EN BANC

G.R. No. 262938 – WALTER MANUEL F. PRESCOTT, Petitioner, **v. BUREAU OF IMMIGRATION, as represented by HON. ROGELIO D. CEVERO, JR., and the DEPARTMENT OF JUSTICE,** Respondents.

Promulgated:

December 5, 2023

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* that the petition for *habeas corpus* filed by petitioner Walter Manuel F. Prescott (Prescott) should be granted in light of the gross and blatant deprivation of his right to due process and that he should be ***immediately*** released by respondents Bureau of Immigration (BI) and Department of Justice (DOJ) (collectively, respondents). Specifically, Prescott was clearly deprived of any opportunity to present his case and submit evidence to counter the allegations of fraud imputed against him.

On the substantive issue of citizenship, it is my submission that the Oath of Allegiance executed by Prescott under Republic Act No. 9225[1] is, for all intents and purposes, equivalent to a formal election of Philippine citizenship under the 1935 Constitution and Commonwealth Act No. 625,[2] which thereby gives him the status of a natural-born Filipino citizen.

And even assuming *arguendo* that the Oath of Allegiance cannot take the place of his formal election, it is also my view that Prescott should nonetheless be granted Philippine citizenship under the 1961 Convention on the Reduction of Statelessness[3] (1961 Convention), which obligates Contracting States to grant its nationality to those who would otherwise be stateless. Pursuant to the 1961 Convention, Prescott should be deemed to have been granted the status of a natural-born Filipino citizen when he became stateless, which status retroacts to the moment of his birth. Hence, his re-acquisition of his Philippine citizenship (presumably lost when he became a naturalized American) under Republic Act No. 9225 on November 26, 2008 was valid since the law grants the benefit of re-acquisition or retention of Philippine citizenship to natural-born Filipinos.

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1 An Act Making the Citizenship of Philippine Citizens Who Acquire Foreign Citizenship Permanent, Amending for the Purpose Commonwealth Act No. 63, as Amended, and for Other Purposes, otherwise known as the "Citizenship Retention and Re-acquisition Act of 2003" (2003).

2 An Act Providing the Manner in Which the Option to Elect Philippine Citizenship Shall be Declared by a Person Whose Mother is a Filipino Citizen (1941).

3 *Available at* https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf (last accessed on November 29, 2023).

*The proceedings before the BI and the Deportation Order are **void** for being violative of Prescott's constitutional right to due process*

A writ of *habeas corpus* lies when there is deprivation of a person's constitutional rights. The writ is available whenever a person continues to be unlawfully denied of one or more of his or her constitutional freedoms, where there is denial of due process, where the restraints are not merely involuntary but are also unnecessary, and where a deprivation of freedom originally valid has later become arbitrary.[4] Once a deprivation of a constitutional right is shown to exist, the tribunal that rendered the judgment in question is deemed ousted of its jurisdiction,[5] and the proceedings already had should be voided in their entirety.

The viability of a petition for *habeas corpus* to question one's detention and impending deportation was upheld by this Court as early as in *De Bisschop v. Galang*,[6] since a writ of *habeas corpus* is "thorough and complete" and "affords prompt relief from unlawful imprisonment of any kind and under all circumstances."[7]

Hence, under the circumstances of this case, the petition for *habeas corpus* that Prescott filed before the Regional Trial Court is proper, as he continues to be deprived of his liberty without due process.

To recall, Prescott was not given the opportunity to contest the allegations against him contained in the letter-complaint filed by his ex-wife and Jesse Troutman. This was sufficiently shown by the fact that the BI did not even deny his claim that he never received the notices they sent for the scheduled hearings from July 10, 2012 to September 20, 2012 vis-à-vis the said complaint. Neither was Prescott given a copy of the order cancelling his re-acquisition of Philippine citizenship, as he only found out about this when he tried to renew his passport in 2014. Until the filing of the present Petition, Prescott has not received the records of his case despite repeated requests to the DOJ.

Consequently, the proceedings conducted by respondents, including the November 28, 2013 Resolution of the DOJ revoking Prescott's re-acquisition of Philippine citizenship and the subsequent Deportation Order under

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4 *In the Matter of the petition for Habeas Corpus of Capt. Alejano v. Cabuay*, 505 Phil. 298, 309 (2005) [Per J. Carpio, *En Banc*] *citing Ilusorio v. Bildner*, 387 Phil. 915 (2000) [Per J. Pardo, First Division] and *Moncupa v. Enrile*, 225 Phil. 191 (1986) [Per J. Gutierrez, Jr., *En Banc*].

5 *Olaguer v. Military Commission No. 34*, 234 Phil. 144, 159 (1987) [Per J. Gancayco, *En Banc*], *citing Gumabon v. Director of the Bureau of Prisons*, 147 Phil. 362, 369 (1971) [Per J. Fernando, First Division], reiterated in *Dacuyan v. Ramos*, 174 Phil. 700, 703-704 (1978) [Per J. Fernando, Second Division].

