

## **Court Denies Back Pay to Fired Illegal Immigrants**

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### **Body**

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The Supreme **Court** ruled yesterday that the federal government may not compel employers to award **back pay** to undocumented **immigrants** who were illegally **fired** for trying to join a labor union.

By a vote of 5 to 4, the **court** held that the National Labor Relations Board (NLRB) had thwarted a national immigration law's goal of preventing the hiring of **illegal immigrants** when it told Hoffman Plastic Compounds Inc. to **pay** almost \$ 67,000 to Jose Castro. Castro was an undocumented worker from Mexico who went to work for the company in 1988, then was **fired** in 1989 for joining an organizing drive by the United Rubber, Cork, Linoleum & Plastic Workers of America.

"[A]llowing the board to award **backpay** to **illegal aliens** would unduly trench upon explicit statutory prohibitions critical to federal immigration policy," Chief Justice William H. Rehnquist wrote in the opinion for the **court**, which was joined by Justices Sandra Day O'Connor, Anthony M. Kennedy, Antonin Scalia and Clarence Thomas. "It would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations."

The NLRB, Rehnquist wrote, "asks that we . . . allow it to award **backpay** to an **illegal alien** for years of work not performed, for wages that could not lawfully have been earned and for a job obtained in the first instance by a criminal fraud."

However, four dissenting justices said that the ruling would actually create more incentives for companies to hire **illegal immigrant** workers, because they can now violate their right to join a union, at least once, without fear of legal liability.

"[T]he **Court's** rule offers employers immunity in borderline cases, thereby encouraging them to take risks, i.e., to hire with a wink and a nod those potentially unlawful aliens whose unlawful employment (given the **Court's** views) ultimately will lower the costs of labor law violations," Justice Stephen G. Breyer wrote in a dissenting opinion joined by Justices John Paul Stevens, David H. Souter and Ruth Bader Ginsburg.

The National Labor Relations Board found in 1992 that Hoffman had violated federal labor law by **firing** Castro and three other employees for trying to join the union. At a hearing in 1993, Castro admitted he had entered the country illegally and got his job with fraudulently obtained documents. An administrative judge found him ineligible for **back pay**. But in 1998, the NLRB reversed that ruling and ordered Hoffman to **pay** Castro.

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Hoffman appealed to the U.S. **Court** of Appeals for the District of Columbia Circuit, which concluded last year that the NLRB's order should be upheld.

Sen. Edward M. Kennedy (D.-Mass.) called yesterday's decision "a dramatic setback to America's workers," and said he would seek legislation to undo it.

The case is Hoffman Plastic Compounds v. NLRB, No. 00-1595.

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