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Louise E. Garrison

Jimmy L. Hom

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SUMMARIES

VIDES-VIDES v. INS: AN ALIEN'S BURDEN IN DEPORTATION PROCEEDINGS

I. INTRODUCTION

In *Vides-Vides v. INS*,[1] the Ninth Circuit affirmed a Board of Immigration Appeals (BIA) decision denying petitioner's request for asylum.[2] Petitioner, a citizen of El Salvador, challenged the BIA's denial of asylum on grounds that his constitutional due process rights were violated.[3] In upholding the denial of asylum, the Ninth Circuit relied on the "well-founded fear of persecution" standard of proof required for asylum, and the "clear probability of persecution" standard required for withholding of deportation.[4] Although the BIA failed to explicitly state the distinctive standards, the court regarded this omission as a harmless error.[5] After holding that Vides-Vides met neither

1. 783 F.2d 1463 (9th Cir. 1986)(per Beezer, J.; the other panel members were Anderson, J. and Brunetti, J.).

2. *Vides-Vides*, 783 F.2d at 1470. The term "asylum" has taken on catchall dimensions with its use to describe three distinct categories in immigration law which provide procedural channels for persons fleeing persecution to enter or remain in the United States. Of the three, withholding of deportation, 8 U.S.C. §1253(h)(1982), and asylum status, 8 U.S.C. §1158(A)(1982) are both available to aliens already within the U.S. Refugee status, 8 U.S.C. §1157(a)(1982) is available only to persons outside the United States.

3. *Vides-Vides*, 783 F.2d at 1469. Although deportation was originally established as an administrative process with no provision for appeal, in 1961 Congress established a statutory right to review in the Federal Courts of Appeal. *See* 8 U.S.C. §1105a (1982); *see also,Alternatives To Deportation: Relief Provisions of the Immigration and Nationality Act*, 8 U.C.D. L. Rev. 323, 326 (1975).

4. *Vides-Vides*, 783 F.2d at 1467.

5. *Id.* at 1468.

standard, the court ruled that Vides-Vides' constitutional due process rights were not violated.[6]

II. FACTS

Vides-Vides entered the United States twice illegally, first in 1978, and again in 1980 after having been deported.[7] Deportation proceedings were instituted against Vides-Vides in 1984.[8] After being given two postponements to obtain an attorney, Vides-Vides appeared at his hearing without counsel, but expressed confusion as to why his Los Angeles attorney was not present in the El Centro courtroom.[9] The immigration judge determined that Vides-Vides had had adequate time to find counsel and proceeded with the hearing, giving Vides-Vides two weeks to file for asylum and withholding of deportation.[10] Vides-Vides' application was sent to the State Department, which advised the immigration judge that Vides-Vides had failed to establish a well-founded fear of persecution if he returned to El Salvador.[11] At the second deportation hearing, a new immigration judge, refused to reverse the denial of Vides-Vides' requests to transfer the case to Los Angeles and for another extension to obtain counsel.[12] Consequently, Vides-Vides was left with no legal representation at the hearing.

Vides-Vides testified that he left El Salvador for fear of repercussions if he refused to join one of the groups engaged in civil war there.[13] He articulated his desire to remain neutral in

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6. *Id.* at 1469.

7. *Id.* at 1465. Vides-Vides was deported to El Salvador in June 1979, where he remained for over a year before reentering the United States in October 1980. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* at 1465. The Department of State, Bureau of Human Rights and Humanitarian Affairs, is required in withholding of deportation and political asylum proceedings to issue an advisory opinion concerning an alien's application before an immigration judge can make a decision. 8 C.F.R. §§208.7, 205.10(b)(1985).

12. *Vides-Vides*, 783 F.2d at 1469.

13. *Id.* at 1465. Although the Ninth Circuit court made only cursory acknowledgment of the strife raging in El Salvador, the U.S. District court in Orantes-Hernandez v. Smith 541 F. Supp. 351 (C.D. Cal. 1982) elaborated on conditions in El Savador which most courts are reticent in discussing. The *Orantes-Hernandes* court took judicial notice of the following facts: (1) El Salvador is currently in the midst of a widespread civil war; (2) the continuing military actions by both government and insurgent forces create a substantial danger of violence to civilians residing in El Salvador; and (3) both govern-

the war as a political opinion upon which he based his application for asylum.[14]

