IMMIGRATION — ASYLUM — DEPORTATION — STANDARDS TO BE MET BY ILLEGAL ALIENS APPLYING FOR WITHHOLDING OF DEPORTATION AND POLITICAL ASYLUM. *Mendoza Perez v. INS*, 902 F.2d 760 (9th Cir. 1990)

I. FACTUAL BACKGROUND

El Salvadoran native Wilfredo Mendoza Perez entered the United States illegally on March 11, 1982.[1] Mr. Mendoza came to the United States seeking safety,[2] but the Immigration and Naturalization Service (INS) began deportation proceedings shortly after Mendoza's apprehension.[3] Mendoza subsequently moved for further consideration of his political asylum application, which the Immigration Judge denied.[4] Mendoza then appealed to the Board of Immigration Appeals (BIA), which also denied his requests.[5]

Mendoza based his requests for withholding of deportation and asylum on the claim that he had been threatened with harm shortly before leaving El Salvador.[6] Mr. Mendoza had been an accountant for an organization which helped landless farmers form and manage agricultural cooperatives.[7] Mendoza testified that because of these

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[1] Mendoza entered the United States by crosssing the Mexican-American border. Mendoza Perez v. INS, 902 F.2d 760, 761 (9th Cir. 1990).

[2] *See* following text and accompanying footnotes for discussion of Mendoza's reasons for fleeing El Salvador.

[3] Mendoza later conceded deportability on March 11, 1985, to the Immigration Judge handling his case. *Mendoza Perez*, 902 F.2d at 761.

[4] The Immigration Judge based his denial of Mendoza's motion on a finding that he did not show either a "clear probability" or "well-founded fear" of persecution. *Id.* These standards must be met to qualify for withholding of deportation and asylum, respectively. 8 U.S.C. § 1253(h)(1) (1982 and Supp. 1988); 8 U.S.C. §§ 1101(a)(42)(A), 1158(a).

[5] The BIA affirmed the Immigration Judge's finding that Mendoza did not meet either of the applicable standards. *Mendoza Perez*, 902 F.2d at 761.

[6] Mendoza claimed to have received a letter at his home threatening he would "suffer the consequences" if he did not leave the country within forty-eight hours. He felt he should take these threats seriously because he supposedly knew of others in his situation who had been killed after receiving similar threats. It should be noted that Mendoza was unable to produce this letter during any of the relevant proceedings, with his wife claiming that it had been destroyed. *Id.* at 761-62.

[7] Mendoza was an accountant with the Salvadoran Communal Union for a three to five year period before leaving his country. *Id.* at 761.

activities he would be singled out and subject to great harm if forced to return to El Salvador.[8]

To avoid deportation, Mendoza appealed the BIA's decision to the Ninth Circuit Court of Appeals.[9] The court found Mendoza's testimony credible[10] and illustrative of a specific, individualized threat.[11] The court also determined that petitioner met both the "clear probability" and "well-founded fear of persecution" standards.[12] On appeal from the BIA, *held*, reversed and remanded in part for exercise of the Attorney General's discretion on the asylum claim.[13] An illegal alien applying for withholding of deportation and political asylum may meet the requisite standards strictly on the basis of his own uncorroborated testimony. *Mendoza Perez v. INS*, 902 F.2d 760 (9th Cir. 1990).

II. LEGAL BACKGROUND

A. International Law and United States Statutes

In 1952, Congress passed the Immigration and Nationality Act (INA)[14] and created section 243(h) thereof.[15] This section allowed the Attorney General to withhold deportation of any alien who could show a "clear probability of persecution" if he were forced to return to his country.[16] In 1965, Congress amended section 243(h) to require

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[8] Petitioner claimed fear of reprisal by the Salvadoran government, who saw his type of work as encouragement to the peasants to join the guerrilla forces. *Id.*

[9] *Mendoza Perez*, 902 F.2d at 760.

[10] Because the Immigration Judge and the BIA made no finding on Mendoza's credibility, his statements were presumed credible by the court. *Id.* at 761; *see* Artiga Turcios v. INS, 829 F.2d 720, 723 (9th Cir. 1987).

[11] The court treated the letter as an individualized threat because other persons within Mendoza's organization had presumably been singled out for harm. *Mendoza Perez*, 902 F.2d at 762. This evidence therefore met the court's requirement that persecution be directed at an alien as an individual. *Id.* at 761 (citing Estrada v. INS, 775 F.2d 1018, 1021 (9th Cir. 1985)).

