

Human Rights Brief

Volume 18 | Issue 3

Article 6

2011

Interview: Annette Martínez

Michael Becker

American University Washington College of Law

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Becker, Michael . "Interview: Annette Martínez." Human Rights Brief 18, no. 3 (2011): 34-36.

This Interview is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

Interview: Annette Martínez

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,



Annette Martínez.

immigrants living in the United States with legal permanent resident status who have been convicted of an “aggravated felony” can be deported without any evaluation of their individual circumstances. The use of the term “aggravated felony” is very misleading; it includes many non-serious offenses that are considered misdemeanors under state law, such as shoplifting, and offenses where the person does not even have to spend one day in jail. Immigrants who fall into this group do not have the opportunity to explain what has happened since they committed the crime, present their personal circumstances, or their family circumstances. For example, in a deportation case, a judge is not allowed to consider the impact of the deportation on an ill spouse that needs both emotional and financial support. None of these factors are taken into account in the deportation decision.

In *The Case of Wayne Smith and Armendariz*, both individuals had turned their lives around by the time they were deported. They were contributing to their communities. They were working. Wayne Smith was a business owner and volunteered his time helping older persons recover from past drug convictions. Additionally, Smith's wife was diagnosed with cancer, and therefore he provided the sole financial income for their household. Smith's family has struggled a lot because of his deportation. None of those factors were taken into account before making the deportation decision in his case. Nothing was gained from their deportations; instead it caused harm and created an economic and emotional burden on their families and children.

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.

HRB: *And this is where CEJIL comes in. You recently had a conversation with members of the U.S. government. Can you explain to me what that meeting was like, where it took place, and some of the issues you wanted to bring to the table?*

A.M.: During the past period of sessions, in March 2011, the Commission granted CEJIL a private meeting with the U.S. government to discuss the implementation of the recommendations in the case of Smith and Armendariz. We were positively surprised that there were U.S. government representatives from a wide variety of agencies at the table. The meeting was very fruitful in the sense that we were able to talk to all of the agencies that have a stake in this issue, collectively in the same meeting. After the meeting, the Commissioners were very open to hearing the government's perspective and our proposed solutions.

Although we think that all of the recommendations of the Commission should be implemented right away, we understand that the dialogue begins by identifying which recommendations can be implemented immediately and discussing the others that will be implemented over a longer period of time.

We also discussed a proposal for implementation that does not necessarily require making major legal reforms to the statutes written by Congress. We recognize the reasons why immigration reform will take time. Therefore, we were trying to find other ways of moving forward, which include greater judicial discretion. We also explained that there are administrative ways in which Smith and Armendariz can be reunited with their families. And we are now in the process of discussing with the Department of Homeland Security and other officials present at the meeting the motions that we are going to submit to them. One possibility is to re-open the cases of Smith and Armendariz.

HRB: *What do you think are the prospects for implementation of the Commission's recommendations, and how feasible do you think your additional recommendations are?*

A.M.: Implementation will depend on the willingness of the U.S. government, as with any recommendation from the Commission or any decision from the Inter-American Court of Human Rights. However, we really think that this case presents compelling reasons for the U.S. to implement the Commission's recommendations. After all, the recommendations set out a position supported by international law. Additionally, the rights of families and children are at the core of the U.S.'s human rights obligations. A massive legal reform is not necessary, and the U.S. government knows that. What is needed is a way of guaranteeing the strict observance of human rights standards in all immigration proceedings, providing a fairer decision on each case and preventing the unjust separation of families.

HRB: *You mentioned that there are compelling reasons for the U.S. government to implement the Commission's recommendations generally. What are the most compelling reasons for these recommendations to be implemented with regard to Smith and Armendariz specifically?*

A.M.: First, in this case the U.S. immigration courts erroneously applied the post-1996 immigration laws retroactively to Armendariz and Smith, thereby requiring their deportation based on convictions that happened before 1996. After the decisions in their cases, *INS v. St. Cyr* came before the U.S. Supreme

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.