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SUPREME COURT
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IN THE SUPREME COURT OF WASHINGTON

In re Personal Restraint of)
) No. 88770-5
)
YUNG-CHEN TSAI and)
MUHAMMADOU JAGANA,) PETITIONERS' STATEMENT
Petitioners.) OF ADDITIONAL AUTHORITY
_____)

Pursuant to RAP 10.8, petitioners cite to additional authority on the questions whether: (1) cases from the Court of Appeals had rejected affirmative misadvice claims during the period between this Court's In re Restraint of Yim¹ decision in 1999 and the present day, whether published or unpublished,² and (2) whether post-Yim cases continued to adhere to the now-rejected "direct/collateral" dichotomy in the context of immigration consequences:

¹ 139 Wn.2d 581, 588, 989 P.2d 512 (1999).

² The question was asked by the Chief Justice during oral argument at time stamp 27:04 – 27:12. See http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2014100008 (last accessed 10/27/14).

ORIGINAL

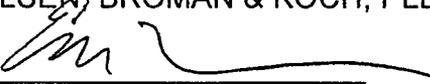
1. State v. Sandoval, noted at 145 Wn. App. 1017, 2008 WL 2460282, at *2 (Nos. 25935–8–III, 26039–9–III, June 19, 2008) (“While trial counsel advised Mr. Sandoval that deportation proceedings would not immediately commence following conviction, possible deportation was a known consequence of the plea. Counsel provided this advice knowing rape is a crime with deportation consequences. See 8 USC § 1227(a)(2)(A)(iii) (“Any alien who is convicted of an aggravated felony at any time after admission is deportable”); 8 USC § 1101(a)(43)(A) (rape is an “aggravated felony”)”, and Sandoval at *3 (“Although Mr. Sandoval may not have pleaded guilty if he had been properly advised of the consequences of his plea, deportation is not a direct consequence of his plea.”), review granted, 165 Wn.2d 1031, 203 P.3d 381 (2009), and reversed, 171 Wn.2d 163, 173-74, 249 P.3d 1015, 1017 (2011) (counsel’s misadvisement about immigration consequences was deficient performance); see also, 171 Wn.2d at 183 (Stephens, J., concurring) (“This now-rejected [direct/collateral] distinction resonates in In re Personal Restraints of Yim, 139 Wn.2d 581, 989 P.2d 512 (1999), upon which the Court of Appeals in this case relied in dismissing Sandoval’s personal restraint petition.”).

2. State v. Jamison, 105 Wn. App. 572, 591, 20 P.3d 1010, 1019 (2001) (“a deportation proceeding that occurs subsequent to the entry of a guilty plea is a collateral consequence of that plea”, and “[a]s such, Jamison need not have been advised, on due process as opposed to statutory grounds, of the immigration consequences of the plea,” citing Yim); 105 Wn. App. at 593 (deportation with no possibility of reentry remains a collateral consequence); 105 Wn. App. at 595 (finding the generic 10.40.200(2) advisement to be adequate because “immigration consequences remain collateral consequences of a guilty plea and not part of a defendant’s punishment”), rev. denied, 144 Wn.2d 1018, 32 P.3d 283 (2001);

3. State v. Martinez-Lazo, 100 Wn. App. 869, 876, 999 P.2d 1275, 1279 (2000) (“a defendant need not be advised of the possibility of deportation because ‘a deportation proceeding that occurs subsequent to the entry of a guilty plea is merely a collateral consequence of that plea’”, quoting Yim, 139 Wn.2d at 588) , rev. denied, 142 Wn.2d 1003 (2000), 2000); abrogation recognized in Chaidez v. United States, ___ U.S. ___, 133 S. Ct. 1103, 1109, 185 L. Ed. 2d 149 (2013).

DATED THIS 29th day of October, 2014.

Respectfully submitted,
NIELSEN, BROMAN & KOCH, PLLC


ERIC BROMAN, WSBA 18487
Office ID No. 91051
Attorneys for Petitioners

OFFICE RECEPTIONIST, CLERK

To: Eric Broman
Cc: talner@aclu-wa.org; masterson.nancy@dorsey.com; abenson@defensenet.org; Ann.Summers@kingcounty.gov; PCpatcecf@co.pierce.wa.us; kprocto@co.pierce.wa.us; bosbyshell.katie@dorsey.com; straitj@seattleu.edu; clasch@law.du.edu; paoappellateunitmail@kingcounty.gov; stearns@defensenet.org; dunne@aclu-wa.org; larsen.bright.shawn@dorsey.com; Jacqueline McMurtrie
Subject: RE: No. 88770-5, In re Tsai and Jagana

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From: Eric Broman [mailto:BromanE@nwattorney.net]
Sent: Wednesday, October 29, 2014 10:36 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: talner@aclu-wa.org; masterson.nancy@dorsey.com; abenson@defensenet.org; Ann.Summers@kingcounty.gov; PCpatcecf@co.pierce.wa.us; kprocto@co.pierce.wa.us; bosbyshell.katie@dorsey.com; straitj@seattleu.edu; clasch@law.du.edu; paoappellateunitmail@kingcounty.gov; stearns@defensenet.org; dunne@aclu-wa.org; larsen.bright.shawn@dorsey.com; Jacqueline McMurtrie
Subject: No. 88770-5, In re Tsai and Jagana

Dear Supreme Court Clerk:

Attached for filing is petitioners' statement of additional authority. A copy has been served on all counsel appearing for the parties and amici.

Thank you for your consideration and assistance.

Eric Broman, WSBA 18487
Nielsen, Broman & Koch PLLC
1908 E. Madison
Seattle, WA 98122
206-623-2373