains only to dispose of whether the NIF should be deemed to commence the action by virtue of language in 8 C.F.R. § 1270.2(d). That provision states in part: “The

proceeding to assess administrative penalties under [8 U.S.C. § 1324c] is commenced when the Service [in this case ICE] issues a notice of intent to fine.” 8 C.F.R. § 1270.2(d).<sup>4</sup> That language is not controlling, for two reasons. First, that language was not written with § 2462 in mind; neither the word “proceeding” nor the word “commenced” in that sentence was intended as a term of art. That glancing reference in the regulatory language is no more controlling than is the provision in 28 C.F.R. § 68.2 providing that the agency’s *complaint* is “the formal document initiating [the] adjudicatory proceeding.”

Second, had the agency intended that sentence as a binding interpretation of § 2462, that would have been beyond its power. As Judge Barton noted in *Curran Engineering*, an agency cannot unilaterally create definitions for words appearing in statutes of general applicability, like § 2462. Indeed, agencies have no special expertise to interpret words in such statutes. 7 OCAHO no. 975, at 887. Certainly, they cannot unilaterally grant themselves the power to initiate untimely proceedings by inserting incorrect interpretations of § 2462 into their regulations. Whether a NIF “commence[s]” an “action” under § 2462 must be determined in accordance with the statutory language, relevant precedent, and the purposes served by the statutory provision. As recognized in *Curran Engineering*, all of those considerations lead to the conclusion that “the filing of the complaint, rather than the issuance of a NIF, commences, for purposes of section 2462, the INS’ action, suit or proceeding for a civil money penalty.” *Id.* at 890.

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<sup>4</sup> The Penalties for Document Fraud, 8 C.F.R. Part 1270, Executive Office of Immigration Review, DOJ, is a duplicate of Penalties for Document Fraud, 8 C.F.R. Part 270.

## CONCLUSION

For the reasons stated above, in the context of 8 U.S.C. § 1324c(a)(5) proceedings, an “action . . . for the enforcement of a civil penalty” is “commenced” for the purpose of 28 U.S.C. § 2462 by the filing of the administrative complaint.

DATED: October 10, 2025

Respectfully submitted,

*/s/ Leslie K. Dellon*

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