

**SECRETARY OF JUSTICE, PETITIONER, VS. HON. RALPH C. LANTION,
PRESIDING JUDGE, REGIONAL TRIAL COURT OF MANILA, BRANCH
25, AND MARK B. JIMENEZ, RESPONDENTS.**

G.R. No. 139465. October 17, 2000

Ponente: PUNO, J.

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PUNO, J.:

On January 18, 2000, by a vote of 9-6, we dismissed the petition at bar and ordered the petitioner to furnish private respondent copies of the extradition request and its supporting papers and to grant him a reasonable period within which to file his comment with supporting evidence[.][1]

On February 3, 2000, the petitioner timely filed an Urgent Motion for Reconsideration. He assails the decision on the following grounds:

"The majority decision failed to appreciate the following facts and points of substance and of value which, if considered, would alter the result of the case, thus:

- There is a substantial difference between an evaluation process antecedent to the filing of an extradition petition in court and a preliminary investigation.
- Absence of notice and hearing during the evaluation process will not result in a denial of fundamental fairness.
- In the evaluation process, instituting a notice and hearing requirement satisfies no higher objective.
- The deliberate omission of the notice and hearing requirement in the Philippine Extradition Law is intended to prevent flight.
- There is a need to balance the interest between the discretionary powers of government and the rights of an individual.
- The instances cited in the assailed majority decision when the twin rights of notice and hearing may be dispensed with in this case results in a non sequitur conclusion.
- Jimenez is not placed in imminent danger of arrest by the Executive Branch necessitating notice and hearing.
- By instituting a 'proceeding' not contemplated by PD No. 1069, the Supreme Court has encroached upon the constitutional boundaries separating it from the other two co-equal branches of government.
- Bail is not a matter of right in proceedings leading to extradition or in extradition proceedings."[2]

On March 28, 2000, a 58-page Comment was filed by the private respondent Mark B. Jimenez, opposing petitioner's Urgent Motion for Reconsideration.

On April 5, 2000, petitioner filed an Urgent Motion to Allow Continuation and Maintenance of Action and Filing

of Reply. Thereafter, petitioner filed on June 7, 2000 a Manifestation with the attached Note 327/00 from the Embassy of Canada and Note No. 34 from the Security Bureau of the Hongkong SAR Government Secretariat. On August 15, 2000, private respondent filed a Manifestation and Motion for Leave to File Rejoinder in the event that petitioner's April 5, 2000 Motion would be granted. Private respondent also filed on August 18, 2000, a Motion to Expunge from the records petitioner's June 7, 2000 Manifestation with its attached note verbales. Except for the Motion to Allow Continuation and Maintenance of Action, the Court denies these pending motions and hereby resolves petitioner's Urgent Motion for Reconsideration.

The jugular issue is whether or not the private respondent is entitled to the due process right to notice and hearing during the evaluation stage of the extradition process.

We now hold that private respondent is bereft of the right to notice and hearing during the evaluation stage of the extradition process.

First. P.D. No. 1069[3] which implements the RP-US Extradition Treaty provides the time when an extraditee shall be furnished a copy of the petition for extradition as well as its supporting papers, i.e., after the filing of the petition for extradition in the extradition court, viz:

"Sec. 6. Issuance of Summons; Temporary Arrest; Hearing; Service of Notices. - (1) Immediately upon receipt of the petition, the presiding judge of the court shall, as soon as practicable, summon the accused to appear and to answer the petition on the day and hour fixed in the order . . . Upon receipt of the answer, or should the accused after having received the summons fail to answer within the time fixed, the presiding judge shall hear the case or set another date for the hearing thereof.

(2) The order and notice as well as a copy of the warrant of arrest, if issued, shall be promptly served each upon the accused and the attorney having charge of the case."

It is of judicial notice that the summons includes the petition for extradition which will be answered by the extraditee.

There is no provision in the RP-US Extradition Treaty and in P.D. No. 1069 which gives an extraditee the right to demand from the petitioner Secretary of Justice copies of the extradition request from the US government and its supporting documents and to comment thereon while the request is still undergoing evaluation. We cannot write a provision in the treaty giving private respondent that right where there is none. It is well-settled that a "court cannot alter, amend, or add to a treaty by the insertion of any clause, small or great, or dispense with any of its conditions and requirements or take away any qualification, or integral part of any stipulation, upon any motion of equity, or general convenience, or substantial justice." [4]

Second. All treaties, including the RP-US Extradition Treaty, should be interpreted in light of their intent. Nothing less than the Vienna Convention on the Law of Treaties to which the Philippines is a signatory provides that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose." [5] (emphasis supplied) The preambular paragraphs of P.D. No. 1069 define its intent, viz:

"WHEREAS, under the Constitution[,] the Philippines adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations;

