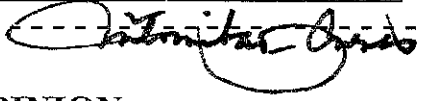


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G.R. No. 242957 – THE BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION AND THE JAIL WARDEN, BUREAU OF IMMIGRATION DETENTION CENTER, Petitioners, v. YUAN WENLE, Respondent.

Promulgated:

February 28, 2023

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CONCURRING OPINION

ZALAMEDA, J.:

I concur.

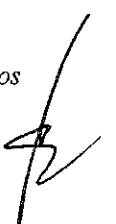
The formulation of the guidelines by the *ponencia* is a welcome step toward tempering the ever-expanding powers of quasi-judicial bodies. Indeed, the Court has long acknowledged the unique role that administrative agencies play in modern society, in light of their specialized knowledge and technical expertise.¹ Such distinct capability rationalized the general policy of non-interference with matters addressed to the sound discretion of government agencies.²

However, Our deference ends where Our constitutional duty begins. It is incumbent upon the Court to ensure the Executive's observance of basic due process rights. The guidelines achieve this by affording the agencies sufficient leeway to meet exigent public needs, but requiring an opportunity to be heard before the deprivation of a right or legitimate claim is made

¹ *Drugstores Association of the Philippines, Inc. v. National Council on Disability Affairs*, 795 Phil. 166 (2016):

x x x Settled is the rule that courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency. As a matter of policy, We accord great respect to the decisions and/or actions of administrative authorities not only because of the doctrine of separation of powers but also for their presumed knowledge, ability, and expertise in the enforcement of laws and regulations entrusted to their jurisdiction. The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.

² *Id.*; See also *Republic v. Apex Mining Co., Inc.*, G.R. No. 220828, 07 October 2020; *Garcia v. Santos Ventura Hocorma Foundation, Inc.*, G.R. No. 224831, 15 September 2021.



permanent.³

The due process requirement imposed by the guidelines has statutory mooring. Specific to deportation proceedings, the Administrative Code of 1987 vests upon the President “the power to deport aliens subject to the requirements of due process.”⁴ Such power is exercised by the President through the Board of Commissioners (Board), a collegial body comprised by the Immigration Commissioner and Associate Commissioners, which has “exclusive jurisdiction over all deportation cases.”⁵

In turn, the Board’s authority is circumscribed by the Philippine Immigration Act of 1940, as amended.⁶ Section 37 (a) thereof provides for the categories of foreigners who may be “arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged.” Meanwhile, Section 37 (c) of the law provides that “[n]o alien shall be deported without being informed of the specific grounds for deportation nor without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration.”

Notably, there is no law prohibiting summary deportation, as provided in the Bureau of Immigration’s (Bureau) Omnibus Rules of Procedure⁷ (Omnibus Rules). To that extent, We defer to the Executive’s determination of the propriety of, and grounds for, summary deportation. Those are matters falling within the Bureau’s discretion. However, the summary nature of the proceedings cannot dispense with the requirement of an opportunity to be heard.

Thus, a distinction must be made between a potential deportee’s arrest and actual deportation. As extensively discussed in the *ponencia*, the conduct of arrests prior to any hearing is justified by the inherent demands of general welfare and public safety.⁸ In certain instances, the danger of a fugitive absconding or escaping the authorities outweighs all other

³ See guideline nos. 1 and 2: (1) “[t]he danger, harm, or evil sought to be prevented by the warrant must be imminent and must be greater than the damage or injury to be sustained by one who will be temporarily deprived of a right to liberty or property;” and (2) “[t]he warrant’s resultant deprivation of a right or legitimate claim of entitlement must be temporary or provisional aimed only at suppressing imminent danger, harm or evil and such deprivation’s permanency must be strictly subject to procedural due process requirements.”

⁴ ADMINISTRATIVE CODE OF 1987, Section 8, Chapter 3, Title I, Book III.

⁵ ADMINISTRATIVE CODE OF 1987, Section 31, Chapter 10, Title III, Book IV.

⁶ Commonwealth Act No. 613.

⁷ BI Memorandum Circular No. SBM-2015-010 dated 08 October 2015, as amended by BI Memorandum Circular No. JHM-2018-002 dated 26 March 2018.

⁸ *Ponencia*, p. 28.

considerations.⁹ However, all potential deportees should be given a post-apprehension opportunity to be heard prior to actual deportation. This is required by the Philippine Immigration Act of 1940 and the general guarantees of due process. As such, those arrested must have a mechanism to challenge their arrest and possible deportation.

In this regard, I wish to further elucidate the implications of the *ponencia* on the interpretation of the Omnibus Rules and the remedies available to a foreigner brought under its operation, particularly to those who are considered fugitives from justice.

