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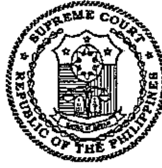

Republic of the Philippines
Supreme Court
Manila

EN BANC

THE BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION AND THE JAIL WARDEN, BUREAU OF IMMIGRATION DETENTION CENTER,
Petitioners,

- versus -

YUAN WENLE,
Respondent.

G.R. No. 242957

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

Promulgated:

February 28, 2023

x - x

DECISION

GESMUNDO, *C.J.*:

> *"The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his [or her] safety. In order to have this liberty, it is requisite that the government be so constituted that one man [or woman] need not be afraid of another.*

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression."

- *Baron de Montesquieu (The Spirit of the Laws)*[1]

In the backdrop of our present Constitution, the Court is now confronted with an age-old but unsettled question: Can warrants be issued by authorities other than regular courts?

Case Overview

The case treats of an appeal by *certiorari* seeking to reverse and set aside the October 22, 2018 Resolution[2] of the Regional Trial Court of Manila, Branch 16 (*RTC*), in R-MNL-18-10197-SP. In this Resolution, the RTC, in a *habeas corpus* proceeding, declared null and void the July 26, 2018 Summary Deportation Order[3] (*SDO*) issued by the Bureau of Immigration's (*Bureau*) Board of Commissioners (*Board*) on the ground that Rule 9 of the Bureau's Omnibus Rules of Procedure[4] (*Omnibus Rules*) does not accord due process to aliens.

Factual Antecedents

On July 10, 2018, the Embassy of the People's Republic of China (*Chinese Embassy*) in the Philippines wrote a letter[5] to the Bureau and sought the latter's assistance to arrest and deport Yuan Wenle (*respondent*), Zhang Hailong, Xu Chongchao, and Cai Miaoling (collectively, *companion*

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1 Translated by Thomas Nugent and revised by J.V. Prichard, New York: D. Appleton and Company (1900).

2 *Rollo*, pp. 34-47; penned by Presiding Judge Janice R. Yulo-Antero.

3 Id. at 53-54.

4 Bureau of Immigration Memorandum Circular No. SBM-2015-010 (2015) as amended by Bureau of Immigration Memorandum Circular No. JHM-2018-002 (2018).

5 *Rollo*, p. 48.

Chinese nationals) — whose Chinese passports have been cancelled — for their supposed involvement in crimes within China's territory.

On July 17, 2018, the Bureau issued a Charge Sheet[6] against respondent, along with companion Chinese nationals; tagging them as "undocumented foreigners" whose presence in the Philippines "poses a risk to public interest."

On July 20, 2018, the Bureau, through Deputy Commissioner J. Tobias M. Javier, issued a Watchlist Order[7] (*WLO*) against respondent and companion Chinese nationals.

On July 26, 2018, the Board issued an SDO[8] against respondent and companion Chinese nationals for being undocumented, for posing a risk to public interest, or being undesirable under Section 69,[9] Article II of Act No. 2711.[10] The same Order directed the Bureau personnel to accompany respondent and companion Chinese nationals to prevent the possibility of escape, as well as the Bureau's Management Information System Division to include them in the Blacklist with remarks "SDO: Fugitive" and to lift the WLO.

On August 22, 2018, while on his way to leave for Hongkong *via* Cathay Pacific Airways, at the airport's pre-departure area,[11] respondent was arrested pursuant to the SDO.[12] While detained, the Bureau's Legal Division wrote a letter[13] to Chinese Ambassador to the Philippines, His Excellency Zhao Jianhua, seeking for the latter's assistance pertaining to respondent's deportation.

On September 11, 2018, respondent filed a Petition[14] for *habeas corpus* with the RTC where he argued that: (1) the SDO was null and void

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[6] Id. at 51.

[7] Id. at 52; WLO No. JTJ/BOC-18-250.

[8] Id. at 53-54; signed by Chairperson Jaime H. Morente, Commissioner J. Tobias M. Javier, and Commissioner Marc Red A. Mariñas.

[9] Section 69. Deportation of subject of foreign power. – A subject of a foreign power residing in the (Philippine Islands) Philippines shall not be deported, expelled, or excluded from said Islands or repatriated to his own country by the (Governor-General) President of the Philippines except upon prior investigation, conducted by said Executive or his authorized agent, of the ground upon which such action is contemplated. In such case the person concerned shall be informed of the charge or charges against him and he shall be allowed not less than three days for the preparation of his defense. He shall also have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witnesses.

[10] Administrative Code (March 10, 1917).

[11] *Rollo*, p. 59.

[12] Id. at 55-56 (Incident Report).

[13] Id. at 57.

[14] Id. at 58-68.

for being issued without notice and hearing, and not by a court of law thereby, making his arrest arbitrary and illegal;[15] (2) he was not served by the Chinese Embassy with documentary copies of the criminal cases he is allegedly facing in China and a foreign warrant, if any, for his arrest cannot be enforced in the Philippines for being outside of its territorial jurisdiction;[16] (3) foreign countries should resort to extradition instead of summary deportation against undocumented aliens for extraterritorial crimes alleged to have been committed by them;[17] (4) he was not detained or committed by virtue of a process issued by a court or judge which amounts to a deprivation of his liberty without due process;[18] (5) the ground relied upon by the Board for his arrest was not among those provided by law;[19] (6) the SDO was unclear with respect to the limitations or conditions for his admission which should supposedly be those indicated in his passport;[20] (7) there was no prior determination by the Board of the ground for his deportation;[21] (8) the issuance of warrants of arrest by the Board was solely for the purpose of investigation and not to effect a final order of deportation;[22] and (9) a "post-entry cancellation of his passport does not operate to divest him of his authorized stay" in the Philippines.[23]

The RTC Ruling

On October 22, 2018, the RTC rendered a Resolution[24] granting respondent's *habeas corpus* petition. The dispositive portion of which reads:

> **WHEREFORE**, the instant Petition for *Habeas Corpus* is hereby **GRANTED**. For having been issued without due process of law, the Summary Deportation Order dated 26 July 2018 by respondent Board of Commissioners of the Bureau of Immigration is hereby declared **NULL and VOID.**
>
> Accordingly, the Jail Warden, Bureau of Immigration Detention Center, Camp Bagong Diwa, Taguig City, Metro Manila is hereby ordered to **RELEASE** the body of petitioner **YUAN WENLE** unless he is being detained for other lawful causes. This ruling is without prejudice to the commencement anew of deportation proceedings by the Bureau of Immigration against petitioner with proper notice and hearing to the latter.

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15 Id. at 62.
16 Id.
17 Id.
18 Id.
19 Id.
20 Id. at 62-63.
21 Id. at 62 and 64.
22 Id. at 64.
23 Id. at 65.
24 Id. at 34-47.

> The Office of the Clerk of Court, Regional Trial Court, Manila is hereby directed to release the Sheriff's Trust Fund in the amount of one thousand pesos (P1,000.00) under O.R. No. 5758174 dated 04 September 2018 to herein petitioner and/or his counsel on record.
>
> **SO ORDERED.**[25]

In the said Resolution, the RTC explained that: (1) respondent's constitutional and statutory rights to due process had been violated because he was not afforded any hearing at all for him to have a chance to refute the charges; despite the fact that his visitor visa had been extended several times;[26] (2) the Chinese Embassy's communications with the Board supposedly reveal that the former merely alleged that respondent is "suspected" of "illegally controlling computer system crimes in China;"[27] and (3) the exhaustion of administrative remedies doctrine is not applicable because Sec. 10, Rule 9 of the Bureau's Omnibus Rules is violative of due process for providing that an SDO "shall be final and executory upon signing/approval thereof;" thereby, making *habeas corpus* "the proper remedy under the present circumstances."[28]

On November 23, 2018, the Board, through the Office of the Solicitor General (*OSG*), filed a "Petition for Review on *Certiorari*"[29] with this Court seeking to reverse and set aside the RTC's October 22, 2018 Resolution.

The Parties' Arguments

The Board ascribes reversible errors on the RTC's part for granting respondent's petition for *habeas corpus* for the following reasons:

1. Administrative issuances have the benefit of being presumed valid and constitutional which, in turn, place a heavy burden upon any party assailing such government regulation in a direct proceeding before a competent court — a crucial requirement that respondent failed to undertake.[30]

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[25] Id. at 46.
[26] Id. at 42-43.
[27] Id. at 44.
[28] Id. at 44-45.
[29] Id. at 11-33; signed by Solicitor General Jose C. Calida, Assistant Solicitor General Raymund I. Rigodon, and Associate Solicitor Ma. Alexandria Ixara B. Maroto.
[30] Id. at 17-18, citing *Chevron Philippines, Inc. v. Bases Conversion Development Authority*, 645 Phil. 84, 96 (2010); *Dasmariñas Water District v. Monterey Foods Corporation*, 587 Phil. 403, 416 (2008).

2. *Habeas corpus* is not a remedy for the correction of errors that led to the judgment of a person's detention; thereby, making the determination on the constitutionality of certain sections of the Omnibus Rules pertaining to SDOs outside the RTC's competence.[31]

3. A hearing is not required prior to the SDO's issuance because a foreign fugitive, having been assumed to be evading law enforcement, may be arrested *in flagrante delicto* for he or she is "deemed to be violating Philippine immigration laws."[32]

4. An alien's stay in the Philippines is a mere privilege and not a right; therefore, "due process accorded in deportation proceedings [has] been calibrated in consideration of [such] privilege being revoked therein."[33]

5. Respondent may still file a motion for reconsideration against an SDO under Sec. 7, Rule 10 of the Omnibus Rules considering that a post-apprehension opportunity to be heard is allowed.[34]

6. Respondent never controverted the fact that he had been involved in criminal activities as alleged by the Chinese Embassy; thereby, cementing his status as a foreign fugitive.[35]

7. Secs. 12 and 37(7) of the "The Philippine Immigration Act of 1940"[36] (*Immigration Act*), when read together, empowers the Bureau to deport undesirable aliens whose presence poses a risk or threat to public safety under expedited procedures.[37]

8. A writ of *habeas corpus* cannot be directed against detentions under processes of any "court" which includes quasi-judicial bodies like the Bureau.[38]

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[31] Id. at 18, citing *In Re: Petition for the Privilege of the Writ of Habeas Corpus*, 393 Phil. 718, 730 (2000).
[32] Id. at 20-21.
[33] Id. at 22.
[34] Id. at 23-24.
[35] Id. at 24-25, citing *Tung Chin Hui v. Rodriguez*, 408 Phil. 102, 116-117 (2001).
[36] Commonwealth Act No. 613 (August 26, 1940).
[37] *Rollo*, pp. 25-26.
[38] Id. at 26, citing *In Re: Commissioner Rodriguez v. Judge Bonifacio*, 398 Phil. 441, 471 (2000).

Respondent counters the aforementioned arguments of the Bureau by retorting that:

1. A petition for review under Rule 45 of the Rules of Court is not the proper remedy under the circumstances because Sec. 3,[39] Rule 41 appeals from *habeas corpus* cases "shall be taken within forty-eight (48) hours from notice of judgment or final order appealed from."[40]

2. The issue on whether due process was accorded to him is a factual issue.[41]

3. The SDO was issued without notice and hearing; thereby, denying him of due process and dispensing with the supposed requirement for the government who is burdened to prove his "deportability" as "expulsion as a penalty has [purportedly] led to the principle that deportation statutes must be strictly construed, and must be limited to the narrowest compass reasonably extracted from their language."[42]

4. Due process was definitely violated because the provisions pertaining to the filing of motions for reconsideration do not apply to SDOs.[43]

Issues

I. Whether a petition for review on *certiorari* under Rule 45 of the Rules of Court is a proper remedy to assail a decision or final order of the RTC in *habeas corpus* cases.

II. Whether the SDO issued by the Bureau against respondent is void for violating due process.

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39 As amended by A.M. No. 01-1-03-SC (June 19, 2001; effective July 15, 2001).
40 *Rollo*, pp. 106, 126-127.
41 Id. at 128.
42 Id. at 134.
43 Id. at 111-113.

The Court's Ruling

I. *On the Propriety of Resorting to Rule 45 in Assailing the RTC's Decision or Final Order Disposing a Habeas Corpus Case*

A. Existence of a Question of Law

Under Rule 45 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari*.[44] Moreover, such questions must be of such substance as to be of distinctly significant consequence and value.[45] A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[46] Accordingly, for a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts.[47] Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[48] Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[49]

In this case, the Court finds respondent's argument – that the issue on whether he was accorded due process – to be a question of law. The records clearly show that the alleged denial of due process was anchored on the RTC's finding that the SDO's very nature did not give respondent a chance to present or mount his defense. Although the RTC did not pass upon the constitutionality or validity of SDOs, invalidating the July 26, 2018 SDO and its effects on the ground that the Omnibus Rules purportedly do not give arrested aliens any opportunity to assail such issuance amounts to an indirect approach of challenging these procedural rules themselves. Such observations demonstrate that there is no need for this Court to examine anew the probative value of any evidence for the purpose of determining the existence of due process. As it stands now, respondent sufficiently justified

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44 *Pascual v. Burgos*, 776 Phil. 167, 169 (2016).

45 *Kumar v. People*, G.R. No 247661, June 15, 2020.

46 *Tongonan Holdings and Development Corporation v. Atty. Escaño, Jr.*, 672 Phil. 747, 756 (2011), citation omitted.

47 *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 767 (2013).

48 *Republic v. Malabanan*, 646 Phil. 631, 638 (2010), citation omitted.

49 *Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172, 178 (2017).

its recourse under Rule 45 of the Rules of Court by presenting a legal question for resolution.

B. Pursuit of the Proper Remedy

The current version of Sec. 3, Rule 42 of the Rules of Court reads as follows:

> Section 3. *Period of ordinary appeal.* – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, an **appeal** in ***habeas corpus*** **cases** shall be taken **within forty-eight (48) hours** from notice of the judgment or final order appealed from.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (Emphases supplied)

The mandatory nature of the 48-hour reglementary period of appeal in *habeas corpus* cases ensures that no unnecessary time will be wasted before a decision or final order will be re-evaluated.[50] Corollary, the right to appeal is a mere statutory privilege, jurisdictional, and mandatory; that is why it should be exercised only in the manner prescribed by law.[51] Verily, the reason why competent courts in *habeas corpus* proceedings have no other alternative but to dismiss an appeal filed out of time is that Sec. 39 of Batas Pambansa Bilang 129[52] (*B.P. Blg. 129*) clearly states:

> Section 39. *Appeals.* – The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: *Provided however*, That in ***habeas corpus*** **cases, the period for appeal *shall* be forty-eight (48) hours** from the notice of the judgment appealed from.
>
> No record on appeal shall be required to take an appeal. In lieu thereof, the entire record shall be transmitted with all the pages prominently numbered consecutively, together with an index of the contents thereof.

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[50] See *Go, Sr. v. Ramos*, 614 Phil. 451, 483 (2009).

[51] *Spouses Lebin v. Mirasol*, 672 Phil. 477, 494 (2011).

[52] The Judiciary Reorganization Act of 1980 (August 14, 1981).

> This section shall not apply in appeals in special proceedings and in other cases wherein multiple appeals are allowed under applicable provisions of the Rules of Court. (Emphasis supplied)

However, by way of exception, there are other available remedies aside from that provided in Sec. 3, Rule 41 of the Rules of Court against an adverse judgment or final order in a *habeas corpus* case. For one, a judgment rendered without jurisdiction is void and is considered no judgment at all in legal contemplation as it may even be subject to a collateral attack.[53] Since it has been settled that the RTC has no jurisdiction to entertain pleas against an SDO issuance in a *habeas corpus* proceeding for the power to deport aliens is vested with the President through the Bureau,[54] a writ of *certiorari* – a remedy designed to correct errors of jurisdiction[55] – may also issue in such instance. In some cases, a party may also opt to challenge an adverse judgment or final order not on the basis of factual misappreciation, but of legal misapplication or misinterpretation. Under such circumstance, elevating an adverse RTC decision or final order directly to this Court on appeal by *certiorari* (Rule 45) is proper.

Even though the Court of Appeals (*CA*) may, at times, pass upon questions of law in appellate proceedings under Rule 42 of the Rules of Court,[56] it has been recognized in *Elepante v. Madayag*,[57] that an appeal in *habeas corpus* cases may be taken directly to this Court on pure questions of law.[58] This is also in deference to Sec. 5(2)(e), Art. VIII of the Constitution which empowers this Court to "[r]eview, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in" "[a]ll cases [where] only an error or question of law is involved." Therefore, the OSG did not err in availing the remedial facilities in Rule 45 in place of Rule 41 of the Rules of Court as this case, as pointed out earlier, does not need a re-examination or recalibration of evidentiary weight.

