**FOLLOW-UP FACTSHEET OF REPORT No. 50/16**

**CASE 12.834**

**UNDOCUMENTED WORKERS**

**(United States)**

1. **Summary of case**

|  |
| --- |
| **Victim(s)**:Leopoldo Zumaya, Francisco Berumen Lizalde (Undocumented Workers)  **Representative(s)**: University of Pennsylvania School of Law, American Civil Liberties Union  **State**:United States  **Merits Report No.** [50/16,](http://www.oas.org/en/iachr/decisions/2016/USPU12834EN.pdf) published on November 30, 2016  **Admissibility Report No.** [134/11](http://www.oas.org/en/iachr/decisions/2011/USAD1190-06EN.doc), adopted on March 20, 2011  **Themes**:Right to Work / Right to Social Security / Right to Equal Protection / Right to a Fair Trial / Judicial Protection / Right to Judicial Personality / Domestic Effects.  **Facts**:This case concerns Leopoldo Zumaya and Francisco Berumen Lizalde, foreign undocumented workers who resided and worked in the United States, who sustained injuries while on the job in Pennsylvania and Kansas, respectively, and were excluded from employment rights and remedies based on their immigration status as these rights and remedies were available to their documented counterparts.  **Rights violated**:The Commission found that the State was responsible for violating the human rights of Messrs. Zumaya and Lizalde under Article II and XVI of the American Declaration by not fully recognizing the victims’ rights to non-discrimination and social security. The Commission further found that, as Mr. Lizalde was unable to pursue his workers’ compensation claim in the judicial system, the State also violated his right to juridical personality and a fair trial, enshrined in Articles XVII and XVIII of the American Declaration. |

1. **Recommendations**

|  |  |
| --- | --- |
| **Recommendations** | **State of compliance in 2020** |
| 1. Provide Messrs. Zumaya and Lizalde with adequate monetary compensation to remedy the violations sustained in the present report. | Pending compliance |
| 2. Once a person commences work as an employee, ensure all federal and state laws and policies, on their face and in practice, prohibit any and all distinctions in employment and labor rights based on immigration status and work authorization. | Pending compliance |
| 3. Prohibit employer inquiries into immigration status of a worker asserting his or her employment and labor rights in litigation or in administrative complaints. | Pending compliance |
| 4. Ensure that undocumented workers are granted the same rights and remedies for violations of their rights in the workplace as documented workers. | Pending compliance |
| 5. Establish a procedure whereby undocumented workers involved in workers’ compensation proceedings, or their representatives, may request the suspension of their deportations until the resolution of the proceedings and the workers have received the appropriate medical treatment ordered by the presiding courts. | Pending compliance |
| 6. Improve and enhance the detection of employers who violate labor rights and exploit undocumented workers and adequately sanction them. | Pending compliance |

1. **Procedural Activity**
2. In 2020, the IACHR requested updated information on compliance from the State on August 18. The State presented said information on September 11, 2019.
3. The IACHR requested updated information on compliance from the petitioners on August 18, 2020. As of the closing date of this report, the Commission had not received said information from the petitioners.
4. **Analysis of the information presented**
5. The Commission considers that the information presented by the State in 2020 is irrelevant to update on the follow-up of the case given that it is repetitive of the information presented in previous years, without presenting new information on measures taken recently to comply with at least one of the recommendations issued in Merits Report No. 50/16.
6. The Commission considers that the information presented by the petitioners in 2020 is relevant to update on the follow-up of the case given that it is up to date and comprehensive on measures adopted recently regarded compliance with at least one for the recommendations issued in Merits Report No. 50/16.
7. **Analysis of compliance with the recommendations**
8. **With regards to the first recommendation**, none of the parties has presented specific information about measures adopted to comply with this recommendation.
9. Based on the foregoing, the Commission finds that Recommendation 1 is pending compliance.

