

## 9th Circ. Sends Mexican Trans Woman's Appeal Back To BIA

By Kelly Knaub

*Law360, New York (December 10, 2015, 4:55 PM ET)* -- The Ninth Circuit on Monday ordered the Board of Immigration Appeals to consider the dangers transgender women face in Mexico when reviewing one such woman's application for asylum, citing a September decision holding that the agency had wrongly assumed Mexico's anti-discrimination laws have made life safer for transgender people.

In an unpublished decision, a three-judge panel pointed to the appeals court's decision in *Avendano-Hernandez v. Lynch*, which held that the BIA erred in assuming that recent anti-discrimination laws passed in Mexico have made life safe for transgender people while ignoring significant evidence that they are still targets of violence.

The appeals court granted the petition by Carlos Soto Moreno and remanded the case for further proceedings consistent with its opinion and with *Avendano Hernandez*.

"The BIA shall take into consideration the dangers faced by transgender women in Mexico when reviewing Ms. Soto's application for asylum, withholding of removal and protection under the Convention Against Torture," the panel said.

An attorney for Soto said he believed the BIA's decision is sealed, along with the rest of the record, and no further details were available about the case.

In September, a Ninth Circuit panel found that the BIA incorrectly concluded that Edin Carey Avendano-Hernandez, from the state of Oaxaca in southern Mexico, hadn't shown that the Mexican government will more likely than not consent to or acquiesce in her torture, saying the conclusion was not supported by the record.

Avendano-Hernandez, who said she knew from an early age that she was different, endured vicious physical attacks and abuse from both her family and from the Mexican police and military, according to the opinion.

The appeals court rejected the government's attempts to characterize the Mexican police and military officers who assaulted Avendano-Hernandez on at least two occasions as "merely rogue or corrupt officials," saying the record makes clear that both groups encountered and assaulted her while on the job and in uniform.

A U.S. Department of Justice spokeswoman did not immediately return a request for comment on

Thursday.

Circuit Judges Alex Kozinski, Jay S. Bybee and Morgan Christen sat on the panel.

Moreno is represented by Keren Zwick of the National Immigrant Justice Center and Christopher J. Kelly of Mayer Brown LLP.

The federal government is represented by Dana Michelle Camilleri and Yanal H. Yousef.

The case is Carlos Soto Moreno v. Lynch, case number 14-72395, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Brian Baresch.

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