Besides, this Court cannot also allow respondent to disregard the doctrines of exhaustion of administrative remedies and of primary jurisdiction for the sake of convenience. Under the doctrine of exhaustion of administrative remedies, a party must first avail of all administrative processes available before seeking the courts' intervention in order to give an administrative officer every opportunity to decide on the matter within his

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[53] See *Imperial v. Judge Armes*, 804 Phil. 439, 459-460 (2017).
[54] See *Kiani v. Bureau of Immigration and Deportation*, 518 Phil. 501, 515 (2006).
[55] *Dy v. Judge Bibat-Palamos*, 717 Phil. 776, 784 (2013), citations omitted.
[56] See *Mandaue Realty & Resources Corporation v. Court of Appeals*, 801 Phil. 27, 36 (2016), citations omitted.
[57] 273 Phil. 636 (1991).
[58] Id. at 641.

or her jurisdiction.[59] Such doctrine is intended to preclude a court from arrogating unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence.[60] Relatedly, the doctrine of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training, and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction.[61] The objective of this doctrine is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.[62] Thus, allowing one to directly resort to a *habeas corpus* proceeding before the regular courts will be to allow a preemption of the Bureau's statutory duty to determine for itself the issues of legality in all deportation cases specifically and supposedly under its jurisdiction.

II. *On the Validity of the SDO as a Means to Arrest a Prospective Deportee*

The discussions regarding the validity of and the constitutional implications on the Bureau's SDO, as a method of enforcing immigration laws, will be divided into three parts: (1) the justiciability of and necessity of passing upon the validity of administrative warrants; (2) the constitutionality of administrative warrants; and (3) the nature and validity of the SDOs. Since the Bureau's Commissioner may issue warrants of arrest under Sec. 37(a) of the Immigration Act, the Court deems it necessary to pass upon question on whether the power to issue warrants may also extend to adjudicative authorities other than regular courts. Likewise, since SDOs are akin to warrants of arrest, the Court also sees it fit to discuss whether such issuances are compliant or violative of due process guarantees.

A. *Justiciability of Resolving the Validity of Administrative Warrants*

The exercise of judicial power requires an actual case calling for it; thus, courts have no authority to pass upon issues through advisory opinions, or to resolve hypothetical or feigned problems or friendly suits collusively

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[59] *Republic v. Gallo*, 823 Phil. 1090, 1121 (2018).
[60] *Ongsuco v. Malones*, 619 Phil. 492, 505 (2009).
[61] *Euro-Med Laboratories, Phil., Inc. v. Province of Batangas*, 527 Phil. 623, 626 (2006).
[62] *Lihaylihay v. Treasurer Tan*, 836 Phil. 400, 429 (2018).

arranged between parties without real adverse interests.[63] This involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution.[64] Hence, courts should decline jurisdiction when that sought by the parties involve rendering advisory opinions which would provide no practical use or value.[65]

Nonetheless, a matter not raised by the parties may be reviewed if necessary for a complete resolution of the case;[66] as this Court is imbued with sufficient authority and discretion to do so.[67] The following instances include: (1) grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (3) **matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice**; (4) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) **matters not assigned as errors on appeal but closely related to an error assigned**; and (6) **matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.**[68]

Here, it appears that both parties do not dispute the constitutional validity of warrants issued by administrative bodies – specifically the Bureau of Immigration. What they are arguing instead is whether SDOs violate a foreign detainee's right to due process. However, a closer look at this issue will reveal that the same cannot be meaningfully resolved without passing upon the constitutional validity of administrative warrants.

Sec. 37(a) of Commonwealth Act No. 613[69] (*CA No. 613*) reads:

> (a) The following aliens shall 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

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[63] *Purisima v. Security Pacific Assurance Corporation*, G.R. No. 223318, July 15, 2019, 909 SCRA 38, 44.

[64] See *Belgica v. Executive Secretary*, G.R. No. 210503, October 8, 2019, 922 SCRA 23, 53.

[65] *Cf. Express Telecommunications Company, Inc. v. AZ Communications, Inc.*, G.R. No. 196902, July 13, 2020, 942 SCRA 418, 429-430.

[66] *Heirs of Leonilo P. Nuñez, Sr. v. Heirs of Gabino T. Villanoza*, 809 Phil. 965, 1004 (2017), citation omitted.

[67] See *Agustin v. Alphaland Corporation*, G.R. No. 218282, September 9, 2020.

[68] *Comilang v. Burcena*, 517 Phil. 538, 545 (2006).

[69] The Philippine Immigration Act of 1940 (Approved: August 26, 1940).

> of Commissioners of the existence of the ground for deportation as charged against the alien[.] (Emphases and underscoring supplied)

The aforecited provision provides that a warrant issued by the Commissioner to implement CA No. 613 may be for the purpose of **arrest** or for the purpose of **deportation**. Since an SDO pertains to the **arrest** of an alien determined as illegally staying in the Philippines, there is a need to closely re-examine the attendant facts which led to respondent's arrest.

Here, a charge sheet was first issued by the Bureau *ex parte* on the basis of the Chinese Embassy's communication letter informing the Philippine authorities of respondent's involvement in crimes within China's territory. This became the basis for the subsequent issuance of an SDO which was used to effect respondent's arrest. In essence (and as it will be explained in the succeeding discussions), an SDO essentially functions as a warrant issued by the Bureau which is an administrative body. As a necessary consequence, the validity of administrative warrants now becomes **integral and necessary** – not merely closely related – to the resolution on whether respondent's arrest, pursuant to the subject SDO, is tainted with due process violations. Whether an SDO's nature is such that it violates due process rights of foreign detainees is **dependent** upon the resolution as regards the constitutional validity of administrative warrants.

Besides, skirting the issue on the constitutional validity of administrative warrants in resolving this case is a form of rendering piecemeal *ex post facto* "justice." If this Court opts to resolve issues involving administrative issuances of similar nature and effect as administrative warrants without addressing the constitutional validity of such warrants themselves, any doctrine handed out would amount to an *ex post facto* promulgation of doctrinal policies. This situation would create a judicial atmosphere of instability and unfairness as the parties that would be involved, prior to the resolution of their respective cases, would have no idea of the doctrines that they are supposed to adhere to in order to avoid any adverse legal predicament. They are left to deal with whatever adverse consequences an *ex post facto* principle would inflict. Hence, resolving the issue of an administrative warrant's constitutional validity now will allow prospective litigants a reasonable opportunity to adjust their future actions to avoid or, at least minimize, any situation where laws or private rights may be breached.

B. Constitutionality of Administrative Warrants

A "writ" is defined as an order or precept in writing issued by a court, clerk or judicial officer.[70] As to the type of proceedings leading to its issuance, writs are classified into the following major categories: (1) *inter partes* – those which require the participation of *all* the contending parties for validity; and (2) *ex parte* – those which require the participation of only the applicant for validity. *Inter partes* writs, on the one hand, refer to either: (1) those that exist or come, as a matter of course, after a final and executory judgment or order (*e.g.*, execution, demolition, garnishment, *etc.*); or (2) those that are sought and applied for to remedy extraordinary circumstances (*e.g.*, *certiorari*, *mandamus*, *habeas corpus*, *etc.*). *Ex parte* writs, on the other hand, refer to either: (1) those that are issued to address an exigent need usually of general welfare (*e.g.*, arrest and search warrants, wire-tapping orders,[71] freeze orders,[72] *etc.*); or (2) those that are issued to prevent an imminent irreparable damage, require the conduct of a preliminary hearing, or enforce a judicially-settled right (*e.g.*, 72-hour temporary restraining order, preliminary citation in *habeas corpus* cases,[73] writ of possession,[74] *etc.*). Significant to this case, the focus of the succeeding discussions will center on **warrants — writs directing or authorizing someone to <u>do an act</u>**; especially one directing a law enforcer to make an arrest, a search, or a seizure[75] — as they pertain to administrative enforcement.

Conventionally, the entrenched idea or principle is that only regular courts, through their magistrates, may issue arrest and search warrants. This was first laid down by Sec. 1(3), Art. III of the 1935 Constitution which explicitly states that probable cause – as the basis for warrant issuances – is "to be determined by the judge." Interestingly, it was also under this Constitution that the Immigration Act was enacted whereby Sec. 37(a) of the same law empowered the Commissioner of Immigration or "any other officer designated by him" to issue arrest warrants against undesirable or unqualified aliens within the Philippine territory. Despite some constitutional challenges, the same provision had not been invalidated because the requirement – that the issue of probable cause should be

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[70] *Henderson v. Dudley*, 574 S.W.2d 658 (1978).

[71] See Republic Act No. 4200, Sec. 3.

[72] *Ret. Lt. Gen. Ligot v. Republic*, 705 Phil. 477, 500 (2013).

[73] See *Lee Yick Hon v. Insular Collector of Customs*, 41 Phil. 548, 551 (1921).

[74] See *LZK Holdings and Development Corporation v. Planters Development Bank*, 725 Phil. 83, 93 (2014), citation omitted.

[75] See *Gethers v. State of Florida*, 838 So.2d 504 (2003); see also *United States v. Block*, 927 F.3d 978 (2019); *Yith v. Nielsen*, 881 F.3d 1155 (2018); *Commonwealth of Kentucky v. Tapp*, 497 S.W.3d 239 (2016); *United States v. Collazo-Castro*, 660 F.3d 516 (2011).

determined by a judge – "does not extend to deportation proceedings."[76] Even the earlier pronouncement of the Court in *Qua Chee Gan v. Deportation Board*[77] merely invalidated Executive Order No. 398 (Series of 1951) on the ground that the President cannot delegate to the Deportation Board the power "to issue warrant of arrest upon the filing of formal charges against an alien or aliens and to fix bond and prescribe the conditions for the temporary release of said aliens"[78] — **it did not pass upon the very foundational justification for the existence of administrative warrants in the first place.**

Significantly, it was under Sec. 3, Art. IV of the 1973 Constitution that probable cause, as required for the issuance of arrest and search warrants, may also be determined by "such other responsible officer as may be authorized by law." However, when former President Ferdinand E. Marcos was deposed during the 1986 EDSA Revolution, the framers of the present 1987 Constitution voiced out their concerns regarding the determination of probable cause as regards arrest and search warrant issuances by persons other than regular court magistrates during their deliberations as shown in the following exchanges:

> **[Commissioner Padilla]:** Madam President, we all agree that a constitution must not only guarantee the rights of the people, but it should be an instrument of the people for their own promotion and welfare.
>
> x x x x
>
> I recall that the President of the Convention, former President Diosdado Macapagal, had sponsored, if not actively supported, a motion or a resolution prohibiting reelection, and that was considered by Malacañang as directly pointed against Mr. Marcos. When the voting came after lengthy debate, the proposal against reelection was lost, which proved that Mr. Marcos had more members supporting him in the 1971 Constitutional Convention than those who had elected Macapagal President, after its first President, Carlos P. Garcia. For President Macapagal to continue in office as President of the Convention, he had to count on the support of the Marcos members. Indeed, that was a very sad situation. The proceedings went on

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76 *Morano v. Vivo*, 126 Phil. 928, 935 (1967).
77 118 Phil. 868 (1963).
78 Id. at 880.

towards the drafting of the 1973 Constitution, where a number of objectionable provisions, particularly the transitory provisions, were inserted in the 1935 Constitution. I will only mention one — that in the Bill of Rights against warrants of arrest and/or unreasonable searches and seizures, which are **essentially judicial in nature** to be determined by the judge upon examination of the complainant and the witnesses he may produce. **The 1971 Convention inserted the objectionable phrase "or any other officer authorized by law," which means that the Executive, like Mr. Marcos, or the Minister of Defense or any other executive officer, if authorized, could issue warrants of arrest. And that unfortunate insertion in the Bill of Rights led to and justified the Arrest, Search and Seizure Orders (ASSO), Presidential Commitment Order (PCO) and even the last Presidential Detention Action (PDA).**

x x x x

And a constitution is not so much the allocation of powers but I believe **it is even more important that there be clear limitations on the exercise of these governmental powers**. And the limitations are not for the public officers or for the leaders in government, but the limitations are **for the protection of the people**, for the **defense of their rights** and for the **promotion of their common welfare**.

Thank you, Madam President.[79]

x x x x

[Commissioner Bernas]: Thank you, Madam President.

x x x x

The provision on Section 3 reverts to the 1935 formula by **eliminating** the 1973 phrase **"or such other responsible officer as may be authorized by law,"** and also adds the word PERSONALLY on line 18. In other words, **warrants under this**

[79] I RECORD, CONSTITUTIONAL COMMISSION 51-53 (June 4, 1986).

proposal can be issued only by judges. I think one effect of this would be that, as soon as the Constitution is approved, the PCGG will have no authority to issue warrants, search and seizure orders, because it is not a judicial body. So, proposals with respect to clipping the powers of the PCGG will be almost unnecessary if we approve this. We will need explicit provisions extending the power of the PCGG if it wants to survive.

x x x x

[Commissioner Nolledo]: Thank you.

With respect to Section 3, lines 13 up to 20, am I right if I say that there are actually two parts of the section: the first part refers to the right of the people against unreasonable searches and seizures; and then the second part **refers to the authority who will issue the search warrant or warrant of arrest**?

x x x x

[Commissioner Bernas]: I am sure the Commissioner is very familiar with this question, having taught Constitution so often: "What is an unreasonable search?" The initial answer is that **a search is generally unreasonable if it is made without a warrant except in that instance when jurisprudence allows searches without a warrant.**

[Commissioner Nolledo]: And the second instance will be: even if there is a warrant but if it was executed with unnecessary force or anything similar to it?

[Commissioner Bernas]: Yes.

[Commissioner Nolledo]: Of course this can be qualified by a provision in the Transitory Provisions upholding, perhaps, the right of the PCGG.

My next question is with respect to Section 5, lines 8 to 12 of page 2. It says here that the liberty of abode shall not be impaired except upon lawful order of the court or — underscoring the word "or" — when necessary in the interest of national security, public safety or public health. So, in the first part, there is the word "court"; in the second part, **it seems that the question**

arises as to who determines whether it is in the interest of national security, public safety, or public health. May it be determined merely by administrative authorities?

[Commissioner Bernas]: **The understanding we have of this is that, yes, it may be determined by administrative authorities provided that they act**, according to line 9, **within the limits prescribed by law**. For instance, when this thing came up, what was in mind were **passport officers**. If they want to deny a passport on the first instance, do they have to go to court? The position is, they may deny a passport provided that the denial is based on the limits prescribed by law. The phrase "within the limits prescribed by law" is something which is added here. That did not exist in the old provision.[80] (Emphases supplied)

The aforementioned exchanges show that the framers' primary concern in allowing authorities or officials of the Executive Branch to issue warrants will expose the people's rights, especially of liberty and of privacy, to the danger of State abuses. This led to the deletion of the phrase "or such other responsible officer as may be authorized by law" pertaining to the determination of probable cause for the issuance of arrest and search warrants. Thus, Sec. 2, Art. III of the 1987 Constitution now reads:

> 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)

Nonetheless, the Court points out that even the framers, specifically Commissioner Joaquin G. Bernas, recognized the need for administrative determination in concerns relating to national security, public safety, and public health — especially in matters relating to the entry of aliens within Philippine borders which affect national security. Such commentary practically justifies why, despite the aforementioned constitutional provision,

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[80] I RECORD, CONSTITUTIONAL COMMISSION 674-677 (July 17, 1986).

Sec. 37(a)[81] of the Immigration Act which empowers the Commissioner of Immigration to issue arrest warrants **still continues to exist** and its constitutionality has yet to be challenged directly, at least as far as this Court is concerned. In fact, this has been affirmed and embodied by the categorical pronouncement in *Salazar v. Achacoso*[82] (*Salazar*), with the salient portion of the ruling which reads:

> For the guidance of the bench and the bar, we reaffirm the following principles:
>
> 1. Under Article III, Section 2, of the 1987 Constitution, it is only judges, and no other, who may issue warrants of arrest and search; [and]
>
> 2. The **exception** is in cases of ***deportation*** of **illegal and undesirable aliens**, whom the **President** or the **Commissioner of Immigration** may **order arrested**, following a **final order of deportation**, for the **purpose of deportation**.[83] (Emphases supplied)

The aforementioned ruling, when analyzed in conjunction with and in the context of the exchanges by the framers of the 1987 Constitution, connotes that a person's constitutional right to be secure against unreasonable searches and seizures is essentially meant to prevent the government from summarily depriving one of his or her liberty and property rights. Meaning, arrest and search warrants have been required by the Constitution as concrete safeguards against unreasonable searches and seizures. Relatedly, since a "warrant" (whether one of arrest or of search) is basically utilized by regular courts in criminal cases,[84] the nature of such writ logically suggests that the prohibition against unreasonable searches and seizures was definitely intended by the framers of the 1987 Constitution to strictly apply to criminal cases — where a person's right, liberty, and property is mostly vulnerable to governmental abuses. This is because, as to non-criminal cases where other compulsory processes are utilized (*e.g.*, subpoenas, injunctions, directives, *etc.*) instead of warrants, the Constitution is silent. It offers some peripheral support to the exception carved out in *Salazar* where authorities other than judges may issue arrest warrants in proceedings not criminal in nature. Hence, due to this observation, the Court is of the view that the **necessity of administrative warrants cannot be disregarded in its entirety — just as the existence of quasi-judicial bodies is imperative to address disputes involving technical matters which justifies the exercise of adjudicative powers by some agencies**

[81] Section 37. *(a)* The following aliens shall 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 against the alien[.] x x x (Emphasis supplied)

[82] 262 Phil. 160 (1990).