6 118 Phil. 246 (1963) [Per J. J.B.L. Reyes, *En Banc*].

7 *Id.* at 251; *see also* J. Leonen, Separate Concurring Opinion in *Board of Commissioners of the Bureau of Immigration and the Jail Warden v. Wenle*, G.R. No. 242957, February 28, 2023 [Per C.J. Gesmundo, *En Banc*].

Resolution dated March 29, 2016 are void *ab initio* for having been rendered in violation of Prescott's fundamental right to due process. Prescott was arrested on August 25, 2016. While there were several attempts to deport him, these never succeeded through no fault of Prescott. ***As a result, he has been in detention and has been deprived of liberty for the last seven years.*** Thus, it is with more reason that the Court should grant the Petition and order the immediate release of Prescott from detention.

The Oath of Allegiance is substantially equivalent to a formal election of Philippine citizenship

To contextualize this discussion, it is necessary to trace the evolution of the Philippine Constitution and case law on the subject of election of Philippine citizenship under the 1935 Constitution.

The original draft for Section 1 of Article IV of the 1935 Constitution included "*All persons born in the Philippines or any foreign territory of a mother who is a citizen of the Philippines (are Filipino citizens)*"[8] as citizens of the Philippines. This language, however, was objected to and the provision was revised as follows:

> SECTION 1. The following are citizens of the Philippines:
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> . . . .
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> 4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

The foregoing provision was then liberalized by the 1973 Constitution in view of feminist and equal right movements as so observed by Father Joaquin G. Bernas, S.J. (Fr. Bernas) in the Records of the Constitutional Commission (RCC) of 1986 when he noted that the reason behind the modification of the 1935 rule on citizenship was a recognition of the fact that it reflected male chauvinism.[9] The 1973 Constitution thus placed the female on the same level as the male in matters of citizenship, so that those born of Filipino fathers and those born of Filipino mothers with alien fathers were placed on equal footing. Such children would then be both considered as natural-born citizens.[10] In *Co v. Electoral Tribunal of the House of Representatives*[11] (*Co*), the Court had this to say about bestowing the status of "natural-born" to the children of both Filipino fathers, and Filipino mothers with alien fathers:

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8 *See* I JOSE M. ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 208 (1936).

9 I Record, Constitutional Commission 203 (June 23, 1986).

10 JOAQUIN G., BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 632 (2009).

11 276 Phil. 758 (1991) [Per J. Gutierrez, Jr., *En Banc*].

> The provision in question was enacted to correct the anomalous situation where one born of a Filipino father and an alien mother was automatically granted the status of a natural-born citizen while one born of a Filipino mother and an alien father would still have to elect Philippine citizenship. If one so elected, he was not, under earlier laws, conferred the status of a natural-born.
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> Under the 1973 Constitution, those born of Filipino fathers and those born of Filipino mothers with an alien father were placed on equal footing. They were both considered as natural-born citizens.
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> Hence, the bestowment of the status of "natural-born" cannot be made to depend on the fleeting accident of time or result in two kinds of citizens made up of essentially the same similarly situated members.
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> It is for this reason that the amendments were enacted, that is, in order to remedy this accidental anomaly, and, therefore, treat equally all those born before the 1973 Constitution and who elected Philippine citizenship either before or after the effectivity of that Constitution.
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> The Constitutional provision in question is, therefore curative in nature. The enactment was meant to correct the inequitable and absurd situation which then prevailed, and thus, render those acts valid which would have been nil at the time had it not been for the curative provisions. (See *Development Bank of the Philippines v. Court of Appeals*, 96 SCRA 342 [1980])[12]

Having been placed on equal footing, the Court in *Co* held that the Constitution accords natural-born status to children born of Filipino mothers before January 17, 1973, if they elect citizenship upon reaching the age of majority.[13] Further, the RCC of 1986 reveals that the intention behind Section 4, Article III of the 1973 Constitution was to give the status of natural-born Filipino to those who elect Philippine citizenship, and that the same shall retroact to the birth of the child:

> MR. REGALADO. With respect to a child who became a Filipino citizen by election, which the Committee is now planning to consider a natural-born citizen, he will be so the moment he opts for Philippine citizenship. Did the Committee take into account the fact that at the time of birth, all he had was just an inchoate right to choose Philippine citizenship, and yet, *by subsequently choosing Philippine citizenship, it would appear that his choice retroacted to the date of his birth so much so that under the Gentleman's proposed amendment, he would be a natural-born citizen*?
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> FR. BERNAS. But the difference between him and the natural-born who lost his status is that the natural-born who lost his status, lost it voluntarily; *whereas, this individual in the situation contemplated in Section 1, paragraph 3 never had the chance to choose*.[14] (Emphasis supplied)

The commentary of Fr. Bernas on the 1987 Constitution elucidates:

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12 *Id.* at 784.

13 *Id.* at 785.