During questioning, Vides-Vides stated that he had never been personally persecuted by the military, but had been approached by a non-military group which invited him to attend its meetings.[15] Vides-Vides also testified that he believed that his brother had been killed by the military — apparently for not belonging to any political organizations — and that Vides-Vides himself would be killed for the same reason.[16] But Vides-Vides was unable to substantiate the fact of his brother's death with any direct evidence, and did not produce the letter which he claimed detailed his brother's murder.[17]

Although Vides-Vides sought asylum and withholding of deportation based on his fear of persecution for his political opinion to remain neutral, both the immigration judge and, on appeal, the BIA, denied his application.[18] Vides-Vides then appealed to the Ninth Circuit Court of Appeals.[19]

III. THE COURT'S ANALYSIS

In *Vides-Vides*, the Ninth Circuit reviewed the BIA's denial of prohibition of deportation under the substantial evidence

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ment forces and guerillas have been responsible for political persecution and human rights violations in the form of unexplained disappearances, arbitrary arrests, torture and murder. *Orantes-Hernandez* 541 F. Supp. at 358.

14. *Vides-Vides*, 783 F.2d at 1466.

15. *Id.* at 1465.

16. *Id.* Although the concept that the Salvadoran military might kill someone for not joining a political organization might be a foreign one for the average U.S. citizen, it must be remembered that El Salvador is in the midst of a civil war. Males especially, who have not joined the military or para-military right wing groups, are often deemed suspect and potential guerillas. *See generally*, Salvadoran and Guatemalan Asylum Cases - A Practitioner's Guide to Representing Clients in Deportation Proceedings, Immigrant Legal Resource Center 1001 (1986).

17. *Vides-Vides* at 1467.

18. *Id.* at 1466.

19. *Id.* The formal proceedings of deportation have multiple stages. *See* 8 C.F.R. §§242.1-.23 (1986). An immigration judge presides at the deportation hearing and the judge's decision is reviewable on appeal to the BIA. Review by the Board is the last administrative proceeding. Only after the alien has exhausted all administrative remedies does a judicial review of deportation become available. 5 U.S.C. §§701-706 (Supp. III 1986).

standard.[20] The court held that substantial evidence supported the BIA's conclusion that Vides-Vides had failed to meet the clear probability of persecution standard under 8 U.S.C. §1253(h), for withholding of deportation.[21] The Ninth Circuit, using the language in *INS v. Stevic*,[22] reasoned that if an alien cannot show "that it is more likely than not" that he will suffer persecution, then he has failed to meet his burden of proof.[23]

The Ninth Circuit also upheld the BIA's finding that Vides-Vides failed to meet the well-founded fear standard.[24] Although the court noted that the BIA did not explicitly state that the asylum standard was more generous than the clear probability standard, it found this omission to be a harmless error.[25] Earlier in *Cardoza-Fonseca v. INS*,[26] the Ninth Circuit reversed a BIA denial of an alien's claim for asylum and withholding of deportation because the Board applied the incorrect legal standard.[27] The United States Supreme Court recently affirmed *Cardoza-Fonseca*, holding that the two standards are indeed distinct .[28]

In *Vides-Vides*, the Ninth Circuit reaffirmed its earlier holding in *Bolanos-Hernandez v. INS*[29] that the well-founded

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20. *Vides-Vides* 783 F.2d at 1467. The substantial evidence standard is set forth in *Garcia-Ramosv. INS*, 775 F.2d 1370, 1372 (9th Cir. 1985) and in *Bolanos-Hernandezv. INS*, 767 F.2d 1277, 1282 n.8 (9th Cir. 1985).

21. *Vides-Vides*, 783 F.2d at 1467.

22. 467 U.S. 407 (1984). The issues raised in *Stevic* were whether the Refugee Act of 1980 had relaxed the clear probability standard with the adoption of the Protocol "refugee" definition and, if so, what elements were necessary to prove a well-founded fear of persecution. The Court held that an alien seeking to qualify for withholding of deportation must satisfy the clear probability of persecution standard. *Id.*

23. *Vides-Vides*, 783 F.2d at 1467, (citing *Stevic*, 467 U.S. at 425).

24. *Vides-Vides*, 783 F.2d at 1469. The Ninth Circuit has held that the well-founded fear standard required under the asylum statute, 8 U.S.C. §1158(a), is distinct fom the clear probability standard necessary under the withholding statute, 8 U.S.C. §1253(h)(1982).

25. *Id.* at 1468.