[83] Id. at 170-171.

[84] See RULES OF COURT, Rule 112, Sec. 6 and Rule 126, Sec. 1.

under the Executive Branch — due to its ability to address some specialized, exigent or important public need.

However, the implied basis pertaining to the Constitution's silence as to the matter of deportation of aliens in *Salazar* seems to be inadequate in justifying the practice of issuing arrest warrants by authorities other than judges. Aside from the absence of some concrete explanation in *Salazar* to justify the President or the Commissioner of Immigration's power to issue arrest warrants under the 1987 Constitution's backdrop, the lingering fear — that agencies or officers in the Executive Branch might abuse their powers by summarily depriving private rights or entitlements without due process — cannot be downplayed. Verily, **this Court cannot allow a situation where Executive and Judicial powers are absolutely and indistinguishably fused in a single authority for it, as Montesquieu points out, may result in violence and oppression**. In this regard, there arises a pressing need to fix a set of guidelines which are unequivocally necessary to prevent an administrative agency or officer from legally performing oppressive acts.

Hence, for **administrative warrants** to be **valid** and justified, ***all*** of the following conditions must be **present and** shall be **strictly complied with**, to wit:

1. The 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 the one who shall be temporarily deprived of a right to liberty or property.

2. The 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 subjected to procedural due process requirements.

3. The issuing administrative authority must be empowered by law to perform specific implementing acts pursuant to well-defined regulatory purposes.

4. The issuing administrative authority must be necessarily authorized by law to pass upon and make final pronouncements on conflicting rights and obligations of contending parties, as well as to issue warrants or orders that are incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.

5. The issuance of an administrative warrant must be based on tangible proof of probable cause and must state a specific purpose or infraction allegedly committed with particular descriptions of the place to be searched and the persons or things to be seized.

6. The warrant issued must not pertain to a criminal offense or pursued as a precursor for the filing of criminal charges and any object seized pursuant to such writ shall not be admissible in evidence in any criminal proceeding.

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 and shall not be denied any access to a competent counsel of his or her own choice. Furthermore, in cases where a person is deprived of liberty by virtue of an administrative warrant, the adjudicative body which issued the warrant shall immediately submit a verified notice to the Regional Trial Court nearest to the detainee for purposes of issuing a judicial commitment order.

8. A violation of any item of these guidelines is a *prima facie* proof of usurpation of judicial functions, malfeasance, misfeasance, nonfeasance, or graft and corrupt practices on the part of responsible officers.

The Court now proceeds to expound on each item of the foregoing guidelines for the understanding of the Bench, the Bar, and the public.

1. The danger, harm, or evil sought to be prevented must be imminent and must be greater than the damage or injury to be inflicted on the person who shall be deprived of a right.

Police power is the power of the State, primarily vested in the legislature,[85] to promote public welfare by restraining and regulating the use of liberty and property[86] — although it virtually extends to "all public needs"[87] as it is not capable of an exact definition for being comprehensive

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[85] See *Cruz v. Pandacan Hiker's Club, Inc.*, 776 Phil. 336, 349 (2016).
[86] *Gerochi v. Department of Energy*, 554 Phil. 563, 579 (2007).
[87] *JMM Promotion and Management, Inc. v. Court of Appeals*, 329 Phil. 87, 93 (1996).

in order to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus, assuring the greatest benefits.[88] Stated differently, it may be said to be "that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society."[89] Such power may be delegated to the President and administrative boards, as well as the law-making bodies of municipal corporations or local government units.[90] Upon this power depends the security of social order, the life and health of the citizens, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property.[91] "The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy."[92]

Concomitant to the foregoing discussions is the principle that police power is not unlimited. For one, the Bill of Rights as enumerated in Art. III of the Constitution recognizes certain several rights which limit the scope of the State's police power. In this context and view, the State is a leviathan that must be restrained from needlessly intruding into the lives of its citizens.[93] This is because the protection of private rights is an essential constituent of public interest and, conversely, without a well-ordered State, there could be no enforcement of private rights.[94] With these observations, the Court is confronted with this conflict: on one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order.[95]

Thus, in order to harmonize the seemingly conflicting objectives of police power and the Bill of Rights, the Court points out that some individual liberties must give way to general welfare or public interest concerns.[96] In other words, no right is absolute.[97] It must be borne in mind that the Constitution, aside from being an allocation of power is also a social contract whereby the people have surrendered their sovereign powers to the

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[88] See *Carlos Superdrug Corp. v. Department of Social Welfare and Development*, 553 Phil. 120, 132 (2007).
[89] *Philippine Association of Service Exporters, Inc. v. Drilon*, 246 Phil. 393, 399 (1988).
[90] *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*, 385 Phil. 586, 601 (2000).
[91] *United States v. Gomez Jesus*, 31 Phil. 218, 227 (1915).
[92] 1987 CONSTITUTION, Art. II, Sec. 5.
[93] *White Light Corporation v. City of Manila*, 596 Phil. 444, 469 (2009).
[94] *Burroughs, Ltd. v. Morfe*, 161 Phil. 521, 533 (1976).
[95] *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
[96] See *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 298 (2009).
[97] *Cf. Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service*, 726 Phil. 104, 122 (2014).

State for the common good.[98] This is in recognition of the fundamental precept that police power has for its object the improvement of social and economic conditions affecting the community at large and collectively with a view to bring about "the greatest good of the greatest number."[99] Even liberty itself, the greatest of all rights, is not an unrestricted license to act according to one's own will — it is only freedom from restraint under conditions essential to the **equal enjoyment of the same right by others.**[100] However, the Court also deems it necessary to stress that: "Individual rights may be adversely affected by the exercise of police power to the extent only — and only to the extent — that may **fairly** be **required** by the **legitimate demands** of **public interest** or public **welfare.**"[101]

To demonstrate the instances where public welfare needs to outweigh private rights, the Court uses by analogy the "close now, hear later" doctrine pertaining to the summary closure of banks in dire straits. It is justified by the grave concern that, "[u]nless adequate and determined efforts are taken by the government against distressed and mismanaged banks, public faith in the banking system is certain to deteriorate to the prejudice of the national economy itself, not to mention the losses suffered by the bank depositors, creditors, and stockholders, who all deserve the protection of the government."[102] This is in recognition of the fact that "[t]he business of banking is imbued with public interest; it is an industry where the general public's trust and confidence in the system is of paramount importance."[103] Here, police power can be validly asserted to make that change to meet any one of the several great public needs, such as, in that case, regulation of the value of money.[104] What this demonstrates is that the magnitude of injury which the public as a whole may sustain is greater than the temporary (and compensable, in cases other than summary closure of banks) damage or inconvenience caused to a limited number of private parties. It implies that, if public interest is not timely and amply protected, more private rights will sustain injury or will be adversely affected. After all, **public interest is basically an aggregate or collection of everyone's private rights**. This is also the essence of majority rule which is a necessary principle in this democratic governance.[105] Hence, in litigations between governmental and private parties, courts go much further both to give and withhold relief in

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98 *Marcos v. Manglapus*, 258 Phil. 479, 504 (1989).
99 *Churchill v. Rafferty*, 32 Phil. 580, 604 (1915), citation omitted.
100 *Case v. La Junta de Sanidad de Manila*, 24 Phil. 250, 281 (1913), citing *Crowley v. Christensen*, 137 U.S. 86, 89 (1890).
101 *Homeowners' Association of the Philippines, Inc. v. Municipal Board of the City of Manila*, 133 Phil. 903, 907 (1968).
102 *Bangko Sentral ng Pilipinas Monetary Board v. Antonio-Valenzuela*, 617 Phil. 916, 938 (2009).
103 *Land Bank of the Philippines v. Kho*, 789 Phil. 306, 314-315 (2016).
104 *Philippine Veterans Bank Employees Union-NUBE v. Philippine Veterans Bank*, 267 Phil. 15, 32 (1990), citation omitted.
105 *Estrada v. Escritor*, 455 Phil. 411, 582 (2003).

furtherance of public interest than they are accustomed to go when only private interests are involved.[106]

Another compelling reason why private rights may sometimes yield to public welfare concerns is exigency. Self-preservation is the first law of nature.[107] Parallel to individual liberty is the natural and illimitable right of the State to self-preservation.[108] On the part of the State, protecting public welfare by way of police power is an act of self-preservation.[109] As discussed in the aforementioned example pertaining to the banking industry, "[s]wift, adequate, and determined actions must be taken against financially distressed and mismanaged banks by government agencies lest the public faith in the banking system deteriorate to the prejudice of the national economy."[110] Just like in temporary restraining order applications where extreme urgency is an essential prerequisite to preserve clearly-established substantive rights;[111] administrative agencies are justified in issuing warrants to address exigent concerns within their competence or technical know-how. This is akin to summarily abating, under the undefined law of necessity, a nuisance *per se* for being a direct menace to public health or safety.[112]

Hence, this is the reason why administrative agencies are permitted – under the circumstances presenting a clear and present danger to the general welfare and when the need for expeditious action will justify omission of prior notice and hearing – to *summarily*: (1) kill on sight a mad dog on the loose for posing an immediate threat to the safety and lives of people; (2) destroy pornographic materials, contaminated meat, and narcotic drugs for being inherently pernicious; (3) cancel the passport of a person sought for a criminal offense and compel his or her return to the country he or she has fled; or (4) padlock filthy restaurants in the interest of the public health or bawdy houses to protect the public morals.[113] In *some* of these instances, specialized administrative agencies possessing technical knowledge, expertise or experience are in a better position to evaluate the degree of public harm that may likely be caused by a nuisance for purposes of abatement.

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[106] *Executive Secretary v. Court of Appeals*, 473 Phil. 27, 58 (2004).
[107] *Soplente v. People*, 503 Phil. 241, 242 (2005), citing Samuel Butler.
[108] *Estrada v. Sandiganbayan*, 421 Phil. 290, 338 (2001).
[109] See *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, 809 Phil. 315, 389 (2017), citing *City Government of Quezon City v. Ericta*, 207 Phil. 648, 655 (1983).
[110] *Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas*, 716 Phil. 132, 151-152 (2013).
[111] See *Manila International Airport Authority v. Powergen, Inc.*, 568 Phil. 481, 488 (2008), citations omitted.
[112] *Monteverde v. Generoso*, 52 Phil. 123, 128 (1928), citation omitted; *Salao v. Santos*, 67 Phil. 547, 550 (1939).
[113] *Ynot v. Intermediate Appellate Court*, 232 Phil. 615, 625 (1987).

However, these general welfare concerns pertain to situations where summarily addressing a nuisance or pressing need is justified. The common denominators in these cases are: (1) that those who perform the summary abatement have immediate personal knowledge of the nuisance or pressing need; and (2) that such knowledge was obtained without violating either constitutional guarantees of privacy,[114] any law pertaining to sensitive information,[115] or an evidentiary rule on confidentiality.[116]

Accordingly, for the purpose of issuing warrants, administrative authorities must first determine from the applicant before issuing any warrant whether: (1) there is a pressing need to implement the law in a swift manner or an immediate need for the prospective respondent to answer for a legal infraction — both to address a public welfare or public interest concern; and (2) the public harm is greater than the damage to be suffered by the person subject of the warrant. Hence, when an immediate need to protect general welfare arises and when damage to be sustained by the public outweighs those of the private parties, the need for an expedient issuance of administrative warrants is justified.

2. The deprivation of a right or legitimate claim of entitlement must be temporary or provisional and its permanency must be strictly subject to procedural due process requirements.

Sec. 1, Art. III of the Constitution states that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." This provision guarantees "the essence of individual liberty and freedom in democracies."[117] Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property.[118] Due process, as it has been accepted, is comprised of two components: (1) substantive due process – which inquires whether the government has a legitimate purpose for taking away a person's life, liberty, or property; and (2) procedural due process – which refers to the procedures that the government must follow before it deprives a person of life, liberty, or property.[119] Both components of due process are intended to secure an

[114] The reasonableness of a person's expectation of privacy depends on a two-part test: (1) whether by his conduct, the individual has exhibited an expectation of privacy; and (2) whether this expectation is one that society recognizes as reasonable (*Spouses Hing v. Choachuy, Sr.*, 712 Phil. 337, 350 [2013], citing *Ople v. Torres*, 354 Phil. 948, 980 [1998], citations omitted); see also CONSTITUTION, Art. 8, Sec. 3(1).

[115] See Secs. 3(l) and 13 of the Data Privacy Act of 2012 (Republic Act No. 10173 [August 15, 2012]).

[116] See REVISED RULES ON EVIDENCE, Rule 130, Sec. 24.

[117] See *Ichong v. Hernandez*, 101 Phil. 1155, 1164 (1957).

[118] See *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998).

[119] *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 311 (2005).

individual against any arbitrary and oppressive exercise of governmental powers.[120]

Markedly, before due process protections are triggered, there must in the first place be, at the very least: (1) an existence of a right or "legitimate claim of entitlement;"[121] and (2) a deprivation of such right or entitlement.[122] On the one hand, the first requisite pertains to "rights which are legally demandable and enforceable"[123] as contradistinguished from something "inchoate" or "one that has not fully developed and therefore cannot be claimed as one's own."[124] On the other hand, the second requisite connotes an intentional act of denying something to someone, or, at the very least, a deliberate decision not to act to prevent a loss.[125] What both requisites entail is that **due process requirements are activated when there is a deprivation of a legally enforceable right or recognized claim of entitlement**. In some instances, these requirements are also set in motion when there exists a risk of an impending deprivation of life, liberty, or property.[126] This implies both things: (1) a person cannot be considered to have been deprived if there is no legally recognized right or claim in the first place; and (2) a right, legally protected entitlement, or its enjoyment thereof not denied to a person by the State constitutes no deprivation at all.

By way of example, due process is not violated when a privilege such as a license or permit is summarily revoked or rescinded by executive action when national or public interest so requires.[127] This is because no enforceable "legitimate claim of entitlement" has been taken away by the State because a privilege is not a demandable right. Comparatively, in *damnum absque injuria* cases, no rights are said to be deprived if there is no law giving a right of action against a legal wrong inflicted.[128] Also, in custodial investigations where a suspect is merely asked to stand in a police line-up for the victim's identification, a person's right to counsel while under custodial investigation cannot be invoked until such time as the police investigators start questioning, interrogating or exacting a confession from the person under investigation.[129] Here, a denial of the right to counsel when

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[120] See *Hurtado v. California*, 110 U.S. 516, 527 (1884); *Den v. Hoboken Land and Improvement Company*, 59 U.S. 272 (1855).

[121] See *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

[122] See *Baker v. McCollan*, 443 U.S. 137, 142 (1979); *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 26 (1979); *Goss v. Lopez*, 419 U.S. 565, 579 (1975), citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

[123] CONSTITUTION, Art. VIII, Sec. 1.

[124] See *Zabal v. Duterte*, G.R. No. 238467, February 12, 2019, 892 SCRA 370, 446.

[125] See Concurrence in the result of Associate Justice Lewis F. Powell, Jr. in *Parratt v. Taylor*, 451 U.S. 527 (1981).

[126] *National Telecommunications Commission v. Brancomm Cable and Television Network Co.*, G.R. No. 204487, December 5, 2019.

[127] See *Republic v. Rosemoor Mining and Development Corporation*, 470 Phil. 363, 381 (2004).

[128] *Cf. City of Bacolod v. Phuture Visions Co., Inc.*, 823 Phil. 867, 882 (2018), citations omitted.

[129] *People v. Martinez*, 469 Phil. 558, 571 (2004).

standing in a police line-up will not amount to a deprivation in the context of due process guarantee if no concomitant or immediately succeeding interrogation is conducted by law enforcers.

