ARREST AND DETENTION OF ALIENS

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Warrant of Arrest — The Constitution provides in Article III:

> SECTION 2.xxx — No 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 person to be seized."

Suit has been brought in the Supreme Court to question the Commissioner's right to issue warrant of arrest. The undersigned Commissioner's position is that the word "judge" in Article III, Section 2 should not be literally construed. Instead, it should be construed in a generic sense, so as to include any officer authorized by law to perform quasi-judicial functions, which require the power of arrest as a necessary adjunct.

In any event, because of the pending case in the Supreme Court, the Commissioner shall voluntarily refrain from issuing a warrant of arrest, unless absolutely necessary.

Warrantless Arrest — The 1985 Rules of Criminal Procedure, Rule 113 provides:

> "SECTION 5. Arrest without warrant, when lawful — A peace officer or a private person may, without a warrant, arrest a person:
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> "(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
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> "(b) When an offense has in fact just been committed, and he has personal knowledge of the facts indicating that the person to be arrested has committed it;

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> "In cases falling under para . (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station, or jail, and he shall be proceeded against in accordance with Rule 112, Section 7. (On preliminary investigation)

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> "SECTION 8. Method of arrest by officer without arrest: When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the person to be arrested is then engaged in the commission of an offense or is pursued immediately after its commission or after an escape, or forcibly resists before the officer has opportunity so to inform him, or when giving of such information will imperil the arrest.

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> "SECTION 11. Right of officer to break into building or enclosure: An officer in order to make an arrest either by virtue of a warrant, or when authorized to make such arrest for an offense without a warrant, as provided in Section 5, may break into any building or enclosure in which the person to be arrested is or is reasonably believed to be, if he has refused admittance thereto, after he has announced his authority and purpose.

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> "SECTION 14. Right of attorney or relative to visit person arrested: Any member of the bar, at the request of the person arrested or of another acting in his behalf has the right to visit and confer privately with such person, in the jail or any other place of custody at any hour of the day or, in urgent cases, of the night. This right shall also be exercised by any relative of a person arrested, subject to reasonable regulation."
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> Mission Order — As a general rule the Commissioner will not issue a warrant of arrest. Instead, the Commission will issue a Mission Order, which in effect authorizes the intelligence team to make warrantless arrest for violation of the Immigration Act, Section 37, para. (a), subparagraphs 1 to 13; or Sections 45 and 48.
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> Bail — In Ong See Hang v. the Commissioner of Immigration, 4 SCRA 442 (1962) the Supreme Court ruled:
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> "Aliens in deportation proceedings, as a general rule; have no inherent right to bail.
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> And it has been held that a person arrested or detained cannot be released on bail unless that right is granted expressly by law.
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> Note that this provision confers upon the Commissioner of Immigration the power and discretion to grant bail in deportation proceedings, but does not grant the alien the right to be released on bail.

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> The right to bail guaranteed by the Constitution may not be invoked in favor of petitioners- appellees, considering that deportation proceedings do not constitute a criminal action.
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> Habeas Corpus Proceedings — In habeas corpus proceedings where the Commission is a respondent, copies of these Instructions shall be filed with the court.
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> The BSI shall have an OSG Group composed of: Atty. Leo Magahum, Bayani M. Subido, Jr., and Leonardo Aguilar, Jr. They shall maintain liaison with the OSC and extend it full cooperation.
>
> Administrative Division Chief shall mimeograph these Instructions and give individual copies to: BSI members; Law Division members; Commissioner Alano, Major Pabalan; Attys. Dizon and Eduardo of Intelligence Division; Fiscal Lara of Prosecutors' Office; Atty. Lorredo of the Public Defenders' Office.

Adopted: 16 Feb. 1988

(SGD.) MIRIAM DEFENSOR SANTIAGO
Commissioner

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