EN BANC

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

Promulgated:

February 28, 2023

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SEPARATE CONCURRING OPINION

SINGH, *J.*:

In this case, the Regional Trial Court, Branch 16, Manila (**RTC**) in a Resolution,[1] dated October 22, 2018, granted the Petition[2] for *Habeas Corpus* filed by the respondent Yuan Wenle (**Wenle**), and declared as null and void the July 26, 2018 Summary Deportation Order[3] (**SDO**) issued by the petitioner Bureau of Immigration's (**BI**) Board of Commissioners (**Board**), reasoning that the said Order, in relation to Rule 9 of the Bureau's Omnibus Rules of Procedure[4] (**Omnibus Rules**) was issued without affording due process to Wenle.[5]

The SDO issued by the Board of the BI against the respondent Wenle was pursuant to a letter[6] from the Embassy of the People's Republic of China (**PRC**) in the Philippines (**Chinese Embassy**), seeking assistance from the BI for his arrest in relation to his alleged crimes in the PRC.[7] Wenle was subsequently arrested by immigration officers of the BI on August 22, 2018 prior to his departure for Hongkong.[8]

Consequently, Wenle filed a Petition for *Habeas Corpus*[9] under Rule

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1 *Rollo*, pp. 34-47.
2 *Id.* at 58-68.
3 *Id.* at 53-54.
4 Bureau of Immigration, Memorandum Circular No. SBM-2015-010 (2015), at <https://immigration.gov.ph/images/MemorandumCircular/2016_May/MC_SBM-2015-010.pdf>, as amended by Memorandum Circular No. JHM-2018-002 (2018), at <https://immigration.gov.ph/images/MemorandumCircular/2018_Mar/JHM-2018-002.jpg>.
5 *Rollo*, pp. 42-44.
6 *Id.* at 48.
7 *Id.*
8 *Id.* at 59.
9 *Id.* at 58-68.

102 of the Rules of Court, before the RTC, which granted it.[10]

The Office of the Solicitor General (**OSG**), on behalf of the Board, filed a Petition for Review on *Certiorari*[11] to assail the RTC Resolution,[12] dated October 22, 2018.

The *ponencia* nullified the assailed Resolution of the RTC,[13] through the lens of its proposed guidelines in determining the validity of an administrative warrant issued by a non-judicial agency:

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 subject 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.

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10 *Id.* at 46.
11 *Id.* at 11-33.
12 *Id.* at 34-47.
13 Chief Justice Alexander G. Gesmundo, *Ponencia*, at 59.

> 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 the responsible officers.[14]

The aforementioned guidelines, the *ponencia* adds, must all be strictly complied with, to sustain the validity of an administrative warrant.[15]

The *ponencia* found that the assailed RTC Resolution must be nullified, reasoning that Wenle's detention by the BI was lawful and justified, which meant that his recourse through *habeas corpus* proceedings should be denied.

However, principally, I strongly believe that now is not the time to determine the validity of non-judicial warrants in general because it is not an issue raised by either party. In the *ponencia*'s summary of the contentions of the parties, and the issues culled therefrom,[16] nowhere is the question of whether a warrant issued by an officer other than a judge is constitutionally impermissible even posed. The guidelines, therefore, in my view, amount to *obiter* and an advisory opinion on the matter, the BI's power to issue an arrest warrant pursuant to deportation proceedings not having been directly challenged in this case. Moreover, the power of other agencies to issue such orders or warrants that hew closely to the language of Article III, Section 2 is also not within the frame of issues raised by the parties. The facts do not pertain to any other agency except the BI. Finally, the Petition filed by the BI is a review of the Resolution of the RTC in a *habeas corpus* proceeding, the only question is the correctness of the said Resolution considering that Rule 102 of the Rules of Court allows the issuance of the remedy in all cases of illegal confinement or detention.[17]

That being said, I nevertheless see the wisdom in the proposed guidelines. Thus, while it is my position that the guidelines amount to an advisory opinion on an issue not squarely raised before this Court, I would like to offer my own thoughts regarding administrative warrants issued by non-judicial agencies merely for academic discourse.

Due process considerations in favor of foreigners

The Fundamental Law is categorical: "No 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." The Court has repeatedly stressed

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14 *Id.* at 18.
15 *Id.* at 17.
16 *Id.* at 5-7.
17 *See* RULES OF COURT, Rule 102, Sec. 1.

that the ambit of protection of the due process clause extends even to foreigners in the Philippines.[18]

This same protection is enshrined in the BI's own Omnibus Rules:

> Part II
> Procedure in Deportation
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> Rule 2
> Commencement of Deportation Proceedings
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> Section 2. *Nature and Conduct.* – Deportation proceedings are administrative in character. **Subject to the requirement of due process, the deportation proceedings shall be conducted for the purpose of ascertaining the truth without necessarily adhering to technical rules of judicial proceedings.**[19] (emphasis supplied)

Corollarily, even the President's statutorily granted power to deport foreigners is subject to the due process clause.[20]