Under the Omnibus Rules, summary deportation proceedings shall apply when the foreigner is: (1) overstaying; (2) undocumented; (3) a fugitive from justice; (4) has fully served the sentence in a crime which carries with it the penalty of deportation after service of sentence; or (5) has fully served the sentence for crimes mentioned in Sections 37 (a) (3) and 37 (a) (10) of the Philippine Immigration Act of 1940, as amended.¹⁰

A fugitive from justice is defined as one: (a) who has been tagged as such by the authorized personnel of a foreign embassy or by the International Police; or (b) whose passport is cancelled by his/her embassy/consulate.¹¹ Respondent Yuan Wenle falls under this definition, as he was tagged as a fugitive by the Chinese Embassy and his Chinese passport had been cancelled.

When a foreigner is overstaying or undocumented, the rules on preliminary investigation shall apply.¹² Thus, once a complaint is received and found sufficient in form, the Bureau's Legal Division, through the Special Prosecutor, shall conduct a preliminary investigation.¹³ The Special Prosecutor shall "determine whether there is sufficient ground to engender a well-founded belief that a violation of the immigration law has been committed and that the respondent is probably guilty and should be charged."¹⁴

If the complaint deserves due course, the Special Prosecutor shall issue an order requiring the respondent-foreigner to submit an answer in the form of a counter-affidavit or memorandum within ten (10) days from notice.¹⁵ If there is sufficient evidence warranting deportation, the Special Prosecutor shall issue a Charge Sheet, which is an accusation in writing

⁹ Id.

¹⁰ Omnibus Rules, Sec. 1, Rule 9.

¹¹ Omnibus Rules, as amended, Sec. 2 (c), Rule 9.

¹² Omnibus Rules, Sec. 4, Rule 9.

¹³ Omnibus Rules, Sec. 7, Rule 2 and Sec. 1, Rule 3.

¹⁴ Omnibus Rules, Sec. 1, Rule 3.

¹⁵ Omnibus Rules, Sec. 2, Rule 3.



charging a foreigner with violation of immigration laws.¹⁶ Thereafter, the Legal Division shall draft a Summary Deportation Order (SDO), which shall be forwarded to and resolved by the Board.¹⁷

The process is different if the foreigner is considered a fugitive from justice or one who has fully served his/her sentence, as classified under (4) and (5) above. There shall be no preliminary investigation. Instead, the Bureau's Intelligence Division shall immediately coordinate with law enforcement for the arrest or turn-over of the foreigner.¹⁸ At the same time, the Bureau's Legal Division shall immediately draft and submit to the Board the SDO and warrant of deportation. The Omnibus Rules further provides that the SDO shall be final and immediately executory once approved by the Board, and has the effect of barring the foreigner concerned from re-entry into the Philippines and including his/her name in the Bureau's blacklist.

The pertinent provisions of the Omnibus Rules state, thus:

SECTION 8. *Duties of the Legal Division When a Foreigner is a Fugitive or Has Served His Sentence.* — Within forty eight (48) hours from receipt of the fugitive/criminal file from the [Office of the Commissioner], the Legal Division shall draft and submit to the Office of the Board Secretary the following documents for appropriate action:

- a. Charge Sheet;
- b. Summary Deportation Order;
- c. Warrant of Deportation; and
- d. Request for NBI Clearance.

The Legal Division shall ensure that the relevant immigration information of the foreign fugitive/criminal shall be attached to the records such as but not limited to: (1) travel records, (2) foreigner registration records; and/or (3) derogatory records. The same shall form part of the fugitive/criminal file.

SECTION 9. *Duties of the Board Secretary When a Foreigner is a Fugitive or Has Served His Sentence.* — Within forty eight (48) hours from receipt of the SDO attached to the case records; the Board Secretary shall schedule a special agenda for the [Board] to resolve the summary deportation of the foreign fugitive/criminal.

SECTION 10. *Nature of the Summary Deportation Order.* — A Summary Deportation Order shall be **final and immediately executory** upon signing/approval thereof.

¹⁶ Omnibus Rules, Sec. 1, Rule 4.

¹⁷ Omnibus Rules, Sec. 5, Rule 9.

¹⁸ Omnibus Rules, Sec. 7, Rule 9.

SECTION 11. *Effect of Summary Deportation Order.* — **Summary deportation shall bar the foreigner concerned from re-entry into the Philippines and his name shall be included in the BI Blacklist.**

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SECTION 6. *Finality of the Decision.* — **Except in cases of voluntary deportation and summary deportation,** the Order/Judgment directing the Respondent's deportation shall become **final and executory after thirty (30) days from notice,** unless within such period, Respondent files a Motion for Reconsideration or an Appeal before the Office of the Secretary of Justice or the Office of the President.¹⁹

Thus, based on the quoted provisions, it may appear that a foreigner tagged as a fugitive would have no opportunity to be heard prior to *and* after arrest. The SDO would be issued without due proceedings, and shall be considered final and immediately executory upon approval. This interpretation contravenes the express requirement of Section 37 (c) of the Philippine Immigration Act of 1940.

However, as aptly pointed out by the *ponencia*, the provisions of the Omnibus Rules should be construed in a manner consistent with the due process clause of the Constitution.²⁰ This is in consonance with the rule that "when a law is susceptible of two constructions[,] one of which will maintain and the other destroy it, the courts will always adopt the former," even if "the construction which is adopted does not appear to be as natural as another construction."²¹

Here, the Board itself argued and admitted that a motion for reconsideration may be filed against an SDO.²² The Board cited Section 7, Rule 10 of the Omnibus Rules, which provides:

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 OCOM 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 OCOM Receiving Unit shall immediately forward the Motion for Reconsideration to the Legal Division or the BSI 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.

¹⁹ Emphasis supplied.

²⁰ *Ponencia*, p. 50.

²¹ *Yu Cong Eng v. Trinidad*, 47 Phil. 385 (1925).

²² *Ponencia*, p. 6.

Whenever necessary, the Legal Division or the BSI, 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 BSI shall draft the Resolution deciding the Motion for Reconsideration.

In case the Legal Division or the BSI 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 BSI 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 BOC to resolve.

As Section 7, Rule 10 of the Omnibus Rules does not provide that it does *not* apply to SDOs, then it should be construed to be applicable to summary deportation proceedings. This is the reasonable construction that would make the Omnibus Rules valid and in accord with the Constitution and the Philippine Immigration Act of 1940, especially in case of fugitives from justice. Indeed, while the provision on the finality and immediate execution of the SDO may be valid as against other foreigners subjected to preliminary investigation, as they had already been given an opportunity to be heard, the same is not true with respect to the others. As to the latter, a post-apprehension proceeding must be conducted where they can raise their respective defenses.

Notably, Our interpretation here is consistent with jurisprudence applying and interpreting the old rules of the Bureau, which also provided for summary deportation.²³ In these cases, We held that a foreigner may file a motion for reconsideration assailing the SDO and the warrant of deportation.²⁴

A deportee has other remedies aside from a motion for reconsideration. Upon denial of the motion, the deportee may exhaust administrative remedies within the executive machinery, *i.e.*, file an appeal with the Secretary of Justice and, then, before the Office of the President.²⁵ The Office of the President's decision may then be assailed before the Court

²³ See Memorandum Order No. 04-92 dated April 1992 and BOI Office Memorandum No. ADD-01-004 dated 07 June 2001.

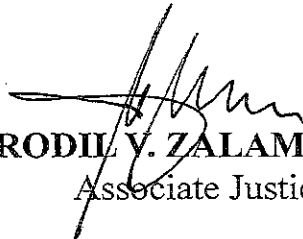
²⁴ See *Mison v. Gallegos*, 761 Phil. 657 (2015); *Domingo v. Scheer*, 466 Phil. 235 (2004); See also Omnibus Rules, Section 7, Rule 10.

²⁵ *Tze Sun Wong v. Wong*, 749 Phil. 206 (2014).

of Appeals via a petition for review under Rule 43 of the Rules of Court.²⁶ In the alternative, under exceptional circumstances and strictly on jurisdictional grounds, the deportee may directly file a petition for *certiorari* under Rule 65 of the Rules of Court.²⁷ Conversely, We have ruled that a petition for *habeas corpus* and a petition for the issuance of a writ of *amparo* are *not* the proper remedies to assail an SDO and a warrant of deportation.²⁸

With the foregoing clarifications on the remedies available to a potential deportee, it would best serve the interests of the public if the Omnibus Rules were to be amended to reflect Our disquisition in this case. This way, deportees would be readily apprised of the remedies they have under the law and effectively raise their defenses. Moreover, as aptly pointed out by the *ponencia*, the text of the Omnibus Rules is susceptible of being misapplied so as to withhold a post-apprehension opportunity to be heard. Thus, I concur with the *ponencia*'s directive to amend the Omnibus Rules.

All told, I concur with the *ponencia*.



RODIL V. ZALAMEDA
Associate Justice

²⁶ Id.

²⁷ Id.; see *Domingo v. Scheer*, 466 Phil. 235 (2004); *Secretary of Justice v. Koruga*, 604 Phil. 405 (2009).

²⁸ *Mison v. Gallegos*, 761 Phil. 658 (2015); *Kiani v. Bureau of Immigration*, 518 Phil. 501 (2006).