Accordingly, before one can be deprived of a right or legitimate claim of entitlement, the requisites of procedural due process must be satisfied, which are: (1) prior notice; and (2) an opportunity to be heard by an impartial tribunal.[130] In essence, this demonstrates the basic precept of "a law which hears before it condemns;"[131] thereby requiring the rendition of any judgment only after trial.[132] Such procedural requirement lies at the foundation of a civilized society which accords paramount importance to justice and fairness.[133] By requiring the government to follow appropriate procedures when its agents decide to "deprive any person of life, liberty, or property," the due process clause promotes fairness in such decisions.[134]

In this regard, the Court emphasizes that there is no controlling and precise definition of due process.[135] The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.[136] Due process of law guarantees "no particular form of procedure; it protects substantial rights."[137] Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved, as well as of the private interest that has been affected by governmental action.[138] Its flexibility is in its scope — once it has been determined that some process is due — is a recognition that not all situations calling for procedural safeguards also call for the same kind of procedure.[139] Thus, in extraordinary situations, where some valid governmental interest is at stake, it justifies postponing the hearing until after deprivation.[140]

The immediately preceding discussions justify a summary but temporary deprivation of liberty or property rights as long as due process guarantees are in place to allow the deprived to justify a recovery of such rights. In the earlier example which demonstrated the necessity of the "close now, hear later" doctrine, financially distressed banks may be summarily

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130 See *Saunar v. Executive Secretary Ermita*, 822 Phil. 536, 545-546 (2017), citation omitted; see also *Makabingkil v. Yatco*, 128 Phil. 165, 173 (1967), citation omitted.
131 *Albert v. University Publishing Co., Inc.*, 121 Phil. 87, 92 (1965), citation omitted.
132 *Flores v. Buencamino*, 165 Phil. 934, 940 (1976).
133 *Secretary of Justice v. Lantion*, 397 Phil. 423, 437 (2000).
134 *Daniels v. Williams*, 474 U.S. 327, 331 (1986).
135 *Morfe v. Mutuc*, 130 Phil. 415, 432 (1968).
136 *Perez v. Philippine Telegraph and Telephone Company*, 602 Phil. 522, 538 (2009); see also *Stanley v. Illinois*, 405 U.S. 645, 650 (1972).
137 *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 610 (1974).
138 *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, 895 (1961).
139 See *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).
140 See *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971).

closed or liquidated to protect the national economy itself because such closure or liquidation is subject to judicial inquiry and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or amounting to a denial of the due process and equal protection clauses under the Constitution.[141] In such case, due process does not necessarily require a prior hearing; a hearing or an opportunity to be heard may be subsequent to the closure.[142] This ratiocination is consistent with the essence of administrative due process which was articulately explained in *Cornejo v. Gabriel*,[143] which reads:

> The fact should not be lost sight of that we are dealing with an administrative proceeding and not with a judicial proceeding. As Judge Cooley, the leading American writer on Constitutional Law, has well said, **due process of law is not necessarily judicial process; much of the process by means of which the Government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law, as is judicial process.** While a day in court is a matter of right in judicial proceedings, in administrative proceedings it is otherwise since they rest upon different principles. x x x In certain proceedings, therefore, of an administrative character, it may be stated, without fear of contradictions that the right to a notice and hearing are not essential to due process of law. Examples of [special] or summary proceedings affecting the life, liberty or property of the individual without any hearing can easily be recalled. Among these are the arrest of an offender pending the filing of charges; the restraint of property in tax cases; the granting of preliminary injunctions [*ex parte*]; and the suspension of officers or employees by the Governor General or a Chief of a Bureau pending an investigation.[144] (Emphasis supplied)

These rationalizations which allow a summary but temporary deprivation of rights also explains why judicial arrest and search warrants, even if they are applied for by law enforcers without the participation of target respondents, are justified by the inherent demands of general welfare and public safety. An accused cannot have an arrest or search warrant quashed on the ground that he or she had not been given an opportunity to participate in the proceedings which resulted in the issuance of such warrant. To hold otherwise and afford the person, who is to be arrested or whose premises is to be searched, an opportunity to be heard would be to grant the same person an opportunity to abscond or conceal the effects of the crime alleged to have been committed. Such absurd scenario would, in effect, greatly endanger public safety for the "long arm of the law" would be rendered inutile in bringing criminals to justice.

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[141] See *Central Bank of the Philippines v. Court of Appeals*, 193 Phil. 338, 351 (1981).
[142] *Rural Bank of Buhi, Inc. v. Court of Appeals*, 245 Phil. 263, 278 (1988).
[143] 41 Phil. 188 (1920), citations omitted.
[144] Id. at 193-194.

More importantly, when such principle is analyzed in the context of criminal proceedings, a court would not have the ability to bring the person of the accused under its jurisdiction should he or she refuse to enter his or her appearance.[145] As such, a provisional restriction of liberty or movement constitutes a partial surrender of civil liberties which is a necessary sacrifice in exchange for upholding the interests of public welfare and public safety. That is why a search warrant proceeding, for example, is independent of any criminal case — it is *ex parte* and non-adversarial.[146] Similarly, this is also the reason why it is essential that investigations for Anti-Money Laundering Act offenses (including the proceedings for the issuance of bank inquiry orders) should be kept *ex parte*, in order not to frustrate the State's effort in building its case and eventually prosecuting money laundering offenses.[147] In these instances, applications for warrants are necessarily *ex parte* and must be expedited for time is of the essence.[148]

All of the aforementioned instances demonstrate that procedural due process is not violated when the deprivation of a right or legitimate claim of entitlement is just temporary or provisional. When adequate means or processes for recovery or restitution are available to a person deprived of a right or legitimate claim of entitlement are in place, everyone is assured that the State — even in the legitimate exercise of police power — cannot summarily confiscate these rights or entitlements without undergoing a process that is due to all. The only exception where the State can effect a summary but permanent deprivation of a right or entitlement is if the same endangers public safety or public health which is, as earlier pointed out, a nuisance *per se*.

In the case of administrative warrants, since they are issued and implemented *before* a respondent has been given an opportunity to ventilate his or her defenses, such deprivations of liberty or property are necessarily temporary or provisional.[149] When due process guarantees are available to restore a liberty or property right being deprived, an executive action *generally* cannot be considered as oppressive or confiscatory. The reason being is that what has been taken away by the State may be returned to the person deprived after such deprivation has been proven through a process that the same was indeed unjustified.

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[145] See *Inocentes v. People*, 789 Phil. 318, 332 (2016).

[146] *People v. Delos Reyes*, 484 Phil. 271, 285 (2004).

[147] *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals*, 802 Phil. 314, 389 (2016), Concurring Opinion of Justice Marvic M.V.F. Leonen.

[148] See *La Chemise Lacoste, S.A. v. Fernandez*, 214 Phil. 332, 350 (1984).

[149] The right to life is not included as there is no such thing as a temporary or provisional deprivation of life.

As long as deprivation is temporary and due process requirements are still available to the one deprived of a right, the Constitution's Due Process clause cannot be considered to have been violated.[150] In essence, warrants under the administrative category should only be a **preliminary step** towards justified final deprivations of rights. Thus, to **prevent** an **oppressive use** of **executive power,** administrative warrants should: (1) only operate to **provisionally** deprive a person of a right or entitlement allegedly being exercised to the detriment of public interest or welfare; and (2) provide for a subsequent mechanism to challenge such deprivation.

3. The issuing administrative authority must be empowered by law to perform specific implementing acts pursuant to well-defined regulatory purposes.

An *ultra vires* act is one outside the scope of the power conferred by the legislature;[151] which can also include acts that may ostensibly be within such powers but are, by general or special laws, either proscribed or declared illegal.[152] Concomitantly, there are two types of *ultra vires* acts: (1) one which is performed utterly beyond jurisdiction; and (2) one performed under an irregular exercise of a basic power.[153] Accordingly, since "jurisdiction" in terms of administrative and law enforcement agencies pertains to "[t]he authority of law to act officially in a particular matter in hand,"[154] *ultra vires* acts under the first category are null and void and cannot be given any effect for being clearly beyond the scope of one's authority.[155]

To prevent an **arbitrary** use of executive power, an administrative agency authorized to issue warrants must be clearly authorized by a statute to perform specific acts of implementation which are consistent with the purposes of said law. In other words, an administrative authority's acts must be *intra vires* and must be consistent with the purposes of the statute or charter creating it before the same authority can be said to have been empowered by law to issue warrants. Such observation alludes to the basic

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[150] In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty, as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected. (*Vivo v. Philippine Amusement and Gaming Corporation*, 721 Phil. 34, 43 [2013]).

[151] See *Pirovano v. De La Rama Steamship, Co.*, 96 Phil. 335, 360 (1954).

[152] *Querubin v. Commission on Elections*, 774 Phil. 766, 829 (2015).

[153] See *Land Bank of the Philippines v. Cacayuran*, 709 Phil. 819, 832 (2013).

[154] See *People v. Villa Gomez*, G.R. No. 216824, November 10, 2020.

[155] See *Gancayco v. City Government of Quezon City*, 674 Phil. 637, 649 (2011), citation omitted.

idea on why the Executive Branch is divided into departments, bureaus, and agencies — each of them charged with implementing specific constitutional provisions and laws within their own sphere of authority. This specialization or division of competence to act is in recognition of the obvious reality that it would be extremely challenging and burdensome for a single office to regulate *all* facets of human activity. In consequence, the authority of administrative bodies to issue warrants must spring from a specific law and must be in furtherance or in pursuit of and in consonance with the regulatory purposes for which these administrative bodies were created.

The need for a specific regulatory statute is consistent with "reasonableness" in judicially scrutinizing the constitutional validity of a warrant. A properly defined scope of statutory authority in the conduct of implementing administrative warrants serves to curtail a "fishing expedition" on the part of law enforcers. Such requirement of particularity as to the governing statute for which a warrant is issued lessens the possibility of arbitrariness. This is because the specificity of a regulatory statute limits the concerned authority's discretion and ensures "reasonableness" in the conduct of implementing administrative warrants. In effect, it prevents agencies and officers in the Executive Branch from performing acts which are beyond their authority. If this guideline is complied with, a warrant would provide assurances from a neutral officer that the inspection: (1) is reasonable under the Constitution; and (2) is pursuant to an administrative plan containing specific neutral criteria.[156]

4. **The issuing administrative authority must be empowered by law to pass upon and make final pronouncements on conflicting rights and obligations of contending parties, as well as to issue warrants or orders that are incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.**

The Court begins by showing the facets of judicial power found in second paragraph of Sec. 1, Art. VIII of the 1987 Constitution which states:

> Section 1. x x x
>
> **Judicial power** includes the duty of the courts of justice to **settle actual controversies** involving **rights** which are **legally demandable** and

[156] *Cf. Marshall v. Barlow's, Inc.*, 436 U.S. 307, 323 (1978).

> **enforceable**, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphases supplied)

As traditionally understood, judicial power is exercised by this Court, as well as all lower courts created by Congress and made part of the Judiciary's framework. Furthermore, such power is the only democratically and constitutionally-recognized means within the government's framework for making final pronouncements in the settlement of conflicting rights and obligations.

However, the growing complexities of modern society have rendered this traditional classification of the functions of government quite unrealistic, not to say obsolete.[157] The ever-increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts.[158]

In consequence, the Court is impelled to admit that the growing complexities of modern life necessitate the existence of specialized adjudicative bodies. An increase of a governed activity's complexity brought about by its actors' increasing number of interactions means that the knowledge involved appurtenant thereto becomes more advanced and more intricate. As a result, disputes occasionally arising from such activity also become more technical to the point that conflicting rights and obligations can no longer be settled by merely looking at the law with a generic lens before applying the same to an established set of facts. Specialized or highly technical knowledge has to be factored into the law before a just resolution of such disputes can be achieved. As such, it now becomes unreasonable and infeasible to expect regular courts, in determining probable cause, to be well-versed in asking searching questions when evaluating highly technical matters which require specialized knowledge, expertise or experience. As pointed out earlier, this is the reason why quasi-judicial bodies exist in the first place — to address disputes involving highly technical matters that relatively few individuals are competent to handle or address. These specialized administrative bodies are deemed experts on matters within its specific and specialized jurisdiction.[159] **Had regular courts been expected by law to be equipped and competent to handle highly technical matters requiring specialized knowledge, there would have been no need of quasi-judicial bodies in the first place.**

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[157] *The Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions in Government Corp. and Offices*, 141 Phil. 334, 349 (1969).

[158] *Monetary Board v. Philippine Veterans Bank*, 751 Phil. 176, 186 (2015).

[159] *Cabral v. Adolfo*, 794 Phil. 161, 170 (2016).

Before proceeding with the nature of quasi-judicial powers, it is also crucial for the Court to address the following unsettling questions:

1. Which authority determines what matters are "specialized" under the purview of adjudication?

2. Can a law empower quasi-judicial bodies to issue prerogative or extraordinary writs such as *certiorari*, *mandamus*, prohibition, or *quo warranto*?

Firstly, whether a particular field is "specialized" enters into the realm of political questions. Determining what subject matters need specialized adjudicative attention is for the Congress — pursuant to its constitutional power to "define, prescribe, and apportion the jurisdiction of the various courts" — to perform.[160] Such matter cannot be considered as a justiciable issue as this Court, should it determine what the Congress should consider as "specialized" fields requiring special adjudicative attention, would be violating the basic principle of separation of powers by indirectly defining, prescribing or apportioning the jurisdiction of specialized courts. **It is up to the wisdom of the Congress to determine what particular matters need specialized adjudicatory functions.**

Secondly, in the Philippine setting, the authority to issue writs of *certiorari*, prohibition, and *mandamus* involves the exercise of original jurisdiction; and such authority has always been expressly conferred, either by the Constitution or by law.[161] However, administrative agencies exercising quasi-judicial powers are specialized and have narrowly-limited competencies.[162] As a consequence, they cannot issue extraordinary writs (like *certiorari*, *mandamus*, prohibition, and *quo warranto*) which are necessary incidents of judicial power because proceedings corresponding to such writs involve only an examination and direct application of a constitutional provision or law which does not require specialized expertise. In other words, the jurisdiction as regards to extraordinary remedies is inherently judicial and not quasi-judicial. Hence, any statute enacted giving administrative agencies the power to issue extraordinary writs which is intrinsically judicial breaches the fundamental principle of separation of powers.

Having settled the questions pertaining to adjudicatory powers in general, the Court now proceeds to define quasi-judicial or administrative

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[160] CONSTITUTION, Art. VIII, Sec. 2.
[161] *Garcia v. De Jesus*, 283 Phil. 735, 750 (1992).
[162] See *Heirs of Zoleta v. Land Bank of the Philippines*, 816 Phil. 389, 411-412 (2017).

adjudicatory power which is the authority of administrative agencies to adjudicate the rights of persons before it.[163] It involves the authority "to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."[164] Here, the administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially executive or administrative in nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.[165] However, such power is limited to the adjudication of the rights of the parties that are *incidental* to the agency's functions under the law.[166] Thus, the judicial discretion is involved in the exercise of these **quasi-judicial powers**, such that it is exclusively vested in the judiciary and **must be clearly authorized by the legislature in the case of administrative agencies.**[167]

At this juncture, the Court echoes the earlier discussion that a deprivation of liberty and property rights inevitably triggers the requirement of procedural due process which administrative authorities must comply to avoid tainting their official actions with arbitrariness and oppressiveness. For administrative authorities which are either part of or attached to the Executive Branch, any implementing act that they perform which deprives one of a right or legitimate claim of entitlement should necessarily be subjected to procedural due process requirements — whether prior or subsequent to such deprivation. Otherwise, such deprivation would be confiscatory and oppressive. This is the reason why past jurisprudence has expressed that legislature, in **granting adjudicative powers** to an administrative agency, must state such intention ***in clear and express terms***.[168] In effect, **an administrative authority which does not have in its framework any procedural relief or opportunity for one temporarily deprived of a right or legitimate claim of entitlement to assail such deprivation is disenfranchised in effecting such deprivation.**

In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as

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[163] *Narra Nickel Mining and Development Corp. v. Redmont Consolidated Mines Corp.*, 775 Phil. 238, 248 (2015).
[164] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003).
[165] *Bedol v. Commission on Elections*, 621 Phil. 498, 511 (2009), citation omitted.
[166] See *Chairman and Executive Director, Palawan Council for Sustainable Development v. Lim*, 793 Phil. 690, 698 (2016).
[167] *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374, 452 (2010).
[168] See *Pilipinas Shell Petroleum Corp. v. The Oil Industry Commission*, 229 Phil. 430, 434 (1986), citation omitted.

basis for their official action and exercise of discretion in a judicial nature.[169] If the only purpose of an investigation is to evaluate the evidence submitted to an agency based on the facts and circumstances presented to it, and if the agency is not authorized to make a final pronouncement affecting the parties, then there is an absence of judicial discretion and judgment.[170] This was already clarified in *Cariño v. Commission on Human Rights*[171] which explained that "investigation" is an act of making an official systematic inquiry or, simply, "to discover, to find out, to learn, obtain information;" while "adjudication" is an act of "[settling] finally (the rights and duties of the parties to a court case) on the merits of the issues raised." Once there is an absence of judicial discretion on the part of the administrative authority seeking to gather facts on a particular person or entity for the purposes of holding him, her or it administratively accountable for a statutory infraction, then such authority cannot issue warrants for being devoid of adjudicative power. This prevents a "fishing expedition" on the part of administrative authorities and law enforcers thereby protecting private rights from undue intrusion. Accordingly, an administrative authority (save in instances where compliance of procedural due process may be dispensed such as abatements of nuisance *per se*) **should be empowered by law to exercise adjudicatory powers** along with its auxiliary writs, processes and other procedural means to carry its jurisdiction into effect.[172]

The need for requiring warrants to be issued by administrative authorities with quasi-judicial power is in view of the inescapable fact that they are still part of the Executive Branch's framework. Any deprivation, though temporary, must either be compliant with due process or be under the purview of its exceptions to avoid oppressive, arbitrary, and confiscatory use of executive power. Thus, requiring administrative authorities to first possess quasi-judicial powers ensures that procedural due process requirements have been complied with before effecting any final deprivation of liberty or property.