This paradigm of affording due process to foreigners in the Philippines governs even considering the settled rule that the entry or stay of foreigners in the Philippines is merely a privilege and a matter of grace and consequently may be revoked.[21] In *Secretary of Justice, et al. v. Koruga*,[22] the Court emphasized that such foreigners "may be expelled or deported from the Philippines only on grounds and in the manner provided for by the Constitution, the Philippine Immigration Act of 1940, as amended, and administrative issuances pursuant thereto."[23]

Qua Chee Gan, et al. v. Deportation Board[24] (***Qua Chee Gan***), a case that predates both the 1973 and 1987 Constitutions, was categorical that the right of the people to be secure in their persons against unreasonable searches and seizures is a right extended to all, citizens or foreigners.[25] The Court took particular note that the said right, as expressed in Section 1, Article III of the 1935 Constitution, was vastly different from the Jones Law of 1916,[26] where

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18 *Commissioner Domingo v. Scheer*, 466 Phil. 235 (2004).
19 Omnibus Rules, note 4, rule 2, Sec. 2.
20 Adm. Code, Book III, Title I, Chapter 3, Sec. 8.
21 *Sec. of Justice et al. v. Koruga*, 604 Phil. 405, at 415 (2009).
22 *Id.*
23 *Id.* (underscoring supplied)
24 118 Phil. 868 (1963).
25 *Id.*
26 United States Pub. L. 64-240, 39 Stat. 545, at <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/39/STATUTE-39-Pg545.pdf>. (Last accessed August 28, 2022.)

such guarantee was expressly reserved as a right of an accused.[27] Conformably, the Supreme Court further noted that the 1935 Constitution does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings:

> As observed by the late Justice Laurel in his concurring opinion in the case of *Rodriguez, et al. v. Villamiel, et al.*, this provision is not the same as that contained in the Jones Law wherein this guarantee is placed among the rights of the accused. Under our Constitution, the same is declared a popular right of the people and, of course, indisputably it equally applies to both citizens and foreigners in this country. **Furthermore, a notable innovation in this guarantee is found in our Constitution in that it specifically provides that the probable cause upon which a warrant of arrest may be issued, must be determined by the judge after examination under oath, etc., of the complainant and the witnesses he may produce.** This requirement — "to be determined by the judge" — is not found in the Fourth Amendment of the U.S. Constitution, in the Philippine Bill or in the Jones Act, all of which do not specify who will determine the existence of a probable cause. Hence, under their provisions, any public officer may be authorized by the Legislature to make such determination, and thereafter issue the warrant of arrest. **Under the express terms of our Constitution, it is, therefore, even doubtful whether the arrest of an individual may be ordered by any authority other than the judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation. The Constitution does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings. And, if one suspected of having committed a crime is entitled to a determination of the probable cause against him, by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee?** Of course, it is different if the order of arrest is issued to carry out a final finding of a violation, either by an executive or legislative officer or agency duly authorized for the purpose, as then the warrant is not that mentioned in the Constitution which is issuable only on probable cause. Such, for example, would be a warrant of arrest to carry out a final order of deportation, or to effect compliance of an order of contempt.[28] (emphasis and underscoring supplied)

The doubt expressed by the Court in *Qua Chee Gan* was settled in *Salazar v. Hon. Achacoso*[29] (**Salazar**), where it ruled that such a power to arrest and deport a foreigner is exceptional in character owing to the constitutional power of the President as the architect of the State's foreign policy:

> The Solicitor General's reliance on the case of *Morano v. Vivo* is not well-taken. *Vivo* involved a deportation case, governed by Section 69 of the defunct Revised Administrative Code and by Section 37 of the

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27 *Supra* note 25, at 874.
28 *Id.*
29 262 Phil. 160 (1990).

Immigration Law. **We have ruled that in deportation cases, an arrest (of an undesirable alien) ordered by the President or his duly authorized representatives, in order to carry out a final decision of deportation is valid. It is valid, however, because of the recognized supremacy of the Executive in matters involving foreign affairs.** We have held:

....

> The State has the inherent power to deport undesirable aliens. **That power may be exercised by the Chief Executive "when he deems such action necessary for the peace and domestic tranquility of the nation."** Justice Johnson's opinion is that when the Chief Executive finds that there are aliens whose continued presence in the country is injurious to the public interest, "he may, even in the absence of express law, deport them."
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> **The right of a country to expel or deport aliens because their continued presence is detrimental to public welfare is absolute and unqualified.**

The power of the President to order the arrest of aliens for deportation is, obviously, exceptional. It (the power to order arrests) can not be made to extend to other cases, like the one at bar. Under the Constitution, it is the sole domain of the courts.[30] (citations omitted; emphasis supplied)

The Court, in *Salazar*, further clarified that:

> For the guidance of the bench and the bar, we reaffirm the following principles:
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> 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;
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> 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.[31] (underscoring supplied)

It should be noted, however, that the issue in *Salazar* was with respect to the power of the Philippine Overseas Employment Administration (**POEA**) (or the Secretary of Labor and Employment) to validly issue warrants of search and seizure (or arrest) under Article 38 of the Labor Code of the Philippines.[32] Thus, in answering the said issue, the Court carved out as an exception to the constitutional requirement that warrants be determined solely

