

DEC 14 2007

Torres-Ramos v. Mukasey
No. 04-73331

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

RYMER, Circuit Judge, concurring in part and dissenting in part.

I agree that the removal order entered *in absentia* should be rescinded under *Lo v. Ashcroft*, 341 F.3d 934 (9th Cir. 2003). This means that everything goes back to square one. Infirmities, if any, in the original proceeding are wiped out. Instead of leaving well enough alone, however, the majority goes further, holding not only that the government's reliance on the I-213 was insufficient (which is unnecessary), but also that *no other evidence of a conviction (or convictions) can be submitted* – which is wrong. We have no idea whether all relevant documents of conviction were available at the time of the *in absentia* hearing; there was, of course, no challenge to the I-213 and no need for presentation of other proof. Nor is it a fair reading of the hearing to imply, as the disposition does, that the government was given a chance to produce additional documentation of conviction but failed to do so.¹ This is no different from lifting a default; it would never occur to anyone to limit the plaintiff at trial to the showing he made to prove up the default. Having undone the removal order, the rest should be left alone. I

¹ What happened was that the immigration judge noted that the NOA would be marked as Exhibit 1; the I-213 would be marked as Exhibit 2; and the Notice of Hearing would be marked as Exhibit 3. He then made the routine inquiry "Does the government have any other evidence it wants to (indiscernible)?" The response was "We do not, your Honor."

accordingly dissent from all but the order rescinding the removal order.