1. **Regarding the second recommendation**,in 2016, the State indicated that it aggressively enforces a robust system of laws that protect workers’ rights and that prohibit many forms of discrimination and retaliation against workers based on their undocumented status. The State further informed that its immigration authorities work collaboratively with labor and employment agencies to ensure consistent enforcement of the law.[[1]](#footnote-1)
2. In 2018, the petitioners informed that instead of ensuring that all federal and state laws and policies, on their face or in practice, prohibit any and all distinctions in employment and labor rights based on immigration status and work authorization, the State’s policies have served to deter individuals from seeking investigations into criminal activity in the workplace and from cooperating with law enforcement. The petitioners informed that those individuals who have experienced workplace crimes or have been victims of trafficking are now deterred from filing for the immigration relief available to them under the law through the U and T visas respectively, as U.S. Citizenship and Immigration Services has issued a new policy indicating that when they deny a visa application, they may now communicate that denial to Immigration and Customs Enforcement and said individual will receive a Notice to Appear, placing them into removal proceedings.
3. In 2019, the petitioners reported that the United States was still discriminating against undocumented workers in the enforcement of its laws and in its policies and practices in connection with enforcing labor and immigration laws at both the federal and state level. In this regard, they describe different policies and actions by the current federal administration, including raids on workplaces and prosecutions in an effort to secure deportation orders, which make individuals reluctant to report violations of their human rights. The petitioners further indicate that the U.S. states continue to discriminate against undocumented workers and that the federal government has not intervened to guarantee these workers’ rights.
4. The Commission notes with concern the information presented by the petitioners concerning the new policy of the U.S. Citizenship and Immigration Services regarding the possible transmission of information to Immigration and Customs Enforcement and the consequences of such action. It further notes with concern the information about raids at workplaces, prosecutions of undocumented workers to get them deported, and inaction by the federal government with respect to individual states’ discriminatory laws and policies. The Commission further notes that in 2020 it has not received specific information from the State regarding the laws and policies in place to ensure that all distinctions in employment and labor rights based on immigration status and work authorization are prohibited. In this sense, the Commission calls on the State to provide it with detailed and up to date information on actions adopted to comply with this recommendation. Based on the foregoing, the Commission finds that Recommendation 2 is pending compliance.
5. **With regards to the third recommendation**, in 2016, the State asserted that there are ongoing efforts to combat employer efforts to discover the immigration status of workers during litigation, investigation of claims and administrative proceedings.[[2]](#footnote-2)
6. In 2018, the petitioners reported that the State had not taken steps towards complying with this recommendation and indicated that the dramatic increase in immigration enforcement has had a detrimental impact on workers and their willingness to pursue employment and labor rights complaints. In 2019, the petitioners reported that the United States has not taken measures to protect undocumented workers from being exploited by employers who take advantage of their immigration status to avoid paying the benefits and compensation they are legally obligated to pay; and that certain federal policies encourage the opposite of what the IACHR recommended inasmuch as they essentially deny undocumented workers who have been unfairly fired or have been hurt access to the same resources, remedies, and benefits documented workers have.
7. In 2020, none of the parties submitted updated information on the measures adopted by the State to comply with this recommendation. Based on the foregoing, the Commission finds that Recommendation 3 is pending compliance.
8. **Regarding the fourth recommendation**, in 2016, the State asserted that in accordance with existing laws and policies, investigations are conducted at worksites and labor laws are enforced without regard to the worker’s immigration status. Further, the State informed that its immigration laws and policies include safeguards for the protection of various classes of victims and vulnerable individuals, and that its immigration authorities work collaboratively with labor and employment agencies to ensure consistent enforcement of the law.[[3]](#footnote-3)
9. In 2019, the petitioners informed that the State has failed to ensure that undocumented workers are granted the same rights and remedies for violations of their rights in the workplace as documented workers. The petitioners indicated that in July 2018 a U.S. District court in Tennessee issued a ruling limiting the damages an undocumented worker injured on the job could receive after he had been retaliated against for filing a workers compensation claim.[[4]](#footnote-4) In this regard, in 2019 they reiterated these same developments they had already reported with respect to Recommendation 1 to indicate a lack of compliance with the recommendation.