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30 *Id.* at 168.
31 *Id.* at 171.
32 *Id.* at 160.

by a judge, the power of the President or the BI to arrest foreigners to effect an order of deportation. This much is evident from *Salazar's* use of *Qua Chee Gan*:

> **The contention of the Solicitor General that the arrest of a foreigner is necessary to carry into effect the power of deportation is valid only when, as already stated, there is already an order of deportation**. To carry out the order of deportation, the President obviously has the power to order the arrest of the deportee. But, certainly, during the investigation, it is not indispensable that the alien be arrested. It is enough, as was true before the executive order of President Quirino, that a bond be required to insure the appearance of the alien during the investigation, as was authorized in the executive order of President Roxas. Be that as it may, it is not imperative for us to rule, in this proceeding — and nothing herein said is intended to so decide — on whether or not the President himself can order the arrest of a foreigner for purposes of investigation only, and before a definitive order of deportation has been issued. We are merely called upon to resolve herein whether, conceding without deciding that the President can personally order the arrest of the alien complained of, such power can be delegated by him to the Deportation Board.[33] (citations omitted; emphasis supplied)

Attention should be given to the fact that the Court in *Qua Chee Gan* sustained the validity of the arrest of a foreigner if and only if a deportation order has been issued. Moreover, it is well-settled that the writ of *habeas corpus* should not be granted if the person is detained under process issued by a court,[34] which includes quasi-judicial bodies such as the BI.[35] Applied in this case, it is clear that Wenle is the subject of the SDO issued by the BI after he was charged on July 17, 2018.[36]

The burgeoning question now is whether Wenle was afforded due process before the SDO was issued? In his petition for the writ of *habeas corpus* before the RTC, Wenle alleged that the BI issued the SDO without notice and hearing, contrary to Section 37(c) of Commonwealth Act No. 613, or the Philippine Immigration Act of 1940, as amended.[37]

The *ponencia* noted the position of Associate Justice Rodil V. Zalameda that "a foreigner tagged as a fugitive would have no opportunity to be heard prior to and after arrest as an SDO is considered final and executory."[38] Moreover, the Omnibus Rules failed to clarify whether a motion for reconsideration is applicable to the SDO.[39] This is notwithstanding

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33 *Qua Chee Gan et al. v. Deportation Board, supra* note 24, at 875.
34 RULES OF COURT, Rule 102, Sec. 4.
35 *Commissioner Rodriguez v. Judge Bonifacio*, 398 Phil. 441 (2000).
36 *Rollo*, p. 51.
37 *Id.* at 62-63.
38 *Ponencia*, p. 54.
39 *Id.*

the position of the BI, represented by the OSG, in its Petition for Review on *Certiorari*, that respondent may file a motion for reconsideration under Rule 10, Section 7 of the Omnibus Rules.[40] In fact, Wenle contends that such a remedy was not expressly stated to apply to SDO's. Thus, it directed the BI to amend the Omnibus Rules "to clarify the availability of certain procedural remedies to give full effect on a prospective deportee's due process rights."[41]

At first blush, it appears that Wenle was indeed deprived of an opportunity to dispute the Charge Sheet[42] and the Mission Order,[43] the Omnibus Rules prohibiting the filing of a motion to dismiss, except on the ground of lack of jurisdiction.[44] With the noted ambiguity of the Omnibus Rules with respect to the filing of a motion for reconsideration, Wenle thus filed his petition for the issuance of the writ of *habeas corpus* before the RTC.

The undersigned finds that Wenle was most certainly afforded due process before the RTC when he filed his petition for the writ of *habeas corpus*. Precisely, the question that the RTC should have resolved was whether Wenle was illegally detained.

Evidence that Wenle's arrest and deportation is justified is amply supported by the record. His identity as "Yuan Wenle" with revoked Passport No. E75457683,[45] as pinpointed by the Chinese Embassy,[46] was confirmed by the BI.[47] Having been declared an as "undocumented foreigner" whose presence in the country according to the BI "poses a risk to public interest,"[48] Wenle's arrest and detention is justified. In his Petition, Wenle failed to rebut the findings of the BI: (1) that he was involved in crimes and was wanted by authorities in the PRC; and (2) that his passport had already been cancelled.

Indeed, as correctly argued by the OSG,[49] the Court in *Tung Chin Hui v. Rodriguez*[50] ruled that:

> We likewise reject petitioner's reliance on the ruling of the trial court that "[w]hile it may be true that there is a Summary Deportation Order against the petitioner allegedly for being [an] undocumented alien, having used a passport which had already been cancelled, there is no showing that he was informed about it."

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40 *Rollo*, pp. 23-24.
41 *Ponencia*, p. 55.
42 *Rollo*, p. 51.
43 *Id.* at 50.
44 Omnibus Rules, *supra* note 4, Rule 1, Sec. 6.
45 *Rollo*, p. 87.
46 *Id.* at 48.
47 *Id.* at 24.
48 *Id.* at 53.
49 *Id.* at 24-25.
50 408 Phil. 102 (2001).

