Amanda Leiter was not surprised on Jan. 20 when she learned from the Supreme Court clerk's office that she had lost *Kucana v. Holder*, the first case she argued there, by a 9-0 vote.

Nor, truth be told, was she that upset.

The position the Catholic University of America Columbus School of Law professor had argued in the case — against judicial review of deportation orders — had been abandoned even by the U.S. Department of Justice, leaving her, in effect, to argue for Attorney General Eric Holder Jr. in favor of a decision neither the deportee nor Holder supported.

Leiter had argued it because the Supreme Court asked her as a way of guaranteeing that both sides of a case it wanted to decide were fully aired and considered. A former law clerk to Justice John Paul Stevens, Leiter is the latest in a series of former clerks called on by the Court to argue orphaned, and sometimes hopeless, positions.

"It was a fabulous experience, and I would be excited to do it again," she said.

When she first read the decision she was asked to defend, written by Chief Judge Frank Easterbrook of the U.S. Court of Appeals for the 7th Circuit, Leiter sensed immediately that the Court had agreed to review it so it could reverse.

But she plunged into the project, devoting nearly all of August, September and October to preparing for argument. In the process, she said, "I had convinced myself the position I was taking was right" on the statutory interpretation issue involved. The Congress of 1996 — the one elected with a "Contract With America" — may well have intended to bar judicial review of administrative decisions like the one at issue, involving an Albanian immigrant under deportation orders, Leiter said.

So she was able to vigorously defend the decision few supported, and she held her own under tough questioning. Some of the sharpest questions came from Justice Sonia Sotomayor, she recalled. "It was interesting to be challenged principally from the left, when I think of myself as more to her side of the Court."
Her co-counsel, RonNell Jones, a fellow high court clerk and now on the faculty at Brigham Young University J. Reuben Clark Law School, said Leiter did "a spectacular job. This was not just her first argument at the Supreme Court, it was her first argument anywhere."

The Court was evidently happy with her advocacy: In the majority decision, Justice Ruth Bader Ginsburg noted Leiter's appointment and wrote that she "has ably discharged her assigned responsibilities." In a concurrence, Justice Samuel Alito Jr. called one of her arguments "ingenious," though unpersuasive.

Those comments pleased Leiter, and the ruling itself, favoring judicial review as a check on executive action, "accords with my world view," she said. As an administrative law professor, she is generally in favor of widening, not shrinking, jurisdiction.

Most pleased of all, perhaps, was her father, Louis Cohen, senior counsel to Wilmer Cutler Pickering Hale and Dorr and a veteran Supreme Court advocate himself. "He doesn't have much experience with losing at the Supreme Court," Leiter said, but he commiserated. Talking to her father about the case was "one of the best parts of the experience," she said, though their interaction was limited by the fact that his firm filed an amicus brief on the side of deportees.

"It was a nearly impossible assignment," said the proud father. "Frank Easterbrook was the only person in the solar system supporting that decision."

Courtside is an occasional column on developments, large and small, at the U.S. Supreme Court. Tony Mauro can be contacted at tmauro@alm.com.