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**Facts About the Hoffman Case and International Law
Inter-American Commission on Human Rights Hearing
March 3, 2005**

What was the Hoffman case about? In March 2002, the United States Supreme Court issued a controversial decision in a case called *Hoffman Plastic Compounds, Inc. v. NLRB*. The Court found that an undocumented immigrant worker illegally fired from his job for union organizing was not entitled to compensation for lost wages. The decision left undocumented workers illegally fired for exercising rights of association without a real remedy under our labor law system – no right to return to work, no compensation for lost work, and no penalty against employers who fire them when they try to form unions.

What has been the effect of the Hoffman decision in the US? The Hoffman decision provoked an onslaught of employers defending workplace abuses by arguing that undocumented employees have no labor rights whatsoever. The decision has been cited in over twenty-five state and federal cases where employers have argued that undocumented workers have no rights to wages owed for work performed, remedies for injuries suffered at work, or compensation for discrimination. While courts have generally not accepted the most extreme arguments, many employers have used Hoffman to intimidate workers.

What is the Inter-American Court of Human Rights? The Inter-American Court is the principal international court for North and South America, and an autonomous judicial organ of the Organization of American States (OAS). Its primary mission is to interpret and apply the American Convention on Human Rights. Most of the countries in the Americas, including the US, have either signed or ratified the American Convention or are bound by it because of their membership in the OAS. The Court rules on the compatibility of domestic law with international human rights treaties, including the Convention and the American Declaration of the Rights and Duties of Man. The Court's seven justices are elected by the OAS General Assembly.

What does the Inter-American Court say about Hoffman? In May of 2002, the government of Mexico requested an advisory opinion from the Court. The request from Mexico asked if the practice of denying certain labor remedies to unauthorized workers violates international human rights laws. Five countries in the region, including Honduras, El Salvador, Nicaragua, Canada and Costa Rica, filed briefs in the case and seven additional countries appeared at oral argument. In addition, over fifty civil rights, immigrants' rights and workers' rights groups in the US filed an amicus curiae brief detailing the effects of Hoffman in the US. The United States did not appear.

The Court's decision was issued in September of 2003. It broadly holds that undocumented workers are entitled to the same labor rights, including wages owed, protection from discrimination, on-the-job health and safety protections, and back pay, as are citizens and those working lawfully in a country. The Court said that, "the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment. On assuming an employment relationship, the migrant acquires rights as a worker, which must be recognized and guaranteed, irrespective of his regular or irregular status in the State of employment. These rights are a consequence of the employment relationship." The decision can be accessed at: http://www.corteidh.or.cr/serieapdf_ing/seriea_18_ing.pdf.

The Court specifically mentioned several workplace rights that must be guaranteed to international migrant workers, regardless of their immigration status. "In the case of migrant workers, there are certain rights that assume a fundamental importance and yet are frequently violated, such as: the prohibition of obligatory or forced labor; the prohibition and abolition of child labor; special care for women workers, and the rights corresponding to: freedom of association and to organize and join a trade union, collective negotiation, fair wages for work performed, social security, judicial and administrative guarantees, a working day of reasonable length with adequate working conditions (safety and health), rest and compensation."

What has been the international response to the Court's decision? The Government of Mexico has issued press releases applauding the decision. The UN Human Rights Commission has adopted a resolution acknowledging the decision. The UN's International Labor Organization also found that Hoffman violates workers' fundamental human rights and called for Congressional action to bring US law into conformity with international human rights law.

What is the Inter-American Commission on Human Rights? The Commission is an organ of the OAS, which meets in session for eight weeks per year in Washington, DC. The Commission has the power to perform site visits and to issue both country reports and annual reports on human rights issues in the Americas. It can educate members of the US Congress and inform itself about specific human rights issues, such as the effects of Hoffman in the US.

Who filed the request to the Commission and what is the hearing about? In December of 2004, students from the American University International Human Rights Law Clinic filed, on behalf of labor, civil rights and immigrants' rights organizations in the United States, a request for a "general interest" hearing before the Inter-American Commission on Human Rights. The hearing will be held on March 3, 2005. It will last thirty minutes, and will be held in conjunction with a similar request by the Coalition of Immokalee Workers from Florida.

What can the Commission do? The petition will ask the Commission to visit sites where Hoffman issues have been most prominent in the US. These include: Florida, home of the Coalition of Immokalee workers, and where a state court has denied the family of an undocumented worker killed on the job the right to lost wages; Utah or North Carolina, both locations where employers have used immigration status as a way of quelling union organizing efforts; Pennsylvania, where undocumented immigrant workers have been denied access to certain workers' compensation benefits after Hoffman; New York, where courts have denied or limited lost wages to immigrant workers on several occasions; or Colorado, where many of the stories included in a book of worker stories provided to the Commission originate.

How has the US Congress responded to Hoffman? In the US, two proposals in the 108th Congress addressed the issue of Hoffman and reversed the Supreme Court ruling. These were S. 2381/HR 4264, the Safe, Orderly, Legal Visas and Enforcement (SOLVE) Act, sponsored by Senators Kennedy, Clinton and Feingold, and by Representative Gutierrez and over forty co-sponsors in the House of Representatives, and HR 3809, the Fairness and Individual Rights Necessary to Ensure a Stronger Society (FAIRNESS) Act by Rep. Lewis and 101 co-sponsors in the House of Representatives.