> Other than petitioner's bare allegations, however, we find no sufficient basis to overturn the presumption that the Bureau of Immigration conducted its proceedings in accordance with law.
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> **In any event, when petitioner filed the Petition for *Habeas Corpus* before the RTC, he was afforded ample opportunity to air his side and to assail the legal and factual bases of the Board of Commissioners' Summary Deportation Order.** Moreover, he could have raised the same points in the proceedings before the CA and even before this Court. Indeed, an alien has the burden of proof to show that he entered the Philippines lawfully. Petitioner has not discharged this burden. He has not controverted – either before the RTC, the CA or this Court – the Board of Commissioners' ruling that he was in fact Chen Kuan-Yuan, who was "sentenced to 8 years and 2 months imprisonment for drug trafficking and violation of controlling guns, ammunition and knives law" and was holding a passport cancelled by the Republic of China in 1995.
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> **Just as unmeritorious is petitioner's contention that "at the time of his detention, there was no deportation charge filed against him." Assuming *arguendo* that his arrest was illegal, supervening events bar his subsequent release. In this case, when the Petition for *Habeas Corpus* was filed, petitioner had already been charged and ordered deported by the Board of Commissioners.**
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> In sum, we hold that petitioner's confinement was not illegal; hence, there is no justification for the issuance of a writ of *habeas corpus*. Moreover, he has not shown any cogent reason to warrant the nullification of the Board of Commissioners' Summary Deportation Order. (Citations omitted; emphasis supplied)

Thus, "[i]f it appears that the prisoner is in custody under a warrant of commitment in pursuance of law, the return shall be considered *prima facie* evidence of the cause of restraint."[51] The RTC Resolution, therefore, was issued without basis and must be reversed, as held by the *ponente*.

Jurisdiction over the issues and the proposed guidelines

Even though I concur in the ruling, I have serious reservations regarding the promulgation of the proposed guidelines. As previously stated, neither of the parties raised the issue of a non-judicial officer or agency, such as the BI, issuing an arrest warrant.

As found in the *ponencia*, the arguments are as follows:

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51 RULES OF COURT, Rule 102, Sec. 13.

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.

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.

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."

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."

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.

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.

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.

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

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."

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

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."

4. Due process was definitely violated because the provisions pertaining to the filing of motions for reconsideration do not apply to SDOs.[52] (citations omitted)

The *ponencia* sythensizes the aforementioned by stating that the substantive issue in the case is whether the SDO issued by the BI against Wenle is void for violating due process.[53]

It is elementary that a court acquires jurisdiction over the issues only after a joinder thereof.[54] Generally, jurisdiction over the issues pertains to a tribunal's power and authority to decide over matters which are either disputed by the parties or simply under consideration.[55] This principle of jurisdiction over the issues traces its origin in the concept that judicial power pertains to the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable.[56] Hence, the Court "has no authority to pass upon issues of constitutionality through advisory opinions and it has no authority to resolve hypothetical or feigned constitutional problems or friendly suits collusively arranged between parties without real adverse interests."[57] Indeed, the Court's decision "should not be any broader than is required by the precise facts" and "[a]nything remotely resembling an advisory opinion or a gratuitous judicial utterance respecting the meaning of the Constitution must altogether be avoided."[58]

Wenle's case calls for a review of the legal correctness of the RTC Resolution granting his prayer for a writ of *habeas corpus*. As the *ponente* already found, Wenle's detention was lawful and justified, supported by the law, jurisprudence and the evidence. Consequently, the RTC's issuance of the writ is erroneous.

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52 *Ponencia*, pp. 6-7.
53 *Id.* at 7.
54 See *Bernabe et al. v. Vergara*, 73 Phil. 676 (1942); *Reyes v. Diaz*, 73 Phil. 484 (1941).
55 *Denila v. Republic et al.*, G.R. No. 206077, July 15, 2020.
56 CONST., Art. VIII, Sec. 1. See also *Express Telecommunications Co., Inc. v. AZ Communications, Inc.*, G.R. No. 196902, July 13, 2020.
57 *Province of North Cotabato et al. v. The Government of the Republic of the Philippines*, 589 Phil. 387 (2008), *J.* Brion (*concurring and dissenting op.*), citing JOAQUIN BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY (2003 ed.), p. 938.
58 *Id.*, citing Van Alstyne, W., *Judicial Activism and Judicial Restraint*, at <http://novelguide.com/a/discover/eamc_03/ eamc_03_01379.html>.

While the dilemma of whether a non-judicial officer or agency may issue a warrant to either arrest a person or search a place and seize an object will for now continually hang, it is a dilemma whose categorical and final adjudication is not called for by the facts as presented. I must, therefore, respectfully disagree that it is "necessary to pass upon [the] question on whether the power to issue warrants may also extend to adjudicative authorities other than regular courts."[59]

Wenle, in particular, did not dispute that the BI may arrest a foreigner under the relevant laws, but only that the SDO was issued in violation of his recognized right to due process. Wenle did not assail the constitutionality of the SDO, in particular, and administrative warrants, in general, under the lens of Section 2, Article III, before the RTC. What concerned him is the SDO's constitutionality as it pertained to his right to due process under Section 1, Article III. Neither did the RTC declare that the SDO was violative of the constitutional requirement that a warrant of arrest be issued only by a judge on the basis of probable cause.

