

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

GUSTAVO GALVEZ-LETONA,

Petitioner - Appellee,

v.

No. 99-4195

WAYNE KIRKPATRICK, Acting
OIC, et al.,

Respondents - Appellants,

NATIONAL ASSOCIATION OF
PROTECTION & ADVOCACY
SYSTEMS; DISABILITY LAW
CENTER, et al.,

Amici Curiae.

ORDER


Filed February 9, 2000

Before **PORFILIO** and **MURPHY**, Circuit Judges.

This matter is before the court on the motion of the National Association of Protection and Advocacy Systems, Disability Law Center, et al., for

permission to file an *amicus curiae* on behalf of appellee. The motion is granted.

Entered for the Court
PATRICK FISHER, Clerk of Court

by: 
Elisabeth A. Shumaker
Chief Deputy Clerk

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

**No. 99-4195
DC# 99-CV-83-K**

GUSTAVO GALVEZ-LETONA

Plaintiff/Appellee,

v.

**WAYNE KIRKPATRICK, Acting Officer in Charge, JOSEPH
GREENE, District Director, Immigration & Naturalization Service,
JANET RENO, United States Attorney General,**

Defendants/Appellants.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF UTAH - HONORABLE DALE A. KIMBALL**

**BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF
PROTECTION & ADVOCACY SYSTEMS,
DISABILITY LAW CENTER, *et al.***

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INTEREST OF AMICI CURIAE

This brief provides an essential and unique perspective by presenting the united voices of nearly 70 national, regional and local disability, religious, immigrant and ethnic advocacy organizations. The issue on appeal is of primary importance to *Amici* National Association of Protection & Advocacy Systems (NAPAS), Disability Law Center, *et al.* because it affects one of our most marginalized populations -- those who not only lack the status of U.S. citizenship but whose disabilities may prevent their capacity to communicate with others and fully participate in society. The organizations joined here have a long history of advocacy on behalf of civil rights for persons with disabilities and immigrants and a distinct perspective on the rights of immigrants and refugees with disabilities.

Amici have a stake in this case because the issue -- whether the Immigration and Naturalization Service can evade the non-discrimination mandate of the Rehabilitation Act of 1973, §504 as it relates to the naturalization program and benefit -- affects hundreds of individual clients or members of these organizations across the nation. These persons could be directly affected by an order determining INS policy and practice. Thousands more are concerned about the welfare of their neighbors, friends, family and fellow prospective citizens.

In addition to NAPAS and the Disability Law Center, the other *Amici Curiae* include: The Arc of the United States (and The Arc of Utah and Arc Allegheny and The Arc of Montgomery County, Pennsylvania), the American Association on Mental Retardation, Bazelon Center for Mental Health Law, Disability Rights Education & Defense Fund, Disability Rights Council of Greater Washington, National Senior Citizens Law Center, New York Lawyers for the Public Interest, Access Living of Metropolitan Chicago, Pennsylvania Coalition of Citizens with Disabilities, Pennsylvania Council on Independent Living, Pennsylvania Statewide Independent Living Council, Public Interest Law Center of Philadelphia, Northeast Pennsylvania Center for Independent Living and Vision for Equality.

Other *Amici* are: the American Jewish Congress, Catholic Charities USA, United Jewish Communities, Lutheran Immigration & Refugee Service, Mexican American Legal Defense and Educational Fund Asian American Legal Defense and Education Fund, Friends Committee on National Legislation, Immigrant Legal Resource Center, Immigration and Refugee Services of America, National Asian Pacific American Legal Consortium, National Center on Poverty Law, National Immigration Law Center, National Council of La Raza, Asian Pacific American Legal Center of Southern California, Fund for Immigrants and Refugees, the Capital Area

Immigrants' Rights Coalition, Florida Justice Institute, Florida Immigrant Advocacy Center, Florida Legal Services, Heartland Alliance for Human Needs and Human Rights, Hebrew Immigrant Aid Society and Council Migration Service of Philadelphia, the Illinois Coalition for Immigrant and Refugee Rights, International Institute of Los Angeles, International Institute of the East Bay, Legal Assistance for Seniors, New York Immigration Coalition, Massachusetts Immigrant and Refugee Advocacy, Northwest Immigrant Rights Project and the Southeast Regional Immigration and Citizenship Coalition.

Amici also include: Albuquerque Border City Project, American Association of Jews from the Former USSR, American Network of Community Options and Resources, Asian Community and Cultural Center Asian Law Alliance, the Asian Pacific Development Center, Cabrini Immigrant Services, Caribbean Women's Health Association, Catholic Charities Community and Immigrant Services, Clare's Well, Council of Senior Centers and Services of New York City, Lincoln Interfaith Council, Lutheran Social Services of Minnesota, Coalition, Montagnard/Dega Association, Korean American Coalition, National Evangelical Slavic Association, National Federation of Filipino American Associations, Oficina Legal/Immigrant Law Center, Sisters of St. Joseph of

Orange, Utica Citizens in Action and Vermont Refugee Resettlement
Program¹

INTRODUCTION²

This court must affirm the district court order granting naturalization to appellee Gustavo Galvez-Letona, who has met all the essential requirements of the naturalization program. It is undisputed that Mr. Galvez-Letona (Galvez) satisfies the residency and good moral character requirements for naturalization and is exempt from the English language, government and history tests, due to his cognitive disability. Dist. Ct. Memorandum Opinion & Order (Mem. Op.) at 3, 6, Appendix (App.) 47, 50. The Immigration & Naturalization Service (INS) has rejected the Guatemalan national's citizenship request because he was unable to demonstrate attachment to U.S. Constitutional principles and "failed to establish that [he] possess[es] the requisite intention, in good faith, to assume and discharge the obligations of the oath of allegiance..."³

¹ See Motion for Leave to File Brief as *Amici Curiae* for a complete description of *amici* and their organizational interests.

² *Amici curiae* adopt appellee Gustavo Galvez-Letona's Statement of Facts and Statement of the Case. Galvez Brf. at 3-6.

³ Oct. 14, 1998 Ltr. from INS Acting Officer in Charge Steven M. Branch to G. Galvez-Letona. App. 72.

