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of HARVARD LAW SCHOOL
1563 Massachusetts Avenue ◆ Pound Hall 408 ◆ Cambridge, Massachusetts 02138 ◆ Voice: (617) 495-5912 ◆ Fax: (617) 495-9393

Memorandum

Date: April 17, 2006
To: Interested Parties
From: Deborah Anker, Nancy Kelly, John Willshire-Carrera, and Matt Muller, Harvard Immigration and Refugee Clinic at Greater Boston Legal Services (Co-Counsel in *Thomas*)
Re: Supreme Court Decision in *Thomas v. Gonzales*

Supreme Court Decision in *Thomas v. Gonzales*: Not a Setback For Family or Particular Social Group Jurisprudence, Only a Limited Application of Existing Procedural Remand Standards

The Supreme Court today released a per curiam opinion reversing and remanding *Thomas v. Gonzales* on limited procedural grounds. The case involves a woman whose family was subjected to brutal attacks and whose life was threatened in reprisal for the racist actions of her father-in-law. Thomas—who was in no way involved with her father-in-law's racist conduct—argued that she had been persecuted on account of her immutable kinship ties to her father-in-law and that her family constituted a particular social group for purposes of the asylum statute. Ms. Thomas's claim was denied by the immigration judge, whose ruling was summarily affirmed by the Board of Immigration Appeals. As the Supreme Court noted, the immigration judge focused "upon questions of race and political views" in denying Ms. Thomas's claim. Similarly, the Board in affirming the IJ relied on "primarily race-related arguments."

On appeal, the en banc Ninth Circuit determined that under the Board's long-standing *Acosta* particular social group standard, family may constitute a particular social group. *Thomas v. Gonzales*, 409 F.3d 1177 (9th Cir. 2005). The Supreme Court DID NOT find error in the Ninth Circuit's particular social group analysis, and recognized its unanimous holding that family may constitute a particular social group as a matter of law. However, the Court determined that the Ninth Circuit had erred in finding "that the particular family at issue" qualified as a social group because the agency did not sufficiently address this issue in the first instance. According to the Court, the agency had not "determin[ed] the facts and decide[ed] whether the facts as found [fell] within a statutory term." Thus, *INS v. Ventura*, 537 U.S. 12 (2002), required remand to the agency in order to examine the record and make these determinations in the first instance.

In this limited opinion, the Court declined to expand *Ventura* in the manner urged by the Solicitor General. Instead, it found only that the agency had not in the first instance made the necessary determinations for the Ninth Circuit to apply its particular social group ruling, which the Court did not dispute or criticize, to the individual case at hand. The decision does not touch on substantive issues of particular social group jurisprudence and does not represent any expansion or modification of *Ventura's* existing remand rule. Further elaboration and analysis of the Court's decision will be forthcoming.