As such, this Court has no jurisdiction to determine the validity of a warrant because it was issued by an officer other than a judge. The guidelines clearly attempt to address such problem by providing that "[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."[60]

By exercising our constitutionally ordained rule-making power in directing the BI to amend its Omnibus Rules, the Court has already directly addressed the issue raised by Wenle in the earnest hope that a perceived violation of the right to due process in deportation proceedings will no longer add to our considerable dockets.

In any case, *Salazar* is guidance that, at present, the only exception recognized by the Court is with respect to deportation proceedings, in consonance with its exceptional character involving immigrants and foreigners whose presence in the country may injure societal interests.

Lest I be misunderstood, I, with utmost sincerity, believe that the guidelines are necessary to "prevent an administrative agency or officer from legally performing oppressive acts."[61] But the Court is not at liberty to make pronouncements that rest on issues not presented before it. The doctrine of separation of powers also limits the Court's constitutional power to act and

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59 *Ponencia*, p. 11.
60 *Id.* at 18.
61 *Id.* at 17.

adjudicate, and it must yield to Congress the wisdom in determining whether an administrative agency, particularly one endowed with quasi-judicial powers, should also possess the power to issue a warrant of arrest and/or search and seizure.

Judicial power "does not extend to hypothetical questions since any attempt at abstraction could only lead to dialectics and barren legal question and to sterile conclusions unrelated to actualities."[62] There must be an assertion of opposite legal claims susceptible of judicial resolution.[63]

Administrative warrants and the regulatory framework

Even with such a position, I would like to humbly share my thoughts regarding the power of administrative agencies to issue warrants of arrest and searches and seizures. To that extent, I join the *ponencia* in the reasonable construction of Article III, Section 2 of the 1987 Constitution as being limited only to criminal cases,[64] that is, actions the goal of which is to determine the guilt or innocence of an accused, and which construction permissibly sustains the power of an administrative agency to issue an administrative warrant to "address some specialized, exigent or important public need."[65]

However, I am mindful that we ought to distinguish between administrative orders that restrain liberty and those that authorize the search and seizure of property. Specifically, the issuance of orders that restrain liberty, which are akin to warrants of arrest, are more clearly within the domain of the judiciary and should be subject to judicial warrants, except for cases where warrantless arrests are recognized. Indeed, the detention of persons is a more serious, if not the most serious, and intrusive means of enforcing the law. As to the power of the Executive to arrest persons for purposes of deportation, prevailing jurisprudence already carves out such arrest warrants from the general rule that warrants of arrest can only be issued by judges. In any other case, if an administrative agency finds that there is a necessity to detain a person or restrain his or her liberty, the rule should still be that a judicial warrant should be obtained, unless a warrantless arrest is allowed. In my humble view, there is no necessity to alter these prevailing rules now.

As to the power of administrative agencies to issue orders for the search and seizure of property, these can be characterized as inspection and

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62 *Zabal v. Duterte*, G.R. No. 238467, February 12, 2019.
63 *Congressman Garcia v. Executive Secretary*, 602 Phil. 64 (2009).
64 *Ponencia*, p. 17.
65 *Id.*

confiscation orders expressly allowed under specific laws and confirmed in a number of cases decided by this Court. For these types of orders, the guidelines in the *ponencia* should apply strictly.

The guidelines on validity of administrative warrants can be succinctly divided into three elements: (1) the origin of the power; (2) the grounds for issuance and the standards for determination; and (3) the manner of execution. To be sustained, an administrative warrant must be within the jurisdiction of the administrative agency, which as the guidelines suggest must be pursuant to "well-defined regulatory purposes."[66] Thus, a law must be enacted granting such power to the non-judicial agency, particularly, as the *ponencia* expressly required, the power to "pass upon and make final pronouncements on conflicting rights and obligations of contending parties."[67]

We must remember that administrative agencies may be broadly classified into two:

> The powers of an administrative body are classified into two fundamental powers: quasi-legislative and quasi-judicial. Quasi-legislative power, otherwise known as the power of subordinate legislation, has been defined as the authority delegated by the lawmaking body to the administrative body to adopt rules and regulations intended to carry out the provisions of law and implement legislative policy. "[A] legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof." The exercise by the administrative body of its quasi-legislative power through the promulgation of regulations of general application does not, as a rule, require notice and hearing. The only exception being where the Legislature itself requires it and mandates that the regulation shall be based on certain facts as determined at an appropriate investigation.
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> **Quasi-judicial power, on the other hand, is known as the power of the administrative agency to determine questions of fact to which the legislative policy is to apply, in accordance with the standards laid down by the law itself. As it involves the exercise of discretion in determining the rights and liabilities of the parties, the proper exercise of quasi-judicial power requires the concurrence of two elements: one, jurisdiction which must be acquired by the administrative body and two, the observance of the requirements of due process, that is, the right to notice and hearing.**[68] (citations omitted; emphasis supplied)

It is in respect of this quasi-judicial power, or the power to determine the rights and liabilities of parties, from where the authority to issue

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66 *Id.*, particularly paragraph (3).
67 *Id.*, particularly paragraph (4).
68 *Alliance for the Family Foundation Philippines, Inc. et al. v Hon. Garin*, 793 Phil. 831 (2017).

administrative warrants must spring forth. Absent this element, an administrative warrant is constitutionally proscribed.

