

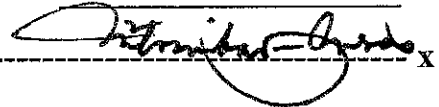
EN BANC

G.R. No. 242957 – The Board of Commissioners of the Bureau of Immigration and the Jail Warden, Bureau of Immigration Detention Center, Petitioners v. Yuan Wenle, Respondent.

Promulgated:

February 28, 2023

x



x

CONCURRENCE

LAZARO-JAVIER, J.:

The *ponencia* of the Chief Justice, most especially his proposed *Guidelines* is a **forward-thinking project** long overdue.

For the first time, the Court is able to integrate a sensible framework for assessing the constitutionality of administrative actions that deprive our peoples of their rights in the name of peace, order, and good government. It matches in terms of theoretical and practical impact and historical significance if not much more the oft-cited Court's ruling in *Ang Tibay v. Commissioner of Industrial Relations*<sup>1</sup> on the requisites of administrative due process.

More, the proposed *Guidelines* is not as a whole *dogmatic* and *inflexible*. Rather, the framework is **flexible**. It **considers** every fact or circumstance relevant to the administrative agency's specific mandates and objectives for the common good. **Yet** the *Guidelines* makes sure that the rights or interests of affected persons are calibrated in the otherwise opaque administrative processes. The framework is truly both inclusive and exhaustive to accommodate, and not discriminate against, myriads of governmental interests while simultaneously securing the individual and collective rights of our peoples. The resulting balancing of rights, positions and interests would understandably result in a case-by-case approach and the enhanced scrutiny of administrative actions, but this disadvantage, if it would be called that, is the only way we can rationally accommodate these competing matters.

<sup>1</sup> 69 Phil. 635 (1940) [Per J. Laurel].



Allow me to illustrate in actual terms how the proposed guidelines could possibly impact other administrative concerns outside the immigration matter before us.

Section 28 of Republic Act No. 7610 (1992)<sup>2</sup> and Section 22 of Republic Act No. 11188<sup>3</sup> authorize the protective custody of abused children by the Department of Social Welfare and Development. These provisions empower administrative agencies to issue the type of administrative warrant similar to what is contemplated here for the purpose of preventing parents or anyone standing in their place from exercising parenting time, decision-making responsibilities, and/or contact with their children.

The same administrative warrant may be issued by a Building Official in exercise of his or her authority to *abate dangerous buildings* under the *National Building Code* and its implementing rules.

In both cases, however, the aggrieved party may now challenge such administrative warrant not only on the basis of procedural due process as outlined in the relevant laws and implementing rules concerned but also using the *Guidelines* set forth in the *ponencia*. The framework ensures utmost protection of the rights of our people without sacrificing the legitimate goals of our regulatory mechanisms.

A survey of jurisprudence reveals that administrative warrants have continued to exist under the regime of the 1987 Constitution. Under Section 8, Chapter 3, Title I, Book III of Executive Order No. 292, the power to deport aliens is vested in the President of the Philippines, subject to the requirements of due process.<sup>4</sup> The power to deport shall be exercised in the following manner:

Section 69. Deportation of subject to foreign power. — A subject of a foreign power residing in the Philippines shall not be deported, expelled, or excluded from said Islands or repatriated to his own country by the 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.<sup>5</sup>

<sup>2</sup> Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

<sup>3</sup> Special Protection of Children in Situations of Armed Conflict Act.

<sup>4</sup> *Mison v. Gallegos*, 761 Phil. 658, 674 (2015) [Per J. Perez, *En Banc*] citing *Kiani v. BID*, 518 Phil. 501 (2006) [Per J. Callejo, Sr., First Division].

<sup>5</sup> Act No. 2711, March 10, 1917.

The Immigration Commissioner is also vested with authority to deport aliens under Section 37 of Commonwealth Act No. 613, known as the Philippine Immigration Act of 1940,<sup>6</sup> as amended,<sup>7</sup> which provides:

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

As such, the Court in *Gan, et al. v. Deportation Board*,<sup>8</sup> recognized that the deportation of an undesirable alien may be effected in two ways: by order of the President, after due investigation under Section 69 of Act No. 2711, and by the Commissioner of Immigration, upon recommendation by the Board of Commissioners under Section 37 of Commonwealth Act No. 613.

Indeed, as the *ponencia* points out, Section 37 of Commonwealth Act No. 613 continues to exist and its constitutionality has yet to be challenged directly.<sup>9</sup> In *In re Harvey, et al. v. Commissioner Defensor-Santiago*,<sup>10</sup> *Secretary of Justice v. Koruga*<sup>11</sup> and *Tze Sun Wong v. Kenny Wong*<sup>12</sup> the Court upheld the order of deportation issued by the Bureau of Immigration (BOI) Board of Commissioners against undesirable aliens pursuant to Section 37 of Commonwealth Act No. 613. In *Tze Sun Wong* the Court ordained:

[T]he Bureau is the agency that can best determine whether petitioner violated certain provisions of the Philippine Immigration Act of 1940, as amended. In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts.<sup>13</sup>

In *In re Harvey, Koruga* and *Tze Sun Wong*, cases resolved under the framework of the 1987 Constitution, **the Court upheld the arrest and deportation of undesirable aliens although the determinations were made without judicial intervention.** The Court has even categorically

<sup>6</sup> Commonwealth Act No. 613, August 26, 1940.