[12] For an explanation of these standards, see the Legal Background section, *infra*. Because the well-founded fear standard is easier to meet than the clear probability standard under INS v. Cardoza-Fonseca, 480 U.S. 421, 449-50 (1987), Mendoza qualified for asylum as well as for withholding of deportation. *Mendoza Perez*, 902 F.2d at 763.

[13] The granting of asylum is vested in the discretion of the Attorney General, even if an alien meets the well-founded fear standard. *Cardoza-Fonseca*, 480 U.S. at 450.

[14] Pub. L. No. 82-414, 66 Stat. 163, 8 U.S.C. §§ 1101-57 (1952).

[15] 8 U.S.C. § 1253(h).

[16] *Id. See* INS v. Stevic, 467 U.S. 407, 413 (1984) (clear probability of persecution must be shown to avoid deportation under Section 243(h)).

demonstration of a clear probability of persecution based on "race, religion, nationality, membership in a particular social group, or political opinion."[17]

In 1968, the United States acceded to the United Nations Protocol Relating to the Status of Refugees (Protocol).[18] The Protocol defined the term "refugee,"[19] and in doing so created the "well-founded fear of persecution" standard.[20] This definition includes the same five criteria contained in section 243(h) for establishing evidence of persecution.[21] To conform United States law to the Protocol and thereby to the law of other nations, Congress created the Refugee Act of 1980 (Act).[22] The Act accomplished this goal by amending the INA to include the Protocol's definition of "refugee."[23] Congress also added section 208(a) to the INA, authorizing the Attorney General to grant asylum to aliens determined to be refugees.[24] Furthermore, the Refugee Act amended section 243(h) by restricting the Attorney General's discretion in withholding of deportation proceedings.[25]

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[17] 8 U.S.C. § 1253(h)(1). To qualify under this section, the alien must show a clear probability of persecution for one of the five statutory reasons by the government or a group the government cannot control. *See, e.g.*, Canjura Flores v. INS, 784 F.2d 885, 888 (9th Cir. 1985); *Artiga Turcios*, 829 F.2d at 723.

[18] United Nations Protocol Relating to the Status of Refugees, *opened for accession* Jan. 31, 1967, 19 U.S.T. 6223, 6261, T.I.A.S. No. 6577 (accession by United States Nov. 1, 1968).

[19] Article I(A) of the Protocol defines the term "refugee" as one who:

> owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion . . . is unable or, owing to such fear, is unwilling to avail himself of the protection of [his] country.

Id.

[20] Aliens applying for asylum must demonstrate a "well-founded fear" of persecution. *Cardoza-Fonseca*, 480 U.S. at 421. The well-founded fear standard does not require persecution to be more likely than not, since "one can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place." *Id.* at 431. Thus, this standard does not change or lessen the necessary focus on an alien's subjective beliefs. *Id.*

[21] 8 U.S.C. § 1253(h)(1)(1982); *see* text accompanying note 17.

[22] Pub. L. No. 96-212, 94 Stat. 102, 8 U.S.C. §§ 1157-59 (1982).

[23] *Id.*; *see supra* note 19 (Protocol's definition of refugee).

[24] 8 U.S.C. § 1158(a) (1982). The addition of section 208(a) allowed aliens physically present within the United States to apply for asylum, while previously the only remedy available to such aliens was to apply for withholding of deportation. *Id.*; Casenote, *The Well-Founded Fear of Persecution Standard in Asylum Proceedings: The Promise of Solace For Refugees After INS v. Cardoza-Fonseca*, 19 LOY. U. CHI. L.J. 217 (1987).

[25] Section 243(h) states that the Attorney General *must* withhold deportation of an alien who shows there would be a clear probability of persecution were he to return home. 8 U.S.C. § 1253(h)(1)(1982 and Supp. 1988).

B. Supreme Court Construction

In 1984, the Supreme Court decided the case of *INS v. Stevic*.[26] Yugoslavian native Predrag Stevic had petitioned for withholding of deportation under section 243(h) of the INA, claiming he would be imprisoned if forced to return home.[27] The Board of Immigration Appeals denied his request,[28] as did the Supreme Court.[29] The Court held that "an alien must establish a clear probability of persecution to avoid deportation under 243(h)."[30] Although the Court did not specifically define the term "well-founded fear of persecution," it did imply that this standard is not equivalent to the clear probability standard governing deportation cases.[31]

Since *INS v. Stevic*,[32] a well-founded fear of persecution has been solidified as the applicable standard for asylum proceedings. In *Cardoza-Fonseca v. INS*,[33] the Ninth Circuit held that the standards for withholding of deportation and granting of asylum differed, with the well-founded fear standard being the least stringent of the two.[34] These findings were subsequently affirmed by the Supreme Court;[35] however, the Court did not specifically state the necessary elements for each standard or how they should be applied.[36]

Since the Supreme Court's decision in *Cardoza-Fonseca v. INS*, the various circuits have created differing interpretations of the standards of proof required for the withholding of deportation and asylum and of the amount of evidence needed to satisfy them. The Ninth

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[26] 467 U.S. 407 (1984).