Such determination of rights and liabilities is typically the province of the judiciary, evident from our Rules of Court in its definition of civil actions, criminal actions, and special proceedings,[69] and the Fundamental Law's definition of judicial power.[70] However, the Court has conceded that "[t]he 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."[71] The Court has thus clarified that a "quasi-judicial function" is a term which applies to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.[72] Stated differently, the administrative body exercises its quasi-judicial power when it performs in a judicial manner an act that is essentially of an executive or administrative 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.[73]

One example is Republic Act No. 10863, or the Customs Modernization and Tariff Act (**CMTA**). Principally, the power of the Commissioner of the Bureau of Customs (**BOC**) revolves around the protection and enhancement of government revenue, the institution of fair and transparent customs and tariff management that will efficiently facilitate international trade, prevention and curtailment of any form of customs fraud and illegal acts, and modernization of customs and tariff administration.[74] In enhancing government revenue in import and export transactions, the BOC, in turn, is empowered to assess and collect customs revenues from imported goods and other dues, fees, charges, fines and penalties accruing under the

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69 RULES OF COURT, Rule 1, Sec. 3 provides:

Sec. 3. *Cases governed.* — These Rules shall govern the procedure to be observed in actions, civil or criminal and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.

(b) A criminal action is one by which the State prosecutes a person for an act or omission punishable by law.

(c) A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact

70 CONST., art. VIII, Sec. 1.

71 *Monetary Board v. Philippine Veterans Bank*, 751 Phil. 176 (2015).

72 *Id.* (underscoring supplied.)

73 *Chairman and Executive Director, Palawan Council for Sustainable Development v. Lim*, 793 Phil. 690 (2016).

74 Republic Act No. 10863 (2016), Sec. 101.

CMTA.[75] To assess and collect customs revenues, the BOC was granted power to effect search, seizure and arrest, with Congress authorizing certain persons to exercise police authority:

> (a) Officials of the Bureau, District Collectors, Deputy District Collectors, police officers, agents, inspectors and guards of the Bureau;
>
> (b) Upon authorization of the Commissioner, officers and members of the Armed Forces of the Philippines (AFP) and national law enforcement agencies; and
>
> (c) Officials of the BIR on all cases falling within the regular performance of their duties, when payment of internal revenue taxes is involved.
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> All officers authorized by the Commissioner to exercise police authority shall at all times coordinate with the Commissioner.[76]

The authorized officers are required to coordinate with the Commissioner of the BOC. The CMTA likewise provides that "mission orders shall clearly indicate the specific name carrying out the mission and the tasks to be carried out."[77] The CMTA further specifies that such exercise of police authority shall only be within customs premises as defined and identified in Section 303 thereof,[78] and only when the vessel, aircraft, cargo, goods, animal or any other movable property when the same is subject to forfeiture[79] or when they are subject of a fine[80] imposed under the said law.[81]

Searches and seizures under the CMTA are further detailed under Sections 219, 221, 222, and 223.[82] The BOC Commissioner is also

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75 *Id.* Sec. 202.
76 *Id.* Sec. 214.
77 *Id.*
78 *Id.* Sec. 215.
79 *Id.* Secs. 1113, 1116, 1117. But see *contra* Sec. 1114.
80 See *e.g.* Sec. 1401 on unlawful importation or exportation.
81 *Id.* Sec. 216.
82 *Id.* Sec. 219. *Authority to Enter Properties.* – Any person exercising police authority may, at any time, enter, pass through, and search any land, enclosure, warehouse, store, building or structure not principally used as a dwelling house.
When a security personnel or any other employee lives in the warehouse, store, or any building, structure or enclosure that is used for storage of goods, it shall not be considered as a dwelling house for purposes of this Act.
Id. Sec. 221. *Authority to Search Vessels or Aircrafts and Persons or Goods Conveyed Therein.* – Any person exercising police authority under this Act may board, inspect, search and examine a vessel or aircraft and any container, trunk, package, box or envelope found on board, and physically search and examine any person thereon. In case of any probable violation of this Act, the person exercising police authority may seize the goods, vessel, aircraft, or any part thereof.
Such power to search includes removal of any false bottom, partition, bulkhead, or any other obstruction for the purpose of uncovering any concealed dutiable or forfeitable goods.
The proceeding herein authorized shall not give rise to any claim for damage caused to the goods, vessel or aircraft, unless there is gross negligence or abuse of authority in the exercise thereof.
Id. Sec. 222. *Authority to Search Vehicles, Other Carriers, Persons and Animals.* – Upon reasonable

empowered to "demand evidence of payment of duties and taxes on imported goods openly for sale or kept in storage," which in case of failure, the BOC Commissioner is authorized to seize the goods and subject them to forfeiture proceedings.[83] The District Collector is similarly authorized to "cause the arrest and bring back [a] vessel or aircraft to the most convenient port with the assistance of other concerned agencies," if it departs or attempts to depart before entry shall have been made, not being thereunto compelled by stress of weather, duress of enemies, or other necessity.[84]

