

7-1-1989

Equitable Tolling of Statutory Benefit Time Limitations: A Congressional Intent Analysis

David D. Doran

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Civil Procedure Commons](#)

Recommended Citation

David D. Doran, Comment, *Equitable Tolling of Statutory Benefit Time Limitations: A Congressional Intent Analysis*, 64 Wash. L. Rev. 681 (1989).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol64/iss3/6>

This Comment is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

EQUITABLE TOLLING OF STATUTORY BENEFIT TIME LIMITATIONS: A CONGRESSIONAL INTENT ANALYSIS

Abstract: Courts toll time limitations that limit a statutory right to sue when tolling is consonant with congressional intent. Courts have left open, however, whether to extend this congressional intent analysis to toll time limitations that limit a statutory right to receive a benefit. This Comment analyzes how the United States Supreme Court's 1988 decision in *INS v. Pangilinan* affects the power of courts to equitably toll time limitations limiting the application period for a statutory benefit. The Comment concludes that these benefit time limitations should be tollable when they are consonant with congressional intent.

In enacting statutes creating public rights or benefits, Congress often imposes time limits on the right of beneficiaries to apply for those rights or benefits. By invoking the doctrine of equitable tolling, courts may permit plaintiffs to apply for a benefit after expiration of the statutory time period, if those plaintiffs have been denied the right to apply for the benefit due to inequitable governmental conduct. Courts are often thwarted in their attempts to grant equity, however, because the Supreme Court has consistently refused to equitably estop the government¹ and because preclusive, formalistic equitable tolling rules hinder the courts' analyses.

Courts analyze and categorize benefit time limitations by analogizing to statute of limitation analysis. Benefit time limitations are unlike statutes of limitation, however, in that they do not limit a right to bring suit in court.² Moreover, analysis of statutes of limitation has always been problematic for courts.³ Analyzing benefit time limitations by analogy to statutes of limitation confuses the differences between benefit time limitations and statutes of limitation, and compounds the analytical problems related to statutes of limitation.

Several federal courts recently have examined equitable tolling questions in the context of two immigration benefit statutes. These courts each classified the limitation differently, using different analyses. The Supreme Court, in *INS v. Pangilinan*,⁴ implied, in dicta, that courts

1. See, e.g., *INS v. Miranda*, 459 U.S. 14, 19 (1982) (eighteen month delay by INS in processing immigration visa does not meet standard of affirmative misconduct necessary to estop the government). See generally Note, *Unauthorized Conduct of Government Agents: A Restrictive Rule of Equitable Estoppel Against the Government*, 53 U. CHI. L. REV. 1026 (1986).

2. See *infra* notes 45-47 and accompanying text.

3. See, e.g., *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1944) (discussing various approaches to statutes of limitation that defy logic).

4. 108 S. Ct. 2210 (1988).

are powerless to toll benefit time limitations like the one in the Nationality Act of 1940.⁵ Several district court judges examined a similar time limitation in the Immigration Reform and Control Act of 1986.⁶ Two district court judges permitted tolling, while a third judge denied tolling, after finding that the limitation was jurisdictional.⁷

Courts can best serve equity by substituting congressional intent analysis for an approach that analogizes benefit time limitations to statutes of limitation. A congressional intent analysis would promote equity⁸ and ensure that Congress' purpose in enacting the statute is not frustrated.

I. THE DOCTRINE OF EQUITABLE TOLLING

A. *Equity Jurisprudence*

Equitable tolling, like all equitable remedies, emerged as the "equity courts" response to injustices resulting from decisions of the "law courts" in cases involving inequitable conduct.⁹ Equity courts found that while equity generally was bound by time limitations, and "followed the law," equity would not permit defendants to take advantage of their own wrong.¹⁰

B. *Elements of Equitable Tolling*

Before a court may invoke the doctrine of equitable tolling, it must find an inequitable event and a tollable time limitation.

1. *Equitable Tolling Requires an Inequitable Event*

Courts will toll a statute of limitation only upon finding an inequitable event that prevented plaintiff's timely action.¹¹ Courts consider plaintiff's otherwise late action to be timely because time limitations do not run while the inequitable event prevented the plaintiff from

5. *Id.* at 2215-16.

6. 8 U.S.C.A. § 1255a (West Supp. 1988).

7. See *infra* notes 71-90 and accompanying text.

8. See *infra* notes 101-02 and accompanying text.

9. See generally 1 J. POMEROY, EQUITY JURISPRUDENCE §§ 16-17, 51 (5th ed. 1941); J. STORY, EQUITY JURISPRUDENCE § 529 (2d ed. 1892).

10. *Hovendale v. Amnesley*, 2 Sch. & Lef. 607, 630 (1806) (Lord Redesdale found that equity follows the law in all *legal* questions); *Booth v. Lord Warrington*, 4 Bro. P. C. 163 (1714) (House of Lords held that suit not barred by statute of limitation at equity because of defendant's fraud), noted in J. BRUNYATE, LIMITATIONS OF ACTIONS IN EQUITY 8, 9, 23-35 (1932).

11. See *Anderson v. Wisconsin Gas Co.*, 619 F. Supp. 635 (E.D. Wis. 1985) (discussing factors that give rise to equitable tolling); *Aljadir v. University of Pa.*, 547 F. Supp. 667, 670 (E.D. Pa. 1982) (time limitation not tolled because no inequitable event found), *aff'd*, 709 F.2d 1490 (3d Cir. 1983).

acting.¹² Courts find inequitable events where a defendant's conduct justifiably misleads a plaintiff,¹³ where a plaintiff's disability prevents exercise of the right within the time limitation,¹⁴ or where some external source, such as war, "closes" the courts to a plaintiff.¹⁵ Thus, tolling allows courts to remedy situations where the injustice of barring prosecution of a stale claim outweighs the injustice done to the defendant by permitting the claim.¹⁶

2. *Equitable Tolling Requires a Tollable Time Limitation*

The second prerequisite to equitable tolling is a determination by the courts that the time limitation is a kind that is tollable according to common law or statute.¹⁷ Because there is little case law on benefit time limitations, when deciding whether to toll, courts often reason by analogy to statutes of limitation. Thus, the same factors that preclude tolling statutes of limitation may preclude tolling benefit time limitations.

12. Courts reconstruct time limitations in three ways, depending on when the inequitable event occurred. Courts "postpone" the commencement of the time limitation if the inequitable event occurred before the period began. *See, e.g.,* *Cerbone v. International Ladies' Garment Workers' Union*, 768 F.2d 45 (2d Cir. 1985) (defendant's fraudulent concealment postponed time limitation). Courts "suspend" time limitations already commenced. *See, e.g.,* *Boag v. Chief of Police*, 669 F.2d 587 (9th Cir. 1982) (plaintiff's imprisonment suspends running of time limitation), *cert. denied*, 459 U.S. 849 (1982). Courts "revive" time limitations already expired, upon defendant's acknowledgement of the plaintiff's cause of action. *See, e.g.,* *United Rubber, Cork, Linoleum & Plastic Workers of Am., v. Great Am. Indus.*, 479 F. Supp. 216 (S.D.N.Y. 1979) (defendant's acknowledgement revives time limitation and removes bar); *see also* Note, *Developments—Statutes of Limitations*, 63 HARV. L. REV. 1177, 1254–60 (1950) [hereinafter *Developments*].