WHEREAS, the suppression of crime is the concern not only of the state where it is committed but also of any other state to which the criminal may have escaped, because it saps the foundation of social life and is an outrage upon humanity at large, and it is in the interest of civilized communities that crimes should not go unpunished;

WHEREAS, in recognition of this principle the Philippines recently concluded an extradition treaty with the Republic of Indonesia, and intends to conclude similar treaties with other interested countries;

x x x." (emphasis supplied)

It cannot be gainsaid that today, countries like the Philippines forge extradition treaties to arrest the dramatic rise of international and transnational crimes like terrorism and drug trafficking. Extradition treaties provide the assurance that the punishment of these crimes will not be frustrated by the frontiers of territorial sovereignty. Implicit in the treaties should be the unbending commitment that the perpetrators of these crimes will not be coddled by any signatory state.

It ought to follow that the RP-US Extradition Treaty calls for an interpretation that will minimize if not prevent the escape of extraditees from the long arm of the law and expedite their trial. The submission of the private respondent, that as a probable extraditee under the RP-US Extradition Treaty he should be furnished a copy of the US government request for his extradition and its supporting documents even while they are still under evaluation by petitioner Secretary of Justice, does not meet this desideratum. The fear of the petitioner Secretary of Justice that the demanded notice is equivalent to a notice to flee must be deeply rooted on the experience of the executive branch of our government. As it comes from the branch of our government in charge of the faithful execution of our laws, it deserves the careful consideration of this Court. In addition, it cannot be gainsaid that private respondent's demand for advance notice can delay the summary process of executive evaluation of the extradition request and its accompanying papers. The foresight of Justice Oliver Wendell Holmes did not miss this danger. In 1911, he held:

"It is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. But it is a waste of time . . . if there is presented, even in somewhat untechnical form according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender." [6] (emphasis supplied)

We erode no right of an extraditee when we do not allow time to stand still on his prosecution. Justice is best served when done without delay.

Third. An equally compelling factor to consider is the understanding of the parties themselves to the RP-US Extradition Treaty as well as the general interpretation of the issue in question by other countries with similar treaties with the Philippines. The rule is recognized that while courts have the power to interpret treaties, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is accorded great weight.[7] The reason for the rule is laid down in *Santos III v. Northwest Orient Airlines, et al.*, [8] where we stressed that a treaty is a joint executive-legislative act which enjoys the presumption that "it was first carefully studied and determined to be constitutional before it was adopted and given the force of law in the country."

Our executive department of government, thru the Department of Foreign Affairs (DFA) and the Department of Justice (DOJ), has steadfastly maintained that the RP-US Extradition Treaty and P.D. No. 1069 do not grant the private respondent a right to notice and hearing during the evaluation stage of an extradition process.[9] This understanding of the treaty is shared by the US government, the other party to the treaty.[10] This interpretation by the two governments cannot be given scant significance. It will be presumptuous for the Court to assume that both governments did not understand the terms of the treaty they concluded.

Yet, this is not all. Other countries with similar extradition treaties with the Philippines have expressed the same interpretation adopted by the Philippine and US governments. Canadian[11] and Hongkong[12] authorities, thru appropriate note verbales communicated to our Department of Foreign Affairs, stated in unequivocal language

that it is not an international practice to afford a potential extraditee with a copy of the extradition papers during the evaluation stage of the extradition process. We cannot disregard such a convergence of views unless it is manifestly erroneous.

Fourth. Private respondent, however, peddles the postulate that he must be afforded the right to notice and hearing as required by our Constitution. He buttresses his position by likening an extradition proceeding to a criminal proceeding and the evaluation stage to a preliminary investigation.

We are not persuaded. An extradition proceeding is *sui generis*. It is not a criminal proceeding which will call into operation all the rights of an accused as guaranteed by the Bill of Rights. To begin with, the process of extradition does not involve the determination of the guilt or innocence of an accused.[13] His guilt or innocence will be adjudged in the court of the state where he will be extradited. Hence, as a rule, constitutional rights that are only relevant to determine the guilt or innocence of an accused cannot be invoked by an extraditee especially by one whose extradition papers are still undergoing evaluation.[14] As held by the US Supreme Court in *United States v. Galanis*:

"An extradition proceeding is not a criminal prosecution, and the constitutional safeguards that accompany a criminal trial in this country do not shield an accused from extradition pursuant to a valid treaty." [15]

