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Interview: Annette Martínez

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Annette Marie Martínez-Orabona is a staff attorney at the Center for Justice and International Law (CEJIL), an organization specializing in litigation and advocacy before the Inter-American Human Rights System. Ms. Martínez is in charge of CEJIL’s U.S., Venezuela, and Caribbean cases, and various advocacy initiatives before the political bodies of the Organization of American States (OAS). Her litigation experience within the Inter-American Human Rights System includes cases dealing with rights of persons deprived of liberty, immigrant rights, gender-based violence, forced disappearances, ethnic discrimination, and the right to nationality. Ms. Martínez is the leading attorney in The Case of Wayne Smith and Hugo Armendariz v. U.S., the leading case in the Inter-American System on the protection of the rights of children and the family in deportation proceedings. Ms. Martínez holds a Masters Degree in International Public Law and Human Security from the Fletcher School of Law and Diplomacy, Boston, MA, and a Juris Doctorate from the Inter-American University, San Juan, PR.

On July 20, 2010, the Inter-American Commission on Human Rights (Commission) published its report on the merits for The Case of Wayne Smith, Hugo Armendariz et al., v. United States, in which the Commission found the mandatory deportation proceedings enacted by the United States violated fundamental human rights.

In March, the Center for Justice and International Law CEJIL, a Washington-based organization specializing in the protection and promotion of human rights in the Americas, met with members of the State Department, Immigration and Customs Enforcement, and the Department of Homeland Security to discuss the deportations of Wayne Smith (Trinidad and Tobago) and Hugo Armendariz (Mexico). Smith and Armendariz were lawful permanent residents of the United States until they were convicted on aggravated felony drug charges and deported under a mandatory deportation law passed in 1996. The men were denied the opportunity to present evidence at the administrative and judicial level about why their deportations would harm the interests of their families and especially their young children — all U.S. citizens.

Editor’s Note: CEJIL has informed HRB that Wayne Smith passed away in mid-July without the U.S. implementing the IACHR’s recommendations. This piece contains corrections that were omitted in the printed version of Volume 18 Issue 3.

Human Rights Brief: Thanks so much for joining us today. Can you tell us why this case is so important, especially in an immigration context?

Annette Martínez: This case is very important because it has the potential to have a large impact on U.S. immigration proceedings. Before 1996, when U.S. immigration laws were amended, judges were able to consider humanitarian defenses in almost all cases. Since the amendments were approved,
HRB: People consider human rights to be of the individual, specifically. This case seems to additionally revolve around the families of Smith and Armendariz. Can you explain a little bit about how human rights are not just an individual-specific problem, but how they have a wide impact?

A.M.: Violations of human rights have a wider impact on people beyond the individual whose rights were originally violated. The family and friends of those individuals also face the burden attached to these violations. They suffer along with the individuals economically and emotionally as they try to find justice and move on with their lives.

That is why this case is so important, in my personal and professional opinion. The decision of the Inter-American Commission in The Case of Wayne Smith and Armendariz states that in deportation proceedings, judges should take into consideration the impact of the deportation on the rights of the family, and the rights of the children.

Basically, the decision says that a judge should be able to make an individual evaluation by applying a balancing test. This is the same balancing test used prior to 1996. If the judge is convinced that the benefits of deportation outweigh the adverse impact that the decision will have on the rights of children and the families, then the judge should decide in favor of deportation. This decision allows for greater judicial discretion in similar deportation proceedings.

In The Case of Wayne Smith and Armendariz, the Commission followed the international standard of taking into account the best interest of children of individuals facing deportation. At the time of his deportation, Smith's daughter was only one year old. Now she's eleven. She still needs the companionship of her father, as any other child, who should have a right to be with her parents. I think that is one of the most important aspects of this case.

HRB: What are the ramifications of this case if the United States takes into account some of these recommendations, and if they don't?

A.M.: Within the U.S., this case would have a great impact in strengthening the immigration system. It emphasizes greater judicial discretion in deportation cases by allowing a judge to take into consideration the impact on family members and children. In replacing the current bright line rule for aggravated felonies, it will allow for a fairer system and rejects a harsh and sometimes seemingly arbitrary rule. Implementing the recommendations does not call for a complete overhaul of current immigration laws; instead it asks to broaden the discretion allowed to judges in deportation cases in order to ensure the fair application of complex immigration laws.

There are also geo-political ramifications to this case. The U.S. has always been a point of reference in discussions about human rights and any decision it takes in this regard will likely have an effect on its legitimacy and standing in the region. Therefore, the U.S. government should take this case very seriously, especially considering the importance of its international obligations.
Court, which held that the 1996 amendments should not be applied retroactively.

Second, in both cases, it is important to remember that the decision on deportation had a specific impact on other human beings: the families, spouses, and children of both Smith and Armendariz who had nothing to do with the past criminal acts of Smith and Armendariz. The families, spouses, and children of both Smith and Armendariz are U.S. citizens, and therefore the U.S. government has a special obligation to protect their rights. In not considering the consequences the deportation will have on their lives and wellbeing the U.S. has violated their rights. I think that’s the most compelling reason for the implementation of the Commission’s recommendations. Smith and Armendariz are only two individuals, but many others currently face similar situations in the U.S.

**HRB:** What would be a happy ending for Smith and Armendariz?

**A.M.:** A happy ending would include allowing both Smith and Armendariz to come back into the U.S.; providing them the opportunity to be reunited with their children and spouses; and providing them with due process in accordance with U.S. standards. Their immigration cases need to be re-opened, and there should be a judge — an independent judge — that is able to apply the balancing test that the Commission recommended.

**HRB:** You’ve been very generous with your time. Is there anything you wanted to add about this case, the work that CEJIL completes, or the work that you’ve done in similar negotiations and meetings?

**A.M.:** Maybe I should say one more thing. Any decision by the Inter-American Commission pertaining to the U.S., regardless of the response of the U.S. government, will have a substantial impact on how other states in the western hemisphere view the U.S. and its respect for human rights. The U.S. government needs to keep this in mind as it decides if and how to implement decisions from the Inter-American system.

Michael Becker, a J.D. candidate at American University Washington College of Law and a Staff Writer for the Human Rights Brief, conducted this interview for the Human Rights Brief.