

FILED
United States Court of Appeals
Tenth Circuit

PUBLISH

MAR 5 2002

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

PATRICK FISHER
Clerk

PHU CHAN HOANG, THANH QUOC
NGUYEN, and PHAM QUA TRUNG,

Petitioners-Appellees,

v.

MICHAEL COMFORT, Acting District
Director, Unite

¹ The Honorable Wayne E. Alley, United States District Court for the Western District of Oklahoma, sitting by designation.

United States or a crime violating drug or firearm laws was subject to deportation. INA § 241, codified at 8 U.S.C. § 1251 (1952). However, the INA provided the Attorney General with discretion to release such al

mandatory detention

On February 12, 2001, after approximately

a writ of habeas corpus arguing that § 236(c), as applied, was unconstitutional. He also filed an application for a temporary restraining order requesting an individual bond hearing. The district court granted a final injunction in favor of Hoang directing the INS to conduct a bond hearing. After the hearing, Hoang was released on \$20,000 bond. Hoang is currently seeking relief for removal

IV.

As a preliminary issue, the government argues that the district court's decisions in Hoang's and Nguyen's cases should be reversed and the habeas petitions in those cases dismissed for failure to exhaust administrative remedies. The government contends that comprehensive administrative procedures are available under Title 8 of the Code of Federal Regulations for aliens to dispute that § 236(c) applies to them and to seek bond.

empowered to grant relief; and 3) where the administrative remedy is inadequate because the administrative body is biased or has otherwise predet

ordered liberty.” When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. This requirement has traditional

[p]ersons subject to [§ 236(c)] have forfeited any *legal*

States. Although they are “dep

their parents, legal guardians, adult relatives, or other appointed and approved caregivers.

507 U.S. at 297. If no one in this category was available, the regulation required the

juvenile's p

by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). “In our society liberty is the norm, and detention prior to trial or without tri

Congress has plenary authority over substantive immigration decisions under Art. I, § 8, cl. 4 of the Constitution. *See INS v. Chadha*, 462 U.S. 919, 941 (1983). “[O]ver no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (quoting *Oceanic Navigation Co. v. Stranahan*, 214 U.S. 320, 339 (1909)). This power is of a political character which is subject only to narrow judicial review. *See Fiallo*, 430 U.S. at 792.

However, statutes which

removable br

who were members of the Communist Party. The Court found the provision to be constitutional, reasoning that “[d]etention is necessarily a part of this deportation

avenues which, if successful, would lessen the probability that they will be deported or removed. Thus, they have a significant incentive to attend deportation proceedings.

assumed that