26. 767 F.2d 1448 (9th Cir. 1985), *aff'd* No. 85-782.

27. *Id.*

28. INS v. Cardoza-Fonseca No. 85-782. In affirming *Cardoza-Fonseca*, the Court based its holding on the statutory interpretation of the two statutes and congressional intent. The more generous interpretation of the well-founded fear standard is derived from Congress' attempt to conform the definition of "refugee" to the United Nation's Protocol. *Id.*

29. 767 F.2d 1277, 1282-83 (9th Cir. 1984). Bolanos, a former right wing party member, soldier and volunteer in the civilian police squad in El Salvador, based his claims for political asylum on his feared persecution by guerillas whom he believed to have killed five of his friends and his brother. *Id.* at 1280. The Ninth Circuit reversed the BIA's

fear standard is more generous than the clear probability standard.[30] But even under what it articulated as a more relaxed standard, the court held Vides-Vides had failed to meet his burden of proof.[31] In fact, in dicta the court stated that Vides-Vides' petition could not be sustained under any relevant standard.[32]

The court cited *McMullen v. INS*,[33] reasoning that a case-by-case analysis was required to evaluate Vides-Vides' appeal since each case had to be reviewed on its own merits to determine whether there was sufficient factual support and concrete evidence to establish that it was more likely than not that the alien would suffer persecution.[34] On this basis the Ninth Circuit held that Vides-Vides' testimony did not meet the requisite standard to show a clear probability of persecution. Since Vides-Vides had never been "personally threatened, attacked, coerced, or persecuted", he failed to show he would be treated any differently than other residents of El Salvador.[35] The court cited *Chavez v. INS*[36] for the proposition that "[t]he tragic and widespread danger of violence affecting all Salvadorans is not persecution. . . ."[37]

In its discussion of the well-founded fear standard, the

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denial of Bolanos' application for withholding of deportation and asylum and, in so doing, found that the desire to remain neutral was a political opinion for purposes of a statutory bar to deportation. *Id.* at 1286.

30. In *Bolanos-Hernandez*, the Ninth Circuit relied on *Stevic* dicta that the well-founded fear standard was "more generous" and "more liberal . . . than the clear probability test." *Stevic*; 467 U.S. at 425.

31. *Vides-Vides*, 783 F.2d at 1468.

32. *Id.* The court, in discussing the BIA's recognition of distinctive standards which could be relevant in adjudicating claims of persecution under the two statutes, stated "[t]he BIA then concluded that Vides-Vides petition could not be sustained under any relevant standard. We agree." *Id.* at 1468-69.

33. 658 F.2d 1312, 1317 (9th Cir. 1981) *rev'd on other grounds* at 788 F.2d 591 (9th Cir. 1986) (McMullen, a former member of the Provisional Irish Republican Army who feared persecution and possible execution by the PIRA for refusing to carry out the kidnapping of an American bar owner, was found by the Ninth Circuit to have demonstrated an adequate showing of probable persecution to avoid deportation).

34. *Vides-Vides*, 783 F.2d at 1467 (citing *McMullen*, 658 F.2d at 1317).

35. *Vides-Vides*, 783 F.2d at 1467.

36. 723 F.2d 1431 (9th Cir. 1984). (The Ninth Circuit rejected Chavez' argument that he faced persecution for being a young man unaffiliated with either the military or the guerrillas).

37. *Id.* at 1433.

Ninth Circuit relied on *Hernandez-Ortiz v. INS*,[38] which held that the standard has both a subjective and an objective component.[39] In *Diaz-Escobar v. INS*,[40] the court explained that the subjective component requires that the petitioner show that his fear is genuine.[41] The Ninth Circuit admitted that Vides-Vides' testimony "makes it clear that he is in fact afraid to return to El Salvador", thereby meeting the subjective fear requirement.[42] But the court added that Vides-Vides' fear also had to be subjectively genuine *and* objectively reasonable. The court again cited *Diaz-Escobar*, stating that the objective component would be met by a showing of "credible, direct, and specific evidence" which showed an alien's fear of persecution to be reasonable.[43] Since Vides-Vides had not been individually threatened because of his political opinion, the Ninth Circuit found that Vides-Vides had not proved that he would be singled out for persecution and had therefore failed to establish the "objective" component of the well-founded fear of persecution test.[44]

