

**BORIS MEJOFF, PETITIONER, VS. DIRECTOR OF PRISONS,
RESPONDENT.***G.R. No. L-2855. July 30, 1949*

Ponente: BENGZON, J.

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The petitioner Boris Mejoff is an alien of Russian descent who was brought to this country from Shanghai as a secret operative by the Japanese forces during the latter's regime in these Islands. Upon liberation he was arrested as a Japanese spy, by U. S. Army Counter Intelligence Corps. Later he was handed to the Commonwealth Government for disposition in accordance with Commonwealth Act No. 682. Thereafter the People's Court ordered his release. But the Deportation Board taking his case up, found that having no travel documents Mejoff was illegally in this country, and consequently referred the matter to the immigration authorities. After the corresponding investigation, the Board of Commissioners of Immigration on April 5, 1948, declared that Mejoff had entered the Philippines illegally in 1944, without inspection and admission by the immigration officials at a designated port of entry and, therefore, it ordered that he be deported on the first available transportation to Russia. The petitioner was then under custody, he having been arrested on March 18, 1948. In May, 1948 he was transferred to the Cebu Provincial Jail together with three other Russians to await the arrival of some Russian vessels. In July and August of that year two boats of Russian nationality called at the Cebu Port. But their masters refused to take petitioner and his companions alleging lack of authority to do so. In October, 1948 after repeated failures to ship this deportee abroad, the authorities removed him to Bilibid Prison at Muntinlupa where he has been confined up to the present time, inasmuch as the Commissioner of Immigration believes it is for the best interests of the country to keep him under detention while arrangements for his deportation are being made.

It is contended on behalf of petitioner that having been brought to the Philippines legally by the Japanese forces, he may not now be deported. It is enough to say that the argument would deny to this Government the power and the authority to eject from the Islands any and all of the members of the Nipponese Army of occupation who may still be found hiding in remote places. Which is absurd.

Petitioner likewise contends that he may not be deported, because the statutory period to do that under the laws has long expired. The proposition has no basis. Under section 37 of the Philippine Immigration Act of 1940 any alien who enters this country "without inspection and admission by the immigration authorities at a designated port of entry" is subject to deportation within five years.

In a recent decision of a similar litigation (Borovsky vs. Commissioner of Immigration) we denied the request for habeas corpus, saying:

"It must be admitted that temporary detention is a necessary step in the process of exclusion or expulsion of undesirable aliens and that pending arrangements for his deportation, the Government has the right to hold the undesirable alien under confinement for a reasonable length of time. However, under established precedents, too long a detention may justify the issuance of a writ of habeas corpus.[1]

"The meaning of 'reasonable time' depends upon the circumstances, specially the difficulties of obtaining a passport, the availability of transportation, the diplomatic arrangements with the governments concerned and the efforts displayed to send the deportee away.[2] Considering that this Government desires to expel the alien, and does not relish keeping him at the people's expense, we must presume it is making efforts to carry out the decree of exclusion by the highest officer of the land. On top of this presumption assurances were made during the oral argument that the Government is really trying to expedite the expulsion of this petitioner. On the other hand, the record fails to show how long he has been under confinement since the last time he was apprehended. Neither does he indicate neglected opportunities to send him abroad. And unless it is shown that the deportee is being indefinitely imprisoned under the pretense of awaiting a chance for deportation[3] or unless the Government admits that it can not deport him[4] or unless the detainee is being held for too long a period our courts will not interfere.

"In the United States there were at least two instances in which courts fixed a time limit within which the imprisoned aliens should be deported[5] otherwise their release would be ordered by writ of habeas corpus. Nevertheless, supposing such precedents apply in this jurisdiction, still we have no sufficient data fairly to fix a definite deadline."

The difference between this and the Borovsky case lies in the fact that the record shows this petitioner has been detained since March, 1948. However, considering that in the United States (where transportation facilities are much greater and diplomatic arrangements are easier to make) a delay of twenty months in carrying out an order of deportation has not been held sufficient to justify the issuance of the writ of habeas corpus,[6] this petition must be, and it is hereby denied. So ordered.

Moran, C. J., Ozaeta, Padilla, Montemayor, and Reyes, JJ., concur.

PARAS, J.:

I dissent for the same reasons stated in my dissenting opinion in case No. L-2852.

FERIA, J.:

I dissent on the same ground stated in my dissent in case G. R. No. L-2852.

[1] Wong Wing vs. U. S., 163 U. S., 228; Administrative Control of Aliens by Van Vleck p. 184, citing Chumura vs. Smith, 29 Fed. (2d), 287, and Ex parte Mathews, 277 Fed., 857.

[2] Cf. Clark, Deportation of Aliens p. 423; Van Vleck op. cit. p. 183 et seq., Rose vs. Wallis, 279 Fed., 401.

[3] Rose vs. Wallis, supra.

[4] Bonder vs. Johnson, 5 Fed. (2d), 238.

[5] Two months, Caranica vs. Nagle, 28 Fed. (2d), 955; four months, Rose vs. Wallis, supra.

[6] Rose vs. Wallis, 279 Fed., 401. May 1920 to January 1922.

DISSENTING

PERFECTO, J.:

To continue keeping petitioner under confinement is a thing that shocks conscience. Under the circumstances, petitioner is entitled to be released from confinement. He has not been convicted for any offense for which he may be imprisoned. Government's inability to deport him is no pretext to keep him imprisoned for an indefinite length of time. The constitutional guarantee that no person shall be deprived of liberty without due process of law has been intended to protect all inhabitants or residents who may happen to be under the shadows of the Philippine flag.

Our vote is the same as the one we cast when the case of Borovsky vs. Commissioner of Immigration, L-2852, was submitted for decision although, for some misunderstanding, our vote was overlooked at the time the decision was promulgated. Our vote is to grant the petition and to order the immediate release of petitioner, without prejudice for the government to deport him as soon as the government could have the means to do so. In the meantime, petitioner is entitled to live a normal life in a peaceful country, ruled by the principles of law and justice.

TUASON, J.:

I dissent on the same ground stated in my dissent in case No. L-2852.

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