<sup>7</sup> *Mison v. Gallegos*, supra citing *Kiani v. BID*, supra.

<sup>8</sup> G.R. No. L-10280, September 30, 1963.

<sup>9</sup> Draft Decision, p. 16.

<sup>10</sup> G.R. No. [Per J. Melencio-Herrera, Second Division]

<sup>11</sup> 604 Phil. 405 (2009) [Per J. Austria-Martinez, Third Division].

<sup>12</sup> 749 Phil. 206 (2014) [Per J. Perlas-Bernabe, First Division].

<sup>13</sup> Id. at 221 citing *Dwikarna v. Hon. Domingo*, 477 Phil. 891 (2004) [Per J. Corona, *En Banc*].

declared that in deportation cases, resort to court is proper only after a decision is rendered by the BOI Board of Commissioners.<sup>14</sup>

The power to order arrests incidental to deportation without prior judicial *imprimatur* finds support in American jurisprudence, which the Court generally finds to be persuasive,<sup>15</sup> viz.:

[I]n the immigration context, federal law enforcement officers have a **long history of using administrative warrants and arrests for purposes of deportation**, dating back to 1798. **Administrative warrants differ significantly from warrants in criminal cases because they do not require a detached and neutral magistrate.** Instead, executive officers may issue an administrative warrant upon probable cause to believe a civil infraction has occurred. **That is precisely what happens when ICE agents issue administrative warrants charging that there is probable cause to believe that an individual is not legally within the United States.**<sup>16</sup> (Emphasis supplied)

The power to arrest and deport undesirable aliens is necessary for the sovereign's self-protection, thus:

It is thoroughly established that Congress has power to order the deportation of aliens whose presence in the country it deems hurtful. **Owing to the nature of the proceeding, the deportation of an alien who is found in this country in violation of law is not a deprivation of liberty without due process of law. This is so, although the inquiry devolves upon executive officers, and their findings of fact, after a fair though summary hearing, are made conclusive.**

The determination of the propriety of deportation is not a prosecution for, or a conviction of, crime; nor is the deportation a punishment, even though the facts underlying the decision may constitute a crime under local law. **The proceeding is in effect simply a refusal by the government to harbor persons whom it does not want.** The coincidence of local penal law with the policy of congress is purely accidental, and, though supported by the same facts, a criminal prosecution and a proceeding for deportation are separate and independent.<sup>17</sup> (Emphasis supplied)

Further:

The order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied

<sup>14</sup> *Dwikarna v. Hon. Domingo*, supra.

<sup>15</sup> See *People v. Ang*, G.R. No. 231854, October 6, 2020 [Per J. Carandang, *En Banc*]; *Dimal and Castillo v. People*, 830 Phil. 309 (2018) [Per J. Peralta, Second Division].

<sup>16</sup> *Lopez-Lopez v. County of Allegan*, 321 F.Supp.3d 794, July 13, 2018, citations omitted.

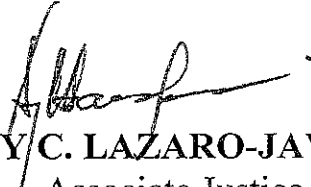
<sup>17</sup> 2 AM Jur., p. 517, cited in *Morano, et al. v. Vivo*, G.R. No. L-22196, June 30, 1967.

with the conditions upon the performance of which the government of the nation, acting within its constitutional authority, and through the proper departments, has determined that his continuing to reside here shall depend. **He has not, therefore, been deprived of life, liberty, or property without due process of law; and the provisions of the constitution, securing the right of trial by jury, and prohibiting unreasonable searches and seizures and cruel and unusual punishments, have no application.**

**The question whether, and upon what conditions, these aliens shall be permitted to remain within the United States being one to be determined by the political departments of the government,** the judicial department cannot properly express an opinion upon the wisdom, the policy, or the justice of the measures enacted by congress in the exercise of the powers confided to it by the constitution over this subject.<sup>18</sup> (Emphasis supplied)

Therefore, Section 2, Article III of the 1987 Constitution on unreasonable arrests, searches and seizures, finds no application in deportation cases simply because there is no deprivation of liberty (unreasonable arrest) or deprivation of property (unreasonable searches and seizures)<sup>19</sup> to speak of.

**ACCORDINGLY**, I concur with the *ponencia* of the Chief Justice who thereby has opened the long-awaited conversation on how courts can meaningfully and sensibly approach *via* judicial review any allegation of overreach against peoples' rights *vis-à-vis* the interests and values sought to be protected by our administrative agencies.

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

---

<sup>18</sup> *Fong Yue Ting v. United States*, 149 U.S. 698, May 15, 1983; Emphasis supplied.

<sup>19</sup> See *United States v. Lucas*, 499 F.3d 769, August 23, 2007.