



THE PERMANENT REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.

March 18, 2016

Mr. Emilio Alvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
Washington, D.C. 20006

Re: L. Zumaya and F. Berumen Lizalde (Undocumented Workers)
Case No. 12.834
Response to Report on Merits

Dear Mr. Icaza:

The United States thanks you for the letter from your office dated January 20, 2016, transmitting Report No. 83/15 of the Inter-American Commission on Human Rights ("Commission") of December 29, 2015, the merits report in the above-referenced case. We note your office's request under Article 44(2) of the Rules of Procedure ("Rules") for a response on measures taken to comply with the Commission's recommendations by March 20, 2016.

With respect to the Commission's recommendations, we have forwarded the merits report to the Departments of Labor, Justice, and Homeland Security; the National Labor Relations Board; and the Governors and Attorneys General of Kansas and Pennsylvania. We would note that several of the recommendations already reflect U.S. law, policy, and action in this area, as explained in detail in our written submissions and at the March 2015 hearing. In general, these include aggressive enforcement of a robust system of laws that protect workers' rights and prohibit many forms of discrimination and retaliation against workers based on their undocumented status; ongoing efforts to combat employer efforts to discover

the immigration status of workers during litigation, investigation of claims, and administrative proceedings; and conducting investigations at worksites and enforcing labor laws, without regard to the worker's immigration status. Our immigration law and policies include safeguards for the protection of various classes of victims and vulnerable individuals. Further, our immigration authorities work collaboratively with labor and employment agencies to ensure consistent enforcement of the law.

Other recommendations, however, do not seem feasible for federal implementation, in that they implicate questions of U.S. state law or otherwise fall within the purview of state authorities for their implementation; or require a change in federal or state jurisprudence. In this regard, we reiterate that for nonparties to the American Convention, the Commission's recommendations are precisely that—recommendations—not requirements under international law. As we explained at the hearing, moreover, the United States has an independent judiciary, and the Executive Branch of the U.S. government cannot compel U.S. federal or state judges to change their case law.

We would also reiterate, for reasons discussed at length in our various filings and in our oral presentation of March 2015, that the United States strongly disagrees with the Commission's assertion that the conduct at issue in this case violated any international legal obligations owed by the United States. Moreover, the United States is disappointed that the Commission chose to summarily reject its arguments relating to the inadmissibility of this case as "untimely," without addressing their substance in any meaningful way.¹ As we have argued in two other recent matters, the Commission has the authority under its Statute and Rules to reconsider a prior decision on admissibility and rescind it if it finds the matter is inadmissible, or has become inadmissible due to supervening events. The United States refers the Commission to its briefs in those matters for its reasoning.²

We also take this opportunity to reiterate our understanding that Petition No. P-1515-06, concerning three petitioners who were once included in the petition

¹ Merits Report at ¶ 43.

² See *Bucklew v. United States*, Case No. 12.958, Response of the United States of America, Feb. 1, 2016, at 6–9; *Tercero v. United States*, Case No. 12.994, Response of the United States of America, Aug. 7, 2015, at 6–9.

in Case No. 12.834, has apparently been abandoned by those petitioners.³ In its 2011 decision dividing Petition No. P-1515-06, the Commission stated that “it requires additional information about [the petitioners’] individual circumstances to be able to process the claims of these three presumed victims.”⁴ The United States has no record of any further correspondence from the representatives of Melissa L., Jesús L., and Yolanda L. R. The merits report recalls the decision to divide Petition No. P-1515-06 from Case No. 12.834 and “process separately the situation of these presumed victims,”⁵ but gives no indication of what the Commission actually intends to do with that petition.

It is our expectation that, in line with past practice, the Commission will issue a final, public version of the merits report that notes and takes account of the additional U.S. views set forth in the present letter. We would urge the Commission to also take the opportunity to include language in the merits report that formally closes or archives Petition No. P-1515-06 due to its dormant and apparently abandoned status. Closing or archiving Petition No. P-1515-06 is an appropriate course of action in light of the Commission’s urgent need to clear out its severe backlog of pending matters, including the scores of U.S. matters that are pending a Commission decision or some other action by the Commission. The Commission should not leave Petition No. 1515-06 open indefinitely on its docket.

Please accept renewed assurances of my highest consideration.

Sincerely,



Michael J. Fitzpatrick
Interim Permanent Representative

³ See Letter from Michael J. Fitzpatrick, Interim Permanent Representative, to Emilio Alvarez Icaza, Executive Secretary, in *Melissa L., Jesús L., and Yolanda L. R. v. United States*, Petition No. P-1515-06, and 15 Other Matters, July 22, 2015, at 3–4.

⁴ Letter from Elizabeth Abi-Mershed, Assistant Executive Secretary, to Secretary of State Hillary Rodham Clinton in *Undocumented Workers v. United States*, Petition No. P-1190-06, Dec. 15, 2011.

⁵ Merits Report at ¶ 1 n. 1.