No. _____ 10-841

In The

Supreme Court of the United States

VAUGHAN ROOFING & SHEET METAL, L.L.C.,

Petitioner,

v.

ANTONIO GARCIA RODRIGUEZ,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Court Of Appeal

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Illegal aliens are prohibited from working in the United States by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. §§ 1101, et seq., especially at § 1324a. Awards of back pay to illegal aliens by the N.L.R.B. have been held to violate IRCA because such awards constitute a substitute for wages that could not have been lawfully earned. *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, 535 U.S. 137, 122 S. Ct. 1275, 152 L. Ed. 2d 271 (2002). In all 50 states a legally employed worker who is injured on the job is entitled to receive workers compensation benefits comprised of medical and wage replacement components. However, the courts of multiple states are split on the availability of such payments to illegal aliens because of IRCA.

The question presented is whether IRCA preempts state law awards of workers compensation benefits to illegal aliens, particularly payments for replacement of wages that could not have been lawfully earned.

LIST OF PARTIES

The name of the Petitioner is:

Vaughan Roofing & Sheet Metal, L.L.C.

The name of the Respondent is:

Antonio Garcia Rodriguez

The names of the other parties are:

Jason Stanton

Louisiana Workers' Compensation Corporation

CORPORATE DISCLOSURE STATEMENT

Pursuant to United States Supreme Court Rule 29.6, Petitioner Vaughan Roofing & Sheet Metal, L.L.C. files this Corporate Disclosure Statement and declares that it has no parent corporation and that no publicly held company owns more than 10% of its stock.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Vaughan Roofing and Sheet Metal, L.L.C., petitions the Court for a Writ of Certiorari to review a final judgment of the Louisiana Supreme Court (entered September 24, 2010) denying a writ of certiorari and/or review to the Louisiana Court of Appeal, Third Circuit.

OPINIONS BELOW

The denial of the writ of certiorari and/or review of the Louisiana Supreme Court can be found at 2010-1307 (La. 9/24/10), 45 So.3d 1076 and a copy is included in the Appendix at 52. The opinion of the Louisiana Court of Appeal, Third Circuit can be found at 2009-1537 (La. App. 3 Cir. 5/5/10), 38 So.3d 511, and a copy is included in the Appendix at 1. Additionally, the Court of Appeal disposed of the parallel cases by simply referencing the primary opinion, but out of an abundance of caution those are included in the Appendix at 38 and 41. Finally, the Judgment and Reasons for Judgment of the State of Louisiana, Office of Workers Compensation are unreported and are included in the Appendix at 44 and 46.

STATEMENT OF JURISDICTION

The judgment of the Louisiana Supreme Court was entered on September 24, 2010. *See* App. at 54.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

8 U.S.C.A. § 1324a: included in the Appendix at 53.

United State Constitution, Art. VI, Clause 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof. . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATEMENT OF THE CASE

Although the question presented in this Petition is not fact driven, some limited background is helpful for context and to frame the issue.

Antonio Garcia Rodriguez (sometimes "Rodriguez") is an illegal alien. He was injured while performing roofing work at the University of Louisiana-Lafayette for his direct employer Jason Stanton d/b/a Integrity Contracting (sometimes "Stanton"). At the time Stanton was a subcontractor to petitioner Vaughan Roofing & Sheet Metal, L.L.C. (sometimes "Vaughan").

Rodriguez is a native of Mexico. He admits he was not legally in this country at the time of his accident. Rodriguez did not work directly for Vaughan. Vaughan did not know of Rodriguez' illegal status and was not involved in any way in his hiring or in any aspect of his employment relationship with Stanton.

After his accident Rodriguez asserted a claim for workers compensation benefits against Stanton. Because of a dispute between Stanton and his workers compensation insurer involving policy cancellation issues, Rodriguez sought workers compensation benefits from Vaughan as a "statutory" employer. Louisiana, like most other states, allows employees to seek workers compensation benefits from a principal contractor, which typically occurs only when a direct employer refuses or is unable to pay workers compensation benefits. Rodriguez sued Vaughan only in that capacity, not as a direct employer.