14 I Record, Constitutional Commission 206 (June 23, 1986).

> Under the 1935 Constitution it was never definitively settled whether a child of a Filipina mother who elected Philippine citizenship upon reaching majority was a natural-born Filipino. The strict view, which defined a natural-born Filipino in the tenor of the first sentence of Section 2 [of the 1987 Constitution], held that he was not. *A liberal view, however, held that he was. This view was anchored on the argument that the election retroacts to the moment of birth since it was birth which gave the child the potential to make the election.* This liberal view was in fact followed by the 1971 Constitutional Convention when it acted as judge of the citizenship qualification of Delegate Ernesto Ong. It was a practical solution to a hitherto unsettled question.
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> The addition of the second sentence by the 1987 Constitution definitively settled the issue. The purpose of this addition is to equalize the status of those of Filipina parents before January 17, 1973, with those born of Filipina parents on or after January 17, 1973.[15] (Emphasis supplied)

In its current iteration, the 1987 Constitution spells out in black and white that those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority, shall be deemed as natural-born citizens.[16]

Jurisprudence involving the issue of citizenship of legitimate children born of Filipino mothers and alien fathers has also undergone refinement over the last 50 years. The 1962 case of *Cueco v. Secretary of Justice*[17] (*Cueco*) adopted the position that three years is the reasonable time to elect Philippine citizenship under Article IV, Section 1(4) of the 1935 Constitution, which period may be extended under certain circumstances, as when the person concerned has always considered himself a Filipino.[18] Subsequently, in *In re Florencio Mallare*[19] (*Mallare*), the Court held that therein respondent's father, Esteban Mallare (Esteban) was an illegitimate child, and thus no other act would be necessary to confer on him all the rights and privileges attached to Philippine citizenship as he was already a Filipino. However, the Court therein ruled that even assuming *arguendo* that Esteban's mother was legally married to an alien, his exercise of the right of suffrage when he came of age, constituted a positive act of election of Philippine citizenship.[20]

The findings of the Court in *Co* are similar to *Mallare*, insofar as the petitioners were both already Filipinos and they no longer needed to formally elect their Philippine citizenship upon reaching the age of majority. The Court, citing *Mallare*, observed that there is jurisprudence that defines "election" as ***both a formal and an informal process***. However, in the later cases of *In re Ching*[21] (*Ching*), *Go, Sr. v. Ramos*[22] (*Go, Sr.*), *Ma v. Fernandez, Jr.*[23] (*Ma*)

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15 JOAQUIN G., BERNAS, S.J., *supra* note 10, at 640–641.
16 CONST. (1987), art. IV, sec. 1(3).
17 115 Phil. 90 (1962) [Per J. Concepcion, *En Banc*].
18 *Id.* at 93–94.
19 158 Phil. 50 (1974) [Per J. Fernandez, *En Banc*].
20 *Id.* at 58.
21 374 Phil. 342 (1999) [Per J. Kapunan, *En Banc*].
22 614 Phil. 451 (2009) [Per J. Quisumbing, Second Division].
23 639 Phil. 577 (2010) [Per J. Perez, First Division].

and *Republic v. Sagun*[24] (*Sagun*), the Court consistently held that those born under the 1935 Constitution will have to formally elect their Philippine citizenship to be considered natural born citizens.

In the *En Banc* case of *Ching*, the Court was sympathetic to Ching's plight as he had lived in the Philippines all his life and had consistently believed that he was a Filipino. Nevertheless, the Court was constrained to rule that Ching's 14-year delay in complying with the requirements of Commonwealth Act No. 625 was beyond, by any reasonable yardstick, the allowable period within which to exercise the privilege to elect his Philippine citizenship. Moreover, Ching offered no reason why he delayed his election of Philippine citizenship. Lastly, the Court ruled that Ching's reliance on *Mallare* vis-à-vis his informal election of citizenship was misplaced, as the facts and circumstances obtaining therein were very different from those in Ching's case, thus, negating its applicability.

In *Go, Sr.*, the Court found that the petitioner's father, Carlos, was a Chinese citizen as his election of Philippine citizenship was irregular because it was not made on time. Finding the petitioner's claim to Philippine citizenship in serious doubt by reason of his father's questionable election thereof, the Board of Commissioners directed the preparation and filing of the appropriate deportation charges against the petitioner. This case further drove home the point that positive acts such as exercising the right of suffrage do not validate an irregular election of Philippine citizenship. The Court ruled:

> It is true that we said that the 3-year period for electing Philippine citizenship may be extended as when the person has always regarded himself as a Filipino. Be that as it may, it is our considered view that not a single circumstance was sufficiently shown meriting the extension of the 3-year period. The fact that Carlos exercised his right of suffrage in 1952 and 1955 does not demonstrate such belief, considering that the acts were done after he elected Philippine citizenship. *On the other hand, the mere fact that he was able to vote does not validate his irregular election of Philippine citizenship. At most, his registration as a voter indicates his desire to exercise a right appertaining exclusively to Filipino citizens but does not alter his real citizenship, which, in this jurisdiction, is determined by blood (jus sanguinis). The exercise of the rights and privileges granted only to Filipinos is not conclusive proof of citizenship, because a person may misrepresent himself to be a Filipino and thus enjoy the rights and privileges of citizens of this country.*
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> *It is incumbent upon one who claims Philippine citizenship to prove to the satisfaction of the court that he is really a Filipino. No presumption can be indulged in favor of the claimant of Philippine citizenship, and any doubt regarding citizenship must be resolved in favor of the state.*[25] (Emphasis supplied; citations omitted)

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[24] 682 Phil. 303 (2012) [Per J. Villarama, Jr., First Division].

