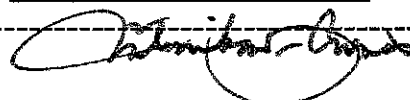


EN BANC

G.R. No. 242957 – THE BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION AND THE JAIL WARDEN, BUREAU OF IMMIGRATION DETENTION CENTER, Petitioners, v. YUAN WENLE, Respondent.

Promulgated:

February 28, 2023

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SEPARATE CONCURRING OPINION

LEONEN, J.:

I concur with the *ponencia* of the Chief Justice. Respondent Yuan Wenle was being legally detained by virtue of the valid Summary Deportation Order issued by the Board of Commissioners of the Bureau of Immigration. Hence, it was error for the trial court to grant respondent Wenle’s Petition for *Habeas Corpus* as it had become moot and academic.

Furthermore, I agree with the Court’s laying down of guidelines for the issuance of administrative warrants, all of which must be strictly complied with. Indeed, there are instances where administrative agencies, in order to complete or execute a law, must temporarily and provisionally detain persons.

However, with respect to the seventh guideline requiring that the person temporarily detained must be formally charged, I submit that a formal charge is not enough for the administrative warrant to be valid. In my view, apart from the formal charge, the administrative agency must immediately inform the courts, via an application for a judicial warrant, of the detention of the person. This should result in the issuance of a judicial warrant within the same reasonable time a formal charge must be brought.

I

The writ of *habeas corpus* “was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom.”¹ It extends to all cases of illegal confinement or detention by which any person is deprived of his

¹ *In re Salibo v. Warden*, 757 Phil. 630 (2015) [Per J. Leonen, Second Division], citing *Villavicencio v. Lukban*, 39 Phil. 778, 788 (1919) [Per J. Malcolm, *En Banc*].



liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.² Its primary purpose “is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal.”³

The viability of a petition for *habeas corpus* to question one’s detention and impending deportation has been upheld by this Court,⁴ the reason being that a writ of *habeas corpus* is “thorough and complete”⁵ and “affords prompt relief from unlawful imprisonment of any kind and under all circumstances.”⁶ In the words of this Court in *De Bisschop v. Galang*:⁷

“[T]he use of *habeas corpus* to test the legality of aliens’ confinement and proposed expulsion from the Philippines is now a settled practice[.]” This is because *habeas corpus*, aside from being thorough and complete, affords prompt relief from unlawful imprisonment of any kind, and under all circumstances. It reaches the facts affecting jurisdiction, or want of power, by the most direct method, and at once releases the applicant from restraint when it is shown to be unauthorized.⁸ (Citations omitted)

However, it is equally settled that a writ of *habeas corpus* shall not be allowed if the person allegedly deprived of liberty is restrained under a lawful process or order of the court.⁹ The restraint, which has become legal,¹⁰ renders the remedy of *habeas corpus* moot and academic.¹¹ The proper remedy of the aggrieved party is to pursue the orderly course of the proceedings.¹² Rule 102, Section 4 of the Rules of Court provides:

SEC. 4. *When writ not allowed or discharge authorized.* — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had

² RULES OF COURT, Rule 102, sec. 1.

³ *In re Salibo v. Warden*, 757 Phil. 630, 644 (2015) [Per J. Leonen, Second Division], citing *Villavicencio v. Lukban*, 39 Phil. 778, 790 (1919) [Per J. Malcolm, *En Banc*].

⁴ See *De Bisschop v. Galang*, 118 Phil. 246 (1963) [Per J. J.B.L. Reyes, *En Banc*]. See also *Alfonso v. Vivo*, 123 Phil. 338 (1966) [Per J. Regala, *En Banc*].

⁵ *De Bisschop v. Galang*, 118 Phil. 246, 251 (1963) [Per J. J.B.L. Reyes, *En Banc*].

⁶ *Id.*

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

⁸ *Id.* at 251.

⁹ *In re Salibo v. Warden*, 757 Phil. 630, 648 (2015) [Per J. Leonen, Second Division], citing *In Re: Petition for Habeas Corpus of Villar v. Director Bugarin*, 224 Phil. 161, 170 (1985) [Per C.J. Makasiar, *En Banc*], *Celeste v. People*, 142 Phil. 308, 312 (1970) [Per J. Fernando, *En Banc*], *Santiago v. Director of Prisons*, 77 Phil. 927, 930-931 (1947) [Per J. Tuason, *En Banc*], *Quintos v. Director of Prisons*, 55 Phil. 304, 306 (1930) [Per J. Malcolm, *En Banc*], and *Carrington v. Peterson*, 4 Phil. 134, 138 (1905) [Per J. Johnson, *En Banc*].

