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DEPORTATION RULES OF PROCEDURE

CID LAW INSTRUCTIONS NO. 39, June 21, 1988

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1. The Commissioner promulgates these Rules, under the authority granted by the Immigration Act, Section 37, paragraph c.

2. Deportation is not the preferred remedy for criminal charges which can be filed with the fiscal; or for administrative charges which can be filed with the proper administrative agency, as specified in the Deportation Guidelines dated 10 October 1972. A written complaint for deportation shall be referred to the chief of the Special Prosecutor's Office, who may refer it to the proper fiscal or administrative agency, or to the Intelligence Division for Investigation.

3. Deportation can be Initiated under either of two laws: (a) Immigration Act, Section 37; or (b) Administrative Code, Section 69. Both laws require notice and hearing before deportation. Qua Chee Gan v. Deportation Board, 9 SCRA 27.

4. But if the embassy cancels the alien's passport, the cancellation may constitute ground for summary judgment of deportation, under the Immigration Act, Sections 10 and 15, which require unexpired passports for admission into the Philippines.

5. The Commissioner or any Associate Commissioner may issue a mission order, which authorizes a warrantless arrest of a suspected alien, pursuant to the 1985 Rules on Criminal Procedure, Rule 113, Section 5 (arrest without warrant; when lawful); Section 8 (method of arrest by officer without warrant); Section 11 (right of officer to break into building or enclosure); Section 13 (arrest after escape or rescue). The mission order shall be valid for 10 days from its date.

6. Rule 113, Section 5 authorizes a warrantless arrest when, in the peace officer's presence, the person to be arrested "is actually committing an offense. Any alien who violates any limitation or condition under which he was admitted is "actually committing" an offense.

7. The Commissioner or any Associate Commissioner, may sign an application for search warrant with the court, under Rule 126. The search shall be conducted pursuant to Section 6 (right to break down door or windows to effect search); Section 7 (search to be made in presence of two witnesses); Section 10 (receipt for property seized); Section 11 (delivery of property and inventory to court).

8. But under Rule 126, Section 12, a warrantless search may be conducted, if it is incidental to a lawful arrest.

9. The intelligence team shall bring the arrested alien to Intelligence Division headquarters, for records and fingerprint check, which shall include a telephone call to the alien's consulate. The team leader shall inform the consul of the alien's arrest, and request the consulate to make a records check of the alien. On the day of the arrest the team leader shall file with the Commissioner, a Post Operation Report specifying the evidence seized.

10. If the alien applies for voluntary departure, he shall be advised to make a self-deportation by buying his own ticket. Voluntary departure entities an alien to return to the country, while self-deportation forever bars him from

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re-entry.

11. Under the Constitution, Article III, Section 12, the investigator can take an alien's sworn statement, during a general inquiry, which does not constitute custodial interrogation. But under custodial interrogation an alien cannot be compelled to give a sworn statement. He has a right to remain silent, and to counsel. These rights cannot be waived, except in writing and in the presence of counsel.

12. While in detention, the alien shall be entitled to make one phone call each to his lawyer, his family and his consulate. At the detention station, he shall be entitled to regulated visits. Visitors' presents shall be inspected to exclude alcohol, dangerous drugs, or other contraband.

13. During custodial interrogation, the alien is entitled to the presence of counsel , Thereafter, under the Anti-Graft and Corrupt Practices Act, sections 3 and 4, no person shall be allowed to "follow up" the deportation case. Any person may inquire about the status of the case, and the clerk shall make the case file available. The person making the inquiry submit a written motion or manifestation to the Commissioner, specifying the action requested. But no CID officer shall entertain any visitor following up a case, including provisional release on bail; any CID officer violating this rule shall be subject to administrative complaint.

14. The team leader shall execute an affidavit of arrest. He shall make a file consisting of mission order, post operation report, affidavit of arrest, and aliens sworn statement, if any. The he shall file the case with the chief of the Special Prosecutor's Office.

15. The chief prosecutor shall conduct preliminary investigation on the basis of the alien's file. If he resolves to file the case, he shall file the charge sheet and prepare the warrant of arrest for the Commissioner's signature. Morano v. Vivo, 20 SCRA 563. He shall, by lottery, assign the case to a member of the Special Prosecutor's Office, and a member of the Public Defender's Office.