[25] *Go, Sr. v. Ramos, supra* note 22, at 478–479.

The cases of *Ma* and *Sagun* likewise categorically stated that the mere exercise of suffrage, or even being elected a public official, continuous and uninterrupted stay in the Philippines, and other similar acts showing exercise of Philippine citizenship cannot take the place of election of citizenship. The Court held in *Sagun*:

> Respondent cannot assert that the exercise of suffrage and the participation in election exercises constitutes a positive act of election of Philippine citizenship since the law specifically lays down the requirements for acquisition of citizenship by election. The mere exercise of suffrage, continuous and uninterrupted stay in the Philippines, cannot take the place of election of Philippine citizenship. Hence, respondent cannot now be allowed to seek the intervention of the court to confer upon her Philippine citizenship when clearly she has failed to validly elect Philippine citizenship.[26]

The special circumstances in *Ma*, nevertheless, set this case apart from the others since the petitioners' election of citizenship had in fact been performed through the execution of affidavits of election of Philippine citizenship and the taking of oaths of allegiance when the petitioners turned 21 years old. Unfortunately, these documents were not registered with the civil registry. The Court therein ruled that under the facts peculiar to the petitioners, the right to elect Philippine citizenship had not been lost and that they should be allowed to complete the statutory requirements for such election. Thus, the belated registration was allowed in *Ma* since "*the election of citizenship has in fact been done and documented within the constitutional and statutory timeframe,* ***the registration of the documents of election beyond the frame should be allowed if in the meanwhile positive acts of citizenship have publicly, consistently, and continuously been done****. The actual exercise of Philippine citizenship, for over half a century by the herein petitioners, is actual notice to the Philippine public which is equivalent to formal registration of the election of Philippine citizenship*" *since the petitioners' positive acts of citizenship have publicly, consistently, and continuously been done.*[27]

The same thread of logic applied in *Ma* should be applied to Prescott; and the requirements under Commonwealth Act No. 625 should be appreciated in light of his substantial compliance therewith.

Commonwealth Act No. 625 provides for the formalities necessary for the election of Philippine citizenship under Article IV, Section 1(4) of the 1935 Constitution. The law provides:

> SECTION 1. The option to elect Philippine citizenship in accordance with subsection (4), section 1, Article IV, of the Constitution shall be expressed in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the

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[26] *Republic v. Sagun*, *supra* note 24, at 316–317.

[27] *Ma v. Fernandez, Jr.*, *supra* note 23, at 593–594. Emphasis supplied.

> aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines.
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> SECTION 2. If the party concerned is absent from the Philippines, he may make the statement herein authorized before any officer of the Government of the United States authorized to administer oaths, and he shall forward such statement together with his oath of allegiance, to the Civil Registry of Manila.

In *Ma*, the Court held that the taking of an oath of allegiance to the Philippines for the purpose of electing one's Philippine citizenship is a serious undertaking. According to the Court, the oath under Commonwealth Act No. 625 is a sign of a commitment and fidelity to the State. An Oath of Allegiance is an unqualified acceptance of one's identity as a Filipino.[28]

As stated earlier, Prescott filed his Petition for Re-acquisition of his Philippine Citizenship under Republic Act No. 9225 on November 26, 2008. On the same day, his petition was granted and he took his Oath of Allegiance to the Republic of the Philippines. His Oath of Allegiance reads:

> **OATH OF ALLEGIANCE**
> **TO THE**
> **REPUBLIC OF THE PHILIPPINES**
>
> I, WALTER MANUEL FERNANDEZ PRESCOTT, solemnly swear that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.
>
> . . . .
>
> [Signed]
> WALTER MANUEL FERNANDEZ
> PRESCOTT
> Affiant[29]

A reading of the Oath of Allegiance executed by Prescott shows that it substantially reflects the unqualified and voluntary allegiance to the country contemplated by the express statement and Oath of Allegiance required under Commonwealth Act No. 625. From this perspective, the very act of swearing under oath that he will support and defend the Constitution of the Philippines, obey its laws, recognize its supreme authority, and maintain true faith and allegiance to the country, amounts to an election of Filipino citizenship under the 1935 Constitution. To stress, the formalities required under Republic Act No. 9225 mirror those under Commonwealth Act No. 625, insofar as an applicant under Republic Act No. 9225 is required to affirm his or her

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[28] *Id.* at 596.
[29] *Rollo*, p. 488.

commitment to the Philippines, and hold the country's authority over him or her to be supreme and above all others.