¹⁰ *In re Salibo v. Warden*, 757 Phil. 630, 648 (2015) [Per J. Leonen, Second Division], citing *In the Matter of the Petition for Habeas Corpus of Harvey v. Hon. Santiago*, 245 Phil. 809, 816 (1988) [Per J. Melencio-Herrera, Second Division].

¹¹ *In re Salibo v. Warden*, 757 Phil. 630, 648 (2015) [Per J. Leonen, Second Division], citing *Integrated Bar of the Philippines v. Hon. Ponce Enrile*, 223 Phil. 561, 580 (1985) [Per J. Melencio-Herrera, *En Banc*]; *In the Matter of the Petition for Habeas Corpus of Harvey v. Hon. Santiago*, 245 Phil. 809, 816 (1988) [Per J. Melencio-Herrera, Second Division].

¹² See *Rodriguez v. Bonifacio*, 398 Phil. 441 (2000) [Per J. Ynares-Santiago, First Division]. See also *Miranda v. Deportation Board*, 94 Phil. 531 (1954) [Per J. Bautista Angelo, *En Banc*].

jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

The term “court” in Rule 102, Section 4 includes quasi-judicial bodies, such as the Bureau of Immigration.¹³ Hence, in deportation cases, *habeas corpus* may no longer be availed of when a deportation charge has already been filed against the alien. The proper remedy of the alien is to pursue the ordinary course of the deportation proceedings under the rules of procedure of the Bureau of Immigration.

In *Rodriguez v. Bonifacio*,¹⁴ agents of the National Bureau of Investigation, in coordination with the Department of Labor and Employment and the Bureau of Immigration, raided night clubs in Ermita, Manila on May 7, 1999. Apprehended were 20 female Chinese nationals, including one Ma Jing, who worked as guest relations officers but had no alien employment permits or alien employment registration certificates. They were subsequently confined at the Bureau of Immigration Detention Center at Camp Bagong Diwa in Taguig.

Ten days later, or on May 17, 1999, Ma Jing filed a petition for *habeas corpus*, contending that she was illegally deprived of her liberty. In particular, she alleged that as of the date of the filing of the petition, “no formal complaint or accusation for any specific offenses has been filed against her or any judicial writ or order for her commitment has [been issued].”¹⁵

It turns out, however, that on May 13, 1999, four days before Ma Jing filed her petition, a Charge Sheet has been filed against her and the other Chinese nationals apprehended with her for violation of Section 37(a)(7) of the Philippine Immigration Act of 1940. The Bureau of Immigration, in its Return of the Writ, thus argued that Ma Jing was being lawfully detained, and her petition for *habeas corpus* was moot and academic.¹⁶

The trial court granted the petition and ordered the release of Ma Jing from detention due to her illegal warrantless arrest. However, the Bureau of Immigration refused to release her as it had already issued a summary deportation order against her. This caused Ma Jing to file a “Motion to Declare Parties Guilty of Contempt” against then Commissioner of

¹³ See *Rodriguez v. Bonifacio*, 398 Phil. 441, 471 (2000) [Per J. Ynares-Santiago, First Division].

¹⁴ 398 Phil. 441 (2000) [Per J. Ynares-Santiago, First Division].

¹⁵ *Id.* at 454–455.

¹⁶ *Id.* at 455.

Immigration Rufus B. Rodriguez, among others, for defying the order of the trial court.¹⁷

The trial court judge, Judge Rodolfo R. Bonifacio, granted Ma Jing's motion and declared Commissioner Rodriguez guilty of indirect contempt. This caused Commissioner Rodriguez to administratively charge Judge Bonifacio with grave misconduct, gross ignorance of the law, gross inefficiency, and knowingly rendering an unjust judgment.

After investigation, this Court suspended Judge Bonifacio from the service for three months without pay. According to this Court, Judge Bonifacio had no authority to order the release of Ma Jing under a writ of habeas corpus because she was being legally detained under a valid process. Notably, said the Court, "[e]ven granting that the arrest of Ma Jing was initially illegal, the filing of the Charge Sheet cured whatever incipient infirmity there was in her arrest."¹⁸

Be that as it may, there was a valid judicial process justifying Ma Jing's detention even before respondent judge rendered his decision as shown by the Return of the Writ which averred, among others, that a Charge Sheet was filed against Ma Jing. Even granting that the arrest of Ma Jing was initially illegal, the filing of the Charge Sheet cured whatever incipient infirmity there was in her arrest. Respondent judge therefore had no authority to release the party who was thus committed. Section 4, Rule 102 of the Rules of Court provides:

SECTION 4. *When writ not allowed or discharge authorized.* — If it appears that the person to be restrained of his liberty is in the custody of an officer under process issued by a court or judge; or by virtue of a judgment or order of a court of record, and that court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

Once a person detained is duly charged in court, he may no longer question his detention through a petition for issuance of a writ of habeas corpus. His remedy would be to quash the information and/or the warrant of arrest duly issued. The writ of habeas corpus should not be allowed after the party sought to be released had been charged before any court. The term "court" includes quasi-judicial bodies like the Deportation Board of the Bureau of Immigration.¹⁹

¹⁷ *Id.* at 461.

¹⁸ *Id.* at 471.

¹⁹ *Id.*

In *Miranda v. Deportation Board*,²⁰ petitioners were charged before the Deportation Board for having entered the country through fraud. They allegedly misrepresented themselves to be children of Filipinos when, in truth, they were Chinese nationals.

Maintaining that they were Filipino citizens, petitioners filed a motion to quash, which the Deportation Board denied. The latter then set the deportation case for hearing.

With their motion to quash denied, petitioners subsequently filed a petition for *habeas corpus* before this Court to challenge the jurisdiction of the Deportation Board. They insisted that the Deportation Board only has jurisdiction when the deportation case involves those who are “admittedly aliens,” not those who have alleged their Filipino citizenship.²¹

Despite their argument, petitioners’ petition for *habeas corpus* was denied by this Court, which held that “the mere plea of citizenship does not divest the [Deportation Board] of its jurisdiction over the case. Petitioners should make ‘a showing that the claim is not frivolous[,]’ and must prove by sufficient evidence that they are Filipino citizens.”²² In other words, petitioners had to go through the orderly course of the proceedings before the Deportation Board, where they had to prove that they are actually Filipino citizens.

Applying *Rodriguez* and *Miranda* in the present case, respondent Wenle’s Petition for *Habeas Corpus* should have been denied by the trial court for being moot and academic. It is undisputed that on July 17, 2018, respondent Wenle was charged before the Board of Commissioners of the Bureau of Immigration, the body with jurisdiction over deportation cases.²³ Nine days later, or on July 26, 2018, a Summary Deportation Order was subsequently issued against respondent Wenle, and only then was he arrested pursuant to the deportation order.

Instead of a petition for *habeas corpus*, respondent Wenle’s proper remedy was to pursue the orderly course of the deportation proceedings. Under Rule 10, Sections 7 and 8 of the Bureau of Immigration Omnibus Rules of Procedure of 2015, respondent Wenle should have filed a motion for reconsideration of the Summary Deportation Order. In case of denial of the motion, an appeal to the Secretary of Justice or Office of the President would still be available.

²⁰ 94 Phil. 531 (1954) [Per J. Bautista Angelo, *En Banc*].

²¹ *Id.* at 533.

²² *Id.* (Citations omitted)

²³ ADMIN. CODE, Book IV, Title III, Chapter 10, sec. 31. *See also* Commonwealth Act No. 613 (1940), sec. 37(a).

RULE 10
Deportation Order/Judgment

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SECTION 7. *Motion for Reconsideration.* — The foreigner shall have three (3) days from receipt of a copy of the Order/Judgment to file two (2) copies of a verified Motion for Reconsideration before the [Office of the Commissioner] Receiving Unit. Only one (1) Motion for Reconsideration may be filed. No other pleading shall be entertained. Within twenty four (24) hours from receipt, the [Office of the Commissioner] Receiving Unit shall immediately forward the Motion for Reconsideration to the Legal Division or the [Board of Special Inquiry] as the case may be.

The Motion for Reconsideration must point out specifically the findings or conclusions of the Order/Judgment which are not supported by the evidence or which are contrary to law, making express reference to the evidence or provisions of law alleged to be contrary to such findings or conclusions.

Whenever necessary, the Legal Division or the [Board of Special Inquiry], as the case may be, may issue an Order directing the complainant to submit a Comment to the Motion for Reconsideration within ten (10) days from receipt.

Within ten (10) days from submission of the Comment or from the lapse of time to submit the same, the Legal Division or the [Board of Special Inquiry] shall draft the Resolution deciding the Motion for Reconsideration.


In case the Legal Division or the [Board of Special Inquiry] opted not to issue an Order to submit a Comment, it shall draft the Resolution deciding the Motion for Reconsideration within ten (10) days from receipt.