Finally, one important beneficial aspect in requiring administrative authorities to first possess adjudicative powers before it may issue warrants is that quasi-judicial acts are susceptible of being brought into the judicial framework either through an appeal or a judicial review. Sec. 9(3) of B.P. Blg. 129 – through the facility of Sec. 1, Rule 43 of the Rules of Court – provides that decisions of specified quasi-judicial bodies are reviewable on appeal by the CA. Additionally, for those quasi-judicial agencies whose decisions are final and not reviewable by the CA under the ordinary appeal process, a writ of *certiorari* assailing an administrative adjudicative issuance

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[169] *So v. Philippine Deposit Insurance Corporation*, 828 Phil. 529, 535 (2018), citation omitted.
[170] *Encinas v. PO1 Agustin, Jr.*, 709 Phil. 236, 257 (2013).
[171] 281 Phil. 547 (1991).
[172] *Cf.* RULES OF COURT, Rule 135, Sec. 6.

(provided that jurisdictional errors or instances of grave abuse of discretion are present) may be filed by an aggrieved party; thereby, bringing the administrative dispute into the judicial framework. This is because discretionary acts will be reviewed where the lower court or tribunal has acted without or in excess of its jurisdiction, where an interlocutory order does not conform to the essential requirements of law and may reasonably cause material injury throughout the subsequent proceedings for which the remedy of appeal will be inadequate, or where there is a clear or serious abuse of discretion.[173] Such institutional and systemic assurance that an administrative decision or final order will ultimately be subjected to judicial review (unless waived by the person being deprived of a right or entitlement) strengthens the guarantee that due process requirements are complied with before any final deprivation of rights or entitlements may be effected by the State.

5. A warrant must be based on tangible proof of probable cause and must state a specific purpose or infraction allegedly committed with particular descriptions of the place to be searched and the persons or things to be seized.

The organic laws of the Philippines, specifically, the Philippine Bill of 1902, as well as the 1935, 1973, and 1987 Constitutions all protect the right of the people to be secure in their persons against unreasonable searches and seizures (with "arrest" falling under the term "seizure").[174] Notably, the present Sec. 2, Art. III of the Constitution contains no prohibition of arrest, search, or seizure without a warrant, but only against "unreasonable" searches and seizures.[175] This **reasonableness requirement** is aimed at curtailing arbitrariness.[176] Disregarding this requirement has the effect of rendering inadmissible, for any purpose in any proceeding, any evidence obtained pursuant to such warrant.[177] Furthermore, although primarily applied in criminal cases, it is with more reason that the requirement of reasonableness should also apply to administrative warrants because a person's liberty or property rights may be unduly burdened by unrestricted government intrusions in the form of restraints in movement or, for the purpose of this requirement, boundless inspections. More importantly, all claims of impropriety as to the issuance and implementation of these warrants should be analyzed under the "reasonableness" standard rather than

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173 *Eagleridge Development Corp. v. Cameron Granville 3 Asset Management, Inc.*, 708 Phil. 693, 707 (2013).
174 *Pestilos v. Generoso*, 746 Phil. 301, 311-312 (2014).
175 See *People v. Malasugui*, 63 Phil. 221, 226 (1936).
176 See *Donovan v. Dewey*, 452 U.S. 594, 606 (1981).
177 See *Pilapil, Jr. v. People*, G.R. No. 228608, August 27, 2020.

under a "substantive due process" approach because Sec. 2, Art. III of the Constitution provides an explicit textual source of protection against intrusive governmental conduct.[178]

"Probable cause" is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness.[179] To apply this standard, it is obviously necessary first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen.[180] Accordingly, for exploratory warrants (such as inspection warrants) to be valid, the following must concur: (1) there must be a substantial government interest that informs or supports the regulatory scheme (*e.g.*, substantial interest in improving health and safety conditions) pursuant to which the search or inspection is made; (2) the search or inspection must be necessary to further the regulatory scheme; and (3) an advise must be made that the search is being made pursuant to the law and that the search must have a properly defined scope thereby limiting the discretion of implementing officers.[181] These requirements, of course, are also subjected to the "reasonable expectation of privacy"[182] standard which the law enforcers ought to be mindful of. In the case of warrants which restrain the movement of persons, their validity hinges on the following requisites: (1) a law which defines an infraction of administrative concern or a general welfare concern sought to be protected by the State; and (2) probable cause that the person to be restrained of movement committed such infraction or presented a general welfare concern as defined by such law.

These requisites for validity find great significance in instances which are **detrimental to public welfare *but do not* justify a summary abatement**. Here, law enforcement agents **do not have immediate personal knowledge** of certain violations of law committed or continually being committed. Instead, an administrative or law enforcement agency's "knowledge" is acquired by gathering of evidence (including sworn statements of private persons or confidential informants with personal knowledge of such violation) through surveillance or other methods which must not intrude into a person's constitutional right to privacy. Such pieces of evidence may establish a reasonable inference that the person against whom a prospective warrant is to be issued has probably committed or is still committing acts in violation of law.

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178 *Cf. Graham v. Connor*, 490 U.S. 386, 392 (1989), citations omitted.
179 *United States v. United States District Court for the Eastern District of Michigan*, 407 U.S. 297, 323 (1972), citations omitted.
180 *Cf. Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523, 534-535 (1967).
181 *Cf. New York v. Burger*, 482 U.S. 691, 703 (1987).
182 See *Spouses Hing v. Choachuy, Sr.*, 712 Phil. 337, 350 (2013).

In criminal cases, one of the constitutional requirements for the validity of a search warrant is that it must be issued **based on probable cause** which, under the Rules, must be in connection with one specific offense to prevent the issuance of a scatter-shot warrant.[183] This requirement is especially useful in administrative proceedings to prevent law enforcers from undertaking a "fishing expedition" by conducting a sweeping search; thereby, lessening the chances of abuse. This is comparative to the jurisprudential *dictum* that "[a] search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to a crime."[184] Thus, for summary deprivations of any right by virtue of a warrant, supporting proof is required to be adduced before an adjudicative body — absent such requirement, a warrant cannot be issued and implemented or considered as valid, if unduly issued.

6. The administrative warrant must not pertain to a criminal offense or be used as precursor for the filing of criminal complaints for any evidence obtained pursuant to such writ shall be inadmissible in criminal proceedings.

To understand the reason behind limiting the use and purpose of administrative warrants to non-criminal offenses, the Court must first highlight Sec. 14(2), Art. III of the Constitution which states that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved." Curiously, nowhere in the Constitution does it state that the quantum of evidence necessary for conviction is "beyond reasonable doubt." However, it has been accepted that the reasonable doubt standard has constitutional stature because the due process clause protects the accused against conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime for which he or she is charged.[185] Such acceptance is consistent with the Court's power to promulgate rules of procedure in all courts as aptly pointed out in *People v. Moner*[186] *(Moner)* which tersely points out that:

> The **power** to **promulgate rules** concerning pleading, practice and **procedure** in all courts is a traditional power of this Court. This **includes** the power to **promulgate** the **rules of evidence.**[187] (Emphases supplied)

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[183] *People v. Pastrana*, 826 Phil. 427, 439 (2018).
[184] *People v. Francisco*, 436 Phil. 383, 396 (2002).
[185] *People v. Garcia*, 289 Phil. 819, 832 (1992).
[186] 827 Phil. 42 (2018).
[187] Id. at 67.

In effect and also due to its long historical use as a necessary component of the constitutional presumption of innocence, the requirement to prove the guilt of an accused beyond reasonable doubt has been engrained with the status of being part of "substantive" due process. In other words, such evidentiary standard now constitutive of what a "sufficient justification for depriving a person of life, liberty, or property"[188] should be. It is indispensable "to command the respect and confidence of the community in applications of the criminal law."[189] Therefore, as it stands now, every fact necessary to constitute the crime with for which an accused is charged must be proven beyond reasonable doubt.[190]

As it relates to the fourth guideline requiring agencies or officers of the Executive Branch to first possess adjudicative powers as a condition for the validity of their warrants, the Court points out that the validity of the decisions or final orders promulgated by administrative proceedings hinges on a **quantum of evidence different** from that of criminal cases. In quasi-judicial and other administrative proceedings, the quantum of proof required is substantial evidence.[191] Consequently, **since it is not required in quasi-judicial proceedings that the quantum of proof be greater than substantial evidence, it follows that only regular courts within the Judiciary's framework can take cognizance of criminal cases where the quantum of proof required in order to convict an accused is beyond reasonable doubt.** Alternatively speaking, **the only adjudicatory body of government that can make final pronouncements in criminal cases — with the use of "beyond reasonable doubt" as a standard of proof to calibrate the legal truth — are regular courts**. Such is consistent to the principle that courts of law (as opposed to quasi-judicial bodies' competence to handle matters requiring specialized expertise) are the proper instruments for the adjudication of legal disputes where matters to be resolved pertain to general questions of law.[192]

As to limiting the use and purpose of administrative warrants to non-criminal cases, the Court takes hint from the immediately preceding discussions that only regular courts can make final pronouncements in criminal cases. The ability of administrative bodies exercising quasi-judicial powers to make final pronouncements is **limited only to their specialized fields of expertise**. Consistent with the fourth guideline requiring quasi-judicial bodies to be statutorily-empowered to make final pronouncements in

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[188] See *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 265 (2018).
[189] *People v. Claro*, 808 Phil. 455, 467 (2017).
[190] See *People v. Ganguso*, 320 Phil. 324, 335 (1995).
[191] *Fact-Finding Investigation Bureau v. Miranda*, G.R. No. 216574, July 10, 2019, 908 SCRA 284, 307; *Philippine National Bank v. Gregorio*, 818 Phil. 321, 340 (2017).
[192] See *Imperial v. Judge Armes*, 804 Phil. 439, 471 (2017).

the first place, such ability **cannot extend beyond such specialized bounds so as to include criminal cases.** Likewise, **it cannot be extended to include *incidents* of criminal proceedings** such as warrant applications.

It may be settled that the purpose of obtaining warrants is either "to place the accused under the custody of the law to hold him [or her] for trial"[193] or "for discovery and to get possession of personal property" which is made necessary due to public necessity.[194] Be that as it may, administrative agencies with quasi-judicial powers have no business in taking part in the initial stages of criminal proceedings where matters up for subsequent final resolution involve general legal questions—not specialized competencies. This is to **prevent any abuse or oppression on the part of the Executive Branch** through its administrative agencies, ***even if they are exercising adjudicatory powers.*** **To permit law enforcers to use administrative warrants for purposes of arresting persons or gathering evidence in view of filing subsequent criminal charges *would be to allow administrative agencies to indirectly participate in the adjudication of criminal cases.***

Accordingly, if a warrant's intent is to pursue both administrative compliance and criminal enforcement, applications for its issuance — *at least, as it pertains to the criminal aspect,* — should be filed before regular courts.

As accentuated earlier, warrants and other processes are incidents of the power to make final pronouncements on the conflicting rights and obligations of contending parties. In administrative proceedings, warrants issued aid only in disposing disputes involving specialized matters requiring specialized competencies to resolve. Consistent with the third guideline which renders an administrative warrant unreasonable if it is issued not in pursuant to the law which created such quasi-judicial body, the admissibility in evidence of the things seized pursuant to an administrative search also becomes subject to the reasonableness under Sec. 3(2)[195] in relation to Sec. 2,[196] Art. III of the Constitution. What this means is that a warrant goes beyond the bounds of reasonableness if it is used for purposes other than the enforcement of a specific statute providing for a particular regulation or

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[193] *De Joya v. Judge Marquez,* 516 Phil. 717, 724 (2006).

[194] *Securities and Exchange Commission v. Mendoza,* 686 Phil. 308, 315-316 (2012), citing *United Laboratories, Inc. v. Isip,* 500 Phil. 342, 357 (2005).

[195] Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[196] 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.

infraction. Any evidence obtained in violation of the right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding.[197]

For administrative warrants, they become unreasonable in the context of the Bill of Rights if the same are used to aid criminal proceedings. Since the authority of quasi-judicial bodies to make final pronouncements is limited only to their specialized fields of expertise, it follows that the utility and evidentiary value corresponding to these warrants and processes should not extend outside of their purposes and specialized competencies. Accordingly, any evidence obtained pursuant to administrative warrants is inadmissible in criminal proceedings for lack of jurisdictional fiat. Conversely, any evidence obtained pursuant to an administrative warrant is admissible only in administrative cases.

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 and shall not be denied access to a competent counsel of his or her own choice. Furthermore, in cases where a person is deprived of liberty by virtue of an administrative warrant, the adjudicative body which issued the warrant shall immediately submit a verified notice to the Regional Trial Court nearest to the detainee for purposes of issuing a judicial commitment order.**

It is settled that the Constitution, being the "fundamental paramount and supreme law," is deemed written in every statute.[198] By extension, all established jurisprudential concepts and requirements of the due process clause — a constitutional libertarian guarantee — are also deemed incorporated in all statutes granting administrative authorities the power to issue warrants. Consistent with the second guideline that any deprivation of rights or entitlements effected by administrative warrants shall only be temporary, these **warrants lose their validity if their effectivity is not tethered to a mandatory period as regards the filing of formal charges. Without formal charges, the temporariness of such deprivation is placed**

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[197] *People v. Comprado*, 829 Phil. 229, 236-237 (2018).
[198] *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82, 101 (1997).

in limbo and is now subject to the absolute discretion of law enforcers. Resultantly, an indefinite but supposedly temporary deprivation becomes, in essence, a final one and an instrument of summary confiscation; thereby, being anathema to the basic tenets of procedural due process.

As a general rule, the period to bring formal charges after a successful implementation of the subject warrant shall be strictly complied with if due process principles are to be respected and upheld. In other words, if the law — which granted a specific administrative authority the power to issue warrants — also provides a period for the filing of formal charges from the time of temporary deprivation, such period shall govern and determine the warrant's effectivity. This is similar to the periods provided in Art. 125 of the Revised Penal Code for the delivery of persons to proper judicial authorities.

However, there may be some instances where a statute providing for an administrative warrant fails to provide for a period (prescriptive or otherwise) pertaining to the filing of formal charges. Mindful of the constitutional principle of separation of powers which is likewise deemed written in every statute, this Court cannot preempt the Congress and determine for itself the exact period for the filing of formal charges after the implementation of the warrant. These periods are part of substantive law as their expiration now accords a right in favor of respondents targeted by such warrants to repel consequent initiations of formal charges. Thus, in instances where a statute does not provide for a period of filing formal charges after the implementation of a warrant, the constitutional demands of due process take over and compel adjudicatory bodies to determine for themselves (with due regard to evidence) what "reasonable time" is within which formal charges should be filed before a respondent may undertake steps to dissolve, lift, or quash the subject warrant.

"Reasonable time" is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any, to the other party."[199] Although it has been said that the question as to what shall be considered such a "reasonable time" is for the determination of the legislature and is, in no sense, a judicial question;[200] courts may infer — pursuant to the constitutional due process clause — what "reasonable" time is under attendant circumstances in order to determine the validity, life, and effectivity of an administrative warrant. What is "reasonable" (in cases

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[199] *Carson Realty & Management Corporation v. Red Robin Security Agency*, 805 Phil. 562, 571-572 (2017).

[200] *Saladas v. Franklin Baker Company*, 108 Phil. 364, 368 (1960), citation omitted.

where a statute fails to provide a period for the filing of formal charges) becomes a factual issue which requires evidence to substantiate — ultimately susceptible of judicial review if the subject dispute is eventually introduced into the judicial framework *via* appeal or *certiorari*. The "possibility of loss" in relation to indefinite deprivations of rights or entitlements may be gauged by considering attendant facts that trigger the need to protect due process rights. Such factual evaluation affords adjudicative bodies the proper facility to determine what constitutes "reasonable time" for purposes of determining the validity and life or extent of the effect of a warrant in question. Consistent with the second guideline requiring that a deprivation through an administrative warrant must be provisional, the "reasonable time" requirement *for the filing of formal charges* prevents administrative authorities from effecting an indefinite deprivation which would virtually amount to a denial of due process for approximating a state of finality.