That the taking of the Oath of Allegiance satisfies the election of Filipino citizenship requirement under Article IV, Section 1(4) of the 1935 Constitution is further supported by the fact that such requirement came about because of the fear that children of alien fathers and Filipino mothers, especially if brought up in the country of the foreign fathers under the influence of foreign institutions and environment and even in the Philippines, if so reared under their influence and control, might not turn out to be devoted and loyal Filipino citizens.[30] In other words, the requirement simply ensures the complete loyalty, fidelity, and allegiance to the country of the person so electing Filipino citizenship, even as he or she was born to an alien father.

This is precisely the oath sworn to by Prescott in 2008.

In an abundance of cases, the Court has regarded as sufficient compliance to laws requiring the performance of acts to be legally considered Filipino citizens the simple act of taking an Oath of Allegiance to the Philippines.[31] For instance, in several election cases, the filing of a Certificate of Candidacy (CoC) which contains an oath of allegiance to the Philippines was considered by the Court as sufficient to meet the requirements of Republic Act No. 9225 to re-acquire or retain Filipino citizenship. Although the law itself and its implementing rules[32] expressly mandate the doing of formalities on top of the swearing of such oath (e.g., filing of an application form, submission of certain documents), the Court has nevertheless considered an election candidate who had previously lost his Filipino citizenship by reason of naturalization in a foreign country to have already become Filipino again by the mere taking of the oath contained in the *pro forma* CoC, despite having skipped the specific formalities under the law and rules. This is because, again, the true essence of laws on Filipino citizenship is allegiance to the Philippines.

This is likewise the reason why only dual allegiance (which results when a Filipino voluntarily swears allegiance to another state as an incident of naturalization therein) is abhorred by the Constitution, but not dual citizenship by birth (which results from the circumstances of one's birth), so that those falling under the latter category need not renounce their foreign citizenship in order to exercise certain political rights such as voting, running for public office, and being appointed into such public office. The law ultimately looks at

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30 I JOSE M. ARUEGO, *supra* note 8, at 208.

31 *See,* among others, *Development Bank of the Philippines Employees Union and Association of DBP Career Officials v. Office of the Ombudsman*, G.R. Nos. 228304-05, June 15, 2022 [Notice, First Division]; *De Guzman v. Commission on Elections*, 607 Phil. 810 (2009) [Per J. Ynares- Santiago, *En Banc*]; *Jacot v. Dal*, 592 Phil. 661 (2008) [Per J. Chico-Nazaro, *En Banc*]; *Mercado v. Manzano*, 367 Phil. 132 (1999) [Per J. Mendoza, *En Banc*].

32 BI Memorandum Circular No. AFF-04-01, Rules Governing Philippine Citizenship under Republic Act (R.A.) No. 9225 and Administrative Order (A.O.) No. 91, series of 2004, dated March 10, 2004; BI Memorandum Circular No. MCL-08-005, 2008 Revised Rules Governing Philippine Citizenship Under Republic Act (R.A.) No. 9225 and Administrative Order (A.O.) No. 91, series of 2004 (2008).

the loyalty of the person to the Philippines. The law distinguishes a Filipino who did not voluntarily swear loyalty to a foreign country but is merely likewise a citizen of such country because of the circumstances of his birth, from a Filipino who willfully took an oath of allegiance to such foreign country by voluntarily acquiring its citizenship through naturalization. Moreover, the validity of the Oath of Allegiance executed by Prescott has not been questioned by respondents, and its binding effect to Prescott is not nullified by the cancellation of Prescott's Certificate of Re-Acquisition of Philippine Citizenship. Hence, to my mind, Prescott's Oath of Allegiance substantially complies with the requirements of election of Philippine citizenship.

In *Rivera III v. COMELEC*,[33] the Court observed that the substantial compliance rule has been applied in numerous issues relative to the scope and application of constitutional and legal provisions. In particular, the Court has applied the rule in criminal cases to comply with the constitutional requirement that the accused be informed of the charge against him or her as embodied in the Information filed with the court. In other cases, the Court applied the rule both primarily in compliance with the essential statutory requirements and in liberally construing and applying remedial laws for just and compelling reasons in order to promote the orderly administration of justice.[34]

In my Concurring Opinion in *Gana-Carait v. COMELEC*,[35] I reiterated the Court's warning against overzealousness in the enforcement of technical rules at the expense of a just resolution of the cases, stressing the oft-repeated rule that cases should be determined on the merits rather than on technicality or some procedural imperfection so that the ends of justice could be better served.[36] I repeat the same sentiment now as insisting on form over substance will cause greater injustice to Prescott, who has already been wrongfully detained for several years over the issue of his citizenship. I see no reason why the doctrine of substantial compliance to Commonwealth Act No. 625 should not be applied here, especially when there has been no doubt as to Prescott's intention to elect his Philippine citizenship. Prescott, now in his seventies, has fought tooth and nail to maintain his Philippine citizenship from the moment he inadvertently discovered the cancellation of his Certificate of Re-acquisition of Philippine Citizenship in 2014. This speaks volumes of his tenacity and resolution to be a Filipino.