Upon drafting the Resolution, the Legal Division or the [Board of Special Inquiry] shall forward the same with the deportation record to the Board Secretary.

Upon receipt of the draft Resolution, the Board Secretary shall include the same to the next scheduled agenda for the [Board of Commissioners] to resolve.

SECTION 8. *Appeal.* — The appeal shall stay the execution of the decision appealed from unless the Secretary of Justice/Office of the President directs its execution pending appeal.

The alleged lack of notice and hearing before the issuance of the Summary Deportation Order does not render the Summary Deportation Order and his confinement void for violation of due process. The essence of due process in administrative proceedings, such as deportation proceedings,



is the opportunity to be heard,²⁴ which was undisputedly given to respondent Wenle.

All told, the Petition for *Habeas Corpus* was moot and academic, respondent Wenle having been detained by virtue of a legal process. The trial court, therefore, should have denied the Petition.

II

The *ponencia* discusses “administrative warrants,” which are warrants akin to search warrants or warrants of arrest, but are issued by “adjudicative authorities other than regular courts.”²⁵ It then lays down guidelines for the issuance of these administrative warrants, which must be strictly followed to render these warrants valid.

I agree with the necessity of issuing administrative warrants in certain instances. Indeed, the Executive, in order to effectively enforce and administer the laws,²⁶ must be empowered to temporarily and provisionally detain persons and affect liberties. This is obvious in deportation proceedings, where the president²⁷ or the Bureau of Immigration,²⁸ in order to complete or execute our immigration policies, is given the power to issue arrest warrants for purposes of carrying out a final order of deportation.²⁹ It is impossible to deport an undesirable alien without first gaining custody of the alien’s person.

The examples given by Justice Amy Lazaro-Javier in her Concurring Opinion are likewise enlightening. Under Section 28³⁰ of Republic Act No. 7610 and Section 22³¹ of Republic Act No. 11188, the Department of Social

²⁴ See *Go, Sr. v. Ramos*, 614 Phil. 451, 479 (2009) [Per J. Quisumbing, Second Division].

²⁵ *Ponencia*, p. 11.

²⁶ CONST., art. VII, sec. 1.

²⁷ Act No. 2711 (1917), sec. 69. See also *Qua Chee Gan v. Deportation Board*, 118 Phil. 868 (1963) [Per J. Barrera, *En Banc*].

²⁸ Commonwealth Act No. 613 (1940), sec. 37(a). The Bureau of Immigration is a constituent unit of the Department of Justice as per ADMIN. CODE, Book IV, Title III, Chapter 1, sec. 4.

²⁹ Commonwealth Act No. 613 (1940), sec. 37(a). See *Qua Chee Gan v. Deportation Board*, 118 Phil. 868 (1963) [Per J. Barrera, *En Banc*], *Morano v. Vivo*, 126 Phil. 928 (1967) [Per J. Sanchez, *En Banc*], *Vivo v. Montesa*, 133 Phil. 311 (1968) [Per J. J.B.L. Reyes, *En Banc*], *Neria v. Vivo*, 140 Phil. 183 (1969) [Per J. Castro, *En Banc*], *In re: Harvey v. Santiago*, 245 Phil. 809 (1988) [Per J. Melencio-Herrera, Second Division], and *Board of Commissioners v. De La Rosa*, 247 Phil. 1157 (1991) [Per J. Bidin, *En Banc*].

³⁰ Republic Act No. 7610 (1992), sec. 28, Special Protection of Children Against Abuse, Exploitation and Discrimination Act provides:

Section 28. *Protective Custody of the Child*. – The offended party shall be immediately placed under the protective custody of the Department of Social Welfare and Development pursuant to Executive Order No. 56, series of 1986. In the regular performance of this function, the officer of the Department of Social Welfare and Development shall be free from any administrative, civil or criminal liability. Custody proceedings shall be in accordance with the provisions of Presidential Decree No. 603.

³¹ Republic Act No. 11188 (2019), sec. 22, Special Protection of Children in Situations of Armed Conflict Act provides:

Section 22. *Rescue, Rehabilitation and Reintegration*. – The State shall institute policies, programs and services for the rescue, rehabilitation and reintegration of children in situations of armed conflict. The

Welfare and Development may immediately take protective custody of children exploited in prostitution and other sexual abuse, or children involved in armed conflict. This is to expeditiously remove them from the unsafe environment they are living in. Also, under Section 207³² of the National Building Code, a Building Official may enter any building or its premises to determine compliance with the requirements of the Code, and the terms and conditions of the building permit issued. As Justice Lazaro-Javier pointed out, these powers are in the nature of administrative warrants, allowable for the effective execution and implementation of our laws.

Be that as it may, it is my view that these powers should be subject to due process requirements and, more specifically, a *judicial* evaluation of the cause, nature, and duration of the detention. *This is the balance between Article VII, Section 1 of the Constitution on executive power, and Article III, Section 2³³ on the issuance of warrants of arrest being, essentially, a judicial function.*

programs, which shall be provided by civilian local and national government agencies, in partnership with nongovernment organizations shall aim at providing services for children while involving their families, communities and other entities to facilitate the children's reintegration process.

These services shall include psychosocial support, health and nutrition, education, livelihood for families and other basic or legal services, as may be necessary.

Any program intervention shall be designed with due respect to the culture of each child, family and community. The child shall, at all times, be provided with legal assistance and physical security upon rescue.

Regardless of the perceived association of the children to one of the sides of the conflict, they shall benefit from all available medical, psychosocial, legal, shelter and educational response mechanism services for the victims of armed conflict.

The State shall take into account the protocol in the rescue, rehabilitation and reintegration of children specified below:

(a) Rescue. – The State shall provide for adequate measures and mechanisms to facilitate the recovery, either voluntary or involuntary, of children from armed groups or government forces. It shall provide legal and physical security to children involved in armed conflict including services such as family tracing and system of referral or response on various psychosocial services needed by the victims;

(b) Rehabilitation. – The civilian national or local government agencies and civil society organizations shall facilitate the normal development of children victims in their post-involvement phase. It shall provide services including therapeutic counseling, security and protection, educational assistance and livelihood opportunities to their parents, relatives or guardians or to the victims when they become of age;

(c) Reintegration. – The civilian national or local government agencies and civil society organizations shall bring children back to their families or communities whenever possible. This shall involve services including the provision of alternative parental care. Trainings aimed to enhance community readiness in the reintegration of these children shall also be undertaken. Processes to facilitate the reintegration, healing and reconciliation of CIAC with their communities shall also be undertaken. Whenever possible, interventions for children shall be done with respect to their opinion. Interventions for indigenous peoples (IPs) children shall be conducted in recognition of the traditional structures and institutions of their communities.

³² Presidential Decree No. 1096 (1977), sec. 207, National Building Code of the Philippines provides: Section 207. *Duties of a Building Official.*

In his respective territorial jurisdiction, the Building Official shall be primarily responsible for the enforcement of the provisions of this Code as well as of the implementing rules and regulations issued therefor. He is the official charged with the duties of issuing building permits.

In the performance of his duties, a Building Official may enter any building or its premises at all reasonable times to inspect and determine compliance with the requirements of this Code, and the terms and conditions provided for in the building permit as issued.

When any building work is found to be contrary to the provisions of this Code, the Building Official may order the work stopped and prescribe the terms and/or conditions when the work will be allowed to resume. Likewise, the Building Official is authorized to order the discontinuance of the occupancy or use of any building or structure or portion thereof found to be occupied or used contrary to the provisions of this Code.

³³ CONST., art. III, sec. 2 provides:

For this reason, I submit that the seventh guideline in the *ponencia* requiring a formal charge be amended accordingly. Apart from the formal charge, the administrative body must immediately inform the courts, via an application for a judicial warrant, of the detention of the person. The application should be filed before the trial court with territorial jurisdiction over the place where the person is detained. This should result in the issuance of a judicial warrant within a reasonable time in order for the administrative warrant to be valid.

It is thus proposed that the seventh guideline be reworded as follows:

7. The person temporarily deprived of a right or entitlement by an administrative warrant shall be formally charged within a reasonable time if no such period is provided by law. Upon the filing of the formal charge, the administrative body shall inform the courts, via a sworn complaint, of the detention of the person. The complaint shall be filed before the trial court with territorial jurisdiction over the place where the person is detained, after which, a judicial warrant should be issued. The filing of the sworn complaint and the issuance of the judicial warrant shall be made within the same reasonable period for filing the formal charge. In all stages of the proceedings, the person detained shall not be denied access to a competent counsel of his or her own choice.

ACCORDINGLY, I vote to **GRANT** the Petition for Review on *Certiorari*. The October 22, 2018 Resolution of Branch 16, Regional Trial Court, Manila in R-MNL-18-10197-SP must be **REVERSED** and **SET ASIDE**. The Petition for *Habeas Corpus* filed by respondent Yuan Wenle must be **DENIED** for being moot and academic.



MARVIC M.V.F. LEONEN
Senior Associate Justice

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (Emphasis supplied)