Addressing Vides-Vides' contentions that his due process rights were violated, the Ninth Circuit first discussed the substitution of the new immigration judge at the asylum hearing. The court reasoned that since the new immigration judge summarized the events of the first hearing, he was in fact familiar with the record and it was therefore harmless error that the judge failed to explicitly state that he was familiarized with the record.[45] No prejudice to Vides-Vides could be discerned in the rec-

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38. *Hernandez-Ortiz v. INS* 777 F.2d at 513. Hernandez-Ortiz, a Salvadoran citizen sought asylum in the United States hoping to avoid the government violence that had already been directed against her family. The Ninth Circuit reversed the BIA's denial to reopen deportation proceedings, holding the BIA abused its discretion in finding Hernandez-Ortiz had not made a prima facie showing of persecution after petitioner told of her brother and sister-in-law's murder at the hands of the Salvadoran security forces. *Id.* She also testified that soldiers robbed her grandparent's grocery store, threatening them with machine guns, and that her brother-in-law's wife was kidnapped by the National Guard who "beat her and threw salt and sand in her eyes." *Id.* at 512.

39. *Id.*

40. 788 F.2d 1488 (9th Cir. 1986). The court found that Diaz-Escobar had not adequately shown that he faced persecution in Guatemala with his testimony about a threatening letter left on his car warning him to leave the country or be subject to the consequences. *Id.* at 1490.

41. *Id.*

42. *Videt-Vides*, 783 F.2d at 1469.

43. *Id.* (citing *Diaz-Escobar*, 788 F.2d at 1488).

44. *Vides-Vides*, 783 F.2d at 1469.

45. *Id. See* 8 C.F.R. §242.3(b).

ord from the new immigration judge's failure to reverse earlier rulings.[46] The Ninth Circuit reasoned that since the first judge had already denied Vides-Vides' requests to transfer the case to Los Angeles and to continue the case so he could obtain an attorney, there was no prejudice caused by the substitution of judges.[47] Moreover, the court found that the original judge had done everything he reasonably could to allow Vides-Vides to get an attorney.[48]

Relying on *INS v. Lopez-Mendoza*,[49] the court explained that because deportation is "purely a civil action" there is no sixth amendment right to appointed counsel and thus Vides-Vides' lack of counsel at the hearings was not a violation of due process.[50] The court concluded its discussion by stating that Vides-Vides in his appeal had not introduced any new evidence which an attorney would have discovered and presented at the hearing.[51]

IV. CONCLUSION

Vides-Vides is significant in that the Ninth Circuit found that the BIA did not explicitly state that the well-founded fear standard for asylum was more generous than the clear probability standard for withholding, yet found that this omission was harmless error. This is an apparent limitation of the *Cardoza-Fonseca* rule requiring reversals of BIA decisions where the Board has incorrectly applied the standards. The Ninth Circuit's delineation in *Vides-Vides* will be important to future asylum applicants, especially those whose applications might pass

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46. *Vides-Vides*, 783 F.2d at 1469.

47. *Id.*

48. *Id.*

49. *Lopez-Mendoza*, 468 U.S. 1032 (1984).

50. *Lopez-Mendoza* focuses on the exclusionary rule and unlawful arrest. The Supreme Court held:

> A deportation proceeding is a purely civil action to determine a person's eligibility to remain in this country. The purpose of deportation is not to punish past transgressions but rather to put an end to a continuing violation of the immigration laws. Consistent with the civil nature of a deportation proceeding, various protections that apply in the context of a criminal trial do not apply in a deportation hearing.

Lopez-Mendoza, 468 U.S. at 1032.

51. *Vides-Vides*, 783 F.2d at 1470.

muster under the well-founded fear standard but not under the clear probability standard.

Vides-Vides also highlighted the evidentiary plight of asylum seekers. Moreover, *Vides-Vides* raised the question of whether an alien is deprived of due process by not being guaranteed counsel in a deportation/asylum context. These were Vides-Vides' most vulnerable contentions in his appeal, and unless liberal changes are made in asylum law, asylum seekers in the future will continue to be constrained by these fundamental limitations in deportation proceedings.