The disloyalty feared by the framers of the 1935 Constitution in relation to the children of Filipino mothers and alien fathers is simply non-existent in Prescott's case. He has shown through his acts over the course of his life his dedication to the Philippines. There can, therefore, be no doubt as to his express willingness to elect Philippine citizenship.

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33 551 Phil. 37 (2007) [Per J. Sandoval-Gutierrez, *En Banc*].
34 *Id.* at 73.
35 G.R. No. 257453, August 9, 2022 [Per J. Rosario, *En Banc*].
36 J. Caguioa, Separate Concurring Opinion in *Gana-Carait v. COMELEC*, G.R. No. 257453, August 9, 2022, p. 6. This pinpoint citation refers to the copy of the Opinion uploaded to the Supreme Court website.

It is not lost on me that Prescott executed the Oath of Allegiance only in 2008 or more than 30 years from when he reached the age of majority. However, it should be recalled that in the seminal case of *Cueco* where the Court first adopted the rule that three years from reaching the age of majority is the reasonable time to elect Philippine citizenship under Article IV, Section 1(4) of the 1935 Constitution, the Court likewise held that ***this period may be extended under certain circumstances, as when the person concerned has always considered himself a Filipino.***[37] I submit that the peculiar and unusual circumstances of Prescott more than sufficiently demonstrate that he believed he was a Filipino up until the time he became a naturalized American citizen in 2006, as detailed below: (a) he pursued his education and his career in the Philippines; (b) even after he lost his American citizenship on April 10, 1976, he consistently identified himself as Filipino in all his documents, including his Marriage Contract and the Birth Certificate of his first-born son; (c) he traveled back and forth the United States of America (USA) and the Philippines under a "balikbayan" status; (d) he applied for naturalization in the USA, which shows that prior to his naturalization, he did not consider himself to be an American citizen; (e) he applied for and was granted the re-acquisition of his Philippine citizenship under Republic Act No. 9225 in 2008 or merely two years after he became a naturalized American citizen, further bolstering the fact that he thought himself to have been a Filipino previous to his naturalization; and (f) he immediately returned to the Philippines after his retirement from the World Bank in 2010. All these acts convincingly establish that Prescott truly believed that he was a Filipino until he became a naturalized American citizen. Moreover, it did not take long after his naturalization in 2006 that he applied for the re-acquisition of his Philippine citizen, which is an even stronger indication of his intent and willingness to elect once again and preserve his Philippine citizenship. All told, relaxation of the period for election of Philippine citizenship is justified and deservedly warranted in this case.

Considering that Prescott should be considered as having formally elected his Philippine citizenship when he took the Oath of Allegiance on November 26, 2008, he should already be considered a natural-born Filipino citizen. As such, there is nothing infirm in his having re-acquired his Philippine citizenship.

The Philippines' accession to the 1961 Convention and its application to the case

But even if Prescott's Oath of Allegiance cannot be considered as substantial compliance with the formalities required under Commonwealth Act No. 625, Article 1, Section 4 of the 1961 Convention mandates that the Philippines, as a Contracting State, shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he or she was born because he or she

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[37] *Cueco v. Secretary of Justice*, *supra* note 17, at 93–94.

has passed the age for lodging his or her application, if the nationality of one of his or her parents at the time of the person's birth was that of the Contracting State.

The records show that Prescott was born on April 10, 1950. He is the legitimate son of an American father and a Filipino mother. He was then issued an Alien Certificate of Registration by the BI on January 12, 1951. He, however, lost his American citizenship on April 10, 1976 after overstaying in the Philippines. It is respondents' position that Prescott was not a Filipino citizen since he failed to elect his Philippine citizenship in accordance with Commonwealth Act No. 625, as required under Article IV, Section 1(4) of the 1935 Constitution. This means, therefore, that Prescott was rendered legally stateless beginning April 10, 1976.

This case now becomes an opportune moment for the Court to breathe life to the provisions of the 1961 Convention, which the Philippines acceded to through Senate Resolution No. 134. On March 24, 2022, then Secretary of Foreign Affairs Teodoro L. Locsin, Jr. deposited the instrument of accession to the 1961 Convention in a ceremony at the United Nations, making the Philippines the 78th party to do so. The 1961 Convention entered into force on June 22, 2022.[38]

The 1961 Convention complements the 1954 Convention relating to the Status of Stateless Persons, which the Philippines likewise acceded to in 2011. Together, these treaties form the foundation of the international legal framework to address statelessness at birth and later in life. By setting out rules to limit the occurrence of statelessness, the 1961 Convention gives effect to Article 15 of the Universal Declaration of Human Rights (UDHR) which recognizes that "everyone has the right to a nationality".[39]

Section 4, Article 1 of the 1961 Convention provides:

> 4. A *Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he has passed the age for lodging his application* or has not fulfilled the required residence conditions, *if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned.* If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the

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38 "Philippines Deposits Instruments of Ratification for the Arms Trade Treaty and The 1961 Statelessness Convention," March 24, 2022, *available at* https://www.un.int/philippines/activities/philippines-deposits-instruments-ratification-arms-trade-treaty-and-1961-statelessness (last accessed on November 29, 2023).