The court below concluded that “the sole reason for the denial of his application is his disability,” in violation of §504 of the Rehabilitation Act of 1973. Mem. Op. at 11, 13, App. 55, 57. More than one thousand other naturalization applicants across the country are estimated to be in the same predicament as Galvez.⁴ To deny them naturalization for their inability to take an oath of allegiance is to subject them to impermissible discrimination. INS cannot show that the oath and Constitutional attachment are an essential eligibility requirement for naturalization, or that the requirement cannot be modified to accommodate the disability of an otherwise qualified applicant.

ARGUMENT

I. Section 504’s Broad Mandate Against Discrimination Was Intended to Promote the Full Participation of Persons with Disabilities and is Consistent with Recent Amendments to the Immigration and Nationality Act.

Enacted in 1973, Section 504 of the Rehabilitation Act, 29 USC §794, is an historic legislative initiative intended “unequivocally” to provide relief to victims of disability-based discrimination by the government. Mem. Op. at 9, App. 53. In amendments adopted the following year, Congress

⁴ Georgetown University Law Center Federal Legislation Clinic, “Questions and Answers Regarding Waiving the Oath of Allegiance and Renunciation for Individuals with Disabilities” 3 (December 1999).

expressed its intent that §504 be accorded the same broad and remedial construction as other civil rights legislation. Sen. Comm. on Labor & Pub. Welf., S.Rep. No. 93-1297, 93d Cong., 2d Sess., at 39-40, *reprinted in* 1974 U.S.C.C.A.N. 6373, 6390. “[A]s virtually contemporaneous and more specific elaborations of the general norm that Congress had enacted into law the previous year, the [1974] amendments and their history do shed significant light on the intent with which §504 was enacted.” *Alexander v. Choate*, 469 U.S. 287, 306 n. 27 (1988). Subsequently, the Justice Department promulgated comprehensive regulations, applying §504 to the programs and activities conducted by federal agencies. See, 28 CFR §39.102 *et seq.*

Section 504 is a simple, but sweeping, measure designed to erase the fear of, and pity toward, persons with disabilities and the image that they are not expected to participate in society.⁵ The Rehabilitation Act codifies the

⁵ As this appeal concerns naturalization for people with disabilities, it is worth noting that less than forty years ago students in American civics classes were exposed to citizenship textbook images such as this:

“The blind, the deaf, the dumb, the crippled, and the insane and feeble-minded are sometimes known collectively as the *defective* ... Such people often need to be placed in some special institution in order to

notion that “disability is a natural part of the human experience and in no way diminishes the right of individuals to...enjoy full inclusion and integration in the economic, political, social, cultural and educational mainstream of American society...” 29 USC §701(a)(3).⁶

In addition to the mandate of the Rehabilitation Act, the naturalization scheme must be viewed against the backdrop of Congress’ recent amendments to the Immigration & Nationality Act (INA). These amendments are intended “to promote the acquisition of U.S. citizenship by relaxing or eliminating certain burdensome and unreasonable testing and residency requirements” for persons with disabilities, among others. Hse. Comm. on the Judiciary, H.R. Rep. No. 387, 103d Cong., 1st Sess. at 3-4, *reprinted in* 1994 U.S.C.C.A.N. 3516, 3516. The amendments include such

receive proper attention.” J. McCrocklin, *Building Citizenship* 244 (1965), *quoted in* tenBroek and Matson, “The Disabled and the Law of Welfare,” 54 *Cal. L. Rev.* 809, 811 & n. 8 (1966).

⁶ Section 504, adopted the year Gustavo Galvez was born, was one of the legislative measures that marked “a new and bold direction in public policy for disabled citizens. With these laws, emphasis shifted from ‘treating’ and ‘supporting’ disabled individuals to creating legally protected opportunities and rights.” S. Percy, *Disability, Civil Rights and Public Policy* 10 (1989). For a more recent depiction of American life for people with disabilities, including barriers to citizenship, see National Council on Disability, *Lift Every Voice: Modernizing Disability Policies & Programs to Serve a Diverse Nation*, www.ncd.gov/publications/lift_report at text acc.

accommodations as exempting disabled applicants from the requirement that they be tested on their knowledge and understanding of U.S. history and government, where they are unable to comply. 8 USC §1423(b)(1994). See INS Brf. at 15 and H.R. Rep. No. 387, *supra*. at 3-4, 1994 U.S.C.C.A.N. at 3516. Other amendments include an expedited oath procedure to assist applicants with developmental and physical disabilities or serious illness, 8 USC §1448(c), and removal of “mental defects” as one of the statutory grounds for denying a visa to applicants with mental disabilities. 8 USC §1182(a).⁷ These particular and partial measures complement the more general legislation designed to eradicate disability-based discrimination.

The Immigration & Naturalization Service concedes that it is a federal agency subject to §504 and that it has a duty to make reasonable accommodations in the administration of the naturalization program for individuals with mental disabilities.⁸ INS Brf. at 19-20. Its appeal of the

nn. 1-4 and 66-95 (1999).

⁷ These reforms represent a sharp break with the immigration legislation of the early 20th century, which barred the entry of “idiots, imbeciles, feeble-minded persons, insane persons, epileptics” and other public charges. See, Acts of Mar. 3, 1903, Pub. L. No. 57-162, §2, 32 Stat. 1213, 1214 and Feb. 20, 1907, Pub.L. No. 59-96, §2, 34 Stat. 898, 898. See also, National Council on Disability, *supra* at text acc. nn.. 57-65.

⁸ While not in the language of §504, judicial interpretation has long recognized the necessity of reasonable accommodations or modifications, as

district court order is based on the narrower claim that demonstrating attachment to Constitutional principles and an understanding of the oath of allegiance are an “essential eligibility requirement” of the naturalization program and benefit under 28 CFR §39.103. Furthermore, the INS claims, there can be no modification of this requirement, absent explicit congressional authorization. INS Brf at 25-31. (See Part II, below).

Alternatively, INS maintains that it has issued various internal guidance memoranda which offer policy modifications or accommodations, e.g., family members or others are allowed into the examination room for support; immigration officers may ask questions in the applicant’s native language or simplified questions; and officers may accept nonverbal cues as a demonstration of comprehension. INS Brf. at 25 & n.6. INS purports that either Galvez’ disability is too severe to accommodate or the accommodation requested is not “reasonable” insofar as it would require a

applied to government programs, activities and services. See, e.g., *Southeastern Community College v. Davis*, 442 U.S. 397, 410 (1979)(reasonable modifications required, but not fundamental alteration); *Alexander v. Choate*, 469 U.S. at 300 (reasonable accommodations, modifications, adjustments or changes necessary to assure meaningful access to government program or benefit). See also, 28 CFR §41.53.

fundamental alteration to the nature of the naturalization program. See, INS Brf. at 20, 24-25.⁹ (See Part III, below).