*Louise E. Garrison**

PANGILINAN v. INS: WAITING THIRTY YEARS FOR CITIZENSHIP

I. INTRODUCTION

In *Pangilinan v. Immigration and Naturalization Service*,[1] the Ninth Circuit Court of Appeals overturned the denial of naturalization petitions of 15 Filipino war veterans who were eligible for U.S. citizenship under a post-World War II act of Congress.[2] The court initially held that the issues presented were justiciable, and not political.[3] The court found that the Attorney General had exceeded his authority in making it administratively impossible for the petitioners to petition for naturalization.[4] The court then exercised its powers in equity and granted petitioners United States citizenship.[5]

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* Golden Gate University School of Law, Class of 1988

1. 796 F.2d 1091 (9th Cir. 1986) (per Norris, J.; the other panel members were Schroeder, J., and Fletcher, J.).
2. *Id.* at 1103.
3. *Id.* at 1096.
4. *Id.* at 1102.
5. *Id.* at 1102-03.

II. BACKGROUND

In March 1942, Congress amended the Nationality Act of 1940 to make it easier for all non-citizens who served honorably in the United States armed forces to become American citizens.[6] Non-citizen servicemembers were exempted from certain naturalization requirements such as the five-year residency requirement in the United States, the requirement to be proficient in the English language, and the mandate that only U.S. courts could perform the naturalization.[7] World War II veterans had between August 1946 and December 31, 1946 to petition for naturalization under these relaxed standards.[8]

Congress permitted any representative of the Immigration and Naturalization Service (INS) designated by the Attorney General to naturalize citizens outside the United States.[9] In the Philippine Islands, the Vice Consul in Manila was so designated in August 1945.[10] For political reasons, the Attorney General revoked the Vice Consul's naturalization authority in October 1945.[11] Philippine officials had expressed concern that many servicemembers would depart to the United States leaving the Philippine Islands with insufficient manpower on the eve of their independence.[12]

In *Pangilinan*, the court consolidated the appeals of 15 Filipino veterans whose naturalization petitions were denied by the district courts on the ground that they were filed after the De-

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6. Nationality Act of 1940, Pub. L. No. 76-853, § 701-05, 54 Stat. 1137 (1940), *amended by* Second War Powers Act § 1001, Pub. L. No. 77-507, 56 Stat. 182 (1942) ("1940 Act"). Congress provided (1) that non-citizens who served honorably in the military forces of the United States during World War II could be naturalized if they met liberalized standards, § 701; (2) that any such person serving abroad may be naturalized outside of the United States, § 702; (3) that the petitions of such persons serving abroad "shall be made . . . and filed with, a representative of the Immigration and Naturalization Service designated by the Commissioner," *Id.*; and (4) that the "Commissioner, with the approval of the Attorney General, shall prescribe and furnish such forms, and shall make such rules and regulations as may be necessary to carry into effect the provisions of this Act." § 705.

7. *Pangilinan*, 796 F.2d at 1093.

8. *Id.* at 1094.

9. *See supra* text accompanying note 6.

10. *Pangilinan*, 796 F.2d at 1093.

11. *Id.* at 1093-94.

12. *Id.*

cember 31, 1946 statutory deadline.[13] All of the veterans were stationed in the Philippines during the nine-month period when there was no naturalizations examiner in the Philippines, but would have qualified for American citizenship under the 1940 Act had they filed naturalization petitions before the cut-off date.[14]

III. THE COURT'S ANALYSIS

A. The Petitioners' Claims Were Not Barred

The court first established jurisdiction by rejecting the government's argument that the appeals presented a non-justiciable political question.[15] Applying the standards enumerated by Justice Brennan in *Baker v. Carr*,[16] the court held that the questions raised by the petitioners were justiciable, not "political."[17] The court found that the case involved questions of individual rights and a bona fide controversy as to whether a branch of government exceeded its constitutional authority.[18]

The INS argued that the lawsuits of the Filipino war veterans were barred by section 310(e) of the 1952 Immigration and Nationality Act.[19] The court admitted that Congress clearly intended to foreclose future petitions under the less stringent requirements of the 1940 Act. However, the court rejected this argument by finding no basis in logic or precedent for concluding that Congress intended to bar claims properly brought pursuant to the older statute.[20]

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13. *Id.* at 1094-95.

14. *Id.*

15. *Id.* at 1096.

16. 369 U.S. 186 (1962). The basic criteria for determining whether a question is "political" are (1) a "textually demonstrable" constitutional commitment of the issue to the political branches; (2) lack of manageable standards for judicial resolution; (3) a need for finality in the action of the political branches; and (4) difficulty or impossibility of devising effective judicial remedies. *Id.* at 217.

17. *Pangilinan*, 796 F.2d at 1096.