13. *See, e.g.,* *Ramsey v. Culpepper*, 738 F.2d 1092 (10th Cir. 1984) (fraudulent concealment); *Palandjian v. Pahlavi*, 614 F. Supp. 1569 (D. Mass. 1985) (duress), *appeal denied*, 782 F.2d 313 (1st Cir. 1986), *cert. denied*, 481 U.S. 1037 (1987). The doctrine of fraudulent concealment is attributed to *Baily v. Glover*, 88 U.S. (21 Wall.) 342 (1875) and *Holmberg v. Almbrecht*, 327 U.S. 392, 397 (1946) (doctrine of fraudulent concealment is to be read into every federal statute). *See also* Marcus, *Fraudulent Concealment in Federal Court: Toward a More Disparate Standard?*, 71 GEO. L.J. 829 (1983); Annotation, *Effect of Fraud To Toll the Period for Bringing Action Prescribed in Statute Creating the Right of Action*, 15 A.L.R.2D 500 (1951).

14. *See, e.g.,* *Brown v. Bigger*, 622 F.2d 1025 (10th Cir. 1980) (imprisonment); *Origet v. Washtenaw County*, 549 F. Supp. 792 (E.D. Mich. 1982) (infancy).

15. *See, e.g.,* *Chardon v. Fomero Soto*, 462 U.S. 650 (1983) (pendency of suit in state court tolls time limitation for action subsequently brought in federal court). *See generally* Comment, *Does War Toll Statutes of Limitation?*, 57 COLUM. L. REV. 1140 (1957).

16. *See* *Burnett v. New York Cent. R.R.*, 380 U.S. 424, 428 (1965) (protection of defendant frequently outweighed by justice to plaintiff's rights).

17. The second equitable tolling prerequisite of a tollable time limitation can be inferred from a refusal by courts to toll certain types of time limitations. *See, e.g.,* *Kalmich v. Bruno*, 553 F.2d 549 (7th Cir. 1977) (making distinction between types of time limitations in conflicts of law), *cert. denied*, 434 U.S. 940 (1978); *Miers v. Central Mine Equip.*, 604 F. Supp. 502, 505 (D. Neb. 1985) (contrasting tollable and nontollable time limitations).

Historically, two rules prevented equity from intervening to toll statutes of limitation. First, the doctrine of sovereign immunity prevented courts from tolling statutes of limitation in statutes that waive the government's immunity from suit.¹⁸ Second, the orthodox substantive-procedural analysis that differentiated between right and remedy¹⁹ prevented courts from tolling substantive statutes of limitation.²⁰ Recently, courts have begun to adopt an analytical approach that looks to the congressional intent behind the statute to determine whether the statute of limitation may be tolled.²¹

a. Jurisdictional Statutes of Limitation Are Not Tollable

The government cannot be sued unless it expressly waives its sovereign immunity,²² usually by a statute creating a right to hold the government liable.²³ If a plaintiff does not meet all of the prerequisites for suit under the statute, sovereign immunity deprives the court of subject matter jurisdiction.²⁴ Therefore, statutes of limitation that limit the time during which actions may be brought against the federal government are "jurisdictional," rather than "substantive" or "proce-

18. See *infra* notes 22–25 and accompanying text. See generally 14 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION 2D § 3655 (2d ed. 1985).

19. In a recent article reexamining the origin of the substantive-procedural dichotomy, Professor Risinger convincingly argues that while the right-remedy distinction originated in the 13th century, the substantive-procedural distinction did not exist until the 18th century. Risinger, "Substance" and "Procedure" Revisited, 30 UCLA L. REV. 189, 190–93 (1982). But see Ailes, *Substance and Procedure in the Conflict of Laws*, 39 MICH. L. REV. 392, 396–401 (1941) (tracing the substantive-procedural dichotomy to a Parlement of Paris case in the 13th century). Under the original 18th century substantive-procedural dichotomy, as conceived by the political philosopher Jeremy Bentham, all time limitations were substantive rather than remedial. BENTHAM, COLLECTED WORKS OF JEREMY BENTHAM: OF LAWS IN GENERAL 137 (Hart ed. 1970). Risinger faults 19th century commentators for fusing the two theories, and developing the theory that time limitations are procedural rather than substantive. Risinger, *supra*, at 193–97.

20. See *infra* notes 26–32 and accompanying text.

21. See *infra* notes 33–44 and accompanying text.

22. See *Kreiger v. United States*, 539 F.2d 317, 320 (3d Cir. 1976) (court refused to toll time limitation in statute authorizing a limited waiver of the government's sovereign immunity because the statutory waiver did not encompass actions that are untimely due to fraudulent concealment by a third party).

23. The government waives sovereign immunity in "jurisdictional" statutes such as the Federal Tort Claims Act, 28 U.S.C. § 2401(b) (1982) ("A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues.").

24. *Lee v. United States*, 809 F.2d 1406 (9th Cir. 1987) (court lacks jurisdiction because statute provides exclusive jurisdictional basis).

dural,” because their expiration deprives the court of subject matter jurisdiction over the case.²⁵

b. Substantive Statutes of Limitation Traditionally Not Tollable

Traditionally, courts applied a substantive-procedural analysis, which was originally developed in and adopted from conflicts of law jurisprudence, to decide whether a time limitation could be tolled.²⁶ A statute of limitation was “substantive” if it satisfied either of the two “specificity test” criteria:²⁷ One, if the statute of limitation was contained in the statute;²⁸ or two, if it specifically referred to the statute.²⁹ For example, a substantive statute of limitation would be one where Congress created the right for railroad workers to sue their employers, and attached a clause within the statute or in another statute that required the worker to sue within three years after the cause of action accrued.³⁰ Because expiration of a substantive statute of limitation destroyed both the remedy and the statutory right to bring suit, restoring the remedy by tolling the statute of limitation would not restore the nonexistent right.³¹

“Procedural” statutes of limitation, on the other hand, were those that did not satisfy either of the two “specificity” test criteria, and

25. *Kreiger*, 539 F.2d at 321 n.5. This Comment follows the majority rule that “jurisdictional” statutes of limitation are those in statutes waiving the government’s sovereign immunity. *See, e.g., McIntyre v. United States*, 789 F.2d 1408 (9th Cir. 1986) (time limitation in Quiet Title Act when the action is brought against government is jurisdictional and not tollable); *see infra* note 44 and accompanying text.

26. In conflicts of law jurisprudence, foreign substantive statutes of limitation were enforceable in the forum, while the forum’s own remedial statutes of limitation controlled. *See R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS* § 3.2(C)-(C)(1) (3d ed. 1986); *see also infra* note 98.

27. The specificity test is derived from conflicts of law analysis. *See id.* §§ 3.2(C), 3.2(C)(2) at 57.

28. *See, e.g., The Harrisburg*, 119 U.S. 199, 214 (1886) (time limitation held an absolute bar where it was contained within the statute creating the right).

29. *Davis v. Mills*, 194 U.S. 451, 454 (1904) (limitation is “substantive” where it is in a different statute, but “directed to the newly created liability so specifically as to warrant saying that it qualified the right”).

