November 15, 2012

RE: Wayne Smith and Hugo Armendariz, et al
Cases 12.561 and 12.562
United States
Compliance with recommendations

Dear Petitioners:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights, in accordance with the provisions of Article 48(1) of the Commission’s Rules of Procedure, in order to request information about compliance with the recommendations set forth in Report No. 81/10, issued in the case cited above on July 12, 2010.

In order to complement the information submitted by the parties this year regarding the referenced case, the Commission would like updated information in order to incorporate it in Chapter III of the Annual Report 2012 on “Status of compliance with the recommendations of the IACHR”.

In this regard, the recommendations issued by the Commission to the State of United States are as follows:

RECOMMENDATIONS ISSUED IN THE CASE REPORT

1. Permit Wayne Smith and Hugo Armendariz to return to the United States at the expense of the State.

2. Reopen Wayne Smith and Hugo Armendariz’s respective immigration proceedings and permit them to present their humanitarian defenses to removal from the United States.

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3. Allow a competent, independent immigration judge to apply a balancing test to Wayne Smith and Hugo Armendariz’s individual cases that duly considers their humanitarian defenses and can provide meaningful relief.

4. Implement laws to ensure that non-citizen residents’ right to family life, as protected under Articles V, VI, and VII of the American Declaration, are duly protected and given due process on a case-by-case basis in U.S. immigration removal proceedings.

Additionally, enclosed are the pertinent parts from Chapter III of the 2011 Annual Report, related to the follow-up on the referenced case.

I request that you present your observations regarding compliance with those recommendations within one month of the date of the transmission of the present communication.

Sincerely,

Elizabeth Abi-Mershed
Assistant Executive Secretary
Annex: Pertinent parts – Chapter III.D of the 2011 Annual Report of the IACHR

Case 12.562, Report No. 81/10, Wayne Smith, Hugo Armendariz et al. (United States)

682. In its Report No. 81/10, approved August 7, 2009, the IACHR concluded that in light of the deportation of Wayne Smith and Hugo Armendariz from the United States, that the State is responsible for violating the rights of Messrs. Wayne Smith and Hugo Armendariz enshrined in Articles V, VI, VII, XVIII, and XXVI of the American Declaration. The IACHR pointed out, moreover, that it is well-recognized under international law that a Member State must provide non-citizen residents an opportunity to present a defense against deportation based on humanitarian and other considerations, such as the rights protected under Articles V, VI, and VII of the American Declaration. The administrative or judicial bodies charged with reviewing deportation orders in each Member State must be permitted to give meaningful consideration to a non-citizen resident's defense, examine it, and balance it against the State's sovereign right to enforce reasonable, objective immigration policy, and provide effective relief from deportation if merited. In Case 12.562 the United States did not follow these International norms.

683. Consequently, the IACHR issued the following recommendations to the State:

1. Permit Wayne Smith and Hugo Armendariz to return to the United States at the expense of the State.
2. Reopen Wayne Smith and Hugo Armendariz's respective immigration proceedings and permit them to present their humanitarian defenses to removal from the United States.
3. Allow a competent, independent immigration judge to apply a balancing test to Wayne Smith and Hugo Armendariz's individual cases that duly considers their humanitarian defenses and can provide meaningful relief.
4. Implement laws to ensure that non-citizen residents' right to family life, as protected under Articles V, VI, and VII of the American Declaration, are duly protected and given due process on a case-by-case basis in U.S. immigration removal proceedings.

684. In 2011, the petitioners sent a communication informing the IACHR that Mr. Wayne Smith had died on July 16, 2011 in Trinidad, the country of this birth, to which he was deported by the U.S. authorities. Mr. Smith's family informed it that he had contracted some type of food poisoning and had been rushed to the hospital dehydrated and in serious condition, dying shortly thereafter. The petitioners indicated that they were in the process of gathering additional information and would shortly send a more complete report on Mr. Smith's death and the current situation of his family. They state that Mr. Smith left behind a wife, three children, and two grandchildren—a family that was forced to live apart due to the unjust application of compulsory deportation regulations. They conclude by expressing their hope that no other family will be forced to live apart because of laws contrary to international human rights law, as the IACHR concluded.

685. On October 25, 2011, the IACHR again requested information from both parties on the status of compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Regulations. The State responded through a communication dated October 28, 2011, in which it stated that it had carefully reviewed the recommendations of the Inter-American Commission in this case. It then
indicated that it “respectfully declined” to implement the recommendations in this case for the reasons noted in its prior communications and during the working meeting of March 26, 2011.”

686. Based on the preceding information, the Inter-American Commission concludes that the State has failed to comply with the recommendation issued. The IACHR particularly regrets the death of Mr. Smith, which occurred far from the place where his family resides due to the circumstances of this case, causing the State to have fatally lost the opportunity to meet its international obligation to him. However, the Inter-American Commission deems that the obligation of “significant redress” to Mr. Smith’s family remains, under the terms of the third recommendation of Report 81/10.

687. The Commission likewise urges the State to take expeditious steps to comply with the recommendation concerning Mr. Armendariz and will continue its supervision of the matters pending compliance.