As regards warrants which restrict the movement of persons, some constitutional principles prevalent in criminal law finds great significance in administrative cases. One of which is the immutable right of an accused to be assisted by a counsel preferably of his or her own choice.[201] The right to the assistance of a competent counsel guarantees that a person has a full opportunity to enjoy all the benefits under the due process clause. This right is granted to minimize the imbalance in the adversarial system where the accused is pitted against the awesome prosecutory machinery of the State; and a recognition that an average person does not have the professional skill to protect himself or herself — as against an experienced and learned prosecutor — before a tribunal with power to take his life or liberty.[202] Such serious risk in losing the right to liberty entitles one, being restrained of movement, to have an indelible right of access to a competent counsel in order to properly pursue appropriate legal remedies.

The obvious reason behind this principle is that it is more difficult for a person restrained of movement to seek the assistance of a competent counsel located outside of his or her confinement than for a person unrestricted of movement to engage in the same undertaking. Such realization makes the right of access to a competent counsel part and parcel of the right to liberty itself. Thus, due to the need to protect the basic right of liberty — especially in cases where a non-judicially sanctioned restraint of movement is justified by imminent public welfare or public safety needs — justifies the analogous application of the right of access to a competent counsel in criminal cases to administrative proceedings.

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[201] *Inacay v. People*, 801 Phil. 187, 191 (2016); see CONSTITUTION, Art. III, Secs. 12(1) and 14(2).
[202] *People v. Serzo, Jr.*, 340 Phil. 660, 670 (1997).

In cases where persons are deprived of liberty by virtue of administrative warrants, this Court is mindful of the constitutional prohibition against "torture, force, violence, threat, intimidation, or any other means which vitiate the free will" which detention prisoners are most vulnerable to or "secret detention places solitary, incommunicado, or other similar forms of detention."[203] To guarantee that the constitutional and statutory rights of persons detained by virtue of administrative warrants are properly and effectively safeguarded, there needs to be a mechanism where detainees are supervised by the court in accordance with Sec. 25, Rule 114 of the Rules of Court. Such mechanism, as brilliantly suggested by Senior Associate Justice Marvic Mario Victor F. Leonen, is to require administrative agencies which issued an arrest warrant or any order (*ex parte* or *inter partes*) to immediately submit a verified notice to the nearest RTC where the person subject of such warrant is detained. Upon receipt of the verified notice, the RTC shall issue a commitment order (not a judicial arrest warrant as the person subject of the administrative warrant is already under custody of law) so that it may include administrative detainees in the conduct of its supervision. In this way, an administrative detainee's constitutional and statutory rights will be judicially secured.

8. A violation of any item on the foregoing guidelines shall be *prima facie* proof of usurpation of judicial functions, malfeasance, misfeasance, nonfeasance, or graft and corrupt practices on the part of responsible officers.

As discussed under the sixth guideline, this Court, in *Moner*, had already clarified that "[t]he power to promulgate rules concerning pleading, practice, and procedure in all courts is a traditional power of this Court [which] includes the power to promulgate the rules of evidence."[204] In this regard, the Court deems it appropriate and necessary to give force to the foregoing guidelines by establishing an evidentiary rule of accountability on the part of responsible public officer charged with the issuance and implementation of administrative warrants. Since, these responsible officers also enjoy the benefits accorded by the due process clause, a presumptive but balanced (in order to give a **reasonable** opportunity to mount a defense) evidentiary rule is warranted. In the realm of administrative warrants, such rational balance is best served by designating the *prima facie* standard as a means to hold responsible officers accountable.

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[203] CONSTITUTION, Art. III, Sec. 12(2).
[204] *People v. Moner*, supra note 186, at 67.

Prima facie evidence is defined as that which is "good and sufficient on its face."[205] A quantum greater than probable cause,[206] such standard or quantum denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counter-balance the presumption of innocence to warrant a conviction.[207] To overcome this *prima facie* presumption of liability, the quasi-judicial officer or law enforcer against whom such presumption is levied must present contrary evidence to overcome what was established by such inference; otherwise, the existence of probable cause cannot be disputed.[208] However, such presumption need not be countered by a preponderance of evidence nor by evidence of greater weight, but only such evidence which puts the case in equipoise is sufficient.[209]

Therefore, to avert any likelihood of administrative abuse, as well as to uphold the due process rights of the responsible officers, the Court deems it fit to consider a violation of **any** item in the foregoing guidelines as *prima facie* evidence of an administrative infraction or guilt, under applicable laws, against quasi-judicial officers and law enforcers, without prejudice to criminal and civil actions that those aggrieved may pursue.[210] Such standard is to ensure that **all** items laid out by these guidelines are **strictly** complied with.

C. Nature and Validity of the July 26, 2018 SDO

The Court, in applying the aforementioned guidelines — to test the validity of both the July 26, 2018 SDO and the accompanying July 17, 2018 Charge Sheet affecting respondent's detention — finds that the same issuances are well-founded for the following reasons:

First, the danger, harm, or evil to be prevented by the subject SDO and the Charge Sheet pertains to both national security and public safety which outweigh the privilege of aliens to continue their stay in the Philippines.

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205 *Wa-acon v. People*, 539 Phil. 485, 494 (2006).

206 See *Cometa v. Court of Appeals*, 378 Phil. 1187, 1196 (1999); see also *People v. Montilla*, 349 Phil. 640, 659 (1998).

207 *Salonga v. Paño*, 219 Phil. 402, 415-416 (1985).

208 *Cf. PCGG Chairman Elma v. Jacobi*, 689 Phil. 307, 347 (2012), citations omitted.

209 *Bautista v. Sarmiento*, 223 Phil. 181, 186 (1985).

210 The "threefold liability rule" holds that the wrongful acts or omissions of a public officer may give rise to civil, criminal, and administrative liability. (*Ramiscal, Jr. v. Commission on Audit*, 819 Phil. 597, 610 [2017]).

The salient provisions of the Constitution pertaining to general welfare read as follows:

Article II
Declaration of Principles and
State Policies Principles

x x x x

Section 4. The **prime duty of the Government is to serve and protect the people**. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal, military or civil service.

Section 5. The **maintenance of peace and order**, the **protection of life, liberty, and property,** and the **promotion** of the **general welfare** are **essential** for the **enjoyment** by **all** the **people** of the blessings of democracy.

x x x x

Article III
Bill of Rights

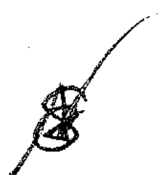
x x x x

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the **right** to **travel** be **impaired *except* in the interest of *national security, public safety*,** or ***public health*, as may be provided by law**. (Emphases supplied)

Clearly, the Fundamental Law makes it a "prime duty" on the part of the State to protect the people and promote general welfare for being "essential for the enjoyment by all the people of the blessings of democracy." More specifically, it is also provided that the right to travel may be impaired by the State's exercise of police power in the interest of national security, public safety, or public health as may be provided by law.

In this regard, such "law" aimed at pursuing the interests of national security, public safety, and public health is embodied in Sec. 8, Chapter 3, Title I, Book III of the Administrative Code of 1987[211] (*Administrative Code*), which provides that: "[t]he President shall have the power to deport aliens subject to the requirements of due process." The President's powers and functions as regards to the deportation of aliens are delegated to the

[211] Executive Order No. 292 (1987).



Department of Justice which, in turn, exercises the power of control and supervision over the Bureau which has rule-making powers under the law.[212]

Moreover, Sec. 2 of the Alien Registration Act of 1950[213] (*Alien Registration Act*) provides:

> Section 2. The Commissioner of Immigration, with the approval of the Department Head, **is authorized to prescribe such rules and regulations** as may be necessary for carrying out the provisions of this Act, including the registration of alien seamen, aliens confined in institutions in the Philippines, **aliens under orders of deportation,** and aliens of any other class not lawfully admitted into the Philippines for permanent residence, and from time to time, always with the approval of the Department Head, to amend such rules and regulations.
>
> All registration records of every alien shall be forwarded for file and record to the Bureau of Immigration.

Both the Administrative Code and the Alien Registration Act demonstrate that the government has assumed to act for the all-sufficient and primitive reason of the benefit and protection of its own citizens and of the self-preservation and integrity of its dominion.[214] They affirm and reinforce the fundamental principle that every sovereign power has the inherent power to exclude aliens from its territory upon such grounds as it may deem proper for its self-preservation or public interest.[215] Such principle was eloquently explained by no less than the first Chief Justice Cayetano S. Arellano in the early case of *In Re: Patterson*[216] as follows:

> Unquestionably[,] **every State has a fundamental right to its existence and development, as also to the integrity of its territory and the exclusive and peaceable possession of its dominions which it may guard and defend by all possible means against any attack.** Upon this fundamental right Act 265 of the Legislative Commission of the Philippines is based. Upon this fundamental principle are based many other laws, among them those concerning immigration, emigration, commerce, and international intercourse. But contrary to the various

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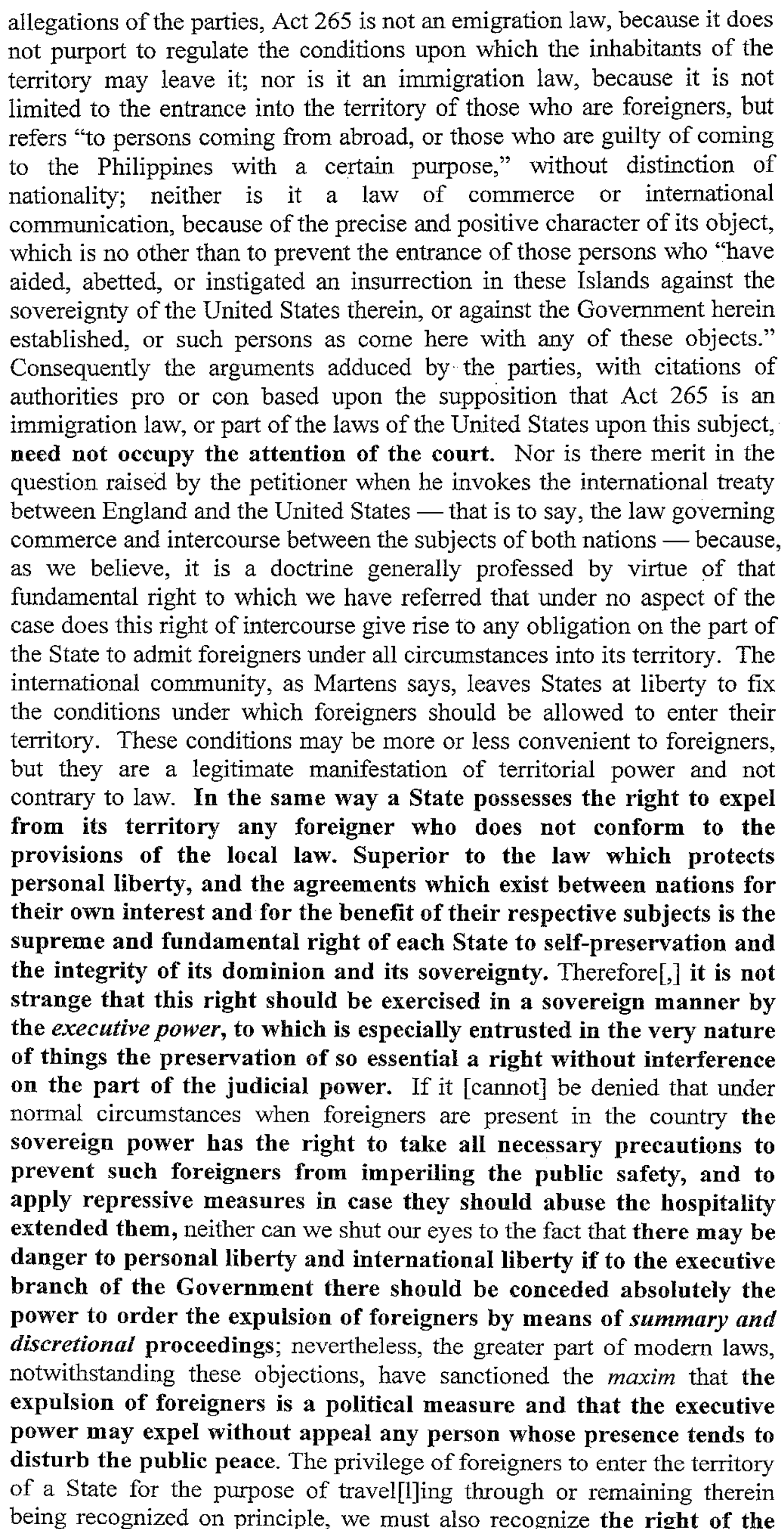
212 See Section 2. The **Commissioner of Immigration, with the approval of the Department Head, is authorized to prescribe such rules and regulations** as may be necessary for carrying out the provisions of this Act, including the registration of alien seamen, aliens confined in institutions in the Philippines, **aliens under orders of deportation**, and aliens of any other class not lawfully admitted into the Philippines for permanent residence, and from time to time, always with the approval of the Department Head, to amend such rules and regulations. (Republic Act No. 562 [1950], Sec. 2), emphases supplied.

213 Republic Act No. 562, id.

214 *Smith, Bell & Co. v. Natividad*, 40 Phil. 136, 148 (1919).

215 *In Re: Petition for Habeas Corpus of Santiago*, 245 Phil. 809, 821 (1988).

216 1 Phil. 93 (1902).



allegations of the parties, Act 265 is not an emigration law, because it does not purport to regulate the conditions upon which the inhabitants of the territory may leave it; nor is it an immigration law, because it is not limited to the entrance into the territory of those who are foreigners, but refers "to persons coming from abroad, or those who are guilty of coming to the Philippines with a certain purpose," without distinction of nationality; neither is it a law of commerce or international communication, because of the precise and positive character of its object, which is no other than to prevent the entrance of those persons who "have aided, abetted, or instigated an insurrection in these Islands against the sovereignty of the United States therein, or against the Government herein established, or such persons as come here with any of these objects." Consequently the arguments adduced by the parties, with citations of authorities pro or con based upon the supposition that Act 265 is an immigration law, or part of the laws of the United States upon this subject, **need not occupy the attention of the court.** Nor is there merit in the question raised by the petitioner when he invokes the international treaty between England and the United States — that is to say, the law governing commerce and intercourse between the subjects of both nations — because, as we believe, it is a doctrine generally professed by virtue of that fundamental right to which we have referred that under no aspect of the case does this right of intercourse give rise to any obligation on the part of the State to admit foreigners under all circumstances into its territory. The international community, as Martens says, leaves States at liberty to fix the conditions under which foreigners should be allowed to enter their territory. These conditions may be more or less convenient to foreigners, but they are a legitimate manifestation of territorial power and not contrary to law. **In the same way a State possesses the right to expel from its territory any foreigner who does not conform to the provisions of the local law. Superior to the law which protects personal liberty, and the agreements which exist between nations for their own interest and for the benefit of their respective subjects is the supreme and fundamental right of each State to self-preservation and the integrity of its dominion and its sovereignty.** Therefore[,] **it is not strange that this right should be exercised in a sovereign manner by the *executive power*, to which is especially entrusted in the very nature of things the preservation of so essential a right without interference on the part of the judicial power.** If it [cannot] be denied that under normal circumstances when foreigners are present in the country **the sovereign power has the right to take all necessary precautions to prevent such foreigners from imperiling the public safety, and to apply repressive measures in case they should abuse the hospitality extended them,** neither can we shut our eyes to the fact that **there may be danger to personal liberty and international liberty if to the executive branch of the Government there should be conceded absolutely the power to order the expulsion of foreigners by means of *summary and discretional* proceedings**; nevertheless, the greater part of modern laws, notwithstanding these objections, have sanctioned the *maxim* that **the expulsion of foreigners is a political measure and that the executive power may expel without appeal any person whose presence tends to disturb the public peace.** The privilege of foreigners to enter the territory of a State for the purpose of travel[l]ing through or remaining therein being recognized on principle, we must also recognize **the right of the**

> **State under exceptional circumstances to limit this privilege upon the ground of public policy**, and in all cases **preserve the obligation of the foreigner to subject himself to the provisions of the local law concerning his entry into and his presence in the territory of each State.**[217] (Emphases supplied)

As it stands, the temporary stay of aliens in the Philippines is but a privilege, not a right, subject to the dictates of public policy and the appropriate determination by the authorities vested with that power under our Immigration Law.[218] Any legislation aimed at preserving national security and protecting public safety through border control measures is considered a legitimate and compelling state interest. Therefore, SDOs satisfy the requirement of an existence of compelling state interest for them to be used in the enforcement of immigration laws.

Second, the respondent's right to liberty as effectively deprived by the July 26, 2018 SDO is merely temporary.

To give a proper context, the Court replicates Sec. 10, Rule 9 of the Omnibus Rules which reads:

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

Relatedly, Sec. 7, Rule 10 of the Omnibus Rules 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. (Emphases supplied)

Clearly, Sec. 7, Rule 10 ***did not distinguish*** **between a summary and a regular deportation order**. The Court cannot accept respondent's argument that such provision should be interpreted to limit its application to regular deportation orders and foreclose his own right to file a motion for reconsideration against an SDO. It is akin to arguing that the rules should be interpreted in such a way as to deny due process to aliens affected by SDOs

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[217] Id. at 95-97.
[218] *Ngo Keh Lin v. Commissioner of Immigration*, 123 Phil. 127, 131 (1966).

in order to allow them to nullify such issuances on constitutional grounds. A more reasonable approach consistent with the due process clause and libertarian constitutional protections would be to construe Sec. 7, Rule 10 of the Omnibus Rules to also cover SDOs.

In this instance, the SDO cannot be considered as a final deprivation of a person's supposed entitlement or privilege to stay within Philippine borders. Sec. 7, Rule 10 of the Omnibus Rules gives a foreigner arrested or detained up to three days to move for reconsideration from any adverse deportation order or judgment from the Bureau. This negates any insinuation that respondent was being permanently deprived by the SDO of his statutory right to question his imminent deportation. Moreover, as discussed earlier, *habeas corpus* will not be issued if a person's arrest is by virtue of some legal process which has adequate procedural facilities for the detained to assail his or her confinement. All told, the guarantee of administrative due process is available in the Omnibus Rules which respondent unjustifiably failed to avail.

Third, the Immigration Act empowered the Bureau, through its Board, to issue warrants of arrest and other orders to that effect in aid of deportation proceedings.

Such power of deportation was first provided in Sec. 37(a) of the Immigration Act which reads as follows:

> Section 37. (a) The following aliens shall 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 against the alien[.]** (Emphases supplied)

Obviously, the aforementioned provision needs no further elucidation as it is self-explanatory. It cements the Bureau's authority to issue warrants of arrest and other orders of similar utility for purposes of implementing the Immigration Act.

Fourth, the Bureau is statutorily authorized to exercise quasi-judicial powers. To start with, Sec. 31, Chapter 10, Title III, Book IV of the Administrative Code reads as follows:

> Section 31. *Bureau of Immigration.* – The Bureau of Immigration is principally responsible for the administration and enforcement of

immigration, citizenship and alien admission and registration laws in accordance with the provisions of the Philippine Immigration Act of 1940, as amended (C.A. No. 613, as amended). The following units shall comprise the structural organization of the Bureau:

(1) Office of the Commissioner and Associate Commissioners;

(2) Board of Commissioners – composed of the Commissioner as Chairman and two (2) Associate Commissioners as members; and

(3) Boards of Special Inquiry which are authorized to be organized in the Commission pursuant to the provisions of the Immigration Act of 1940, as amended.

Subject to the provisions of existing law, the Secretary is hereby authorized to review, revise and/or promulgate new rules and regulations to govern the conduct of proceedings in the Board of Commissioners and the Boards of Special Inquiry, including the determination of the size and number of the support staff to be assigned thereat.

The Bureau shall be headed by a Commissioner assisted by two Associate Commissioners, all of whom shall be appointed by the President upon the recommendation of the Secretary.

The Commissioner and the two Associate Commissioners shall compose the **Board of Commissioners**, a collegial body hereby **granted exclusive jurisdiction over all deportation cases**. The Board shall also have **appellate jurisdiction** over decisions of the Boards of Special Inquiry and shall perform such other functions as may be provided by law.

Each Board of Special Inquiry shall be composed of a Chairman and two members who shall be appointed by the Secretary upon the recommendation of the Commissioner.

Likewise, the appointment of all the other personnel of the Bureau including the designation of Acting Immigration Officers shall be vested in the Secretary upon the recommendation of the Commissioner. (Emphases supplied)

This is supplemented by Sec. 37(c) of the Immigration Act which states:

(c) No 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. (Emphasis supplied)

The aforequoted provisions, when taken together, demonstrate that the Bureau, through its Board, has been vested with quasi-judicial powers to

pass upon questions involving the privilege of an alien's stay in the Philippines. The Board's appellate jurisdiction mentioned in the Administrative Code, as well as the hearing requirement fixed in the Immigration Act both entail an examination of facts before passing upon with finality the status of an alien's privilege to continue his or her stay in the Philippines. In other words, the Board is not only empowered to examine, gather, inquire, probe, study, research, or explore a subject for the purpose of learning, discovering, or obtaining information — it is also empowered to settle or resolve issues relating to the continued existence of an alien's privilege to stay in the Philippines. Essentially, such function of examining facts before a final order of deportation may be validly issued by the Board is in itself adjudicatory for it also requires the exercise of discretion as a necessary step in fixing the rights and obligations of a prospective deportee.

Fifth, the communication of the Chinese Embassy constitutes probable cause as to respondent's status as a foreign fugitive.

Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[219] It is a reasonable ground of presumption that a matter is, or may be, well-founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.[220] The term does not mean "actual and positive cause" nor does it import absolute certainty; it is merely based on opinion and reasonable belief.[221] Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction — it is enough that it is believed that the act or omission complained of constitutes the offense charged.[222]

In deportation cases, Sec. 2(c), Rule 9 of the Omnibus Rules defines a "fugitive from justice" as follows:

> Section 2. x x x
>
> x x x x
>
> (c) *Fugitive from justice*. – A fugitive from justice refers to a foreigner who has been tagged as such by the authorized personnel of a foreign

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[219] *Hasegawa v. Giron*, 716 Phil. 364, 373 (2013).
[220] *Sales v. Adapon*, 796 Phil. 368, 379 (2016).
[221] *Marasigan v. Fuentes*, 776 Phil. 574, 584 (2016).
[222] *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 498 (2014).

> embassy or by the International Police and whose passport is cancelled by his embassy/consulate.

As pointed out in the preceding discussions, this bears an intimate relation with the probable cause requirement as a component of the due process requirement. Accordingly, as to the charge of lack of due process, Sec. 37(c) of the Immigration Act should be read together with Sec. 37(a)(6) which states:

> Section 37. (a) x x x
>
> x x x x
>
> (6) Any alien who **becomes a** ***public charge*** within five years **after entry from** ***causes not*** **affirmatively** ***shown*** **to have arisen** ***subsequent*** **to** ***entry[.]*** (Emphases and italics supplied)

From the aforementioned provision, it is clear that Sec. 37(a)(6) empowers the Bureau's Commissioner to issue warrants against any alien "who **becomes** a **public charge** within five years **after entry from causes not affirmatively shown to have arisen subsequent to entry**;" but only "after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against [such] alien" as provided in the preliminary statement of Sec. 37(a). This provision is subject to Sec. 37(c) of the foregoing law which requires that an alien shall be "informed of the specific grounds for deportation" and be "given a hearing" under the Bureau's procedural rules in order for a deportation to be valid.

However, the Court finds that the law does not prescribe a specific procedure as to when hearing requirement is to be observed; either before or after the implementation of the warrant of arrest. As pointed out in the early discussions, due process is flexible and may come before or after a temporary deprivation of right or entitlement. In consequence, the Bureau may provide for a flexible mechanism of due process which they may deem fit depending on the nature and circumstances that such warrants (or orders of similar effect like SDOs) are supposed to address.

As to the July 26, 2018 SDO, the Board cannot be said to have been remiss in informing respondent of the specific grounds for his arrest. The SDO, which also contains all the allegations found in the Charge Sheet, clearly informed the respondent that he is being arrested for being a foreign fugitive. Even if the fact or allegation of being a fugitive was merely communicated to the Bureau by the Chinese Embassy, respondent cannot deny or plead ignorance that such ground was indeed made known to him.

The specific grounds found in both the SDO and the Charge Sheet are part of the notice requirement in order to allow prospective deportees to mount their defenses or challenges against warrants of arrest and SDOs. Besides, Sec. 12 of the Immigration Act reads:

> Section 12. A **passport visa shall not be granted** to an applicant who fails to establish satisfactorily his nonimmigrants status ***or*** whose **entry** into the Philippines would be **contrary** to the **public safety**. (Emphases supplied)

The aforecited provision should be read together with Sec. 37(a)(6) which authorizes the Bureau's Commissioner to issue warrants against an alien who "becomes a public charge" "after entry from causes not affirmatively shown to have arisen subsequent to [such] entry." Clearly, the knowledge acquired by the government from the Chinese Embassy that respondent may have been a fugitive in the latter's country is sufficient for the Board to conclude that he had become a "public charge" subsequent to his entry into the Philippines. Such allegation of being a fugitive is already constitutive of probable cause which is enough to trigger the issuance of a warrant of arrest or SDO on the Bureau's part in order to protect public safety. The government need not make an inquiry beyond the Chinese Embassy's claim that respondent is wanted for crimes in the latter's home country. It is enough that a reasonable belief has formed in the minds of the Board for them to be able to form an initial finding that respondent has probably violated provisions in the Immigration Act. Such reasonable belief justifies the issuance of an SDO or taking such other necessary steps to implement the Immigration Act by the Bureau through its Board.

Contrary to the RTC's finding that "the Chinese Embassy's communications with the Board supposedly reveal that the former merely alleged that respondent is 'suspected' of 'illegally controlling computer system crimes in China'," the July 10, 2018 letter categorically stated that respondent is one of those tagged as a fugitive of justice for being "involved in crimes in China and being wanted by China's police authority." To require the Philippine government to make its own independent investigation as to the truth or veracity of the Chinese Embassy's allegation that respondent is a fugitive, before the issuance of a warrant or SDO, borders on absurdity. The Philippine government cannot be reasonably expected to conduct an investigation within Chinese territory in order to determine whether respondent is indeed a fugitive of justice. At most, the Philippine government can only retrieve information from its foreign counterparts which is what the Chinese Embassy had offered to the former in the first place through the July 10, 2018 letter.

Besides, the issue – on whether respondent's tagging a fugitive of justice is proper – goes beyond the Philippine courts' power to pass upon. Due process, under the circumstances, is best left for the alien's own government to accord. Requiring additional documents or other pieces of evidence from the Chinese government before a warrant of arrest or SDO will be issued is not covered by any statutory guarantee; certainly not in Sec. 37(a) of the Immigration Act. Worse, it may even be seen as an upfront to the basic practices on international comity.[223] These matters are internal to the Chinese government and appurtenant to the exercise of its own courts' respective jurisdictions.

In the final analysis, the paramount concern that the Philippine government should tackle is the protection of public safety and the preservation of national security. As correctly pointed out by the OSG, the SDO was not invalidly issued because respondent is deemed to have violated the Immigration Act for concealing the fact that he was a fugitive in China which justifies his summary arrest.

Sixth, the SDO was issued neither pursuant to a criminal statute nor for the purpose of prosecuting respondent for a criminal offense. It was issued pursuant to an infraction under the Immigration Act and for the purpose of acquiring jurisdiction over respondent's person in order to initiate deportation proceedings. Here, the records do not indicate that respondent was arrested for the purpose of charging him with any violation relating to Sec. 45 of the Immigration Act which enumerates criminal acts punishable under such law. Besides, had respondent been arrested by the Bureau's agents for the purpose of making him answer for acts committed in violation of Sec. 45, a warrant issued by a competent court would have been needed in order to validate such arrest.

Seventh, no issue arose as the Bureau's timeliness of filing appropriate charges against respondent. It is undisputed that a Charge Sheet was issued before the SDO and was given to respondent upon his arrest. It is also undisputed that the SDO essentially contained all the allegations found in the Charge Sheet. As indubitably demonstrated in the records, respondent even challenged the contents of the SDO (by claiming before the RTC that he was not served by the Chinese Embassy with a copy of the alleged

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[223] *Mutuality, reciprocity, and comity as bases or elements.* — International Law is founded largely upon mutuality, reciprocity, and the principle of comity of nations. Comity, in this connection, is neither a matter of absolute obligation on the one hand, nor of mere courtesy and good will on the other; it is the recognition which one nation allows within its territory to the acts of foreign governments and tribunals, having due regard both to the international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws. The fact of reciprocity does not necessarily influence the application of the doctrine of comity, although it may do so and has been given consideration in some instances. (*Sison v. Board of Accountancy*, 85 Phil. 276, 282 [1949], citing 30 Am. Jur., 178; *Hilton v. Guyot*, 159 U.S. 113, 228 (1895).

criminal cases he is facing in China. That, in itself, is reason enough for this Court to conclude that respondent **actually knew** that he is being arrested and detained for the reason that he was tagged as a foreign fugitive.

Accordingly, such actual knowledge equates to **understanding** the **nature** and **cause** of the charges levelled by the Bureau against him; that is why, he was able to timely file his opposition against the SDO. However, respondent made a fatal error in pursing the wrong remedy by prematurely resorting to the courts for relief by filing a petition for *habeas corpus*; instead of exhausting the administrative process of filing a motion for reconsideration which adequately gave him all the opportunity to defend his claim of continued stay in the Philippines. Given the established factual milieu of the case, the Court finds that formal charges were timely brought against respondent who, in turn, blundered in pursuing the appropriate remedies.

Last, the Bureau's officers who were responsible in issuing and implementing the SDO committed no fault under the circumstances such that it would expose them to legal liabilities and taint the SDO's validity.

It is disputably presumed that official duty has been regularly performed.[224] This presumption of regularity in the performance of official duties is an aid to the effective and unhampered administration of government functions — without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge.[225] However, the same stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.[226] Meaning, such presumption may be rebutted by affirmative evidence of irregularity or failure to perform a duty.[227] Such evidence must be clear and convincing in order to overturn such presumption.[228]

In this case, the Court cannot find any indication in the records that the Board or the Bureau's agents committed any irregularity in the issuance and implementation of the subject SDO. The RTC's Resolution and respondent's pleadings show that what is being assailed as irregular is the "practice" itself of issuing and implementing SDOs which goes into the heart of the Omnibus Rules. Since it was already clarified earlier that there is nothing constitutionally abhorrent in the practice of issuing SDOs as due

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[224] *Bustillo v. People*, 634 Phil. 547, 556 (2010).
[225] *Yap v. Lagtapon*, 803 Phil. 652, 653 (2017).
[226] *People v. Arposeple*, 821 Phil. 340, 369 (2017).
[227] *Iladan v. La Suerte International Manpower Agency, Inc.*, 776 Phil. 591, 600 (2016).
[228] See *Guanzon v. Arradaza*, 539 Phil. 367, 375 (2006).

process is still accorded to target aliens, it necessarily follows that issuing and implementing officers of the Bureau cannot be held either criminally, civilly, or administratively liable under the circumstances.

D. Amendment of the Omnibus Rules to Reflect Due Process Requirements

As to the nature of SDOs, the following sections of the Omnibus Rules read as follows:

> **Rule 9**
> **Summary Deportation**
>
> Section 10. *Nature of the Summary Deportation Order.* — A Summary Deportation Order shall be **final and immediately executory** upon signing/approval thereof.
>
> 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.**
>
> **Rule 10**
> **Deportation Order/Judgment**
>
> x x x x
>
> 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. (Emphases supplied)

As astutely pointed out by Associate Justice Rodil V. Zalameda (*Justice Zalameda*), it appears that a foreigner tagged as a fugitive would have no opportunity to be heard prior to *and* after arrest as an SDO is considered as final and *executory*. More so, the remedy of filing a motion for reconsideration against an SDO appears to be absent in Sec. 7, Rule 10 of the Omnibus Rules which states:

> 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.
>
> 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.

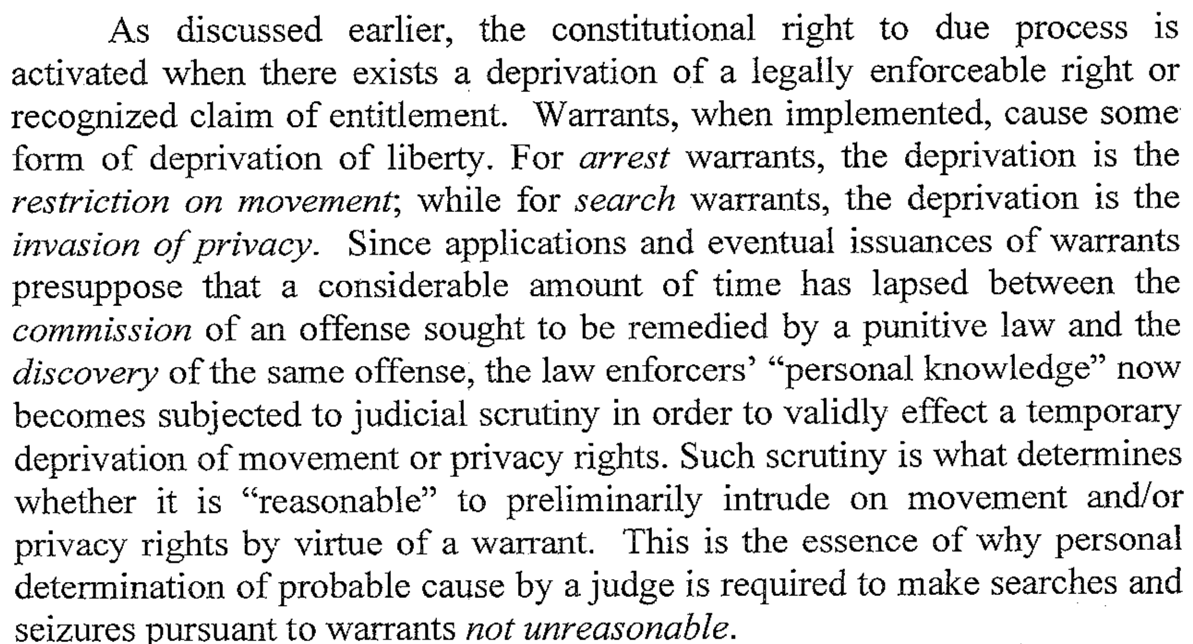
Also pointed out by Justice Zalameda, it seems that the foregoing provision on the filing of a motion for reconsideration does not cover SDOs. Although prospective deportees may file a motion for reconsideration in view of due process rights as interpreted here, the text of the Omnibus Rules makes it susceptible to being misapplied and used as a justification to withhold such remedy. Since Sec. 5(5), Art. VIII of the Constitution explicitly states that "[r]ules of procedure of special courts and *quasi-judicial bodies* shall remain effective unless disapproved by the Supreme Court," this Court *disapproves* Sec. 7, Rule 10 of the Omnibus Rules *only insofar as* it does *not explicitly make* the remedy of filing a *motion for reconsideration available* to prospective deportees arrested pursuant to SDOs. Under such circumstance, judicial review is justified and may be wielded to direct the Bureau of Immigration to *amend* its Omnibus Rules in order to clarify the availability of certain procedural remedies to give full effect on a prospective deportee's due process rights.