It is well settled that the BOC has exclusive jurisdiction over seizure and forfeiture proceedings, to hear and determine all questions touching on the seizure and forfeiture of dutiable goods.[85] Thus, the Court has held that trial courts "are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the BOC and to enjoin or otherwise interfere with these proceedings."[86]

Under the Civil Code of the Philippines (**Civil Code**), abatement (that is, corrective action without prior judicial permission)[87] of a nuisance *per se*, whether public or private, may be done extrajudicially.[88] But to pursue such extrajudicial abatement, the Civil Code commands that the district health officer "determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance."[89] Further, the Civil Code also provides that:

> Art. 704. Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:
>
> (1) That demand be first made upon the owner or possessor of the property to abate the nuisance;
>
> (2) That such demand has been rejected;

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cause, any person exercising police authority may open and examine any box, trunk, envelope, or other container for purposes of determining the presence of dutiable or prohibited goods. This authority includes the search of receptacles used for the transport of human remains and dead animals. Such authority likewise includes the power to stop, search, and examine any vehicle or carrier, person or animal suspected of holding or conveying dutiable or prohibited goods.
Id. Sec. 223. *Authority to Search Persons Arriving From Foreign Countries.* – Upon reasonable cause, travelers arriving from foreign countries may be subjected to search and detention by the customs officers. The dignity of the person under search and detention shall be respected at all times. Female inspectors may be employed for the examination and search of persons of their own sex.

83 *Id.* Sec. 224.
84 *Id.* Sec. 1209.
85 *Agriex Co., Ltd. v. Hon. Villanueva*, 742 Phil. 574 (2014).
86 *Id.*
87 *Rana v. Lee Won*, 737 Phil 364 (2014).
88 CIVIL CODE, Art. 699.
89 CIVIL CODE, Art. 702.

> (3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and
>
> (4) That the value of the destruction does not exceed three thousand pesos.
>
> Art. 706. Any person injured by a private nuisance may abate it by removing, or if necessary, by destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. However, it is indispensable that the procedure for extrajudicial abatement of a public nuisance by a private person be followed.

Thus, the district health officer is given the quasi-judicial power to determine whether abatement should proceed.

The Revised Fire Code of the Philippines of 2008 also authorizes the immediate abatement of fire hazards, in the form of notices or orders to comply against the owner, administrator, occupant or other person responsible for the condition of the building or structure by the Bureau of Fire Protection (**BFP**) and its Chief.[90] Further, any building or structure assessed and declared by the chief, the BFP or his/her duly authorized representative as a firetrap on account of the gravity or palpability of the violation or is causing clear and present imminent fire danger to adjoining establishments and habitations shall be declared a public nuisance, through a notice to be issued to the owner, administrator, occupant or other person responsible for the condition of the building, structure and their premises or facilities.[91] If such persons fail to comply within the prescribed periods, the Chief, the BFP or his/her duly authorized representative may cause the structures summary abatement, defined as all corrective measures undertaken to abate hazards which shall include, but not limited to remodeling, repairing, strengthening, reconstructing, removal and demolition, either partial or total, of the building or structure.[92]

Dangerous buildings, as defined under the National Building Code of the Philippines, may also be abated by the Building Official, who shall order their repair, vacation, or demolition, if possible.[93]

In all these instances, it cannot be denied that there is a seizure of property, which is enforced and determined by an administrative officer through proceedings that partake of a judicial character, hence, quasi-judicial. This quasi-judicial character is what, at the very outset, lends basis to an administrative warrant.

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90 Republic Act No. 9514 (2001), Sec. 9.
91 *Id.*
92 *Id.*
93 Presidential Decree No, 1096 (1977), Sec. 215, in relation to Sec. 214.

Disallowing these warrants simply because they are not issued by a judge would be, in my humble view, problematic, leaving government without seasonable and sufficient remedies in these spheres of governance.

Another point that must be considered in determining the validity of an administrative warrant is the ground under which it may issue. The guidelines already deal with the same by requiring that "[t]he danger, harm, or evil sought to be prevented by the warrant must be imminent and must be greater than the damage or injury to be sustained by the [person] who shall be temporarily deprived of a right to liberty or property."[94] The guidelines likewise emphasize that the resulting deprivation should be temporary or provisional, in line with the objective of suppressing imminent danger, harm, or evil.[95] With this in mind, Congress must specify that such danger, harm or evil are present in the cases where it grants quasi-judicial power, and subsequently endows the agency with the power to issue administrative warrants.

The harm, danger or evil referred to are not too difficult to discern. In the case of forfeiture proceedings, taxation of dutiable goods, under the lifeblood theory, is too obvious to require microscopic evaluation. For dangerous buildings and fire hazards, the danger to the public is all too real to ignore. The summary abatement and the seizure of these properties is undoubtedly for public safety.

