

Harvard Immigration and Refugee Clinic
of
Greater Boston Legal Services, Inc.
and
Harvard Law School

Deborah Anker
Director/Lecturer on Law
Nancy Kelly
Clinical Supervisor/Attorney
Jane Rocamora
Clinical Supervisor/Attorney

John Willshire Carrera
Clinical Supervisor/Attorney
Jeroboum Tisme
Clinical Assistant

MEMORANDUM

To: Interested Parties

From: Deborah Anker (please reply to Matt Muller at mmuller@law.harvard.edu, who will add your information to a contact list and forward the message to me)

Re: Petition for Certiorari in *Thomas v. Gonzales*, 409 F.3d 1177 (9th Cir. 2005) (en banc)

Date: November 7, 2005

Attorneys with the Department of Justice have filed a petition for certiorari in *Thomas v. Gonzales*, 409 F.3d 1177 (9th Cir. 2005) (en banc) arguing for an extreme form of agency deference that could restrict the ability of courts to provide meaningful review in immigration cases and significantly increase the amount of time it takes for petitioners to obtain relief. In the instant case, the government's argument would let it sidestep the Ninth Circuit's recent decision—derived from years of Board and Circuit rulings—that persons who fear persecution on account of their family membership are entitled to protection in the United States. More generally, the government's argument could undermine years of development in asylum law, especially in the area of protection of women and families who often seek asylum under the “particular social group” category, which is one of the core grounds for protection under U.S. and international asylum law. It would also make it more difficult for courts to correct increasingly aberrant positions taken by the DOJ in asylum cases, such as its recent argument that the asylum statute offers no protection to individuals persecuted for peacefully practicing their religion in a manner that conflicted with discriminatory government restrictions.

Thomas involves a woman whose family (which includes her young children) was subjected to brutal attacks and whose lives were threatened because of racist actions taken by

her father-in-law against workers in his factory. The government in this case has argued that the family unit “does not constitute a protected category.” By arguing that Ms. Thomas may not be considered a member of a persecuted family because she was related to her father-in-law only by marriage, the DOJ has apparently taken the position that marriage is not an immutable characteristic that someone should not have to change. The government has also argued that the harm Ms. Thomas suffered as a woman and as a mother (including attacks on her home, death threats in front of her children, and having her child almost kidnapped from her arms) was not serious enough to constitute “persecution.” These positions, along with those taken in recent cases involving family and religion, seem incongruent with the current administration’s stated commitment to strengthening families and religious freedom.

Our Women Refugees Project is coordinating amici briefings in opposition to the petition, which formally are due in three weeks, although the granting of a 30 day extension is common. A memorandum on the case below and a copy of our brief can be found at <http://www.gbls.org/immigration/> under item 5. The petition for certiorari will also be available at this address, and can be found on Westlaw at 2005 WL 2875043.

If you are interested in receiving further information, updates, and opportunities relating to this case, please e-mail your contact information (phone and e-mail) to Matt Muller (mmuller@law.harvard.edu). Please also circulate this memorandum to anyone you think might be interested in this case. Thanks!