



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

December 23, 2005

The Honorable Roy Blunt
Acting Majority Leader
U.S. House of Representatives
Washington, DC 20515

Re: Ramirez-Landeros v. Gonzales, No. 03-71743 (9th Cir. 2005)

Dear Mr. Leader:

I am writing to advise you that I have decided not to file a petition for a writ of certiorari in this case, in which the court of appeals, in an unpublished decision, held that the Board of Immigration Appeals' denial of eligibility for cancellation of removal to an alien violated her constitutional right to equal protection. Although it is unclear whether the court's ruling is of the sort for which a report to Congress is contemplated by 28 U.S.C. 530D, as in the words of the Ninth Circuit, "it pertains primarily to the Board's application of its own precedent," Opinion at 3, I thought it would be appropriate to bring this matter to your attention.

Respondent Ramirez-Landeros, a Mexican national, was unlawfully residing in the United States since 1989. Her teenage son suffers from total blindness and various other disabilities requiring continuous therapeutic intervention that he is able to obtain in the United States but that is scarce or unavailable in Mexico. Following a brief trip to Mexico to visit her ailing father, Ramirez-Landeros was intercepted at the border on August 25, 2000, placed in expedited removal proceedings, and ordered removed under 8 U.S.C. 1225. She tried to enter the United States again on August 31, 2000, but was ordered removed a second time. Following a third attempt on September 4, 2000, she was detained once again and placed in regular removal proceedings under 8 U.S.C. 1229a. Opinion at 1-2.

In the regular removal proceedings, Ramirez-Landeros applied for the discretionary relief of cancellation of removal under 8 U.S.C. 1229b. In order to be eligible for that relief, the alien must, *inter alia*, "ha[ve] been physically present in the United States for a continuous period of not less than 10 years" immediately preceding the date of the application for cancellation of removal. 8 U.S.C. 1229b(b)(1)(A). The Board of Immigration Appeals (BIA), relying on its *en banc* decision in Matter of Romalez-Alcaide, 23 I. & N. Dec. 423 (2002), held that the expedited removal orders previously entered against Ramirez-Landeros interrupted her accrual of continuous physical presence under Section 1229b(b)(1)(A) and therefore rendered her ineligible for cancellation of removal.

The Ninth Circuit granted the petition for review, finding a constitutional violation in the denial to Ramirez-Landeros of eligibility for cancellation of removal. The court noted that it had previously held that the BIA's reading of the statute to find an interruption of continuous physical presence in circumstances such as these to be a reasonable one worthy of deference. See Opinion at 3 n.1, citing Vasquez-Lopez v. Ashcroft, 343 F.3d 961, 973 (9th Cir. 2003). However, the court held that the BIA's application of that precedent to respondent's case violated the equal protection component of the Fifth Amendment's Due Process Clause. The court reasoned that the BIA's application of its precedent created an irrational distinction between (1) aliens, like Ramirez-Landeros, who leave the United States briefly, but are detained at the border upon their return and are ordered removed, thus interrupting the accrual of continuous physical presence, and (2) aliens who leave the country for brief periods of time, but successfully evade detection upon their return and thus remain eligible for cancellation of removal. Opinion at 4. The court could "conceive of no rational basis for a rule that rewards successful lawbreakers yet punishes those unfortunate enough to get caught." Ibid.

The court of appeals also expressed the view that the equities in this case strongly favor allowing Ramirez-Landeros to seek cancellation of removal. The court noted that, "[b]y all accounts, Ramirez-Landeros is an exemplary member of her community," and that "the brunt of the hardship stemming from her removal would be borne by a vulnerable United States citizen: her severely disabled son." Opinion at 5 n.3.

The Court of appeals remanded the case to the BIA for further proceedings consistent with its disposition, Opinion at 5, which would include a determination by the BIA or an immigration judge whether to grant Ramirez-Landeros cancellation of removal as a matter of discretion.

The time for filing a petition for a writ of certiorari in the Supreme Court to review the Ninth Circuit's decision in this case has been extended to January 10, 2006. I have determined, however, not to file a certiorari petition. The decision of the court of appeals is unpublished, and it therefore does not establish circuit precedent. Nor does it create a conflict with the decision of any other court of appeals. In addition, the decision does not state that it is holding a provision of the statute unconstitutional. Rather, the court ruled that the application of the BIA's own adjudicatory precedent to petitioner violated her right to equal protection. In reaching that conclusion, the court appears to have been influenced by what it perceived to be substantial equities resulting from the disabilities of her U.S. citizen son. Finally, the decision does not order that Ramirez-Landeros be granted cancellation of removal. Instead, it remands to the BIA for further proceedings, which preserves the authority for the BIA to decide whether to grant relief as a matter of discretion.

Please let me know if I can be of any further assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'P. D. Clement', with a long horizontal flourish extending to the right.

Paul D. Clement
Solicitor General