10. In 2020, the IACHR notes that it does not count with updated information from the State or the petitioners on the level of compliance of this recommendation. Based on the foregoing, the Commission finds that Recommendation 4 is pending compliance.
11. **With regards to the fifth recommendation**, the State has not submitted specific information about measures adopted to comply with this recommendation.
12. In 2018, the petitioners informed that the State has not established any new procedures whereby undocumented workers involved in workers compensation proceedings may request the suspension of their deportation until the resolution of their proceedings and receipt of appropriate medical treatment. In 2019, they reiterated that the State has not complied with this recommendation. They further indicated that, to the contrary, the policies established by the federal government under the heading “Zero Tolerance” reject the prioritization of immigrants for purposes of enforcing immigration laws. They informed that these policies have, in fact, intensified the enforcement of such laws, under which all undocumented workers, including those with pending workers compensation claims, are potentially exposed to prosecution in an effort to get them deported. The petitioners believe that all of the foregoing discourages undocumented workers from filing claims.
13. The IACHR urges the United States to establish a procedure whereby undocumented workers involved in proceedings in connection with compensation claims for workplace accidents, or their representatives, may request the suspension of their deportation until their cases have been settled and the workers have received the appropriate medical treatment ordered by the judges handling the cases. Based on the foregoing, the Commission finds that Recommendation 5 is pending compliance.
14. **Regarding the sixth recommendation**, in 2016, the State asserted that there are ongoing efforts to combat employer efforts to discover the immigration status of workers during litigation, investigation of claims and administrative proceedings. The State indicated that in accordance with existing laws and policies, investigations are conducted at worksites and labor laws are enforced without regard to the worker’s immigration status. Further, the State informed that its immigration law and policies include safeguards for the protection of various classes of victims and vulnerable individuals, and the State’s immigration authorities work collaboratively with labor and employment agencies to ensure consistent enforcement of the law.[[5]](#footnote-5) In 2020, the State reiterated its earlier position regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR.
15. In 2018, the petitioners informed that the State has not taken any affirmative action to improve and enhance the detection of employers who violate labor rights and exploit undocumented workers and to adequately sanction them. In 2019, they reported that, while the State has begun to take some actions against employers who violate the rights of undocumented workers, such actions are minimal given the number of rights violations. They further informed that the current policies of the federal government in connection with, among other things, T and U visas, have made it increasingly difficult for undocumented workers to avail themselves of legal mechanisms to assert their rights.
16. In 2020, the State reiterated the information presented to the IACHR in previous years. Based on this, the Commission concludes that the State has not adopted measures to comply with this recommendation and considers that Recommendation 6 is pending compliance.
17. **Level of compliance of the case**
18. Based on the foregoing, the IACHR concludes that the compliance of the case is pending. Consequently, the Commission will continue to monitor Recommendations 1 to 6.
19. The Commission invites the State to adopt actions to implement the recommendations issued in Merits Report No. 50/16 and to provide it with detailed and up to date information about these actions.
20. **Individual and structural results of the case**
21. Given that this case is pending compliance, there are no individual or structural results, which have been informed by the parties.

1. IACHR, [Case 12.834, Merits Report No. 50/16, Undocumented Workers (United States)](http://www.oas.org/en/iachr/decisions/2016/USPU12834EN.pdf), para. 126. [↑](#footnote-ref-1)
2. IACHR, [Case 12.834, Merits Report No. 50/16, Undocumented Workers (United States)](http://www.oas.org/en/iachr/decisions/2016/USPU12834EN.pdf), para. 126. [↑](#footnote-ref-2)
3. IACHR, [Case 12.834, Merits Report No. 50/16, Undocumented Workers (United States)](http://www.oas.org/en/iachr/decisions/2016/USPU12834EN.pdf), para. 126. [↑](#footnote-ref-3)
4. Western District Court of Tennessee, *Torres v. Precision Industries*, 2018 WL 3474088 (W.D Tennessee, United States, July 19, 2018). [↑](#footnote-ref-4)
5. IACHR, [Case 12.834, Merits Report No. 50/16, Undocumented Workers (United States)](http://www.oas.org/en/iachr/decisions/2016/USPU12834EN.pdf), para. 126. [↑](#footnote-ref-5)