In fact, Congress' recent amendments to the INA which lower some of the barriers for immigrants with disabilities do not limit the accommodations available under §504, and there is nothing in these amendments to suggest that these are the exclusive accommodations available. The statutory testing exemptions, for example, are simply incremental and partial measures that were taken to ease the process for otherwise qualified applicants. To adopt INS' narrow reading of the immigration statutes, INS Brf. at 27-30 is to thwart the broad mandate of §504 of the Rehabilitation Act.¹⁰

⁹ The original memorandum, INS, *Supplemental Policy Guidance I*, reprinted in 74 *Interpreter Releases* 941 (1997), cited by the district court at Mem. Op. 9-10, App. 53-54, has since been replaced with another internal document. The new guidelines contain no substantive changes that are relevant here. See, Immigration Services Division, Field Operations, *Policy Memorandum No. 47* (Apr. 7, 1999).

¹⁰INS also cites *Afroyim v. Rusk*, 387 U.S. 253 (1967), in support of its position that conferring citizenship has foreign policy implications and it must be particularly solicitous in overseeing an immigrant's "transfer of allegiance." INS Brf. at 28-29, n. 7. That case is inapposite as it involves denaturalization, or *revocation* of citizenship, which is far different from Mr. Galvez's seeking to be *granted* this status. Moreover, the *Afroyim* Court was concerned about the inadvertent expatriation of American citizens based on a single act of voting in another country, and not the speculative scenario of a U.S. national abroad induced to unwittingly relinquish his citizenship. *Id.* at 254.

II. Taking the Oath is Not An Essential Eligibility Requirement of Naturalization.

By insisting that the oath and Constitutional attachment requirements are essential, INS is effectively applying a “back door” examination of “the principles and form of government” for the very class of applicants Congress so recently excused from being tested on their knowledge of U.S. history and government. 8 USC §1423(b). This kind of counter-intuitive construction was rejected in one judicial naturalization petition, where the court excused the applicant from complying with an explicit statutory requirement to take the oath in English, in light of Congress’ having waived the English literacy requirement the year before for older, long-term residents. “To preclude such an alien from citizenship because the letter of the statute provides the taking of the oath...in English would nullify the Congressional intention and render the legislation meaningless.” *In re Contreras*, 100 F.Supp. 419, 420 (S.D. Cal. 1951).

Here, the district court noted that while the attachment and oath requirements “play an important role in becoming a citizen,” they are not essential to the program or benefit. Congress “has made [this] clear” by building into the statute exceptions to the oath and attachment requirements. Mem. Op. at 12, App. 56. Specifically, in the case of minors who acquire

or derive citizenship through their parents, Congress has authorized the Attorney General to waive the taking of the oath where the child is unable to understand its meaning. 8 USC §1448(a). *Amici* do not suggest that this statutory provision applies to Mr. Galvez, but should be read as an indication that the oath is *not* essential to citizenship. As the court below concluded: “[I]f the attachment and oath requirements were essential, they would not be waived by *anyone* for *any* reasons.” Mem. Op. at 12, App. 56 (emphasis added).

Other exceptions belie INS’ assertion that these requirements are essential to the naturalization program. For instance, the agency has allowed citizenship applicants to naturalize without insisting they participate in such civic activities as jury service or demonstrate loyalty by pledging allegiance to the U.S. flag, or serve in the military, if it would violate their religious beliefs. See, *In re Pisciatano*, 308 F.Supp. 818, 820 (D. Conn. 1970); *In re Battle*, 379 F.Supp. 334, 336 (E.D.N.Y. 1974); and 8 USC §1448(a). In addition, the INS makes accommodations for new Americans who maintain dual citizenship¹¹ insofar as they need not honor their literal obligations under 8 USC §1448(a) to “absolutely and entirely renounce and abjure all

¹¹ See, e.g., *Perkins v. Elg*, 307 U.S. 325, 329 (1939), *Schneider v.*

allegiance and fidelity to any foreign...state.”

Rather than constituting an essential requirement or an “unalterable monolithic barrier,” one commentator has observed that the oath requirement is instead “a ceremonial formality marking the successful completion of the naturalization screening process.” Lyons, “Mentally Disabled Citizenship Applicants and the Meaningful Oath Requirement for Naturalization,” 87 *Cal. L. Rev.* 1017, 1046 (1999).

For authority, INS relies on “express” and “specific” provisions of the INA and Congress’ plenary authority over naturalization. See, INS Brf. at 20-23, 26-31 and cases cited therein. But, merely characterizing the oath as essential does not make it so. The agency must evaluate the purpose of the oath and attachment requirements to determine whether they are necessary or essential to the naturalization benefit or program. *Pottgen v. Missouri State High Schl. Activities Ass’n*, 40 F.3d 926, 929 (8th Cir. 1994)(age limit shown to have independent bases as essential requirement of interscholastic athletic program, disqualifying older student with learning disabilities). See also, *Borkowski v. Valley Central School District*, 63 F.3d 131, 140 (2d Cir. 1995)(school must assess whether class control is essential function of

Rusk, 377 U.S. 163, 166-67 (1964) and *Afroyim v. Rusk*, 387 U.S. 253.

school librarian position held by person with mobility impairment); *Nelson v. Thornburgh*, 567 F.Supp. 369, 382 (E.D. Pa. 1983), *aff'd.*, 732 F.2d 146 (3d Cir. 1984), *cert. denied*, 469 U.S. 1188 (1985) (ability to read is not essential job function of visually impaired welfare worker where agency can provide reader as reasonable accommodation); and *Overton v. Reilly*, 977 F.2d 1190, 1195 (7th Cir. 1992) (contact with public not essential job function of agency technical officer who has psychiatric disability).

In *Juvelis v. Snider*, 68 F.3d 648 (3d Cir. 1995), the court invalidated as discriminatory the policy of a state department providing services to residents with mental retardation which required persons to prove their domiciliary *intent*. The essential nature of the state program, the court held, was residency, not whether beneficiaries had the mental capacity to form intent to reside in the state. *Id.* at 652.

Determining just what is essential in a rule or statute is a highly fact-specific exercise and few courts have been able to easily articulate the standard underlying their findings. Substituting the word “necessary” is one means. See, e.g., *Pottgen* at 929 and *Simon v. St. Louis Co.*, 656 F.2d 316, 321 (8th Cir.), *cert. denied* 455 U.S. 976 (1981)(in both cases, the court of appeals attempted to apply the *Southeastern Community College v. Davis*

test: an “otherwise qualified individual” is one who meets all the program requirements in spite of a disability). Perhaps *Coleman v. Zatechka*, 824 F.Supp. 1360 (D. Neb. 1993) says it best: when additional eligibility requirements are not applied to *all* program participants or beneficiaries, they are *not* essential, “but rather [a]re advanced by defendant in an attempt to legitimize the policy of excluding [persons] with disabilities...” *Id.* at 1371-72.¹² Indeed, the court below reached a similar conclusion when it observed that if the oath and attachment requirements were essential elements of the naturalization program, they would not be waived for *anyone* – including minors. Mem. Op. at 12, App. 56.

Should this court adopt INS’ tautological reasoning, it would find that virtually no substantive requirement in any naturalization or immigration statute is ever subject to modifications under the Rehabilitation Act, as all alterations would be deemed fundamental and all requirements essential--

¹² In *Coleman*, the court determined in painstaking detail that the essential eligibility requirements of a state university dorm roommate assignment program were admission to the university and submission of a request for a double room, without specifying a particular roommate. Additional requirements -- occupying no more than one-half the room space and not needing services of a visiting personal care attendant – could not be considered essential and therefore improperly excluded a student with a disability from the program who used a wheelchair and personal attendant services. *Id.* at 1367-71.

unless Congress or the INS has explicitly provided for the required accommodations. See, *Brennan v. Stewart*, 834 F.2d 1248 (5th Cir. 1988) (benefit itself cannot be defined in a way that effectively denies otherwise qualified disabled individuals meaningful access; “it cannot refer only to those already capable of meeting the requirements--or else no *reasonable requirement* could ever violate §504...”) *Id.* at 1261(emphasis added).

Even in cases that have not applied an essential requirements analysis, the concepts of the oath and Constitutional attachment defy easy interpretation. Far from providing guidance, the courts “have generally shied off from concrete definition...” *Stasiukevich v. Nicholls*, 168 F.2d 474, 477 (1st Cir. 1948)(denial of petition of alleged communist labor activist). See also, *Tauchen v. Barber*, 183 F.2d 266, 268 (9th Cir. 1950). (“ Attachment to the Constitution is an especially nebulous concept, not easy of definition [citations omitted]” as applied to German national who failed to unequivocally state he would bear arms against Germany during World war II) and *Baumgartner v. United States*, 322 U.S. 665, 673 (1944) (denaturalization proceeding against German national for withholding complete renunciation of allegiance to Germany and having reservations in

oath of allegiance to U.S. reaffirming that oath “test or formula” is one of broad conception).

One commentator suggests that rather than reasonably modify the ambiguous oath and attachment requirements for applicants with severe mental disabilities, in its zeal INS has branded these prospective citizens as disloyal and insufficiently attached to Constitutional principles. The agency has “transmuted simple silence on this point into a clarion call to defend the gates of membership in the body politic. As a result, those who will not and those who *cannot* express their willingness to uphold the principles of the Constitution find themselves lumped together in the same category of inadmissible citizenship applicants.” Lyons, 87 *Cal. L.Rev.* 1017, 1035.

III. Both Section 504 and the INA Authorize INS to Waive or Modify the Oath and Attachment Requirements by Allowing Applicants to Present Alternative Evidence of Allegiance.

The agency’s rigid refusal to go outside of a limited set of accommodations is itself contrary to the Rehabilitation Act, which requires an individualized inquiry to determine whether an applicant for government benefits is qualified or whether she may be accommodated in meeting the qualifications. *School Bd. of Nassau Co. v. Arline*, 480 U.S. 273, 287-88

(1987). See also, *Crowder v. Kitagawa*, where the court reiterated its previous holding (*Chalk v. United States District Court*, 840 F.2d 701, 705 (9th Cir. 1988)) that “the determination of what constitutes reasonable modification is highly specific, requiring case-by-case inquiry” in finding Hawai’i’s refusal to modify a state law imposing a quarantine on animals entering the state violated §504 because it denied visually impaired guide dog owners meaningful access to state services. 81 F.3d 1480, 1486 (9th Cir. 1996).¹³

INS claims Congress considered and, by its silence, rejected waiving the oath. INS Brf. at 29, n. 8. ¹⁴ However, Congress is not required to insert a nondiscrimination clause at the end of every other statute it enacts or

¹³ In *Borkowski*, 63 F.3d , the court of appeals cautioned against relying on intuition under §504. “[I]ndeed, unthinking reliance on intuition about the methods by which jobs are to be performed and how an individual’s disabilities relate to those methods is among the barriers that the Rehabilitation Act was designed to overcome.” *Id.* at 140.

¹⁴ INS contends that as the legislators were mindful of special exceptions in administering the oath to persons with disabilities, and were therefore capable of waiving the oath entirely, their decision not to do so underscores the oath’s essential nature. *Amici* have already responded above to such a broad-based defense. The fact that Congress has considered and failed to enact legislation to exempt disabled applicants from the oath requirement should carry little or no weight under the canons of statutory interpretation as it is subject to different conclusions. See, Tiersma, “The Language of Silence,” 48 *Rutgers L.Rev.* 1, 91 (1995)(several commentators have argued against the use of legislative silence, or suggested its use be limited).

amends in order to extend the protection of the ADA and the Rehabilitation Act. *Howard v. Dep't of Social Welfare*, 655 A.2d 1102, 1109 (Vt. 1994).

As the INA does not actually specify the manner of interviewing and examining a naturalization applicant, the program is that much more capable of modification. An immigration officer is authorized to take testimony “touching or in any way affecting the admissibility of any applicant for naturalization,” 8 USC §1446(b),¹⁵ and under the agency’s own regulations, the applicant need not be the sole source of information for the examination. For instance, “[t]he applicant and the Service shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required...” 8 CFR §335.2(b). Witnesses may also be called to testify regarding an applicant’s qualifications. *Id.* at §335.2(c).¹⁶

¹⁵ INS implicitly recognizes that the examination is not a precise or uniformly conducted process, but is “typically use[d]” to question applicants about their understanding of the oath. INS Brf. at 19.

¹⁶ This kind of proxy testimony has precedent from the period during which district courts had exclusive jurisdiction over naturalization petitions. See, e.g., *In re Rodriguez*, 81 F. 337, 355 (W.D. Tex. 1897) (court’s granting naturalization based on witnesses’ statements that petitioner was “a very good man, peaceable and industrious” and upstanding member of community who “by his daily [life, for ten years] has practically illustrated and emphasized his attachment to the principles of the constitution.”).

Thus, family members, social service providers or others¹⁷ could testify, e.g., that an applicant is not “hostile to the basic form of government of the United States, or [does not] disbelieve in the principles of the Constitution”¹⁸ or that he otherwise satisfies the oath obligations.¹⁹

Documentary evidence -- such as a passport showing no departures from the country, an educational or habilitation program plan with goals related to civic education, or the absence of an arrest record -- could be presented as

¹⁷ See Lyons, *supra* at 1037, 1048 on the role of caregivers and families as supports in the interview process. This commentator also notes the irony in INS’ insistence on obtaining affirmative consent to becoming citizens by persons with severe cognitive disabilities, *Supp. Policy Guidance I, supra* at 3, when for this group of persons, family members or others routinely make other vital decisions, including whether to immigrate to the United States and petition for permanent residency. *Id.* at 1045.

¹⁸ See 8 CFR §316.11(a). While the court below rejected a so-called “negative” test of attachment, Mem. Op. at 9, App. 53, *amici* believe Congress’ concern with the oath is actually that persons whose loyalty to the United States is questionable should be excluded from citizenship. Therefore, evidence that an applicant has *refrained* from such hostile acts as joining certain political organizations or evading military service may suffice to satisfy one’s attachment and allegiance. See Lyons, *supra* at 1032-33 and cases cited in nn. 92-95. See also, Galvez Brf. at 20-23. Similarly, one district court ruled that citizenship should be denied “[o]nly if the applicant’s beliefs would deny others’ civil or constitutionally protected rights or if the applicant believes in a change of our form of government through violence.” *In re Battle*, 379 F.Supp. 334, 337 (E.D.N.Y. 1994).

¹⁹ Persons with certain mental or physical disabilities are already in many instances exempt from the obligation under the oath of allegiance to bear arms or perform noncombatant or civilian service. 8 CFR §237.1(a).

well.

This approach to the examination is also consistent with naturalization caselaw. In *Schneiderman v. U.S.*, the Supreme Court held that the oath requirement is not so much about attachment or beliefs as it is about behavior or conduct,²⁰ which the Court characterized as “a purely objective qualification.” 320 U.S. 118, 133 (1943) (denaturalization of Russian Marxist active in Communist party organizations). And, when this concept is paired with the agency’s Rehabilitation Act obligations, it is plain to see how INS can modify its test for attachment and oath obligations by relying on objective factors that are probative of an applicant’s loyalty. See e.g. *Juvelis v. Snider*, 68 F.3d at 654-56 (Rehabilitation Act requires alternative test for intent to change domicile based on objective factors where person lacks mental capacity, citing *Rishell v. Phillips Episcopal Hosp.*, 12 F.3d 171, 173 (10th Cir. 1993)).²¹

²⁰ “Given the difficulty of peering into the human mind, these standards must necessarily focus on outward conduct as a reflection of an applicant’s inner views.” Lyons, *supra* at 1033. See, *In re Arbesu*, 347 F.Supp. 1014, 1017 (E.D. La. 1972) (citing *In re Sittler*, 197 F.Supp. 278 (S.D.N.Y. 1961), *aff’d*, 316 F.2d 312 (2d Cir. 1963), *cert. denied*, 376 U.S. 932 (1964) (test for determining sincerity in applicant’s attachment and favorable disposition requires ascertainment of state of mind).

²¹ While *Rishell* did not apply the Rehabilitation Act, it was cited for its holding that a domiciliary rule is not immutable, *viz.* the rule that an “incompetent person” lacks capacity to change domicile.

INS, however, has disallowed the use of a proxy as an accommodation for applicants with developmental disabilities, a position the lower court found to be “without explanation.”²² Mem. Op. at 10, App. 54. In short, INS firmly rejects as unreasonable any accommodation beyond the set menu prescribed in its internal memoranda. This outcome runs counter to both the naturalization scheme, with its provisions easing requirements for immigrants with disabilities, as well as the expansive anti-discrimination mandate of the Rehabilitation Act.

CONCLUSION

As the oath and Constitutional attachment requirements are not essential to naturalization – or may be modified -- the decision of the district

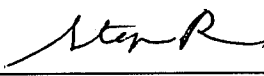
²² INS’ disallowance of a proxy seems to directly contradict its own regulations permitting a legal guardian to sign applications for a “mentally incompetent person.” 8 CFR §103.2(a). INS Brf. at 18, n. 5. The absurd result is that an individual with a cognitive disability is allowed to initiate the process even with no possibility of completing it. Here, Mr. Galvez’ mother is his legal guardian. Galvez Brf. at 3. See also, Utah Code Ann. §75-5-303 (procedure for appointment of guardian for “incapacitated person”).

court and the order granting naturalization to Gustavo Galvez-Letona should be affirmed.

Dated: February 1, 2000

Respectfully submitted,

STEPHEN A. ROSENBAUM
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by 

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**CERTIFICATION OF COMPLIANCE
WITH TENTH CIRCUIT RULE 32(a)(7)(C)**

Pursuant to the Federal Rules of Appellate Procedure, R. 32 and the Rules of this Court, I hereby certify that this brief is double-spaced, and meets the type-volume limitation. The brief contains 5,148 words in 14-point proportionately spaced typeface, less than one-half the maximum length authorized for a party's principal brief.

Dated: February 1, 2000


STEPHEN A. ROSENBAUM

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of February 2000, I did mail first class postage prepaid two true and correct copies of the foregoing brief of *amici curiae* to:

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

GUSTAVO GALVEZ-LETONA,

Plaintiff/Appellee,

**MOTION FOR LEAVE
TO FILE BRIEF AS
*AMICI CURIAE***

vs.

**WAYNE KIRKPATRICK,
Acting Officer in Charge,
JOSEPH GREENE, District Director
JANET RENO, United States
Attorney General,**

**No. 99-4195
(DC #99-CV-83 K)**

Defendants/Appellants

Pursuant to Rule 29 (b) of the Federal Rules of Appellate Procedure, the National Association of Protection & Advocacy Systems and the Disability Law Center, by and through their attorneys Stephen A. Rosenbaum and Lauren R. Barros, hereby move this Court for leave to file the attached Brief of *Amici Curiae*. The Brief urges affirmance of the decision of the District Court and supports the granting of naturalization to plaintiff/appellee Gustavo Galvez-Letona. Mr. Galvez, through his attorneys of record, consents to the filing of the Brief. The defendants/appellants, Wayne Kirkpatrick, *et al.* (INS), neither consent nor object to the filing. In the absence of uniform consent by all parties, this Motion is submitted with the Brief and proof of service.

INTRODUCTION

The Brief provides an essential and unique perspective by presenting the united voices of nearly 70 national, regional and local disability, religious, immigrant and ethnic advocacy organizations. The issue on appeal is of primary importance to *Amici* National Association of Protection & Advocacy Systems (NAPAS), Disability Law Center, *et al.* because it affects one of our most marginalized populations – those who not only lack the status of U.S. citizenship but whose disabilities may prevent their capacity to communicate with others and

fully participate in society. The organizations joined here have a long history of advocacy on behalf of civil rights for persons with disabilities and immigrants and a distinct perspective on the rights of immigrants and refugees with disabilities.

Amici have a stake in this case because the issue -- whether the Immigration and Naturalization Service can evade the non-discrimination mandate of the Rehabilitation Act of 1973, §504 as it relates to the naturalization program and benefit -- affects hundreds of individual clients or members of these organizations across the nation. These persons could be directly affected by an order determining INS policy and practice. Thousands more are concerned about the welfare of their neighbors, friends, family and fellow prospective citizens.

Amici's attached Brief provides a thorough analysis of the Rehabilitation Act and the Immigration and Nationality Act, which should be helpful to this Court in its evaluation of Mr. Galvez' case. The analysis provides ample reason to affirm the District Court's decision by showing that the oath is not an essential eligibility requirement for naturalization, and that the requirement can be modified to accommodate the disability of an otherwise qualified applicant. The Brief persuasively demonstrates that to deny these individuals naturalization for their inability to take an oath of allegiance is to subject them to impermissible discrimination.

I. NATIONAL AND LOCAL DISABILITY RIGHTS ORGANIZATIONS

The following national and local disability rights groups have joined as *Amici* on the attached Brief:

National Association of Protection and Advocacy Systems (NAPAS)

NAPAS is a membership organization for the nationwide system of protection and advocacy (P&A) agencies. Since 1975, federal statutes¹ have mandated that P&As provide legal representation and related advocacy services on behalf of all persons with disabilities in a variety of settings. Pursuant to the P&A statutes, at least one P&A agency exists in each state and territory of the United States.

NAPAS facilitates coordination of P&A activities and provides training and technical assistance to the P&A network. Numerous P&As around the country advocate for clients who, just like Mr. Galvez, are seeking naturalization but lack the mental capacity to demonstrate attachment to the principles of the U.S. Constitution. NAPAS, in turn, is providing this brief on behalf of its P&As and thereby voicing a consolidated opinion in support of Mr. Galvez' case.

¹ Part C of the Developmental Disabilities Assistance And Bill Of Rights Act of 1975, 42 USC §§ 6041-43; the Protection And Advocacy For Individuals With Mental Illness Act of 1986, 42 USC §§ 10801 et seq.; and the Protection And Advocacy Of Individual Rights Program of the Rehabilitation Act of 1973, 29 USC § 794e (collectively referred to herein as the "P&A statutes.")

Disability Law Center

The Disability Law Center has been designated by the Governor of Utah as the P&A agency for the State of Utah. The Center's mission is to enforce and strengthen the federal, state and local laws that protect the rights of Utahns with disabilities, such as Gustavo Galvez-Letona.

The Arc of the United States - The Arc, through its more than 1,000 state and local chapters, is the largest national voluntary organization in the United States devoted solely to the welfare of the more than seven million children and adults with mental retardation and their families. Since its inception, The Arc (formerly the "Association for Retarded Citizens") has vigorously challenged attitudes and public policy, based on false stereotypes, which have authorized or encouraged discrimination against people with mental retardation in virtually all areas of life. In recent years, The Arc has worked to ensure the availability of the naturalization process for people with mental retardation who wish to become citizens. State and local chapters including **The Arc of Utah**, **The Arc Allegheny (PA)**, and **The Arc of Montgomery County (PA)** also join as *Amici*.

American Association on Mental Retardation – The AAMR is the nation's oldest and largest interdisciplinary organization of professionals who work exclusively in the field of mental retardation. The expressed mission of AAMR,

which has over 8,000 members, is to promote global development and dissemination of progressive policies, sound research, effective practices and universal human rights for people with mental retardation.

Bazelon Center for Mental Health Law - The Bazelon Center is a national public interest organization founded in 1972 to advocate for the rights of individuals with mental disabilities. The Center has engaged in litigation, administrative advocacy, and public education to promote equal opportunities for individuals with mental disabilities to participate fully in society.

Disability Rights Education & Defense Fund – DREDF is a national disability civil rights law and policy organization dedicated to securing equal citizenship for Americans with disabilities. Since its founding in 1979, DREDF has pursued its mission through education, advocacy and law reform efforts. In 1996, DREDF joined with other civil rights firms in filing a national federal class action lawsuit, *Chow v. Meissner*, (N. D. Cal.) challenging INS' interpretation of §504 and Immigration & Nationality Act amendments as applied to immigrants with disabilities seeking naturalization.

National Senior Citizens Law Center – the National Senior Citizens Law Center is a non-profit organization which, for the past 28 years, has advocated nationwide to promote the independence and well-being of low-income elderly individuals

and persons with disabilities, with particular emphasis on women and racial and ethnic minorities. The Law Center also provides technical assistance and educational materials to advocates for the elderly and persons with disabilities, including the impact of immigration status on eligibility for public benefits. The Law Center is particularly concerned with the issues in this case because a substantial number of seniors with dementia are currently prevented from obtaining citizenship due to current INS policy regarding allegiance.

American Network of Community Options and Resources – ANCOR is a nationwide association of more than 650 private, non-profit, for-profit and family care agencies that has provided support and services to more than 150,000 people with mental retardation and other severe disabilities for over thirty years.

Other disability rights organizations that have signed on as *Amici* include the following: **New York Lawyers for the Public Interest** (non-profit law firm founded in 1976 which includes a Disability Law Center that engages in education, advocacy, and litigation on the national and local levels to ensure that people with disabilities have full and meaningful access to United States citizenship); **Disability Rights Council of Greater Washington** (non-profit membership organization advocating equal opportunities for persons with disabilities in all aspects of life, including governmental services); **Access Living**

of Metropolitan Chicago (disability rights organization, governed and staffed by a majority of people with disabilities, seeking to make the immigration process accessible to people with disabilities); **Pennsylvania Council on Independent Living** (promoting the development and expansion of a statewide network of consumer-directed Centers for Independent Living); **Pennsylvania Statewide Independent Living Council** (leadership group of people with disabilities, appointed by Governor of Pennsylvania, whose mission is “to use its collective power and legal mandate to develop and secure public policies that ensure civil rights and expand options for all people with disabilities in all aspects of life”); **Vision for Equality** (advocacy agency based in Philadelphia, working primarily with adults who have mental retardation and their families, which seeks to assist and empower people with disabilities and their families in order to have quality and satisfaction in their lives, as well as equal access to services); **Public Interest Law Center of Philadelphia** (non-profit, public interest organization, in its 25th year of representing people with disabilities to safeguard their right to meaningful integration and participation in the community); **Pennsylvania Coalition of Citizens with Disabilities** (a statewide, cross-disability coalition of individuals and organizations, committed to promoting disability rights through advocacy, activism and social change); **Northeast Pennsylvania Center for Independent**

Living (a non-profit organization staffed, managed, and governed by a majority of people with disabilities, with the mission of expanding the independent living options of people with all types of disabilities (i.e. physical, mental and sensory) in a ten county region of Northeast Pennsylvania); **Asian Pacific Development Center** (non-profit specialty mental health clinic which provides outreach services to Asian/Pacific Islanders in Colorado); and **Council of Senior Centers and Services of New York City** (representing the 335 senior centers and other community-based senior service providers in New York City, providing a variety of services to over 300,000 older New Yorkers.)

Legal Assistance for Seniors – LAS provides free legal services to seniors in Alameda County, California and has assisted hundreds of seniors in naturalizing and becoming U.S. citizens, most of whom are in their 70s and 80s or older, and typically have from physical or mental disabilities that have prevented them from becoming U.S. citizens in the past. Unfortunately, many seniors represented by LAS have been denied citizenship because their impairments prevented them from taking the oath of allegiance. Once denied, they cannot access the full range of public benefits and health care they need to survive.

II. RELIGIOUS ORGANIZATIONS

Many of the major national religious organizations have also joined as *Amici* on this Brief, including the following:

Catholic Charities U.S.A. – Catholic Charities U.S.A. is the nation's largest private network of local, independent, social service agencies and institutions, with more than 1,400 local agencies and 301,000 staff members and volunteers serving nearly 10.6 million people in need - mostly families and children - each year. Local Catholic Charities agencies provide reunification, education, legal, and employment services to over 300 thousand refugees and immigrants every year.

Lutheran Immigration and Refugee Service – LIRS is a separately incorporated, not-for-profit cooperative agency of the Evangelical Lutheran Church in America, the Lutheran Church-Missouri Synod, and the Latvian Evangelical Lutheran Church in America. It was organized in 1939 to resettle refugees fleeing from the Nazis. Since then, LIRS has become a broad multi-service and advocacy agency that addresses the needs and rights of uprooted people at local, regional, national and international levels. LIRS provides in-house immigration law expertise to its affiliate offices nationwide. These affiliate offices provide immigration and naturalization services to diverse immigrant and

refugee populations throughout the country. **American Jewish Congress** – The American Jewish Congress is an organization of American Jews founded in 1918 to protect the civil, political, religious and economic rights of American Jews.

Historically, it, and the Jewish community, have sought construction of the nation's immigration law which facilitates naturalization. Because this case implicates that concern, the American Jewish Congress seeks to file this Brief.

United Jewish Communities - UJC was created in the spring of 1999 by the merger of the Council of Jewish Federations, United Jewish Appeal, and United Israel Appeal. UJC, through its 189 member Jewish Federations, represents North American Jewry's primary fundraising and service providing agencies in over 800 municipalities throughout the United States and Canada. The Federation network embraces more than 6.1 million Jews. The Federations and the agencies they support provide resettlement and naturalization services to assist newcomers, including those with physical and developmental disabilities, to become fully integrated into American society by achieving United States citizenship.

Friends Committee on National Legislation – FCNL is composed of members of the Religious Society of Friends (Quakers) who bring spiritual values to bear on public policy decisions. FCNL seeks to end unjust discrimination, including discrimination based on disability.

National Evangelical Slavic Association – NESA is a group of Pentecostal and Baptist Evangelical Churches that represents individuals primarily from the former Soviet Union who have resettled in the United States and are fleeing from religious persecution. NESA has many members who are unable to take the oath, yet want to be United States citizens. Many have not even applied for U.S. citizenship because they were not able to take the oath.

Other religious organizations that have joined include **Lutheran Social Services of Minnesota** (Minnesota's largest non-profit social service agency, LSS has arranged and advocated for resettlement of refugees and immigrants, including those with developmental disabilities, since the end of World War II); **Catholic Charities Community and Immigrant Services** (resettling refugees, including those with disabilities, in Hawai'i); **Sisters of St. Joseph of Orange** (Catholic religious organization, located in Orange, California, committed to the promotion of justice for immigrants); and **Lincoln Interfaith Council** (advocating in Nebraska for newcomer asylees, refugees, immigrants and migrants, including those with severe developmental disabilities, since 1951).

III. IMMIGRATION AND ETHNIC ORGANIZATIONS

The following prominent national immigration and ethnic advocacy organizations have joined as *Amici*:

National Asian Pacific American Legal Consortium – The Consortium is a non-profit organization whose mission is to advance and protect the legal and civil rights of Asian Pacific Americans through litigation, advocacy, public education and public policy development. The Consortium is affiliated with the Asian American Legal Defense and Education Fund in New York, the Asian Law Caucus in San Francisco, and the Asian Pacific American Legal Center of Southern California in Los Angeles. In the area of immigration and naturalization, the Consortium and its affiliates collectively have over a half century of experience in direct legal services, community education and advocacy.

Naturalization law and policy is particularly important to the Consortium and its affiliates because of the large percentage of recent immigrants in the Asian Pacific American community, and the long history of racially discriminatory treatment of Asian Pacific Americans by our country's immigration and naturalization laws.

Mexican American Legal Defense and Educational Fund - MALDEF is a national non-profit civil rights organization that for 35 years has promoted and protected the rights of Latinos in the United States through litigation, public

policy advocacy and community education. Access to citizenship through naturalization is a key matter of concern to MALDEF because MALDEF has worked for several years to ensure that the naturalization process is accessible to those seeking to become new citizens.

Asian American Legal Defense and Education Fund – AALDEF is a non-profit civil rights organization dedicated to advancing and defending the rights of Asian Americans through litigation, community education, and policy advocacy. AALDEF has assisted thousands of immigrants to become citizens, including immigrants with disabilities.

The National Council of La Raza – Established in 1968, NCLR is the largest constituency-based national Hispanic organization, annually serving over three million Hispanics of all nationality groups in every region of the country. NCLR works to reduce poverty and discrimination, and improve life opportunities, for Hispanic Americans. NCLR is committed to ensuring the equitable treatment of immigrants with disabilities seeking naturalization.

National Immigration Law Center – NILC is a national legal support center dedicated to protecting the rights of low-income immigrants and their family members throughout the United States through litigation, training workshops, legal publications, and technical assistance to non-profit legal assistance

organizations. A major concern of the organization is fairness of immigration law implementation.

National Center on Poverty Law – NCPL represents individuals in a wide range of matters relating to public benefits, specializing in the eligibility of immigrants for public benefits and the effect of welfare policies on people with disabilities. NCPL has a strong interest in removing unreasonable barriers to accessing life-sustaining public benefits, including barriers arising from immigration status and disability.

Immigration and Refugee Services of America – IRSA is a national organization that, for over 80 years, has advocated for the fair treatment of refugees and immigrants and helped them become fully participating members of their new communities. With an extensive network of local partner agencies, IRSA has helped thousands of immigrants become United States citizens, and has focused much of its efforts on seniors and persons with disabilities.

Immigrant Legal Resource Center – Created in 1979, ILRC is a national support center which provides training, consultation, legal research, litigation support, and law materials to legal and community-based programs serving immigrant communities. ILRC is committed to preserving the rights of older immigrants and immigrants with disabilities because they are two of our most

vulnerable populations.

The National Federation of Filipino American Associations - NaFFAA is a non-profit, non-partisan organization whose mission is to promote the interests and well being of all Filipinos and Filipino-Americans in the United States by working with other national advocacy groups to address public policy issues affecting immigrants and minorities.

American Association of Jews from the Former USSR – AAJFSU is a national non-profit, grassroots mutual-assistance and refugee-advocacy organization which represents interests of over 500,000 Russian-speaking Jewish refugees and immigrants from the former Soviet Union. AAJFSU provides assistance in the naturalization of seniors and people with disabilities.

Other regional and local immigration and ethnic advocacy organizations that have joined as *Amici* in support of this brief include the following:

Utah Minority Bar Association (dedicated to providing a mechanism for concerted action in support of the civil rights, cultural values, economic interests, and social dignity of minority communities); **Heartland Alliance for Human Needs and Human Rights** (Chicago-based immigrant service organization, with over 500 employees, which has provided social services and legal representation on behalf of immigrant populations since 1900); **Hebrew Immigrant Aid Society**

and Council Migration Service of Philadelphia (assisting immigrants and refugees with naturalization and immigration matters since 1882 and, this past year, serving approximately 500 applicants, many of whom were persons with disabilities); **Asian Pacific American Legal Center of Southern California** (the largest Asian Pacific American legal and civil rights advocacy organization); **Capital Area Immigrants Rights Coalition** (broad-based group of community organizations, concerned individuals, volunteer attorneys, and immigrants dedicated to a fair and humane immigration policy); **Massachusetts Immigrant and Refugee Advocacy Coalition** (coalition of over 130 organizations that provide naturalization services to applicants, including those with disabilities); **Southeast Regional Immigration and Citizenship Coalition** (organizations, service providers and immigration advocates in Southeast Pennsylvania and Delaware, providing citizenship services); **Illinois Coalition for Immigrant and Refugee Rights** (coalition of more than 90 public and private organizations advocating on behalf of immigrants and refugees throughout Illinois and participating in the Immigrants with the Disabilities Rights Project, which seeks access for disabled immigrants to immigration benefits, including citizenship); **Asian Law Alliance** (non-profit community law office based in San Jose, California which has represented many clients with developmental disabilities

seeking naturalization before the INS over the past 22 years); **Florida Justice Institute, Inc.** (non-profit, public interest law firm which, together with *Amici Florida Immigrant Advocacy Center, Inc.* and **Florida Legal Services, Inc.** , recently brought a federal court class action on behalf of individuals with disabilities who qualified for medical waiver but were denied citizenship due to a determination by the INS of their lack of competence to take the oath in *Campos v. INS* , (S.D. Fla.)); **International Institute of Los Angeles** (non-profit social service agency, providing legal services to immigrants and refugees for over 85 years); **International Institute of the East Bay** (non-profit legal and social service agency, serving immigrants and refugees since 1919, which represents many disabled naturalization applicants who are unable to take a "meaningful oath" of allegiance); **New York Immigration Coalition** (advocacy organization for almost 200 groups across New York State that advocate for immigrants and refugees); **Fund for Immigrants and Refugees** (funders collaborative that makes grants to immigrant and refugee-serving organizations in metropolitan Chicago, including monies for naturalization services, legal services, policy and community advocacy and community organizing/advocacy); **Albuquerque Border City Project** (non-profit organization that offers services to, and advocates for, immigrants with the intent of defending and promoting human rights); **Asian**

RESPECTFULLY SUBMITTED this 1 day of February, 2000.

/s/
by LAUREN R. BARROS
Attorneys for *Amici Curiae*

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

GUSTAVO GALVEZ-LETONA,

Petitioner - Appellee,

v.

No. 99-4195

WAYNE KIRKPATRICK, Acting
OIC, et al.,

Respondents - Appellants,

NATIONAL ASSOCIATION OF
PROTECTION & ADVOCACY
SYSTEMS; DISABILITY LAW
CENTER, et al.,

Amici Curiae.

ORDER

Filed February 9, 2000

Before **PORFILIO** and **MURPHY**, Circuit Judges.

This matter is before the court on the motion of the National Association
of Protection and Advocacy Systems, Disability Law Center, et al., for