

Recent Criminal and Civil Case Summaries Regarding Hiring and Continuing to Employ Unauthorized Workers

I. Harboring Illegal Aliens

A. Criminal Case: U.S. v. Kim, 193 F.3d 567 (2d Cir. 1999)

Defendant employer, Myung Ho Kim, knowingly employed unauthorized workers and willfully misrepresented facts on Forms I-9. Kim was convicted in the United States District Court for the Southern District of New York of harboring an illegal alien, and he appealed.

The Court of Appeals affirmed the conviction and held that:

- (1) 8 USC § 1324 regarding harboring an illegal alien could be applied to an employer, because where there is knowledge or reckless disregard of the alien's unlawful status, the defendant's conduct tended to substantially facilitate the alien's remaining in the United States illegally.
- (2) The employer's conduct constituted "harboring" within meaning of the statute, because conduct of an employer in *knowingly or recklessly disregarding employee's status as an alien who was not authorized to work or remain in the United States, and taking steps designed to help her remain in his employ, undetected by the INS, constituted "harboring" within meaning of the statute proscribing harboring an illegal alien.*

II. Conspiracy

A. Criminal Case: Conspiracy to Smuggle Aliens - The Tyson Foods Indictment and Trial

On December 11, 2001, a federal grand jury in the United States District Court for the Eastern District of Tennessee returned a 36-count indictment against executives and managers of Tyson Foods, Inc., the world's largest producer, processor, and marketer of poultry-based food products, for, among other alleged criminal acts, conspiracy to violate immigration laws and conspiracy to smuggle undocumented aliens to Tyson processing facilities in the U.S. for profit. The 36-count indictment resulted from a lengthy INS undercover investigation, spanning two and a half years and implicating 15 Tyson plants in nine states.

According to the indictment, Tyson cultivated a corporate culture in which the hiring of unauthorized workers was condoned in order to meet production goals and cut costs. The indictment described a scheme by which the defendants requested delivery of undocumented aliens to work at Tyson plants in the U.S., and aided and abetted them in obtaining false documents so they could work "under the false pretense of being legally

employable." The indictment also charged that Tyson participated in the Basic Pilot employment eligibility verification program to "foster the appearance of compliance" with immigration laws while deliberately not complying behind the scenes.

However, before the case went to jury, Judge R. Allan Edgar dismissed 24 of the 36 counts, including the smuggling charges for lack of evidence. The remaining 12 charges alleged conspiracy to violate immigration laws. The dismissed counts included "causing the use of illegal documents" (using false social security numbers).

On March 26, 2003, Tyson was acquitted of the remaining 12 charges, because the Government could not prove that the hiring of unauthorized workers was encouraged by the corporation and not just the acts of several managers working outside of company policies.

B. Criminal Case with Two Charges: 1) Conspiracy to Hire or to Continue to Employ Illegal Aliens and 2) Continuing Employment of Illegal Aliens - U.S. v. Fragale, 1999 WL 816254 (E.D.P.A. 1999).

Defendant, the owner/operator of a mushroom growing business and a mushroom packing plant, was convicted after a trial by jury of: (1) conspiracy to hire or continue to employ aliens unauthorized for employment in the United States; and (2) knowingly continuing to employ aliens unauthorized for employment in the United States. The defendant moved for judgment of acquittal, claiming that the government has failed to prove beyond a reasonable doubt all of the elements of the above-mentioned crimes.

The District Court denied the motion and held that:

- (1) Count 1: Conspiracy: An employee testified that the defendant told him, and other employees, not to report to work at the usual time. Rather, they were to contact the supervisor before going to work to ensure that INS agents on the premises did not discover that the employees were illegal aliens. *A reasonable jury could have concluded that this was sufficient circumstantial evidence to support a finding that the defendant and the supervisor had an agreement to commit the crime of continuing to employ unauthorized aliens.*
- (2) The foreman testified at trial that he told the defendant that many people applying for jobs were unauthorized for employment in the United States. *The defendant responded that the foreman should nonetheless hire these unauthorized aliens even if he knew that they were unauthorized. Again, the Court found that a reasonable jury could have concluded that this was an agreement to commit the crime of hiring unauthorized aliens.*

(3) Count 2 - Continuing employment of unauthorized aliens:

- (a) On this count, the Court held that for many of the same reasons that a reasonable jury could have found the evidence sufficient to support a conspiracy charge, a jury could have reasonably found that the evidence supported a finding that the defendant continued to employ aliens while knowing that the aliens were unauthorized for employment in the United States.

C. Criminal Case – Conspiracy: [“Case Study - Company X”]

Government alleged that Company officials conspired to unlawfully hire individuals it knew were unauthorized to work in the United States. The Company ultimately waived indictment and pled guilty to one count in the criminal information, to a violation of Title 8, USC Sections 1324(a)(1)(A) and F(1) “knowingly hiring and continuing to employ individuals unauthorized to work in the United States.”

III. Racketeering Influenced and Corrupt Organizations (RICO)

18 U.S.C. § 1961 defines all federal racketeering activities and specifically includes any act which is indictable under Immigration and Nationality Act section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose), if the act indictable under such section of the INA was committed for the purpose of financial gain.

A. Civil Case – Commercial Cleaning Services, LLC v. Colin Service Systems, Inc., 271 F.3d 374 (2nd Cir. 2001).

Commercial Cleaning Services, LLC brought a class-action suit for treble damages under the RICO Act against competitor, Colin Service Systems, Inc., alleging that Colin hired undocumented aliens in violation of the Immigration and Nationality Act, thereby enabling itself to underbid competing firms. The United States District Court for the District of Connecticut dismissed the suit for failure to state a claim. The Second Circuit vacated the District Court’s decision and held that private parties have standing to sue under the RICO Act to protect themselves against unlawful employers and to recover treble damages and injunctive relief against future violations. The Court based its holding on the following rationale:

- (1) *A company that loses business because a competitor hired illegal alien labor, in violation of 8 USC 1324(a), suffers a direct injury, and can sue to recover under the RICO Act.*

- (2) The plaintiff must show that violation of Section 1324(a) was the proximate legal cause of the defendant's ability to underbid the plaintiffs and take business from them.
- (3) Government prosecution of employers of illegal aliens does not relieve the party that employed illegal workers from lawsuits by their competitors who lost profits.

B. Civil Case – Mendoza v. Zirkle, 301 F.3d 1163 (9th Cir. 2002).

Here, the 9th Circuit gave documented employees the standing to sue their own employers under the RICO Act for systematically depressing wages through the hiring of undocumented workers.

In Mendoza, legally documented agricultural laborers sued fruit growers under RICO, and an employment agency for conspiracy under state law, alleging that the growers leveraged hiring of undocumented immigrants in order to depress wages of legally documented employees. The United States District Court for the Eastern District of Washington dismissed the action for failure to state a claim, and the laborers appealed. The Court of Appeals held that:

- (1) *Complaint alleging that fruit growers had knowledge of illegal harboring and/or smuggling of undocumented workers sufficiently alleged predicate act of knowingly hiring undocumented workers, as required to state a RICO claim.*
- (2) The documented laborers had statutory standing to sue under RICO, because they were direct victims of the fruit growers' alleged scheme to leverage hiring of undocumented immigrants in order to depress wages.