Conclusion

It is understandable that some may have strong reservations, such as those justifiably raised by Associate Justice Alfredo Benjamin S. Caguioa,

against "warrants" issued by administrative agencies instead of regular courts due to the possibility of abuse. Such fear of abuse is rooted on the likelihood that due process rights might be further exposed to governmental breaches. Executive abuses prior to the 1987 Constitution which resulted from the use of warrants, however, were performed pursuant to the *prosecutory functions* of the administrative agencies concerned. Understandably, one cannot expect total impartiality from an agency whose primary function, after all, is to prosecute or advocate in line with its legally-mandated purpose. In other words, their brand of exercising warrant under the 1973 Constitution was **active**, requiring no complaint to be initiated and proof of probable cause to be presented by an applicant. On the contrary, the type of "warrants" contemplated as valid in this case pertain to those issued pursuant to and as a complement of *adjudicative*—not prosecutorial—*functions*; thereby curbing the possibility of abuses since both *impartiality and consideration of evidence are inherently required in adjudication.* In essence, abuses are curbed because administrative agencies exercising quasi-judicial powers may only issue warrants at the instance of an applicant who is required to present proof of probable cause; meaning, the power being exercised here is **passive**.

Associate Justice Amy C. Lazaro-Javier aptly demonstrates (and as graciously recognized by Associate Justice Maria Filomena D. Singh) that there may be instances where there is a need to issue administrative warrants. Examples include abatement of dangerous buildings by a Building Official under the National Building Code or summary protective custody of abused children by the Department of Social Welfare and Development under Sec. 28 of Republic Act No. 7610.



As discussed earlier, the constitutional right to due process is activated when there exists a deprivation of a legally enforceable right or recognized claim of entitlement. Warrants, when implemented, cause some form of deprivation of liberty. For *arrest* warrants, the deprivation is the *restriction on movement*; while for *search* warrants, the deprivation is the *invasion of privacy*. Since applications and eventual issuances of warrants presuppose that a considerable amount of time has lapsed between the *commission* of an offense sought to be remedied by a punitive law and the *discovery* of the same offense, the law enforcers' "personal knowledge" now becomes subjected to judicial scrutiny in order to validly effect a temporary deprivation of movement or privacy rights. Such scrutiny is what determines whether it is "reasonable" to preliminarily intrude on movement and/or privacy rights by virtue of a warrant. This is the essence of why personal determination of probable cause by a judge is required to make searches and seizures pursuant to warrants *not unreasonable*.

The same personal determination of "probable cause" is no different, at least substantially, from that of valid warrantless arrests conducted by law enforcers as it is based on or "actual belief or reasonable grounds of suspicion."[229] The standards for evaluating the factual basis supporting a probable cause assessment are not less stringent in warrantless arrest situation than in a case where a warrant is sought from a judicial officer.[230] Splitting legal hairs as to the *official* in whose instance an arrest or search is effected merely creates a "distinction without a difference" as both will be considered "not unreasonable" if based on probable cause.

The presumption is against absurdity, and it is the duty of the courts to interpret the law in such a way as to avoid absurd results.[231] To say that only judges of regular courts may issue search and seizure warrants without regard to the nature of the proceedings (and the competencies of the tribunals handling them) in which they are issued would be to say that *all* searches and seizures *are* constitutionally *infirm even if* they *satisfy* the *reasonableness requirement.* Reasonable warrantless searches and seizure undertaken by law enforcers would be included in such sweeping statement if this Court would confine the authority of probable cause determinations only to judges of regular courts. Certainly, this makes the "reasonableness" – *not* the personality of the adjudicator – the determinant factor on whether an arrest, search or seizure undertaking pursuant to a warrant is constitutional.

In this regard, it has long been recognized that there are several exceptions developed by jurisprudence on prior issuance of arrest or search warrants itself on account of reasonableness. As earlier explained in the first guideline, one such indication of "reasonableness" is exigent public need or safety. Stripped of all the verbiage, the threshold to test the validity of governmental searches and seizures is "reasonableness." Such requirement of reasonableness is essentially a safeguard against arbitrary summary deprivations of rights or legitimate claims of entitlement.

Consequently, if the *issuance* of warrants *in itself* can be *disregarded* based on **reasonableness**, there is no compelling reason why such exception cannot also exist as regards the *issuing adjudicative authority*; especially when the objective is to ***rationalize*** **probable cause determinations** by allowing quasi-judicial bodies with the appropriate specialized competencies to determine such evidentiary quantum's existence. It is even more dangerous to consider "administrative inspections" – which have not been

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[229] See *People v. Doria*, 361 Phil. 595, 632 (1999).
[230] *Pestilos v. Generoso*, 746 Phil. 301, 322 (2014).
[231] *People v. Villanueva*, 111 Phil. 897, 899-900 (1961).

adjudged by this Court as constitutionally repugnant in previous cases[232] – as an exception to the requirement of search warrants than allow quasi-judicial bodies to determine the existence of probable cause before undertaking any intrusive administrative implementation measure. Allowing the practice of administrative inspections *sans* some prior determination of probable cause is even more susceptible to executive abuses. Therefore, if the existence of reasonableness is the underlying basis of a warrant's validity, it would be unduly shortsighted for the Court to make such basis entirely dependent on the issuing adjudicative authority instead on the reasonable or competent calibration and resultant determination of probable cause.

On a related note, administrative issuances directing agents or enforcers to conduct inspections function essentially like warrants. As the familiar saying goes: "[I]f it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck."[233] Whether coming from a judicial or administrative officer, an issuance amounts to some form of deprivation when it is adverse or detrimental to the rights or legitimate claims to entitlement of persons or entities. Not equating intrusive administrative issuances (*e.g.*, inspection orders) as warrants and treating them as valid warrantless intrusions will be more detrimental to libertarian rights. Stated differently, it would all the more be violative of the constitutional proscription against unreasonable searches and seizures if this Court should allow the existence of intrusive administrative arrest, seizure or inspection orders to be conducted *sans* probable cause. Such is the logic why this Court in *Acosta v. Ochoa*,[234] even recognized, while taking guidance from American jurisprudence, that an administrative agency's power to conduct warrantless inspections so long as they are: (1) "large interests at stake;" and (2) *not* unreasonable and arbitrary. It was even held at one point that administrative inspections, duly authorized and reasonably limited by statute and regulation, are examples of inspections sanctioned by the State in the exercise of its police power that, as aforementioned, may be considered as among the instances of valid warrantless searches.[235] In this case, however, the Court has harmonized all the guidelines and, instead of making slippery justifications to warrantless administrative intrusions, has now both classified all intrusive administrative actions as "warrants" and required all of them to follow the same procedure as judicial warrants which is to require the presence of probable cause. Doing so would be more in keeping with the Constitutional requirement of reasonableness, as well as of due process.

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[232] See *Pilapil, Jr. v. People*, supra note 177; *Acosta v. Ochoa*, G.R. No. 211559, October 15, 2019, 923 SCRA 451.

[233] Concurring and Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Ang Nars Party-List v. Executive Secretary*, G.R. No. 215746, October 8, 2019, 922 SCRA 186, 302.

[234] Supra at 565.

[235] *Pilapil, Jr. v. People*, supra note 177.

A reasonable interpretation which is more in keeping with the "spirit" of the Constitution is to confine the requirement of warrant issuances by *judges* to *criminal cases* where evidence "beyond reasonable doubt" is needed for conviction where only regular courts may calibrate. To assuage the public against concerns of executive abuse, it was clarified in the earlier discussions that any evidence obtained or seized by virtue of an administrative warrant that pertains to a criminal offense is automatically rendered inadmissible for being unreasonable. Thus, the nature of allowable administrative warrants as outlined by this Court does not in any way flout the reasonableness requirement of search and seizure warrants in Sec. 2, Art. 3 of the Constitution.

All told, the Court is not unaware of the dangers in allowing both the Executive and Judicial powers to fuse in a single authority for such a chimera presents a looming threat of oppression and of arbitrary law enforcement on our fundamental rights. Nonetheless, the growing complexities of modern life necessitate a hybrid approach to implementing the law and resolving disputes; hence, the creation of quasi-judicial bodies whose existence is recognized by the Constitution.[236] The existence of quasi-judicial bodies comes with it all attributes, as long as they have constitutional or statutory fiat, which enable these entities to perform their functions to the fullest. Such set of attributes may include the power to issue warrants and orders of like effect. However, to curtail administrative authorities and law enforcers from abusing their power to issue and implement such warrants, this Court declares that all the aforementioned guidelines should be strictly complied with; otherwise, such warrants will be rendered invalid and such responsible officers will be held liable. Finally, to strike a balance between civil liberties and the pursuit of legitimate or compelling state interests, each of the aforementioned guidelines pertaining to the issuance and implementation of administrative warrants **shall not be taken in isolation.**

WHEREFORE, in view of the foregoing reasons, the Court:

1. **NULLIFIES** the October 22, 2018 Resolution of the Regional Trial Court of Manila, Branch 16 in R-MNL-18-10197-SP for seriously erring in assuming jurisdiction over the *habeas corpus* case and in invalidating the July 26, 2018 Summary Deportation Order for supposedly denying respondent Yuan Wenle of due process;

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[236] Several portions of the Constitution mention and acknowledge the existence of quasi-judicial bodies; these are: (a) Sec. 11, Art. III; (b) Sec. 16, Art. III; (c) Sec. 14, Art. VI; (d) Sec. 5(5), Art. VIII; (e) Sec. 12, Art. VIII; and (f) Sec. 12, Art. XVIII.

2. **ORDERS** the Bureau of Immigration to **AMEND** its Omnibus Rules to reflect the principles laid out in this case especially in the issuance of its Summary Departure Orders; and

3. **DIRECTS** the *En Banc* Clerk of Court to **SERVE** a copy of this Decision to the Office of the Court Administrator for dissemination to all courts and the Department of Justice for dissemination to all administrative agencies of the Executive Branch.

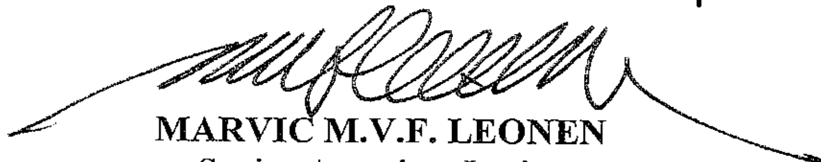
No pronouncement as to costs.

SO ORDERED.

ALEXANDER G. GESMUNDO
Chief Justice

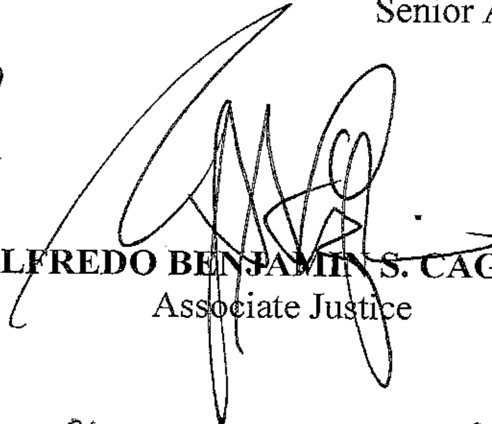
WE CONCUR:

See separate concurring opinion



MARVIC M.V.F. LEONEN
Senior Associate Justice

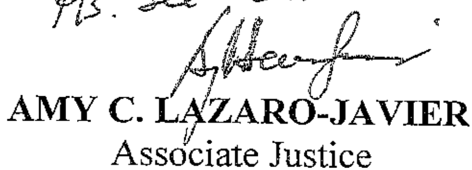
See Concurring & Dissenting



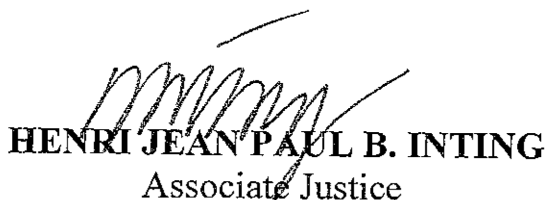
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

Pls. see concurrence

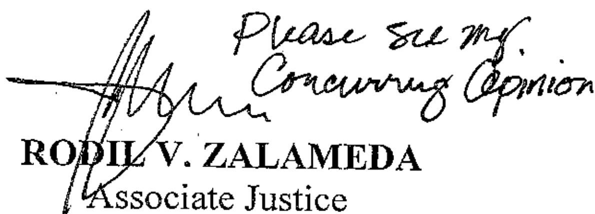


AMY C. LAZARO-JAVIER
Associate Justice

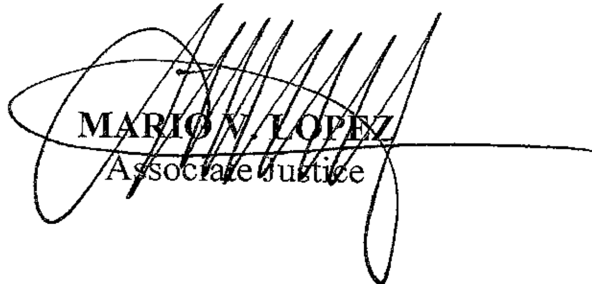


HENRI JEAN PAUL B. INTING
Associate Justice

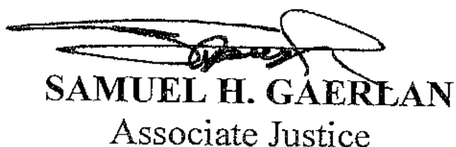
Please see my Concurring Opinion



RODIL V. ZALAMEDA
Associate Justice



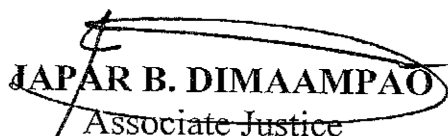
MARIO V. LOPEZ
Associate Justice



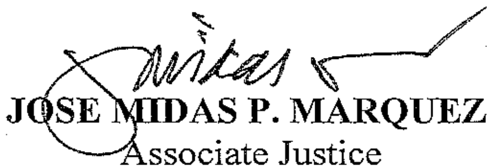
SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

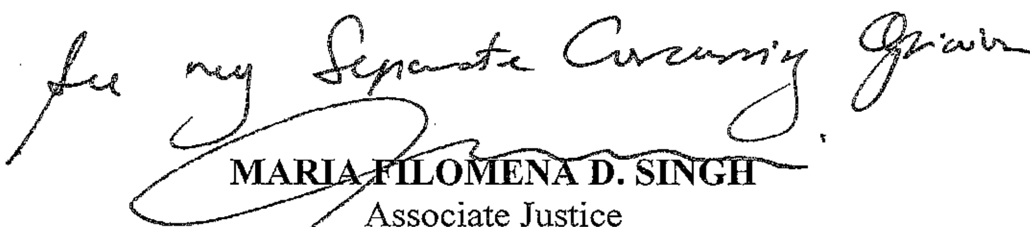


JAPAR B. DIMAAMPAO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice

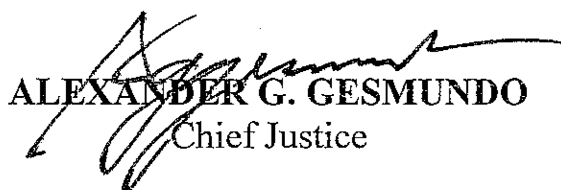
ANTONIO T. KHO, JR.
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ALEXANDER G. GESMUNDO
Chief Justice