Post-Deportation Human Rights Project Supports Landmark Case

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Newton, MA--The Inter-American Commission on Human Rights, an autonomous organ of the Organization of American States, has found that U.S. deportation policy violates fundamental human rights because it fails to consider evidence concerning the adverse impact of the destruction of families, the best interest of the children of deportees, and other humanitarian concerns. The Post-Deportation Human Rights Project of Boston College, which had filed an amicus brief in the case, hails it as a major, ground-breaking legal decision.

Professor Daniel Kanstroom, the Project's co-founder and co-director, notes that U.S. courts lag far behind other systems in recognizing the often devastating effects that deportations can have on families and communities. "It is crucial that government agents and courts begin to weigh the harms caused by such actions," he said, "especially when they concern long-term legal residents with families who are often deported for very minor criminal offenses."

Mr. Wayne Smith and Mr. Hugo Armendariz, lawful permanent residents of the United States for 25 and 35 years respectively, were deported from the United States for non-violent criminal offenses that had occurred many years prior. They were deported without any opportunity to present evidence of their rehabilitation, their family situation, and the equities in their favor. The refusal to consider this evidence led to substantive violations of the rights of their U.S. citizen family members to establish a family. The United States government also violated the special protections that should be accorded to children who are affected by deportation proceedings.

In this decision, the IACHR determined that when a decision-making process involves the potential separation of a family, there must be a hearing in which the judge accepts evidence and applies a "balancing test" whereby the destruction of family life may be justified only where there is a more compelling need to protect the public order. The Commission found that "a balancing test is the only mechanism to reach a fair decision between the competing individual human rights and the needs asserted by the State." According to the decision, the U.S. should allow Wayne Smith and Hugo Armendariz to return to the U.S. to be reunited with their families, and they should be given an opportunity to have their day in court – something that they were denied under the current U.S. deportation policy.

"This decision makes clear that there is an urgent need for immigration reform," said Robert Pauw, lead attorney in the case. "New legislation should prioritize the best interests of U.S. citizen children and the unification of families. Deportation should be reserved for those individuals who present a real danger to our society."