[27] Stevic claimed to have been active in an anti-Communist organization and feared imprisonment for this reason. *Id.* at 410.

[28] The BIA found that Stevic did not present evidence of a clear probability of persecution. *Id.* at 410-11.

[29] *Id.* at 413.

[30] *Id.* The Court went on to explain that the question under the clear probability standard is "whether it is more likely than not that the alien would be subject to persecution." *Id.* at 424.

[31] *Id.* at 429-30. The Court also determined that an alien who seeks withholding of deportation under section 243(h) is not entitled to it just because he qualifies as a "refugee." *Id.* at 428.

[32] 467 U.S. 407 (1984).

[33] 767 F.2d 1448 (9th Cir. 1985).

[34] *Id.* at 1451. This holding means that an alien who satisfies the clear probability standard automatically becomes eligible for asylum as well. *Id.*

[35] *Cardoza-Fonseca*, 480 U.S. at 421. Here, the Court specifically held well-founded fear of persecution to be the applicable standard for discretionary asylum proceedings under section 208(a). *Id.* at 436.

[36] *Id.* at 448.

Circuit has interpreted clear probability to mean greater than a fifty percent chance.[37] Persecution must be directed at an individual, and evidence of general violence in the alien's country is not enough to show clear probability;[38] however, such evidence may be used to support the alien's specific claims.[39] In asylum cases, the Ninth Circuit requires a showing that the alien's fear is "genuine"[40] and that persecution is a "reasonable possibility."[41]

Among the various circuits, some have employed the standards in a fashion similar to that of the Ninth Circuit, while others have differed somewhat. The Third Circuit has equated clear probability with a well-founded fear of persecution,[42] while the Fourth Circuit has declined to decide whether the standards are identical.[43] The Fifth Circuit has held the well-founded fear standard to be more generous.[44] Similarly, the Sixth Circuit has maintained that the well-founded fear test requires less proof than the clear probability test.[45] In *Carvajal-Munoz v. INS*,[46] the Seventh Circuit held that the two standards differed somewhat.[47]

III. ANALYSIS

In interpreting the applicable standards for withholding of deportation and political asylum, the Ninth Circuit has significantly departed in four areas from the reasoning of the other circuits.

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[37] *See Stevic*, 467 U.S. at 424; *Artiga Turcios*, 829 F.2d at 723; *Estrada*, 775 F.2d at 1021.

[38] 775 F.2d at 1021.

[39] *See Artiga Turcios*, 829 F.2d at 723; Zavala-Bonilla v. INS, 730 F.2d 562, 564 (9th Cir. 1984).

[40] Hernandez-Ortiz v. INS, 777 F.2d 509, 513 (9th Cir. 1985).

[41] *Cardoza-Fonseca*, 480 U.S. at 440.

[42] Rejaie v. INS, 691 F.2d 139, 145 (3d Cir. 1982); Sankar v. INS, 757 F.2d 532 (3d Cir. 1985)(clear probability standard applied in an asylum proceeding).

[43] Cruz-Lopez v. INS, 802 F.2d 1518, 1522 (4th Cir. 1986); *see generally* Note, *Immigration and Naturalization Service v. Cardoza-Fonseca: The Last Word on the Standard of Proof for Asylum Proceedings?*, 13 N.C. J. INT'L & COM. REG. 171 (1988).

[44] Guevara Flores v. INS, 786 F.2d 1242, 1249 (5th Cir. 1986).

[45] Youkhanna v. INS, 749 F.2d 360, 362 (6th Cir. 1984); Dolores v. INS, 772 F.2d 223, 226 (6th Cir. 1985).

[46] 743 F.2d 562 (7th Cir. 1984).

[47] The Seventh Circuit found that the two standards were very similar but not identical. *Id.* at 575. The court held that newspaper articles of a general nature were not enough to show that the petitioner's fear of persecution was well-founded. *Id.* at 577.

A. Standard of Appellate Review

The Ninth Circuit differs from other circuits in its use of the substantial evidence standard. This standard inherently favors aliens by making it easier for them to successfully argue that an unfavorable decision by an immigration judge was not supported by substantial evidence.[48] The Ninth Circuit's use of this standard began with *Bolanos-Hernandez v. INS*.[49] In *Bolanos-Hernandez*, the court held that the limited "abuse of discretion" standard of review was no longer applicable, and began to employ the heightened, "substantial evidence" standard in reviewing withholding of deportation denials.[50]

The standard of appellate review used by the other circuits is the abuse of discretion standard, which limits their role to determining whether the BIA has abused its discretion in denying the alien's request for withholding of deportation.[51] Exercise of this standard is based on the idea that appellate court judges should disturb the findings of lower courts only where a grave mistake has clearly been made.[52] Circuits following the abuse of discretion standard include the Third, Fourth, Fifth, and Sixth Circuits.[53]

In *Bolanos-Hernandez*,[54] the Ninth Circuit concluded that the substantial evidence standard should be used because relief under section 243(h) of the INA was no longer discretionary after passage of the Refugee Act of 1980.[55] The court reasoned that since the language of section 243(h) was now mandatory, the standard of review should be increased.[56]

Although this reasoning may appear logical, it goes against the congressional intent of sections 243(h) and 208(a). When section 243(h)

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[48] *Mendoza Perez*, 902 F.2d at 765 (Sneed, J., concurring specially).

[49] 767 F.2d 1277 (9th Cir. 1984). This case involved an El Salvadoran native who testified that he feared death at the hands of guerrilla forces if his asylum application were not granted. *Id.* at 1280.

[50] *Id.* at 1282 n.8.

[51] *See* Gumbol v. INS, 815 F.2d 406, 411 (6th Cir. 1987).

[52] *Mendoza Perez*, 902 F.2d at 764 (Sneed, J., concurring specially).

[53] *See* Campos-Guardado v. INS, 809 F.2d 285, 289 (5th Cir.), *cert. denied*, 484 U.S. 826 (1987)(deference should be given to the agency to which Congress has given responsibility for administering statutory requirements); for similar applications of abuse of discretion standard see *Gumbol*, 815 F.2d at 411; McLeod v. INS, 802 F.2d 89, 92 (3d Cir. 1986); *Cruz-Lopez*, 802 F.2d at 1523.

[54] *Bolanos-Hernandez*, 767 F.2d 1277 (9th Cir. 1984).

[55] *Id.* at 1281; *see supra* note 25 (Attorney General prohibited from deporting aliens showing a clear probability of persecution).

[56] *Bolanos-Hernandez*, 767 F.2d at 1282 n.8.

was amended, Congress did not also include any provision allowing the Ninth Circuit to employ its own standard of review. Congress specifically curtailed the authority of the Attorney General,[57] but it did not increase the authority of appellate court judges. Accordingly, there is no statutory or legislative construction on which the Ninth Circuit can ground its reasoning.

Similarly, there is no case precedent for the Ninth Circuit to rely upon except its own, since all other circuits that have addressed the issue follow the abuse of discretion standard.[58] The Ninth Circuit should conform its reasoning to that of the other circuits to promote the principles of fairness and uniformity. The United States in the international context has traditionally stood for fairness and justice, but this image becomes tarnished when one alien stands a better chance of being granted asylum or withholding of deportation simply because he or she resides in a particular geographical area. The Ninth Circuit's stance also contradicts the principle of uniformity, which was the goal the United States had in mind when it acceded to the United Nations Protocol.[59]

B. The Credibility Requirement

The Ninth Circuit also diverges from its fellow circuits on the issue of the credibility of an applicant's testimony. In the Ninth Circuit, an alien's own testimony will be controlling if it is "credible and supported by general documentary evidence that the threats should be considered serious."[60] However, if the immigration judge and the BIA do not make a specific finding on the alien's credibility, then his or her statements will be presumed credible for the purposes of appellate review.[61] With this presumption already in his or her favor, it becomes much simpler for an alien to meet the credibility requirement.

In determining an alien's credibility, the other circuits use a more careful method of scrutiny. These courts make no presumption of credibility and are cautious in giving weight to an alien's own tes-

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[57] *Id.*

[58] *See supra* note 47 and accompanying text for discussion of other circuits' decisions.

[59] *See supra* notes 18-22 and accompanying text discussing the United States' accession to the Protocol.

[60] *Artiga Turcios*, 829 F.2d at 723; *see Bolanos-Hernandez*, 767 F.2d at 1285.

[61] *Mendoza Perez*, 902 F.2d at 761; *see Artiga Turcios*, 829 F.2d at 723.

timony.[62] For example, the Sixth Circuit has stated that the petitioner's "own conjecture or subjective allegations" would not be considered credible evidence for purposes of meeting the clear probability standard.[63] Similarly, the Seventh Circuit has also limited the strength to be accorded to an alien's testimony.[64]

Once again, the Ninth Circuit has created a judicial fiction for its own purposes. It has not pointed to any statute or law authorizing it to make such a presumption of credibility. Furthermore, the Ninth Circuit contradicts itself by requiring the alien to provide specific evidence corroborating his or her testimony as to the clear probability of persecution,[65] while often accepting the alien's unsubstantiated testimony. Congress did not create sections 243(h) and 208(a) for all aliens wishing to remain in the United States. These special provisions for withholding deportation and asylum were created to assist only those aliens meeting the specific statutory qualifications.[66] By presuming credibility, the Ninth Circuit gives an alien a head start he or she may not deserve on meeting the statutory requirements. The application of different standards to similarly situated aliens within the same country undermines what should be a uniform national immigration policy. Congress has attempted to legislate such a policy in accordance with international immigration standards. The Ninth Circuit's unique determination of credibility is inconsistent with this attempt.

C. *External Evidence*

Closely related to the credibility issue is the Ninth Circuit's failure to require external evidence to corroborate an alien's testimony. In

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[62] *Mendoza Perez*, 902 F.2d at 765. According to Justice Sneed, other courts are cautious of an alien's own statements because they tend to be self-serving.

[63] *Gumbol*, 815 F.2d at 411.

[64] In Carvajal-Munoz v. INS, the Seventh Circuit stated:

> [T]he applicant's uncorroborated testimony will be insufficient to meet the evidentiary burden unless it is credible, persuasive, and points to *specific* facts that give rise to an inference that the applicant has been or has a good reason to fear that he or she will be singled out for persecution . . . .

743 F.2d 562, 574 (7th Cir. 1984)(emphasis in original).

[65] *See* Sarvia-Quintanilla v. INS, 767 F.2d 1387 (9th Cir. 1985). Here, the court found petitioner's introduction of newspaper articles describing the violence in El Salvador to be insufficient evidence to meet his burden of proving a clear probability of persecution. *Id.* at 1392.

[66] The five statutuory bases for persecution common to both standards are race, religion, nationality, membership in a particular social group, and political opinion. 8 U.S.C. §§ 1101(a)(42)(A), 1158(a), 1253(h)(1).

the Ninth Circuit, an alien need not present any external corroborating evidence to substantiate his or her allegations of persecution.[67] Even though an alien is required to show that the persecution, if carried out, would be directed toward him or her as an individual,[68] the alien may meet this burden solely by his or her own testimony.[69]

In marked contrast, all other circuits have required an alien to give some external corroborating evidence.[70] In *Farzad v. INS*,[71] the Fifth Circuit found that the petitioner did not meet the well-founded fear standard because he could produce no proof that his political activities were known to the government.[72] In a similar case, the Sixth Circuit also demonstrated its reliance on external proof. In *Gumbol v. INS*,[73] the court held that the petitioner did not meet the clear probability standard even though he had submitted an affidavit from a friend to back up his own testimony that he had been attacked at his workplace in Iraq.[74] According to the Sixth Circuit, this evidence was insufficient to overcome the stringent external proof requirement.[75]

At the present time, the Ninth Circuit's relaxed standards of proof open the door to questionable statements by aliens. The instant case[76] illustrates the inherent difficulty of ascertaining the truth that arises with use of the Ninth Circuit's reasoning. Here, the petitioner (Mendoza) was allowed to prevail on his claims for asylum and withholding of deportation without producing the document which served as the basis for his entire case.[77] The only explanation offered for the failure to produce the alleged letter was that it had been destroyed.[78] But,

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[67] *Mendoza Perez*, 902 F.2d at 766.

[68] *Estrada*, 775 F.2d at 1021.

[69] *Mendoza Perez*, 902 F.2d at 766; *see, e.g., Artiga Turcios*, 829 F.2d at 723.

[70] *Mendoza Perez*, 902 F.2d at 766.

[71] 802 F.2d 123 (5th Cir. 1986)(per curiam).

[72] Petitioner Farzad claimed to have supported an anti-Khomeini group while in his native country of Iran. The Fifth Circuit held that he did not meet the standard for asylum since "[t]he record does not indicate that Farzad has been identified by Iranian authorities as a political opponent seeking to overthrow the present regime." *Id.* at 125.

[73] 815 F.2d 406, 413 (6th Cir. 1987).

[74] The petitioner claimed to have been beaten by members of Iraq's ruling party because of his Christianity. *Id.* at 410.

[75] In ruling against the petitioner, the court stated he "presented no evidence, other than his own unsubstantiated testimony, that this alleged attack was anything more than an isolated incident or that it was not motivated by personal animosity rather than by political beliefs." *Id.* at 412.

[76] *Mendoza Perez*, 902 F.2d at 760.

[77] *Id.* at 766.

[78] *Id.* at 762.

it seems just as plausible that the letter never existed at all.

The Ninth Circuit's obviation of the external evidence requirement also contradicts the general rule of deference to administrative decisions.[79] In the context of deportation and asylum proceedings, Congress has delegated the responsibility for statutory interpretation to the BIA and the immigration judges.[80] By employing its own evidentiary standards, the Ninth Circuit is not entrusting the BIA or the immigration judges with the full authority Congress intended them to have.

D. Political Neutrality as an Opinion

The last point on which the Ninth Circuit differs from the other circuits concerns the meaning of the term "political opinion" with respect to establishing persecution. The Ninth Circuit has held that political neutrality is a political opinion for purposes of section 243(h),[81] but other circuits have held to the contrary.[82]

Although the Ninth Circuit claims that remaining neutral is indeed a political opinion, this interpretation is not supported by the applicable statutes. Sections 243(h) and 208(a) both include the phrase "political opinion," but nowhere do they include the phrase "political neutrality." One may assume that if Congress had intended to include political neutrality, it would have explicitly done so.

As a concept of international law, political asylum was intended to protect those aliens from persecution who had politically opposed their government.[83] The idea of neutrality is inconsistent with taking an active stand for a cause one believes in. Allowing the Ninth Circuit to define political neutrality as an opinion minimizes the significance

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[79] "Where Congress has made either an explicit or implicit delegation of authority to an agency to fill the gaps in a statute and to provide meaning to particular terms . . . we must give 'considerable weight' to the executive department's construction." Perlera Escobar v. Executive Office for Immigration, 894 F.2d 1292, 1296 (11th Cir. 1990).

[80] *Mendoza Perez*, 902 F.2d at 766.

[81] *See, e.g.*, Maldonado-Cruz v. INS, 883 F.2d 788, 791 (9th Cir. 1989). Here, the court noted that "[c]hoosing to remain neutral is no less a political decision than choosing to affiliate with a particular political faction." (quoting *Bolanos-Hernandez*, 767 F.2d at 1286). *Id.*

[82] *See Perlera Escobar*, 894 F.2d at 1292. In this case, the Eleventh Circuit declined to follow the language of the Ninth Circuit in *Bolanos-Hernandez*, stating that "in the context of a civil war . . . the BIA has declined to apply the principle that a desire to remain neutral is an expression of a political opinion for purposes of asylum and withholding of deportation." *Id.* at 1298.

[83] *Mendoza Perez*, 902 F.2d at 767 (Sneed, J., concurring specially).

of the claims of those aliens whom asylum was intended to protect.

IV. CONCLUSION

The Ninth Circuit stands on its own in interpreting the clear probability and well-founded fear of persecution standards applicable to withholding of deportation and political asylum proceedings. Specifically, the Ninth Circuit differs regarding the proper appellate standard of review, determination of credibility, necessity of external corroborating proof, and the definition of the phrase "political opinion." The Ninth Circuit reviews BIA decisions under a substantial evidence standard, while other circuits employ the abuse of discretion standard. The Ninth Circuit presumes an alien's statements to be credible if the lower courts have not found to the contrary, but other circuits make no such presumption. The Ninth Circuit does not require external proof to corroborate an alien's own testimony, but other circuits do. Finally, the Ninth Circuit allows political neutrality to qualify as an opinion, while other circuits do not.

The law according to the Ninth Circuit as it presently stands does not conform to either the intent of Congress or to international law. In order to establish harmony with these two important political aspects and to promote equal treatment of all aliens, the law of the Ninth Circuit with respect to these issues should be harmonized with that of its fellow circuits.

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