18. *Id.*

19. Immigration and Nationality Act of 1952 § 310(e), 75 Stat. 656, 8 U.S.C. § 1421(e) (1961). Section 310(e) required that all naturalization petitions be filed under the 1952 Act, thereby closing the option of petitioning under the less stringent requirements of the 1940 Act.

20. *Pangilinan*, 796 F.2d at 1096-97.

The INS next attempted to argue laches as a bar to the petitioners' lawsuits. The court countered this argument by noting that the government failed to show that it was prejudiced by any lack of diligence by the veterans in pursuing their claims.[21]

Finally, the court held that the Supreme Court's decision in *INS v. Hibi*[22] did not apply. The petitioners here did not base their claims on the doctrine of equitable estoppel as had the petitioners in *Hibi*. In the instant case, petitioners raised statutory and constitutional arguments not addressed by the Court in *Hibi*.[23] Stare decisis was thus held inapplicable.[24]

B. The Attorney General Exceeded His Authority

Examining the words of section 705 of the 1940 Act,[25] the court found that Congress clearly mandated overseas naturalization of non-citizen war veterans.[26] Thus, the Attorney General's actions were in direct conflict with the will of Congress.[27] The INS argued that the broad executive powers in the area of foreign affairs permitted the Attorney General to deny selectively the benefits of the 1940 Act.[28] However, following the Supreme Court's analysis in *Youngstown Sheet & Tube Co. v. Sawyer*,[29] the court held that there was no inherent executive foreign affairs power that permitted that branch of government to override the expressed will of Congress.[30] Further, because a "pre-

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21. *Id.* at 1097.

22. 414 U.S. 5 (1973). In *Hibi*, the Court held that the government's failure to advise a Filipino war veteran of his rights under the 1940 Act and to station a naturalization officer in the Philippines during 1945-46 did not rise to the level of affirmative misconduct sufficient to invoke the doctrine of equitable estoppel against the United States.

23. *Pangilinan*, 796 F.2d at 1097.

24. *Id.*

25. *See supra* text accompanying note 6.

26. *Pangilinan*, 796 F.2d at 1097, 1099-1100.

27. *Pangilinan*, 796 F.2d at 1099-1100.

28. *Id.* at 1098.

29. 343 U.S. 579 (1952) (Jackson, J., concurring). In the concurrence, Justice Jackson provided a three-part analysis of the extent of executive power. Where the executive branch acts with Congress' express or implied approval, executive power is at its zenith, and it is most likely that the executive action involved will be found constitutional. At the other extreme, where the executive branch acts in opposition to the will of Congress, executive power is at its lowest ebb. The President can then only rely on his or her own constitutional powers *minus* any constitutional power of Congress over the matter. *Id.* at 637-38.

30. *Pangilinan*, 796 F.2d at 1100.

cious right"[31] was involved, any authority granted to the Attorney General must be construed narrowly.[32]

Absent any broad delegation of discretionary authority to the Attorney General by Congress, the court held that the Attorney General was expected to carry out the mandate of Congress even-handedly and without discrimination.[33] The court found that the Attorney General failed to do so when he denied benefits to Filipinos as a class.[34]

The court concluded by stating that when the Attorney General has made it administratively impossible for persons to acquire the benefits stemming from their legal rights, he has exceeded the bounds of his legal authority.[35]

Using its powers as a court of equity, the court granted citizenship to the 15 Filipino petitioners as the "only effective remedy available."[36]

IV. CONCLUSION

In *Pangilinan*, the Ninth Circuit rectified a situation that has caused extensive litigation. The court wisely based its decision on the clear and unambiguous language in the statute, thus avoiding a constitutional clash between Congress' exclusively vested naturalization power[37] and the executive branch's foreign affairs powers.[38]

*Jimmy L. Hom**

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31. *Id.* at 1101 (citing *Kent v. Dulles*, 357 U.S. 116, 128-29 (1958)).
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.* at 1102.
36. *Pangilinan*, 796 F.2d at 1103.
37. *See* Holmgren v. United States, 217 U.S. 509 (1910) (the power of naturalization is vested exclusively in Congress).
38. The court also avoided the constitutional equal protection question. *See, e.g., In re Naturalization of 68 Filipino War Veterans*, 406 F. Supp. 931 (N.D. Cal. 1975) (actions of the Attorney General violated the equal protection rights of Filipino war veterans).

* Golden Gate University School of Law, Class of 1988.