Throughout these proceedings Vaughan has asserted that federal law prevents an illegal alien from being an employee of Vaughan and therefore from receiving workers compensation benefits. More particularly, the application of IRCA as a bar to recovery was specifically urged to the trial court in Vaughan's Motion for Summary Judgment and in Vaughan's Pretrial Memorandum of Facts and Law (App. at 56). The issue was considered and denied at the trial on the merits by the workers compensation judge (App. at 46). It was raised again at the intermediate appellate level and was addressed by the

Court of Appeal in its published appellate decision, 2009-1537 (La. App. 3rd Cir. 5/5/10), 38 So.3d 511, a copy of which is also included in the Appendix at 1. The issue was further raised at the Louisiana Supreme Court (App. at 61), which was denied by a split vote of the justices, 2010-1307 (La. 9/24/10) 45 So.3d 1076, a copy of which is also included in the Appendix at 52.

REASON FOR GRANTING THE WRIT

The courts of numerous states are split over whether the IRCA prohibition against employing illegal aliens preempts an award of workers compensation benefits to an illegal alien, in whole or in part. Resolution of this recurring issue will provide uniformity and continuity to workers compensation systems nationwide.

The Immigration Reform & Control Act of 1986 (IRCA) 8 U.S.C. §§ 1101, et seq., at 1324a is a "comprehensive scheme prohibiting the employment of illegal aliens in the United States." *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, 535 U.S. 137, 147, 122 S. Ct. 1275, 152 L. Ed. 2d 271 (2002). "IRCA forcefully made combating the employment of illegal aliens central to the policy of immigration law." *Hoffman*, 535 U.S. at 147. "Under the IRCA regime, it is impossible for an undocumented alien to obtain employment in the United States without some party directly contravening explicit Congressional policies." *Hoffman*, 535 U.S. at 148.

Workers Compensation laws in all states provide varying levels and types of medical and wage replacement benefits to legally employed workers who may be injured in the course and scope of their employment. There is typically no requirement that an employee prove negligence or fault in order to recover. The medical benefits component provides full coverage to the employee. The wage replacement component usually provides for a percentage of an employee's preinjury wage level to be paid out for a specified duration or until the employee returns to work or is shown to be employable. Fundamental to the obligation for payment of workers compensation benefits is that an actual employee-employer relationship exists.

The Supremacy Law Clause of the United States Constitution, Art. VI, Clause 2, provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof. . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Thus, to the extent that the law of any state explicitly includes illegal aliens as employees, such laws are necessarily preempted by the application of the supremacy clause to IRCA. Congress specifically forbade the establishment of an employment relationship between an employer and an illegal alien. The same logic applies in Louisiana and other states

where courts have held that workers compensation laws are applicable to illegal aliens because the respective legislatures did not specifically exclude them. In these states there is no preemption of any particular statute, but instead the application of the statutes to include illegal aliens is preempted. The court rulings in these "include by failure to exclude" states are particularly problematic because those courts are presumed to have been aware of expressed immigration policy of the United States as enacted by Congress in IRCA precluding the employment of illegal aliens.

To date, a dozen or more States have considered and decided this issue at various reported appellate levels, with many different results. Because these decisions were all made at the state level, none provide precedent for any other state, resulting in an inconsistent and haphazard approach to analyzing issues of constitutional law and federal statutory interpretation. Such issues are more properly resolved by this court. Failure to address and resolve these inconsistencies and conflicts on a nationwide basis can only lead to future litigation in the remaining states that have not yet been presented with this issue but most certainly will be. Examples of a few of the varying state results are set forth in the following paragraphs, although a complete list is beyond the scope and page limitations of this Petition.

The Supreme Court of Virginia, in *Granados v. Windson Development Corp.*, 509 S.E.2d 290 (Va. Supr. Ct. 1999), held that Granados, as an illegal

alien, was not eligible to receive workers compensation benefits as an employee because any contract of hire he may have had was void and unenforceable due to the IRCA prohibition against an illegal alien being employed lawfully in the United States. *Granados*, 509 S.E.2d at 293. While the Virginia legislature subsequently amended its statutory scheme to explicitly include illegal aliens, that amendment has been held not to be retroactive. Further, there appears to be no subsequent jurisprudence challenging the current version of the law on IRCA preemption grounds and, contrarily, subsequent jurisprudence affirms the ruling. *Rios v. Ryan, Inc.*, 542 S.E.2d 790 (Va. Ct. App. 2001).

The District of Columbia Court of Appeals, the court of last resort established by Congress for the District, also affirmed the holding of *Granados*. *Marboah v. Ackerman*, 877 A.2d 1052 (D.C. Ct. App. 2005). In a legal malpractice claim, the court affirmed the inability of an illegal worker to recover damages from his lawyer for failure to timely file his Virginia workers compensation claim. The Court noted that the *Granados* holding foreclosed his worker's compensation claim because he was an illegal alien.