30. The “substantive” time limitation in the Federal Employers’ Liability Act (“FELA”), 45 U.S.C. §§ 51–60 (1982), is contained within the statute creating liability against certain employers. *Id.* § 56. *See generally* Annotation, *Accrual of Cause of Action and Tolling of Limitations Period of § 6 of the Federal Employers’ Liability Act*, 16 A.L.R.3D 637 (1967).

31. *See Kansas City, Mo. v. Federal Pac. Elec.*, 310 F.2d 271, 282 (8th Cir. 1962) (“[W]here a statute creates a cause of action that did not exist before and at the same time establishes a period . . . within which it must be brought, the running of the statute of limitations destroys the very right itself and thus cannot be tolled for any reason.”), *cert. denied*, 371 U.S. 912, *cert. denied*, 373 U.S. 914 (1963). *See generally* Grossman v. Young, 72 F. Supp. 375 (S.D.N.Y. 1947) (discussing cases holding that substantive time limitations are an absolute bar).

were, therefore, tollable. Courts reasoned that they could equitably restore the remedy by tolling the time period, and thereby enforce the surviving right.³²

c. *Congressional Intent Analysis of Substantive Statutes of Limitation: The Modern Trend*

Modern courts analyze equitable tolling cases involving statutes of limitation by employing congressional intent, rather than the orthodox substantive-procedural analysis. Beginning in the 1940's, courts began tolling substantive statutes of limitation when they found that tolling was consonant with congressional intent.³³ These courts rejected the orthodox substantive-procedural analysis.³⁴ They disagreed with earlier decisions which labeled statutes of limitation satisfying the specificity test as "jurisdictional" and nontollable, rather than "mere statutes of limitation."³⁵ These recent courts found that limitations satisfying the specificity test, although substantive, were still statutes of limitation. Therefore, tolling should apply to them as well as to procedural statutes of limitation. In 1965, in *Burnett v. New York Central Railroad*,³⁶ the Supreme Court adopted congressional intent analysis in an equitable tolling case. In *Burnett*, the issue was whether plaintiffs' timely Federal Employers' Liability Act action in state

32. A procedural statute of limitation would exist if, for example, Congress restricts the time in which a plaintiff could bring a common law nuisance action, rather than limits a statutory right. See, e.g., *Cox v. McDonnell-Douglas Corp.*, 665 F.2d 566, 568, 571 (5th Cir. 1982) (the statute of limitation in Idaho's wrongful death statute is procedural because the wrongful death statute is subject to Idaho's general two-year tort statute of limitation and does not itself incorporate a statute of limitation).

33. In *Scarborough v. Atlantic Coast Line R.R.*, 178 F.2d 253 (4th Cir. 1949), *cert. denied*, 339 U.S. 919 (1950), the court explicitly tolled the substantive time limitation in § 6 of FELA. The court concluded that the legalistic substantive-procedural dichotomy could not set aside the maxim that no one shall profit from his own wrong and that the purposes of Congress should not be defeated. *Id.* at 259; see also *Westinghouse Elec. v. Pacific Gas & Elec. Co.*, 326 F.2d 575 (9th Cir. 1964) (tolling § 4B of the Clayton Act).

34. *Osbourne v. United States*, 164 F.2d 767 (2d Cir. 1947) (war tolls both substantive and procedural time limitations).

35. *Nitkey v. Dawes*, 151 F.2d 639, 643 (7th Cir. 1945) (time limitation not tolled because it was a special condition coupled with the cause of action and was jurisdictional in nature), *cert. denied*, 327 U.S. 788 (1946). Until the 1940's, and sporadically since then, some courts have not used "jurisdictional" in reference to sovereign immunity statutes, but have used "jurisdictional" in the same sense that most other courts use "substantive." These courts reasoned that statutes of limitation, as a part of the statute that creates the liability and gives the right of action, are not "mere statutes of limitation," but instead affect the court's jurisdiction. See, e.g., *Id.*; *League of United Latin Am. Citizens v. INS*, No. 87-4757-WDK (C.D. Cal. Aug. 12, 1988) (time limitation of the Immigration Reform and Control Act of 1986 ("IRCA") is jurisdictional rather than merely a statute of limitation).

36. 380 U.S. 424 (1965).

court, which was dismissed for improper venue,³⁷ tolled the substantive statute of limitation.³⁸ After analyzing the congressional intent behind the statute, the Court allowed the plaintiffs' late action.³⁹ The Court reasoned that the substantive-procedural analysis was not indicative of congressional intent.⁴⁰

Courts are split over whether congressional intent analysis, used in determining if substantive statutes of limitation are tollable, should also apply to statutes of limitation that might otherwise be classified as jurisdictional.⁴¹ Recently, several courts have tolled statutes of limitation after finding that Congress intended that the particular statute of limitation, which waived the government's sovereign immunity, could be tolled. These courts found that Congress intended that the statute of limitation not be jurisdictional; therefore, the limitation was tollable.⁴² These courts did not, however, hold that a jurisdictional statute of limitation may be tolled.⁴³ In contrast, other courts, in refusing to toll jurisdictional time limitations, hold that compliance with each provision of the statute is necessary before the statute's explicit waiver of the government's immunity becomes effective, thereby permitting suit against the government.⁴⁴

II. "BENEFIT" TIME LIMITATIONS

A. *Definition and Problems*

Benefit time limitations present courts with unique, unresolved problems. Benefit time limitations are statutory provisions that limit

37. *Id.* at 425.

38. *Id.* at 426, 436.

39. *Id.* at 432, 436. The Court reasoned that the substantive-procedural dichotomy does not determine whether the time limitation may be tolled. *Id.* at 426-27.

40. *Id.* at 427 n.2. In 1974, the Supreme Court again adopted a congressional intent approach in *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974). The issue in *American Pipe* was whether a federal court could extend the substantive statute of limitation in § 4B of the Clayton Act beyond the period established by Congress, where plaintiffs had failed to join a class action before the limitation period expired. In tolling the limitation, the Court reasoned that "the proper test is not whether the statute of limitation is 'substantive' or 'procedural,' but whether it is consonant with the legislative scheme." *Id.* at 554.

41. *See, e.g., Bowen v. New York*, 476 U.S. 467 (1986) (congressional intent dictated that the time limitation in the Social Security Act was not jurisdictional, but a condition precedent to the waiver of sovereign immunity); *Block v. North Dakota ex rel. Board of Univ. and School Lands*, 461 U.S. 273, 287-88 (1983) (Congress intended the time limitation to be a jurisdictional bar to late action under Quiet Title Act).

42. *See, e.g., Bowen*, 476 U.S. at 480.

43. *See, e.g., id.* at 478.