16. If the chief prosecutor resolves to dismiss the case, he shall make a written recommendation to the Commissioner, attaching the draft order for her approval.

17. If the alien files a motion for release on bail, the chief prosecutor shall get the comment of the military or technical assistant for intelligence. Then the chief prosecutor shall file his written opposition or comment, and submit the motion to the Commissioner, attaching the draft resolution for her approval.

18. Deportation proceedings are administrative or quasi-judicial and not criminal, in character. Lao v. Fabre, 81 Phil. 682. Hence, the alien has no constitutional right to bail. Ong See Hang v. Commissioner of Immigration, 4 SCRA 442; Republic D. Cloribel, 9 SCRA 453; Carlson v. Landon, 342 US 524. Release on bail shall be denied, if evidence of guilt is strong or the probability of jumping bail is high.

19. The chief prosecutor shall file the case with the executive chairman of the Board of Special Inquiry. By lottery, she shall assign the case to any of the three divisions.

20. The Administrative Code, Section 69 provides: "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."

21. The BSI shall calendar cases under the principle, "First come, first served." After arraignment, the case shall be heard continuously until terminated, in two sessions featuring two witnesses for each session. As a rule, both parties shall be entitled to present only two witnesses each, under examination in chief. No postponement shall be granted. The proceedings shall be reduced to writing.

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22. In deportation proceedings, the alien has no right to a speedy and public trial. Zakonaite v. Wolf, 226 US 272. But the Board of Special Inquiry, to avoid delay and case backlog, shall conduct speedy trial by limiting to the essential the examination of the four witnesses. The Board shall direct parties to abbreviate the examination by developing a specific theory of prosecution or defense. "Officers of the government, to whom is entrusted the determination of questions of expulsion, are not bound by the strict rules of evidence applied in courts." Bufalino v. Holland , 277 F 2d 270.

23. If the alien files a petition for writ of habeas corpus in court, the BSI shall continue hearing the case; unless the court issues a temporary restraining order or preliminary injunction.

24. To reach judgment of deportation, only reasonable, substantial, and probative evidence, not proof beyond reasonable doubt, is required.

25. The BSI by majority vote drafts the decision for approval by the Board of Commissioners. The draft shall specify the exhibits that support the findings of fact. The draft decision shall be accompanied by a covering letter, signed by all three members of the BSI. The draft decision shall state that a copy shall be furnished to the foreign embassy of the alien.

26. If judgment of deportation is issued under the Immigration Act, the draft shall state that a copy is furnished the Office of the President, and the decision shall be final and executory 30 days from promulgation. But if judgment of deportation is issued under the Administrative Code, the judgment shall be immediately final and executory. The clerk of court shall issue the warrant of deportation.

27. After the Board of Commissioners by majority vote issues the decision, the BSI shall set the case for promulgation of judgment in open court.

28. Any alien against whom a final judgment of deportation has been outstanding for more than six months, may, for good cause, apply for suspension of sentence and release. In determining whether good cause has been shown to justify releasing the alien, the Board of Commissioners shall take into account such factors as:

a. The age, health, and period of detention of the alien;

b. The effect of the aliens release upon the national security and public peace or safety;

c. The likehood the aliens resuming or following a course of conduct which makes or would make him deportable;

d. The character of the efforts made by such alien himself and by representatives of the country or countries to which his deportation is directed to expedite the alien's departure from the Philippines to secure passports, other travel documents, or deportation facilities from the country or countries to which the alien has been ordered deported; and

e. The eligibility of the alien for discretionary relief under the immigration laws.

29. Should the Commissioner find that any alien has unlawfully reentered the Philippines after having previously departed or been deported pursuant to an order of deportation, whether before or after the date of enactment of these Rules on any ground described by law, the previous order of deportation shall be deemed to be reinstated from its original date, and such alien shall be deported under such previous order at any time subsequent to such reentry. The date on which the finding is made that such reinstatement is appropriate shall be deemed the date of the final order of deportation.

Adopted: 21 June 1988

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Commissioner

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