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Federal Appeals Court Blocks Deportation of Domestic Violence Victim

From domestic violence to the recall election; 9th Circuit addressed a range of statutory and constitutional issues.

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Special to The National Law Journal; Kevin M. Fong and John M. Grenfell are partners in the San Francisco office of Pillsbury Winthrop. Fong chairs the firm's appellate practice team. The firm was involved in several California Supreme Court cases involving the recall election, but not the 9th Circuit case discussed in the article, or any issues related to the 9th Circuit case.

The 9th U.S. Circuit Court of Appeals receives much attention when its decisions are reviewed by the U.S. Supreme Court. In the 2003-04 term, nearly a third of the cases heard by the court came from the 9th Circuit. Perhaps more important for litigants and practitioners, however, are the hundreds of 9th Circuit decisions each year that are never reviewed by the Supreme Court.

The decision of the 9th Circuit is most often the final word for federal cases in the Western United States. In the past 12 months, those decisions have vindicated the rights of individuals on issues profoundly affecting their lives.

For example, in *Hernandez v. Ashcroft*, 345 F.3d 824 [9th Cir. 2003], a woman fled to the United States from Mexico to escape domestic violence from her husband, a legal permanent resident of the United States. The woman sought suspension of deportation under the Violence Against Women Act of 1994. At that time, the act restricted the deportation of aliens who had been "battered or subjected to extreme cruelty in the United States." The petitioner in *Hernandez*, however, had been battered while living in Mexico.

The 9th Circuit blocked the deportation of the wife, holding that she had suffered "extreme cruelty" in the United States. The 9th Circuit relied heavily on several law journal articles in analyzing the cycle of domestic violence. Here, there was violence by the husband in Mexico, the wife fled to the United States, the husband tracked her down and coaxed her to return to Mexico, followed by more violence by the husband in Mexico. "Although [she] was not battered in the United States, the interaction that took

place in the United States presents a well-recognized stage within the cycle of violence, one which is both psychologically and practically crucial to maintaining the batterer's control." *Id.* at 828.

The 9th Circuit acknowledged that the Hernandez case presented a "challenging" issue of statutory interpretation. Id. at 849. In its endeavor to protect a victim of domestic violence, the 9th Circuit arguably did not give full effect to the statutory language, i.e., "extreme cruelty in the United States." However viewed, the decision illustrates why the 9th Circuit attracts more than its share of controversy.

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