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INS v. Hibi

414 U.S. 5 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

October 11, 1973

Re: No. 72-1652 - U. S. Immigration and Naturalization
Service v. Marciano Haw Hibi

HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Stanford, California 94305-6000

Dear Bill:

Please join me in your proposed per curiam.

Regards,

WRB

Mr. Justice Rehnquist

Copies to the Conference

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2nd DRAFT

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

Circulate: _____
UNITED STATES IMMIGRATION AND NATURAL-
IZATION SERVICE v. MARCIANO HAWAII
Redacted: 10-15

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 72-1652. Decided October —, 1973

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

The Court today summarily reverses the decision of the Court of Appeals, which found that the Government was estopped from denying citizenship to respondent under the Nationality Act of 1940.¹ The Court reasons that estoppel is not even arguably applicable because there was no "affirmative misconduct" on the part of the United States; it implies that there were merely failures to "fully publicize" the rights given by the Act and "to have stationed in the Philippine Islands during all the time those rights were available an authorized naturalization representative." Failures of this kind could, perhaps, be excused if caused by the exigencies of war as long as good-faith efforts to carry out the provisions of the Act had been made.

But the Court ignores the record and the decisions below when it speaks only of these failures. In 1942, Congress amended the Nationality Act of 1940 to extend the benefits of citizenship to individuals who had fought in the armed forces of the United States during World War II, authorizing the appointment of naturalization officers to confer these benefits on noncitizens outside the jurisdiction of a naturalization court.² Between 1943

¹ C. 876, 54 Stat. 1137.

² As amended, Act of March 27, 1942, c. 199, §§ 701-705, 56 Stat. 182, the Nationality Act waived certain normal requirements for naturalization, such as residency in the United States and literacy.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. October 12, 1973

RE: No. 72-1652 - U.S. Immigration & Naturalization Service v. Marciano Haw Hibi

Dear Bill:

Please join me in your dissent in the
above.

Sincerely,

Brennan

Mr. Justice Douglas

cc: The Conference

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W
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

Potter Stewart
October 11, 1973

72-1652 - U. S. Immig. & Nat. Serv.
v. Hibi

Dear Bill,

I agree with the proposed Per Curiam
you have circulated in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

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Sanford, California 94305-6000



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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 10, 1973

Re: No. 72-1652 - U. S. Immigration and
Naturalization Service v. Hibi

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Rehnquist

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 18, 1973

Re: No. 72-1652 -- United States Immigration
and Naturalization service v. Marciano
Haw Hibi

Dear Bill:

Please join me in your dissent in this case.

Sincerely,

T.M.

T.M.

*TD
T.M.*

Mr. Justice Douglas

cc: The Conference

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Stanford, California 94305-6010



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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 12, 1973

Re: No. 72-1652 - U.S. Immigration & Naturalization
Service v. Marciano Haw Hibi

Dear Bill:

Please join me in your proposed per curiam.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

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Stanford, California 94305-6000



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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 10, 1973

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No. 72-1652 United States Immigration
and Naturalization Service v. Marciano
Haw Hibi

Dear Bill:

Please join me in your Per Curiam.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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ON WAR, REVOLUTION AND PEACE



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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE *v.* MARCIANO HAW HIBI

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 72-1652. Decided October —, 1973

PER CURIAM.

Respondent filed his petition for naturalization in the United States District Court for the Northern District of California on September 13, 1967. The District Court granted the petition, rejecting the negative recommendation of the naturalization examiner appointed by the Attorney General pursuant to 8 U. S. C. § 1446. The Court of Appeals affirmed. *Immigration and Naturalization Service v. Hibi*, 475 F. 2d 7 (CA9 1973), holding that even though the deadline fixed by Congress for the filing of applications such as respondent's had expired more than 20 years earlier, petitioner was "estopped" from relying on this fact.

Respondent was born in Manila in 1917, and in February 1941 enlisted in the Philippine Scouts, a unit that was part of the United States Army. He was captured by the Japanese armed forces and released after six months' internment. In April 1945 after the liberation of the Philippines by Allied forces, he rejoined the Scouts and served until his discharge in December 1945.

Sections 701 and 702 of the Nationality Act of 1940, as amended, provided for the naturalization of non-citizens who served honorably in the armed forces of the United States during World War II.* Section 701

*Sections 701, 702, and 705 of the Nationality Act of 1940, 56 Stat. 182, *et seq.*, as amended, 8 U. S. C. (1940 ed., Supp. V) 1001, 1002, 1005, provided in pertinent part:

"Sec. 701. . . . [A]ny person not a citizen regardless of age, who has served or hereafter serves honorably in the military or naval forces

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