44. *See, e.g., Soriano v. United States*, 352 U.S. 270 (1957) (war does not toll a time limitation against the government); *Burns v. United States*, 764 F.2d 722 (9th Cir. 1985) (U.S. government cannot be estopped nor can principles of equity toll jurisdictional time limitation).

to a specific period of time a beneficiary's right to receive or apply for a statutory benefit.⁴⁵ Benefit time limitations are different from statutes of limitation in several important respects. First, benefit time limitations, unlike statutes of limitation, do not limit the time in which a suit may be brought on a statutory cause of action. Second, statutory rights to sue, limited by statutes of limitation, are exercised through the judicial branch, while benefit statutes are exercised through the executive branch. Third, the policies behind the two types of limitations are different. Statutes of limitation are specifically enacted to protect defendants from stale claims regardless of the right granted.⁴⁶ The policy behind benefit time limitations varies depending upon congressional intent in granting the particular statutory benefit. Notwithstanding the important differences between benefit time limitations and statutes of limitation, courts frequently analyze benefit time limitations by analogizing to statutes of limitation.⁴⁷ Thus, whether a court will find a benefit time limitation tollable often depends on the statute of limitation category to which the court finds the benefit time limitation most analogous.

A number of recent federal court decisions have considered the benefit time limitations in two different immigration statutes. The Nationality Act of 1940,⁴⁸ which allowed Filipino World War II veterans to apply for naturalization under a favorable naturalization process, included a benefit time limitation. The Immigration Reform and Control Act of 1986 ("IRCA")⁴⁹ similarly contained a benefit time limitation during which illegal aliens could apply for amnesty to legalize their presence in the United States.

45. Certain statutes create a benefit, but limit the time in which judicial action may be brought if the government denies the benefit. True benefit time limitations limit application for the benefit itself, and therefore do not involve suit against the government. *See, e.g., Bowen*, 476 U.S. at 470 (provision limiting time in which to bring court action after denial of social security benefits).

46. *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-49 (1944) (the purpose of time limitations is to uphold the "right to be free of stale claims . . . over the right to prosecute them").

47. *See, e.g., League of United Latin Am. Citizens v. INS*, No. 87-4757-WDK, slip op. at 3-4 (C.D. Cal. Aug. 12, 1988) (analogizing the IRCA benefit time limitation to statutes of limitation). *See infra* note 93.

48. Pub. L. No. 76-853, 54 Stat. 1137 (repealed by the Immigration and Naturalization Act of 1952, Pub. L. 82-414, § 403(a)(42), 66 Stat. 163, 280), *as amended by* Second War Powers Act, Pub. L. 77-507, § 1001, 56 Stat. 182 (1942) (expired by its own terms on Dec. 31, 1946 following amendment by Act of Dec. 20, 1944, Pub. L. 78-509, 58 Stat. 827).

49. Pub. L. 99-603, 100 Stat. 3359 (codified as amended primarily at 8 U.S.C. and 42 U.S.C.). The time limitation is codified at 8 U.S.C.A. § 1255a(1)(A) (West Supp. 1988).

Benefit Time Limitations

B. Recent Benefit Time Limitation Cases

Courts differ in their opinions on what a benefit time limitation is and whether it may be tolled. The Supreme Court in *INS v. Pangilinan* implied in dicta that benefit time limitations are substantive preclusions to tolling.⁵⁰ However, three IRCA amnesty cases, decided after *Pangilinan* in two federal district courts, demonstrate that there is still confusion over the power of the courts to toll benefit time limitations.⁵¹ One district court judge found that the IRCA benefit time limitation was simply a statute of limitation.⁵² A second district court judge found that the same benefit time limitation was not a statute of limitation, but was instead a jurisdictional preclusion to tolling.⁵³ Finally, a third judge did not classify the IRCA benefit time limitation, but tolled it on the basis of congressional intent.⁵⁴

1. *INS v. Pangilinan*

In *INS v. Pangilinan*,⁵⁵ the United States Supreme Court held that courts could not invoke their equitable powers to confer citizenship in violation of the provisions of the Nationality Act of 1940 ("1940 Act").⁵⁶ The 1940 Act granted the United States Vice Consul to the Philippines the authority to accept naturalization petitions.⁵⁷ When the Attorney General revoked the Vice Consul's authority, this deprived Pangilinan and others⁵⁸ of the full benefit application time period authorized under the 1940 Act.⁵⁹ Pangilinan filed naturaliza-

50. *INS v. Pangilinan*, 108 S. Ct. 2210, 2216 (1988).

51. See *infra* notes 71-90 and accompanying text. A third court is in the process of reconsidering whether *Pangilinan* limits its equitable tolling power. *Ayuda, Inc. v. Meese*, No. 88-0625 (D.D.C. Sept. 27, 1988) (Supplemental Order XI to *Ayuda, Inc. v. Meese*, 687 F. Supp. 650 (D.D.C. 1988)), noted in 66 INTERPRETER RELEASES 152-53 (1989).

52. *Zambrano v. INS*, No. S-88-455 EJJ (E.D. Cal. Aug. 9, 1988).

53. *League of United Latin Am. Citizens v. INS*, No. 87-4757-WDK, slip op. at 4 (C.D. Cal. Aug. 12, 1988).

54. *Catholic Social Servs., Inc. v. Meese*, No. S-86-1343 LKK, slip op. at 2 (E.D. Cal. June 10, 1988; final order Aug. 11, 1988).

55. 108 S. Ct. 2210 (1988).

56. *Id.* at 2215. See Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137 (repealed 1952) as amended by Second War Powers Act, Pub. L. 77-507, § 1001, 56 Stat. 182 (1942) (expired 1946).

57. Nationality Act of 1940, Pub. L. 76-853, § 702, 54 Stat. 1137 as amended by Second War Powers Act, Pub. L. 77-507, § 1001, 56 Stat. 182, 183 (1942).

58. *Pangilinan*, 108 S. Ct. at 2212 & n.1 (a total of 16 Filipino veterans brought suit).

59. Nationality Act of 1940, Pub. L. 76-853, §§ 701-705, 54 Stat. 1137 as amended by Second War Powers Act, Pub. L. 77-507, § 1001, 56 Stat. 182, 182-183 (1942). Section 702 authorized designation of the INS official. *Id.*, 56 Stat. 183. The 1940 Act instructed the INS to designate representatives in the Philippines, and other countries, to receive petitions for naturalization from qualified veterans who had fought for the United States armed forces during World War II. *Id.*, 56 Stat. 182. After only four months, and more than a year before the December 31, 1946

tion petitions more than thirty years after the cutoff date.⁶⁰ The Ninth Circuit Court of Appeals held that it had the equitable power to grant citizenship to Pangilinan even though the Act had expired.⁶¹ The court also held that the Attorney General's revocation of the Vice Consul's naturalization authority had violated the mandatory language of sections 702 and 705 of the 1940 Act.⁶² The Supreme Court reversed.

Writing for a unanimous Court, Justice Scalia held that the Constitution delegates naturalization power exclusively to Congress,⁶³ the judiciary cannot, through its equitable powers, usurp this power. Neither by equitable estoppel, "nor by invocation of equitable powers, nor by any other means does a court have the power to confer citizenship in violation of these limitations."⁶⁴ The Court found that Congress did not intend veterans eligible under the 1940 Act to be able to petition after the 1946 cutoff date.⁶⁵ Also, contrary to the Ninth Circuit's holding, the Supreme Court found that section 702 of the 1940 Act authorized, but did not mandate, appointment of a representa-

cutoff date, the Attorney General revoked the Vice Consul's authority. *Pangilinan*, 108 S. Ct. at 2214.

60. *Pangilinan*, 108 S. Ct. at 2215.

61. *Pangilinan v. INS*, 796 F.2d 1091, 1102-03 (9th Cir. 1986). The relevant provisions of the 1940 Act expired by their own terms on December 31, 1946. Act of Dec. 20, 1944, Pub. L. 78-509, § 1501, 58 Stat. 827. *Pangilinan* was originally litigated and appealed under a number of different case names. In *Barretto v. United States*, 694 F.2d 603 (9th Cir. 1982), the case that began the *Pangilinan* litigation, the Ninth Circuit reversed the district court's opinion in *In re Litonjua*, 511 F. Supp. 630 (S.D. Cal. 1981), on the ground that *Barretto* was collaterally estopped by the Ninth Circuit's earlier decision in *Mendoza v. United States*, 672 F.2d 1320 (9th Cir. 1982). However, the Supreme Court later reversed *Mendoza*, 464 U.S. 154 (1984). Thus, the Supreme Court vacated and remanded *Barretto* because the Ninth Circuit's collateral estoppel rationale in that case, as based on *Mendoza*, was no longer valid. *INS v. Litonjua*, 465 U.S. 1001 (1984). On remand *Barretto* became *Pangilinan v. INS*. 796 F.2d 1091 (1986).

62. *Pangilinan v. INS*, 796 F.2d 1091, 1099-1100 (9th Cir. 1986). Section 702 of the 1940 Act provides that the petitions of eligible veterans "shall be made and . . . filed with, a representative of the Immigration and Naturalization Service designated by the Commissioner." Second War Powers Act, Pub. L. 77-507, § 1001, 56 Stat. 182 (1942) (amending Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137). Section 705 provides that the "Commissioner shall make rules necessary to carry into effect the Act." *Id.*, 56 Stat. 183.

63. *Pangilinan*, 108 S. Ct. at 2215 (citing U.S. CONST. art. I, § 8, cl. 4).

64. *Pangilinan*, 108 S. Ct. at 2216.

65. *Id.* In 1948, Congress amended the Nationality Act of 1940, enacting new provisions for naturalization of persons serving in the armed forces. Act of June 1, 1948, Pub. L. 48-567, § 324A(a), 62 Stat. 281, 282. However, the Philippines was specifically excluded from these provisions. *Id.* The Immigration and Naturalization Act of 1952 incorporated the 1948 amendments and required all subsequent and pending petitions for naturalization to be adjudicated under the 1952 Act. Immigration and Naturalization Act of 1952, Pub. L. 82-414, § 329(d), 66 Stat. 163, 251 (codified as amended at 8 U.S.C. § 1440 (1982)).

Benefit Time Limitations

tive.⁶⁶ Thus, the government acted properly within its discretionary powers in prematurely revoking the representative's authority to receive petitions.⁶⁷

Although the Supreme Court did not mention equitable tolling, or rely on tolling cases to support its denial of equitable relief, *Pangilinan* appears to limit the power of courts to craft equitable remedies overriding the expiration date of a statutory right.⁶⁸ In the opinion's only paragraph pertaining to equitable remedies, the Court relied on three nineteenth century cases to state that "[c]ourts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law,"⁶⁹ and "equity cannot . . . create a remedy in violation of the law."⁷⁰

2. *The Amnesty Cases*

Several federal district courts have attempted to resolve the effect of *Pangilinan* on equitable tolling in cases involving the benefit time limitation in IRCA.⁷¹ IRCA granted illegal aliens satisfying certain criteria⁷² the opportunity to apply for legalization in the form of temporary resident status, adjustable to permanent resident status.⁷³ The benefit of legalization was available under the statute only if the eligible applicant applied during the twelve-month period between May 5, 1987, and May 4, 1988.⁷⁴ The INS misinterpreted several IRCA provisions, however, and consequently declared certain aliens ineligible to apply for amnesty during a substantial portion of the twelve-month IRCA

66. *Pangilinan*, 108 S. Ct. at 2215. Furthermore, the Supreme Court found that no other inequity deprived respondents of their right to petition under the 1940 Act. The Court reasoned that while INS representatives moved from country to country in other parts of the world, an authorized representative continuously existed in the Philippines for eight months. *Id.* at 2217.

67. *Id.*

68. *Id.* at 2215-16.

69. *Id.* at 2216 (quoting *Hedges v. Dixon County*, 150 U.S. 182, 192 (1893)).

70. *Pangilinan*, 108 S. Ct. at 2216 (quoting *Rees v. Watertown*, 86 U.S. (19 Wall.) 107, 122 (1874)). For the same proposition, the Court also cited *Thompson v. Allen County*, 115 U.S. 550, 555 (1885), and 1 J. STORY, EQUITY JURISPRUDENCE § 19 (W. Lyon ed. 1918). None of these cases, however, involved a time limitation. See *infra* note 116.

71. 8 U.S.C.A. § 1255a(1)(A) (West Supp. 1988); see *supra* notes 51-54.

72. Besides timely application, the alien must establish a continuous unlawful residence in the United States since January 1, 1982, a continuous physical presence in the United States since November 6, 1986, and admissibility as an immigrant. 8 U.S.C.A. § 1255a(a)(1)-(4) (West Supp. 1988).

73. *Id.* § 1255a(b).

74. *Id.* § 1255a(a)(1)(A). The alien must apply for adjustment to lawful status during the 12-month period. The period began May 5, 1987 and ended May 4, 1988. 8 C.F.R. § 245a.2(a)(1) (1988). Certain other illegal aliens, known as Special Agricultural Workers (SAWs), were given a 18-month period to apply for amnesty. 8 U.S.C.A. § 1160(a) (West Supp. 1988).

legalization period.⁷⁵ Aliens brought suit asking the courts to toll the application period due to the INS misinterpretations, and to require the INS to accept late applications so that the aliens would have the full benefits of the IRCA application period as intended by Congress.⁷⁶

Despite *Pangilinan*, two federal district courts, in opinions by three different judges, allowed applications after expiration of the IRCA time limitation. The judges differed, however, in their classification of the time limitation and whether the limitation could be equitably tolled. In *Catholic Social Services, Inc. v. Meese* ("CSS"),⁷⁷ the court tolled, without classifying, the IRCA time limitation by enjoining the INS to accept late applications.⁷⁸ The court concluded that *Pangilinan* should be read narrowly and limited to its factual and statutory context.⁷⁹ The court did not adopt the *Pangilinan* language, which it termed "dicta," that suggested that courts are powerless to equitably remedy the INS violation.⁸⁰ In *League of United Latin American Citizens v. INS* ("LULAC"),⁸¹ the court classified the IRCA time limitation as jurisdictional and, therefore, nontollable.⁸² The court reasoned that by placing timely application as the first among four eligibility requirements, "Congress expressly made [it] a jurisdictional provision instead of a statute of limitation,"⁸³ the latter generally being tollable.⁸⁴ Nevertheless, the court held that because the plaintiffs were not accorded the full twelve-month period mandated by IRCA, their applications were timely.⁸⁵ Finally, in *Zam-*

75. *Zambrano v. INS*, No. W-88-455 EJJ (E.D. Cal. Aug. 9, 1988) (INS violated 8 C.F.R. 245a.1(i)), noted in 65 INTERPRETER RELEASES 818 (1988); *League of United Latin Am. Citizens v. INS*, No. 87-4757-WDK (C.D. Cal. July 18, 1988) (INS policy codified at 8 C.F.R. § 245a.2(b)(8)), noted in 65 INTERPRETER RELEASES 767 (1988); *Catholic Social Servs., Inc. v. Meese*, No. S-86-1343 LKK, slip op. at 4 (E.D. Cal. June 10, 1988) (order holding that INS' interpretation of the "brief, casual and innocent" absence provisions of 8 C.F.R. § 245a.2(p) violated IRCA).

76. See 65 INTERPRETER RELEASES 818 (1988).

77. No. S-86-1343 LKK (E.D. Cal. Aug. 11, 1988).

78. *Id.*, slip op. at 4.

79. *Id.* at 3.

80. *Id.* at 3. The CSS court reasoned that it was "inconceivable" that *Pangilinan* has overturned 200 years of jurisprudence "in the cavalier manner suggested by the Government's reading of the case," thereby prohibiting equitable remedy in this suit. *Id.* at 3. The court also reasoned that such a broad reading of *Pangilinan* would allow the executive branch to violate IRCA and "raise very serious" separation of powers questions. *Id.* at 3-4.

81. No. 87-4757-WDK (C.D. Cal. Aug. 12, 1988).

82. *Id.*, slip op. at 4.

83. *Id.* at 3-4. The court held that it had subject matter jurisdiction, however, because the INS had promulgated regulations inconsistent with congressional intent. *Id.* at 5 n.4.

84. See *supra* note 32 and accompanying text.

85. *League of United Latin Am. Citizens v. INS*, No. 87-4757-WDK, slip op. at 6 (C.D. Cal. Aug. 12, 1988). The court also distinguished *Pangilinan* on three points. First, the Supreme

brano v. INS,⁸⁶ the court tolled the IRCA time limitation after finding that it was a statute of limitation and not jurisdictional.⁸⁷ In distinguishing *Pangilinan*, *Zambrano* agreed with *LULAC* that Congress intended plaintiffs to have a full year to apply for amnesty.⁸⁸

These three IRCA benefit opinions demonstrate that it is an open question whether courts will apply a congressional intent,⁸⁹ substantive-procedural, or jurisdictional analysis to benefit time limitations. Courts have not resolved whether benefit time limitations are sufficiently like statutes of limitation to be analyzed under a congressional intent analysis or whether tolling is precluded by application of the orthodox substantive-procedural analysis. Neither have courts decided whether benefit time limitations, as limiting benefits granted by the sovereign, deprive courts of their subject matter jurisdiction.⁹⁰

III. TOLLING BENEFIT TIME LIMITATIONS: A CONGRESSIONAL INTENT APPROACH

Courts should determine whether benefit time limitations are tolled by examining congressional intent, rather than by analogizing to statutes of limitation. A congressional intent analysis would allow courts to weigh effectively the policy behind the benefit time limitation against other policies behind the statute in deciding whether the limitation may be tolled.⁹¹ The Supreme Court's decision in *INS v. Pangilinan* does not preclude congressional intent analysis of benefit

Court had not found that the INS had violated the 1940 Act, while the *LULAC* court found that the INS violated IRCA. Second, Congress intended to grant plaintiffs the complete 12-month period in *LULAC*, while in *Pangilinan*, Congress intended that the cutoff date be absolute. Finally, the *LULAC* court merely granted plaintiffs the right to apply for adjustment of status, but did not confer citizenship. *Id.* at 7.

86. No. S-88-455 EJG (E.D. Cal. Aug. 9, 1988), noted in 65 INTERPRETER RELEASES 818 (1988).

87. The *Zambrano* court granted plaintiffs' relief by enjoining the INS from enforcing its stricter interpretation of the "likely to become a public charge" IRCA provision. 65 INTERPRETER RELEASES 818 (1988).

88. *Zambrano*, No. S-88-455 EJG, noted in 65 INTERPRETER RELEASES 818 (1988).

89. The modern congressional intent analysis has not been extended to benefit time limitations. The Supreme Court, in *American Pipe*, specifically found the time limitations in the congressional intent line of cases to be statutes of limitation, which create a substantive liability or right to sue. *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 559 (1974).

90. See, e.g., *INS v. Hibi*, 414 U.S. 5 (1973) (in deciding whether to allow plaintiffs to apply after the benefit time limitation had expired, Supreme Court did *not* consider whether tolling was available).

91. See *infra* notes 101-102 and accompanying text.

time limitations, although it implies that such limitations are subject to the formalistic, substantive-procedural analysis.⁹²

A. Courts Should Not Analogize Benefit Time Limitations to Jurisdictional or Substantive Statutes of Limitation

Whether benefit time limitations may be tolled is resolved properly by looking to congressional intent, rather than by analogizing to jurisdictional or substantive statutes of limitation.⁹³

Benefit time limitations are not properly analogous to jurisdictional statutes of limitation, which deprive a court of subject matter jurisdiction, because a statute creating benefits does not waive the government's immunity from suit,⁹⁴ as do statutes creating a right to sue.⁹⁵ Whether the statute requires that the benefit time limitation be a nontollable condition precedent to exercise of the right to receive the benefit can only properly be ascertained by examining congressional intent.⁹⁶

92. This method is characterized by the "specificity test." See *supra* notes 27-30 and accompanying text.

93. In deciding the remedies available to plaintiffs in *LULAC*, Judge William Keller, in a memorandum, directed counsel to submit supplemental memoranda on whether the 12-month IRCA deadline is "jurisdictional or more akin to a statute of limitation." (copy of Judge Keller's memoranda on file at *Washington Law Review*). See *supra* note 35 and accompanying text.

94. Neither the district court in *Catholic Social Servs., Inc v. Meese*, No. Civ. S-86-1343 LKK (E.D. Cal., Aug. 11, 1988), nor the district court in *Zambrano v. INS*, No. S-88-455 EJG (C.D. Cal. Aug. 12, 1988), found the benefit time limitation in IRCA to be jurisdictional. See *supra* notes 77-80, 86-88 and accompanying text. The Supreme Court in *Pangilinan* did not find that the 1940 Act's cutoff date deprived the courts of jurisdiction over the suit, although it did find that the cutoff date was a prerequisite to exercising the right. *Pangilinan v. INS*, 108 S. Ct. 2210, 2215-16. (1988); see *supra* note 65 and accompanying text.

95. See *supra* notes 22-25 and accompanying text. The only court that found a benefit time limitation jurisdictional nonetheless held that it had subject matter jurisdiction over the suit. See *League of United Latin Am. Citizens v. INS*, No. 87-4757-WDK, slip op. at 5 n.4 (C.D. Cal. Aug. 12, 1988). The *LULAC* court's holding, that the benefit time limitation in IRCA was a jurisdictional preclusion to tolling, is not persuasive. *LULAC* exemplifies the courts' confusion over labeling and defining benefit time limitations. The court reasoned that the time limitation is jurisdictional because it is contained in the same section defining other amnesty eligibility requirements. *Id.* at 3. In so reasoning, the court incorrectly applied *Zipes v. Trans World Airlines*, 455 U.S. 385 (1982). In *Zipes*, the Supreme Court held that the time limitation was not jurisdictional because it was separate from the provision granting jurisdiction. *Id.* at 393-94. The *Zipes* Court reasoned that the time limitation does not in any way refer to the jurisdiction of the courts. *Id.* at 394. There is no indication in *Zipes* that because a time limitation is part of the statutory requirement specifying eligibility, it is jurisdictional. *Id.* at 398. The court implied that the time limitation would have been jurisdictional if it had been in the jurisdictional section. The *LULAC* court seems to have misconstrued the IRCA time limitation as similar to a statute of limitation and, therefore, jurisdictional.

96. In *Zipes*, the court looked to congressional intent in finding that the statute of limitation was not a jurisdictional prerequisite to bringing suit. *Zipes*, 455 U.S. at 394-95.

Benefit Time Limitations

Analogizing benefit time limitations to statutes of limitation that the court characterizes as “substantive” is similarly inappropriate. The orthodox substantive-procedural characterization analysis is a conflicts of law doctrine that does not serve any purpose in equitable tolling. By applying the orthodox substantive-procedural analysis, courts may find that benefit time limitations are a non-tollable, substantive element of the statutory benefit granted by Congress.⁹⁷ While this substantive-procedural approach may be proper in analyzing statutes of limitation, the analysis does not further any policy behind benefit time limitations.⁹⁸ The main policy behind statutes of limitation is to avoid evidentiary problems resulting from claims brought long after the cause of action has accrued.⁹⁹ In contrast, the policies behind benefit time limitations depend on the benefit granted. Unlike statutes of limitation, there is no single broad policy behind benefit time limitations to protect defendants from lost evidence and failed memories caused by stale claims. The government’s ability to remember whether an applicant is eligible depends on the government’s filing capacity rather than its mental capacity, and will not deteriorate over time.¹⁰⁰ Therefore, courts should closely analyze congressional intent to decide whether the benefit time limitation in a given statute should be tolled.

B. Congressional Intent Analysis Enables Courts To Equitably Resolve Benefit Time Limitation Cases

Employing congressional intent analysis to determine whether a benefit time limitation may be tolled will ensure that decisions are made in accordance with the public policy behind the statutory benefit, and will restore equity to the doctrine of equitable tolling. Congressional intent analysis is the appropriate means of resolving equitable tolling cases involving benefit time limitations because deciding whether such time limitations may be tolled, requires courts to

97. See *supra* notes 26–32 and accompanying text.

98. In conflicts of law, the substantive-procedural characterization approach is a valid means for differentiating between procedural laws, which control the machinery of the courts, and substantive laws, which the courts’ machinery enforces. See *Developments, supra* note 12, at 1187. In deciding conflicts of law cases, courts must choose the applicable law to ensure smooth operation of a forum’s judicial machinery while still according the parties their substantive rights. H. GOODRICH, HANDBOOK ON THE CONFLICTS OF LAW § 86 (1927).

99. See *supra* note 46.

100. For example, respondents in *Pangilinan* are still Filipino World War II veterans, eligible under the 1940 Act but for the cutoff date. See *supra* note 59. Aliens satisfying the eligibility requirements under IRCA are still just as eligible for benefits under IRCA but for the time limitation. See *supra* notes 72–74 and accompanying text.

balance competing congressional policies within the same statute.¹⁰¹ When the government has acted inequitably in administering the benefit, one of two congressional policies ultimately will be frustrated. Courts must choose between permitting late application by excusing the intended beneficiary's noncompliance with the benefit time limitation, and denying late application by allowing the executive branch to frustrate the purpose of the statute by placing unwarranted obstacles in the path of applicants and then refusing to accept late applications. Permitting the executive branch to implement the law in a manner that conflicts with congressional intent raises separation of powers issues.¹⁰² Courts deciding such cases according to congressional intent could accurately balance the policies behind both the time limitation that would be violated and the statutory provision violated by the government.

C. Persuasive Judicial Authority Applies Congressional Intent Analysis

Most Courts analyzing statutes of limitation and some courts analyzing benefit time limitations have adopted a congressional intent approach. While statutes of limitation are different from benefit time limitations, the reasons courts have applied a congressional intent analysis in some statutes of limitation cases apply equally in benefit time limitation cases.

Recently, courts have looked to congressional intent in finding that an apparently jurisdictional limitation does not deprive the court of subject matter jurisdiction and, therefore, is not jurisdictional.¹⁰³ Thus, even if a court finds benefit time limitations sufficiently analogous to jurisdictional statutes of limitation, the court could toll the benefit time limitation when to do so is consistent with congressional intent.

101. A few courts have misapplied the congressional intent analysis in statute of limitation cases. These courts analyzed congressional intent to discover whether Congress intended the statute to be substantive or procedural when the better analysis would have looked to congressional intent to discover whether Congress intended tolling to be available. *See, e.g.,* *Kansas City, Mo. v. Federal Pac. Elec.*, 310 F.2d 271, 283 (1962) (Congress intended § 4B of the Clayton Act to be a procedural statute of limitation), *cert. denied*, 371 U.S. 912 (1962), *cert. denied*, 373 U.S. 914 (1963). While allowing courts greater flexibility, this misapplication of the congressional intent analysis still assumes that Congress is aware that time limitations it intends to be labeled substantive would be an absolute bar. There is no reason to assume congressional intent when the court could analyze legislative history to ascertain Congress' actual intent.

102. *See* *League of United Latin Am. Citizens v. INS*, No. 87-4757-WDK, slip op. at 5 (C.D. Cal. Aug. 12, 1988).

103. *See, e.g.,* *Bowen v. New York*, 476 U.S. 467 (1986); *see also supra* note 41 and accompanying text.

Benefit Time Limitations

Several modern courts have abandoned the substantive-procedural analysis in statutes of limitation cases in favor of a congressional intent analysis. These courts have reasoned that the substantive-procedural approach would only be valid in equitable tolling cases if Congress always intended substantive statutes of limitation to be absolute bars to late action.¹⁰⁴ This reasoning presents persuasive authority for courts to apply congressional intent in benefit time limitation cases. The same reasons that persuaded those courts to reject the substantive-procedural analysis and apply congressional intent to substantive statutes of limitation¹⁰⁵ could persuade courts to employ congressional intent analysis to benefit time limitations. According to the courts' analysis, Congress, instead of openly stating in the plain language of the statute that the time limitation may not be tolled, chose to make its intent known by placing the time limitation within the statute creating the right.¹⁰⁶ The courts thus rejected the substantive-procedural approach because it did not properly discern whether Congress intended the limitation to be tollable.¹⁰⁷

Each of the amnesty cases, which decided whether the benefit time limitation in IRCA could be tolled, have looked to congressional intent to some degree. The court in *Catholic Social Services* took the best approach by looking directly to congressional intent without classifying the limitation.¹⁰⁸ By not attempting to classify the IRCA benefit time limitation as a statute of limitation, the court avoided the formalistic rules controlling whether statutes of limitation should be tolled. *LULAC* also supports a congressional intent analysis.¹⁰⁹ While the *LULAC* court found that the IRCA limitation was jurisdictional,

104. See *Burnett v. New York Cent. R.R.*, 380 U.S. 424, 429 n.6 (1965).

105. See *supra* notes 33–40 and accompanying text.

106. See, e.g., *Phillips Co. v. Grand Trunk W. R.R.*, 236 U.S. 662, 667 (1915) (statutory purpose is indicated by the location of the time limitation).

107. The Supreme Court in *Burnett*, 380 U.S. at 428, explicitly found that the substantive-procedural dichotomy was not indicative of congressional intent. The courts also faulted the rationale behind the right-remedy distinction of the substantive-procedural approach. Rights expire only because some paramount authority refuses to protect the right. It is circular reasoning to claim that a substantive right has expired, but that the right has expired because the substantive statute of limitation cannot be tolled. See *LeRoy v. Crowninshield*, 15 F. Cas. 362, 368 (C.C.D. Mass. 1820) (recognizing that a right is useless without a remedy).

108. *Catholic Social Servs., Inc v. Meese*, No. S-86-1343 LKK, slip op. at 2 (E.D. Cal. June 10, 1988; final order Aug. 11, 1988); see *supra* notes 77–80 and accompanying text.

109. *League of United Latin Am. Citizens v. INS*, No. 87-4757-WDK, slip op. at 6 (C.D. Cal. Aug. 12, 1988). Although *LULAC* found the benefit limitation in IRCA jurisdictional, it seemed to apply the term “jurisdictional” in the same manner as other courts have applied the term “substantive.” See *supra* note 35.

it nevertheless looked to congressional intent in granting the plaintiffs' late applications.¹¹⁰

IV. *INS v. PANGILINAN* DOES NOT PRECLUDE CONGRESSIONAL INTENT ANALYSIS

A careful reading of *INS v. Pangilinan*¹¹¹ shows that courts are not restricted in their power to toll benefit time limitations unless tolling would be contrary to the Constitution and to congressional intent. *Pangilinan* does not explicitly mention equitable tolling.¹¹² The constitutional question, whether courts have the equitable power to confer citizenship, dominated the Supreme Court's inquiry into equitable remedies and its reasoning throughout *Pangilinan*.¹¹³ While the Court stated that it lacked the equitable power to craft remedies in violation of statutory limitations, it emphasized that the more fundamental issue was its lack of equitable power to confer citizenship beyond statutory limitations.¹¹⁴ The Court reasoned that the 1940 Act constituted the complete extent of the benefit granted by Congress under its exclusive constitutional authority.¹¹⁵

Given the constitutional focus taken by the Court, the Court's assertion that equitable remedies may not override statutory limitations is dictum unless violation of the statutory limitations also would violate the Constitution.¹¹⁶ The Court did not hold that it lacked the power

110. Because the remedy granted in *LULAC* had the same effect as tolling, and because ultimately *LULAC* looked to congressional intent to allow the plaintiffs' late applications, *LULAC* at least suggests that a congressional intent analysis should be the main, if not the only, focus in deciding whether to toll a benefit time limitation.

111. 108 S. Ct. 2210 (1988).

112. Although *Pangilinan* does not explicitly mention equitable tolling, the Supreme Court's language restricting the power to provide equitable remedies encompasses equitable tolling. See *supra* notes 68-70 and accompanying text.

113. *Pangilinan*, 108 S. Ct. at 2215.

114. Immediately following its one paragraph discussion of equitable remedies, the Court stated: "More fundamentally, however, the power to make someone a citizen of the United States has not been conferred upon the federal courts . . . as one of their generally applicable equitable powers." *Id.* at 2216. Moreover, the cases from which the Supreme Court quoted the maxims both involved constitutional questions. See *Hedges v. Dixon*, 150 U.S. 182, 192 (1893) (equity cannot disregard constitutional or statutory requirements any more than can the law); *Rees v. Watertown*, 86 U.S. (19 Wall.) 107, 122 (1874) (equity cannot create a remedy in violation of law), quoted in *Pangilinan*, 108 S. Ct. at 2216. Finally, the district courts in both *League of United Latin Am. Citizens v. INS*, No. 87-4757-WDK, slip op. at 7 (C.D. Cal. Aug. 12, 1988), and *Catholic Social Servs., Inc v. Meese*, No. Civ. S-86-1343 LKK, slip op. at 3 (E.D. Cal. Aug. 11, 1988) agreed that *Pangilinan* does not create greater restrictions on the equitable tolling powers of the courts than existed prior to *Pangilinan*.

115. *Pangilinan*, 108 S. Ct. at 2215.

116. Neither *Hedges* nor *Rees* involved time limitations or equitable tolling. *Hedges*, 150 U.S. at 183; *Rees*, 86 U.S. (19 Wall.) at 116. *Pangilinan* also cited *Thompson v. Allen County*, 115

Benefit Time Limitations

to grant equitable relief from a statutory limitation; it merely quoted maxims to that effect.¹¹⁷ Furthermore, because the Court did not find an inequitable event in *Pangilinan*,¹¹⁸ the case merely follows the well-established rule that courts may not toll time limitations unless an inequitable event prevented a plaintiff's timely action.¹¹⁹ The *Pangilinan* decision is, therefore, consistent with the doctrine of equitable tolling by refusing to toll a time limitation where no inequitable event exists.

The Court in *Pangilinan* ultimately applied a congressional intent analysis in holding that the benefit time limitation barred late action. *Pangilinan* examined whether Congress intended the courts to have the power to confer citizenship by naturalization after the benefit time limitation had expired.¹²⁰ By applying congressional intent analysis in connection with its constitutional findings, the Court demonstrated the importance of analyzing all benefit time limitations according to congressional intent. Therefore, while *Pangilinan* does not preclude jurisdictional or substantive-procedural analysis, neither does it preclude courts from applying a congressional intent analysis.

V. CONCLUSION

Without the power to equitably toll benefit time limitations, courts can only stand by while the executive branch frustrates the will of Congress by depriving would-be beneficiaries of their statutory benefits. While not all inequitable conduct by the government will be serious enough to warrant tolling, courts can only determine whether tolling is precluded by examining congressional intent and carefully weighing the particular statute's policies. Analyzing benefit time limitations as either jurisdictional or substantive precludes the balancing necessary to resolve justly equitable tolling cases. A fair resolution of

U.S. 550 (1885). The *Thompson* Court, in deciding the same issue as *Rees*, reasoned that the power to tax is legislative and not judicial. *Id.* at 557–58. The court in *CSS* agreed that *Pangilinan* is dicta where it suggested that the court is powerless to allow plaintiffs to apply for amnesty in violation of the IRCA time limitation. *Catholic Social Servs.*, at 3.

117. *Pangilinan*, 108 S. Ct. at 2215–16; see *supra* notes 68–70 and accompanying text. In tolling the IRCA time limitation the court in *LULAC* found that granting plaintiffs' relief would produce no constitutional violation. The court distinguished *Pangilinan* as a case where tolling would violate the Constitution. *League of United Latin Am. Citizens*, at 7.

118. See *supra* notes 62, 66–67 and accompanying text.

119. *Pangilinan*, 108 S. Ct. at 2215 (citing the lower court's finding that revocation of the Vice Consul's authority violated the statute and was an inequitable event). The Court did not find that any other inequity caused plaintiffs' delay. *Id.* at 2217. See *supra* notes 11–16 and accompanying text.

120. See *supra* note 65 and accompanying text.

equitable tolling cases can best be achieved by a congressional intent analysis.

David D. Doran