39 Introductory Note, 1961 Convention, *available at* https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf (last accessed on November 29, 2023).

> applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this Article, such application shall not be refused. (Emphasis supplied)

In relation thereto, Section 2, Article 12 of the 1961 Convention reads:

> 2. The provisions of paragraph 4 of Article 1 of this Convention shall apply to persons born *before* as well as to persons born *after its entry into force.* (Emphasis supplied)

Accordingly, paragraph 4 of Article I thereof becomes applicable to persons born even before the 1961 Convention's entry into force—thus clearly embracing within its mantle Prescott.

Applying the foregoing provision, Prescott, who was born in the Philippines and whose mother is a Filipino, is deemed to have been granted his Filipino nationality when he lost his American citizenship and became stateless. The question now to be determined is whether the grant of Philippine nationality to Prescott pursuant to the 1961 Convention should be deemed as having granted him the status of a natural-born Filipino citizen, which would make him eligible to re-acquire or retain his Philippine citizenship under Republic Act No. 9225.

I submit that in order to give full expression to the Philippines' voluntary commitment to its international obligations, the grant of nationality to Prescott should be reckoned from the moment of birth, thus making him a natural-born Filipino citizen. Further, since Prescott is already deemed a natural-born Filipino citizen by virtue of Article I, Section 4 of the 1961 Convention, he is no longer required to formally elect his Philippine citizenship in accordance with Article IV, Section 1(4) of the 1935 Constitution.

Article I, Section 4 of the 1961 Convention should be read in conjunction with Article I, Section 1 which provides the reckoning point as to when a nationality shall be granted:

> 1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:
>
> (a) at birth, by operation of law, or
>
> (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.
>
> A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for

> the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

From the foregoing, a Contracting State has the option to grant nationality or citizenship to a person who will otherwise be stateless from either: (a) the moment of birth, by operation of law; or (b) upon application for such nationality or citizenship.

Given the Court's pronouncement in *Poe-Llamanzares v. COMELEC*[40] (*Poe*) that the common thread of the UDHR, United Nations Convention on the Rights of the Child and International Covenant on Civil and Political Rights is to obligate the Philippines to grant nationality from birth and ensure that no child is stateless,[41] I am inclined to the view that the grant of nationality should be reckoned from the moment of Prescott's birth, which would consequently make him a natural-born Filipino citizen.

I am not unaware of the Court's A.M. No. 21-07-22-SC or the Rule on Facilitated Naturalization of Refugees and Stateless Persons which provides for the procedure for petitions for naturalization of refugees and stateless persons. Nevertheless, I submit that requiring Prescott to undergo a naturalization process or to file an application for the grant of his nationality as contemplated in Article I, Section 1(b) of the 1961 Convention, when he is already of advanced age and of failing health and more importantly, ***has always thought himself to be a Filipino***, would be the height of inequity.

Just as the Court held in *Poe* and in the later case of *David v. Senate Electoral Tribunal*[42] (*David*) that it is through no fault of a foundling that the circumstances of his or her birth would render him or her stateless, Prescott's statelessness was likewise through no fault of his. It would be absurd to assume that Prescott intended to be stateless for a period of 30 years until he was naturalized as an American citizen in 2006. It is more believable, therefore, that Prescott thought himself to be a Filipino even after he had lost his American citizenship in 1976, as shown by his acts referred to in the preceding section.

It should likewise be emphasized that the Court in *Poe* agreed with the Solicitor General that given the grave implications of the argument that foundlings are not natural-born Filipino citizens, the 1935, 1973, and 1987 Constitutions did not intend to discriminate against foundlings. The Court held:

> We find no such intent or language permitting discrimination against foundlings. On the contrary, all three Constitutions guarantee the basic right to equal protection of the laws. All exhort the State to render social justice. Of special consideration are several provisions in the present charter: Article II, Section 11 which provides that the "State values the

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40 782 Phil. 292 (2016) [Per J. Perez, *En Banc*].
41 *Id.* at 404.
42 795 Phil. 529 (2016) [Per J. Leonen, *En Banc*].

> dignity of every human person and guarantees full respect for human rights," Article XIII, Section 1 which mandates Congress to "give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities . . ." and Article XV, Section 3 which requires the State to defend the "right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development." Certainly, these provisions contradict an intent to discriminate against foundlings on account of their unfortunate status.[43]

The Court likewise held in *David* that foundlings should be treated as natural-born citizens, as the converse would be tantamount to permanently discriminating against them, to wit:

> Other than the anonymity of their biological parents, no substantial distinction differentiates foundlings from children with known Filipino parents. They are both entitled to the full extent of the state's protection from the moment of their birth. Foundlings' misfortune in failing to identify the parents who abandoned them—an inability arising from no fault of their own—cannot be the foundation of a rule that reduces them to statelessness or, at best, as inferior, second-class citizens who are not entitled to as much benefits and protection from the state as those who know their parents. Sustaining this classification is not only inequitable; it is dehumanizing. It condemns those who, from the very beginning of their lives, were abandoned to a life of desolation and deprivation.
>
> This Court does not exist in a vacuum. It is a constitutional organ, mandated to effect the Constitution's dictum of defending and promoting the well-being and development of children. It is not our business to reify discriminatory classes based on circumstances of birth.[44]

Notably, this appears to be the first case that has come to the Court since the Philippines' accession to the 1961 Convention involving a person who is legally stateless. Just as the Court in *Poe* held that foundlings should be considered as natural-born Filipino citizens,[45] more so should Prescott be treated as a natural-born Filipino citizen in light of the country's obligation to grant citizenship to persons who would otherwise be stateless if one of his or her parents at the time of his or her birth was Filipino, subject to the provisions of the 1961 Convention. Similarly, the 1935, 1973, and 1987 Constitutions do not contain any restrictive language which would exclude former stateless persons who have been granted Philippine citizenship from being considered natural-born Filipino citizens. Hence, they should be granted their civil and political rights under domestic law and be entitled to the full extent of the State's protection from the moment of their birth.

It follows then that if the grant of nationality is reckoned from Prescott's birth and he is deemed a natural-born Filipino citizen from that

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43 *Poe-Llamanzares v. COMELEC*, *supra* note 40, at 400.
44 *David v. Senate Electoral Tribunal*, *supra* note 42, at 610.
45 *Poe-Llamanzares v. COMELEC*, *supra* note 40, at 717.

moment, there is, therefore, no need for him to elect his Philippine citizenship. Accordingly, respondents' argument that Prescott is not a Filipino since he never elected Philippine citizenship has no leg to stand on.

Considering the premises set forth above, Prescott's re-acquisition of Philippine citizenship on November 26, 2008 (after he had become a naturalized American) was valid.

Section 3 of Republic Act No. 9225 provides:

> SEC. 3. *Retention of Philippine Citizenship.* – Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:
>
> . . . .
>
> Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

Republic Act No. 9225 made permanent and immutable the status of natural-born Filipino citizens despite naturalization as citizens of other countries.[46] Since Prescott became a naturalized American citizen only on August 5, 2006 or after the effectivity of Republic Act No. 9225 in 2003, he was then able to retain or keep his Philippine citizenship. Accordingly, respondents had no jurisdiction to deport him as he is a Filipino citizen.

On a final note, I observe how the treatment of foundlings as natural-born citizens despite their unknown parental lineage puts a spotlight on how the law has unfairly treated the legitimate children of Filipino mothers and alien fathers. As I mentioned above, Article IV, Section 1(4) of the 1935 Constitution was crafted out of fear that foreign fathers will yield such dominant influence that it will sway their children to abandon their loyalty to the Philippines. Thankfully, this provision was liberalized under the 1973 and 1987 Constitutions so that those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority shall be deemed as natural-born citizens.

Yet, despite the evolution of legal thought over the last 80 years, the discriminatory provision requiring the election of Philippine citizenship remains in force. It is high time that we abandon this archaic and sexist election requirement that disadvantages children who are born to alien fathers and Filipino mothers at the time of the effectivity of the 1935 Constitution. If the Court can be convinced that foundlings (whose parents' nationalities are

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[46] *David v. Senate Electoral Tribunal*, *supra* note 42, at 620.

unknown) should be treated as natural-born Filipino citizens, the position that Prescott, who is born of a Filipino mother, is a natural-born Filipino citizen, should more so favorably be considered by the Court.

Conclusion

At this juncture, I wish to clarify that I am not inclined to agree that informal election of Philippine citizenship *alone* is sufficient to satisfy the election requirement under the 1935 Constitution in deference to established jurisprudence that has consistently held that those born under the 1935 Constitution need to formally elect their Philippine citizenship to be considered a natural born citizen.

However, the case of Prescott carves a special place in case law as his peculiar and unique circumstances should be appreciated in light of his unshakeable fealty and fidelity to the Philippines. Despite respondents' vehement denial of his constitutional right to due process, he remains steadfast in his conviction that he is a Filipino. Despite the hardships he has suffered while being detained and hospitalized, he remains hopeful that the highest court of the land will find the wisdom behind the technicality and elevate the essence of justice so that the spirit of the law may prevail.

This case has likewise given the Court the opportunity to harmonize the 1961 Convention with our national law, inasmuch as it illustrates the country's commitment to its obligations under human rights agreements, especially those that concern the affirmation of the right of all persons to a nationality. More importantly, this demonstrates to the Filipino people and to other countries our determination to promote and uphold fundamental human rights and humanitarian standards unfettered by antiquated logic and gender-based discriminatory policies that have long burdened many of our countrymen and countrywomen. Though late in the day, as many of those who may be similarly situated as Prescott are already senior citizens or are in their twilight years, it remains the Court's duty to dispense justice.

In light of the foregoing, I concur with the *ponencia* and vote to **GRANT** the petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice