Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HOFFMAN PLASTIC COMPOUNDS, INC. *v.* NATIONAL LABOR RELATIONS BOARD

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00–1595. Argued January 15, 2002—Decided March 27, 2002

Petitioner hired Jose Castro on the basis of documents appearing to verify his authorization to work in the United States, but laid him and others off after they supported a union-organizing campaign at petitioner's plant. Respondent National Labor Relations Board (Board) found that the layoffs violated the National Labor Relations Act (NLRA) and ordered backpay and other relief. At a compliance hearing before an Administrative Law Judge (ALJ) to determine the amount of backpay, Castro testified, *inter alia*, that he was born in Mexico, that he had never been legally admitted to, or authorized to work in, this country, and that he gained employment with petitioner only after tendering a birth certificate belonging to a friend born in Texas. Based on this testimony, the ALJ found that the Board was precluded from awarding Castro relief by *Sure-Tan, Inc.* v. *NLRB,* 467 U. S. 883, and by the Immigration Reform and Control Act of 1986 (IRCA), which makes it unlawful for employers knowingly to hire undocumented workers or for employees to use fraudulent documents to establish employment eligibility. The Board reversed with respect to backpay, citing its precedent holding that the most effective way to further the immigration policies embodied in IRCA is to provide the NLRA's protections and remedies to undocumented workers in the same manner as to other employees. The Court of Appeals denied review and enforced the Board's order.

Held: Federal immigration policy, as expressed by Congress in IRCA, foreclosed the Board from awarding backpay to an undocumented alien who has never been legally authorized to work in the United States. Pp. 4–14.

(a) This Court has consistently set aside the Board's backpay

awards to employees found guilty of serious illegal conduct in connection with their employment. See, *e.g., Southern S. S. Co.* v. *NLRB,* 316 U. S. 31, 40–47. Since *Southern S. S. Co.,* the Court has never deferred to the Board's remedial preferences where such preferences potentially trench upon federal statutes and policies unrelated to the NLRA. See, *e.g., Sure-Tan, supra,* in which the Court set aside an award of reinstatement and backpay to undocumented alien workers who were not authorized to reenter this country following their voluntary departure when their employers unlawfully reported them to the Immigration and Naturalization Service in retaliation for union activity. Among other things, the Court there found that the Board's authority with respect to the selection of remedies was limited by federal immigration policy as expressed in the Immigration and Nationality Act (INA), and held that, in order to avoid a potential conflict with the INA with respect to backpay, the employees must be deemed "unavailable" for work (and the accrual of backpay therefore tolled) during any period when they were not "lawfully entitled to be present and employed in the United States." 467 U. S., at 903. This case is controlled by the *Southern Steamship* line of cases. *ABF Freight System, Inc.* v. *NLRB*, 510 U. S. 317, 325, distinguished. Pp. 4–8.

(b) As a matter of plain language, *Sure-Tan*'s express limitation of backpay to documented alien workers forecloses the backpay award to Castro, who was never lawfully entitled to be present or employed in the United States. But the Court need not resolve whether, read in context, *Sure-Tan*'s limitation applies only to aliens who left the United States and thus cannot claim backpay without lawful reentry. The question presented here is better analyzed through a wider lens, focusing on a legal landscape now significantly changed. The *Southern S. S. Co.* line of cases established that where the Board's chosen remedy trenches upon a federal statute or policy outside the Board's competence to administer, the Board's remedy may have to yield. Whether or not this was the situation at the time of *Sure-Tan,* it is precisely the situation today. Two years after *Sure-Tan,* Congress enacted IRCA, a comprehensive scheme that made combating the employment of illegal aliens in the United States central to the policy of immigration law. *INS* v. *National Center for Immigrants' Rights, Inc.,* 502 U. S. 183, 194, and n. 8. Among other things, IRCA established an extensive "employment verification system," 8 U. S. C. §1324a(a)(1), designed to deny employment to aliens who (a) are not lawfully present in the United States, or (b) are not lawfully authorized to work in the United States, §1324a(h)(3). It also makes it a crime for an unauthorized alien to subvert the employer verification system by tendering fraudulent documents, §1324c(a), an offense that

Castro committed when obtaining employment with petitioner. Thus, allowing the Board to award backpay to illegal aliens would unduly trench upon explicit statutory prohibitions critical to federal immigration policy. It would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations. However broad the Board's discretion to fashion remedies when dealing only with the NLRA, it is not so unbounded as to authorize this sort of an award. Lack of authority to award backpay does not mean that the employer gets off scot free. The Board here has already imposed other significant sanctions against petitioner, including orders that it cease and desist its NLRA violations and conspicuously post a notice detailing employees' rights and its prior unfair practices, which are sufficient to effectuate national labor policy regardless of whether backpay accompanies them, *Sure-Tan, supra,* at 904, and n. 13. Pp. 8–14.

237 F. 3d 639, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined.