

**Leon Jose S. De MESA, et al., on behalf of themselves and others similarly situated,
Plaintiffs-Appellees,**

v.

**Francisco C. CASTRO, et al., Defendants,
Edwin Meese, III., Defendant-Intervenor-Appellant.**

No. 86-1713.

United States Court of Appeals, Ninth Circuit.

February 24, 1989.

1244 *1244 Michael A. White, White, Novo-Gradac and Thompson, Saipan, CM, for plaintiffs-appellees.

Before SCHROEDER, NELSON and BOOCHEVER, Circuit Judges.

The government in its petition for rehearing with suggestion for rehearing en banc contends that we have "misread" the decision of *Smith v. Pangilinan*, 651 F.2d 1320 (9th Cir.1981). *Smith* held that the United States was entitled to intervene in the class action filed in the District Court for the Northern Mariana Islands, in which the plaintiffs contended they met all the requirements for Certificates of Identity under the transitional schedule of the Northern Mariana Islands Constitution. The government's petition for rehearing seizes upon our statement in *Smith* to the effect that if the government is not permitted to intervene, the plaintiffs will "have to litigate their claims all over again in another case when the Attorney General declines to recognize their Certificates of Identity."

The government asks us to interpret this statement as a guarantee that the government would be entitled to participate in this litigation, even if it proceeded to judgment before our mandate in *Smith* could issue. We made no such guarantee in *Smith*. The government was unsuccessful in securing a stay when it appealed the denial of its motion to intervene. Consequently, it did not participate in the proceedings which ensued during pendency of appeal and led to the grant of interim citizenship. This leaves the government in the position of any other litigant that fails to obtain a stay.

The panel has voted to deny the petition for rehearing, and no active judge of the court having called for a vote on the suggestion for rehearing en banc, the petition for rehearing and suggestion for rehearing en banc are denied.

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