Similarly, the Supreme Court of Nevada, in *Tarango v. State Industrial Insurance System*, 25 P.3d 175 (Nev. Supr. Ct. 2001) concluded, that IRCA preempts the Nevada Industrial Insurance Act (Nevada's workers compensation law). More particularly, the Court determined that IRCA's prohibition against employing illegal aliens precluded an award

of vocational rehabilitation services (a form of workers compensation benefits) to an illegal alien.

Still further, the Michigan Court of Appeals, in *Sanchez v. Eagle Alloy, Inc.*, 658 N.W.2d 510 (Mich. Ct. App. 2003), determined that under IRCA it was a crime for an illegal alien to be employed in the United States. As such, an illegal alien was precluded from receiving workers compensation benefits. Because the employer "could not legally retain (Sanchez) or find (him) other work, plaintiffs became unable to perform work because of the commission of a crime." The Court found that "this result is in accord with the policy of the federal government as set forth in *Hoffman* . . . ." In reaching this result, the Michigan court denied the illegal alien further wage benefits under the Michigan workers compensation scheme.

On the other hand, the Supreme Court of Pennsylvania, in *Reinforced Earth Company v. Workers' Compensation Appeal Board*, 810 A.2d 99 (Pa. Supr. Ct. 2002), rejected the employer's argument that IRCA preempted Pennsylvania law and precluded an award of benefits to an illegal alien. Notably though, in a lengthy dissent joined by another court member, Justice Newman addressed his view of the application of *Hoffman* and IRCA to Pennsylvania workers compensation claims:

> The preferable course is to announce, as a matter of public policy consistent with federal immigration law that unauthorized aliens are not eligible for workers' compensation benefits. One who obtains employment in a

> manner contrary to federal law should not benefit from that illegal employment relationship.

Similarly, the Supreme Court of Minnesota held that IRCA does not preempt the authority of states to award workers compensation indemnity benefits to illegal aliens. *Correa v. Waymouth Farms*, 664 N.W.2d 324 (Minn. Supr. Ct. 2003). However, Justice Gilbert strenuously dissented, noting:

> "Moreover, the policy considerations articulated in *Hoffman* (citation omitted) are applicable here. As the United States Supreme Court recognized, Correa cannot conduct a diligent job search "without triggering new IRCA violations, either by tendering false documents to employers or by finding employers willing to ignore IRCA and hire illegal workers." (citation omitted). In addition, awarding Correa continuing temporary total disability benefits predicated on a diligent job search would reward him for remaining in the United States illegally and encourage him to violate the IRCA by finding further employment. This result "trivializes" the immigrations laws. (citation omitted). In support of its holding, the majority adopts the rationale of the dissent in *Hoffman*. However, the dissent did not carry the day in *Hoffman*. We should not disregard the law of the land as articulated by the *Hoffman* majority and elevate the dissent over the majority opinion to reach a desired result in this case."

The Georgia Supreme Court has also held that IRCA does not preempt its state workers compensation laws, thus finding an award to illegal aliens is permissible. *Continental PET Technologies, Inc. v. Palacias*, 604 S.E.2d 627 (Ga. Supr. Ct. 2004). Notably, the employer was denied review by this court. *Continental PET Technologies, Inc. v. Palacias,* 546 U.S. 825, 126 S. Ct. 362, 163 L. Ed. 2d 69 (2005). But, examination of its Petition reveals that the question presented was directed solely to Georgia law as was the argument. In the instant Petition, the question presented applies to all 50 states instead of the intrastate disputes of the courts of a single one.

Even if the supremacy clause does not require state workers compensation systems to yield in their entirety to IRCA, those statutes or those interpretations of such acts addressing wage replacement awards certainly must. In *Hoffman*, this Court established a balancing approach which excluded an award of back pay but left other remedies intact. This same approach has been adopted by various state and federal courts interpreting claims by illegal aliens for lost wages in state law tort claims and other litigation seeking wage based recoveries. Utilizing such an approach in workers compensation claims would prevent illegal aliens from receiving wage replacement benefits, but would not preclude them from other workers compensation remedies, notably medical benefits. While not a perfect solution, it is one that

could accommodate both the interests of injured workers and federal immigration policy.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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