When the objective has been clearly spelled out in the applicable law, the criteria for the determination of the grounds for the issuance of the administrative warrant should, in the same vein, be particularized. The requirements of the Constitution under Section 2, Article III of a probable cause finding, as also suggested by the guidelines,[96] should be extended. Before its issuance, 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 x x x things to be seized."[97]

In so far as execution, the *ponencia* is also correct in invalidating an administrative warrant if it pertains 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.[98] In *People v. O'Cochlain*[99] (***O'Cochlain***) the Court sustained the validity of airport searches as a form of administrative searches provided that "the scope

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94 *Ponencia*, p. 17, particularly, paragraph (1).
95 *Id.*, particularly, paragraph (2).
96 *Id.*, particularly, paragraph (5).
97 *Id.*
98 *Id.*, particularly, paragraph (6).
99 845 Phil. 150 (2018).

of the administrative search exception is not exceeded; once a search is conducted for a criminal investigatory purpose, it can no longer be justified under an administrative search rationale."[100] Conformably with the *ponencia* that the administrative warrant must only seek to prevent an imminent danger, harm, or evil, the Court in *O'Cochlain* held:

> **The constitutional bounds of an airport administrative search require that the individual screener's actions be no more intrusive than necessary to determine the existence or absence of explosives that could result in harm to the passengers and aircraft. <u>The search cannot also serve unrelated law enforcement purposes as it effectively transforms a limited check for weapons and explosives into a general search for evidence of crime, substantially eroding the privacy rights of passengers who travel through the system</u>**. As in other exceptions to the search warrant requirement, the screening program must not turn into a vehicle for warrantless searches for evidence of crime. It is improper that the search be tainted by "general law enforcement objectives" such as uncovering contraband unrelated to that purpose or evidence of unrelated crimes or evidencing general criminal activity or a desire to detect "evidence of ordinary criminal wrongdoing." In United States v. $124,570 US. Currency, the US Court of Appeals for the Ninth Circuit noted that **the US Supreme Court has repeatedly emphasized the importance of keeping criminal investigatory motives from coloring administrative searches.** (citations omitted; emphasis and underscoring supplied)

Similarly, in *Venus Commercial Co., Inc. v. Department of Health and Food and Drug Administration* [101] (***Venus***) this Court ruled that an administrative search authorized under Republic Act No. 3720 is valid after it found that the administrative search met the requirement for the valid exercise of police power, *i.e.*, the presence of a lawful object and the use of lawful means. The Court in *Venus* made it clear that searches incident of inspection, supervision and regulation sanctioned by the State in the exercise of its police power, known as administrative searches, do not violate the constitutional proscription against unreasonable searches and seizures.

Although *O'Cochlain* and similar cases dealing with administrative searches invariably pertain to "warrantless" searches, the same requirement, that such searches are undertaken with no criminal action already in mind, is equally applicable here.[102] The primary duty of administrative agencies to regulate specific spheres of governance by enforcing the law is what sustains the validity of administrative warrants. When the administrative warrant conflates the administrative liability of a person with his or her criminal

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100 *Id.*

101 G.R. No. 240764, November 18, 2021.

102 *Id.* (The Court differentiated administrative searches because they "primarily ensure public safety instead of detecting criminal wrongdoing, they do not require individual suspicion. Where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable.'")

liability, Section 2, Article III is transgressed, and such warrant must be struck down for being unconstitutional.

Finally, paragraph (7) of the guidelines, which mandates that a 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, should be clarified. It must be a formal administrative charge because any misinterpretation as to what the charge is, *i.e.*, criminal charges, will confuse the paradigm introduced by paragraph (6).

Summary

In summary, I agree in reversing the assailed RTC Resolution. Wenle was not deprived of his right to due process, even if we concede that the Omnibus Rules was ambiguous as to the remedies available to a foreigner, such as Wenle, detained on the basis of the SDO. Wenle was amply afforded an opportunity to be heard during the proceedings in his petition for *habeas corpus*.

However, I must express my reservation with respect to the proposed guidelines because the facts do not call for adjudication of the validity of the arrest of Wenle, nor of any other agency empowered to issue an administrative warrant of arrest or search and seizure. The Court has no jurisdiction over such an issue because Wenle never disputed the power of the BI to cause his arrest pursuant to the SDO. In our review of the RTC Resolution, we are bound by the arguments of the parties and the issues they generate once joined, and thus the said Resolution's correctness as to its finding that the SDO violated Wenle's right to due process is the only judicial question we should entertain.

To stress, the proposed guidelines provide an elegant solution to the question of the validity of administrative warrants. I support such proposition, if and when the proper case comes before this Court.

The temptation to resolve this dilemma of whether non-judicial officers or agencies may validly issue warrants of arrest and search and seizure is admittedly strong. But we are constitutionally mandated in every case to adjudicate on the basis of facts adduced and the issues pleaded by the parties.

ACCORDINGLY, I respectfully **CONCUR** and vote to **GRANT** the Petition for Review on *Certiorari* filed by the petitioner Board of Commissioners of the Bureau of Immigration, and nullify the assailed Resolution, dated October 22, 2018, of the Regional Trial Court, Branch 16, Manila, in Case No. R-MNL-18-10197-SP.

I likewise **CONCUR** in ordering the Bureau of Immigration to **AMEND** its Omnibus Rules of Procedure in conformity with the Decision.

MARIA FILOMENA D. SINGH
Associate Justice