

VICTOR A. BOROVSKY, PETITIONER, VS. THE COMMISSIONER OF IMMIGRATION AND THE DIRECTOR OF PRISONS, RESPONDENTS.*G.R. No. L-2852. June 30, 1949*

Ponente: BENGZON, J.

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Victor A. Borovsky, a stateless citizen though a Russian by birth according to his allegations, prays for release from the custody of the Director of Prisons, who holds him for purposes of deportation.

In December, 1946, the President of the Philippines ordered petitioner's deportation as undesirable alien, after a proper investigation by the Deportation Board upon charges of being a vagrant and habitual drunkard, engaged in espionage activities, whose presence and conduct endangered the public interest. Pursuant to such order, Borovsky was placed aboard a vessel bound for Shanghai; but the authorities there declined to admit him for lack of the proper visa, which the Chinese consulate in this country had refused to give. Wherefore he was brought back to the Philippines. Thereafter he was temporarily released pending further arrangements for his banishment. And when subsequently a Russian boat called at Cebu, Borovsky was re-arrested and transported to Cebu for deportation; however, the captain of the boat declined to take him, explaining he had no permission from his government to do so. Wherefore the petitioner is now confined in the premises of the New Bilibid Prisons—not exactly as a prisoner—while the Government is exerting efforts to ship him to a foreign country.

There is no question as to the validity of the deportation decree. 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. Petition denied. No costs.

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

MORAN, C. J.:

I hereby certify that Mr. Justice Pablo voted to deny the petition.

[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. Ross vs. Wallis, 279 Fed., 401.

[3] Ross vs. Wallis, supra.

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

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

DISSENTING

PARAS, J.:

I agree to a temporary detention of a person to be deported, but said detention must be for a reasonable length of time. In this particular case, the deportation order was issued in 1946. If the Government is unable to carry out said order within a reasonable period, it should in the meantime release the petitioner, unless he has committed a crime, in which case the law should take its due course. The theory that the detention of a person is to prevent the commission of a crime, is more in consonance with the idea of concentrating suspected or would be criminal.. In a democracy, however, every person is entitled to freedom, subject to arrest only for actual commission of a crime. At most, I can agree to a further detention of the herein petitioner, provided that he be released if after six months, the Government is still unable to deport him.

TUASON, J.:

I concur in this dissenting opinion except that two months constitute, in my judgment, reasonable time.

FERIA, J.:

I dissent from the majority. The Government cannot indefinitely detain the petitioner until it may deport the petitioner, without violating the right of the petitioner not to be deprived of his liberty without due process of law.

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