There are other differences between an extradition proceeding and a criminal proceeding. An extradition proceeding is summary in nature while criminal proceedings involve a full-blown trial.[16] In contradistinction to a criminal proceeding, the rules of evidence in an extradition proceeding allow admission of evidence under less stringent standards.[17] In terms of the quantum of evidence to be satisfied, a criminal case requires proof beyond reasonable doubt for conviction[18] while a fugitive may be ordered extradited "upon showing of the existence of a *prima facie* case." [19] Finally, unlike in a criminal case where judgment becomes executory upon being rendered final, in an extradition proceeding, our courts may adjudge an individual extraditable but the President has the final discretion to extradite him.[20] The United States adheres to a similar practice whereby the Secretary of State exercises wide discretion in balancing the equities of the case and the demands of the nation's foreign relations before making the ultimate decision to extradite.[21]

As an extradition proceeding is not criminal in character and the evaluation stage in an extradition proceeding is not akin to a preliminary investigation, the due process safeguards in the latter do not necessarily apply to the former. This we hold for the procedural due process required by a given set of circumstances "must begin with a determination of the precise nature of the government function involved as well as the private interest that has been affected by governmental action." [22] The concept of due process is flexible for "not all situations calling for procedural safeguards call for the same kind of procedure." [23]

Fifth. Private respondent would also impress upon the Court the urgency of his right to notice and hearing considering the alleged threat to his liberty "which may be more priceless than life." [24] The supposed threat to private respondent's liberty is perceived to come from several provisions of the RP-US Extradition Treaty and P.D. No. 1069 which allow provisional arrest and temporary detention.

We first deal with provisional arrest. The RP-US Extradition Treaty provides as follows:

"PROVISIONAL ARREST

1. In case of urgency, a Contracting Party may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Philippine Department of Justice and the United States Department of Justice.

2. The application for provisional arrest shall contain:

a)

a description of the person sought;

b)

the location of the person sought, if known;

c)

a brief statement of the facts of the case, including, if possible, the time and location of the offense;

d)

a description of the laws violated;

e)

a statement of the existence of a warrant of arrest or finding of guilt or judgment of conviction against the person sought; and

f)

a statement that a request for extradition for the person sought will follow.

3. The Requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 7." (emphasis supplied)

In relation to the above, Section 20 of P.D. No. 1069 provides:

"Sec. 20. Provisional Arrest.- (a) In case of urgency, the requesting state may, pursuant to the relevant treaty or convention and while the same remains in force, request for the provisional arrest of the accused, pending receipt of the request for extradition made in accordance with Section 4 of this Decree.

(b) A request for provisional arrest shall be sent to the Director of the National Bureau of Investigation, Manila, either through the diplomatic channels or direct by post or telegraph.

(c) The Director of the National Bureau of Investigation or any official acting on his behalf shall upon receipt of the request immediately secure a warrant for the provisional arrest of the accused from the presiding judge of the Court of First Instance of the province or city having jurisdiction of the place, who shall issue the warrant for the provisional arrest of the accused. The Director of the National Bureau of Investigation through the Secretary of Foreign Affairs shall inform the requesting state of the result of its request.

(d) If within a period of 20 days after the provisional arrest the Secretary of Foreign Affairs has not received the request for extradition and the documents mentioned in Section 4 of this Decree, the accused shall be released from custody." (emphasis supplied)

Both the RP-US Extradition Treaty and P.D. No. 1069 clearly provide that private respondent may be provisionally arrested only pending receipt of the request for extradition. Our DFA has long received the extradition request from the United States and has turned it over to the DOJ. It is undisputed that until today, the

United States has not requested for private respondent's provisional arrest. Therefore, the threat to private respondent's liberty has passed. It is more imagined than real.

Nor can the threat to private respondent's liberty come from Section 6 of P.D. No. 1069, which provides:

"Sec. 6. Issuance of Summons; Temporary Arrest; Hearing, Service of Notices.- (1) Immediately upon receipt of the petition, the presiding judge of the court shall, as soon as practicable, summon the accused to appear and to answer the petition on the day and hour fixed in the order. [H]e may issue a warrant for the immediate arrest of the accused which may be served anywhere within the Philippines if it appears to the presiding judge that the immediate arrest and temporary detention of the accused will best serve the ends of justice. . .

(2) The order and notice as well as a copy of the warrant of arrest, if issued, shall be promptly served each upon the accused and the attorney having charge of the case." (emphasis supplied)

It is evident from the above provision that a warrant of arrest for the temporary detention of the accused pending the extradition hearing may only be issued by the presiding judge of the extradition court upon filing of the petition for extradition. As the extradition process is still in the evaluation stage of pertinent documents and there is no certainty that a petition for extradition will be filed in the appropriate extradition court, the threat to private respondent's liberty is merely hypothetical.

Sixth. To be sure, private respondent's plea for due process deserves serious consideration involving as it does his primordial right to liberty. His plea to due process, however, collides with important state interests which cannot also be ignored for they serve the interest of the greater majority. The clash of rights demands a delicate balancing of interests approach which is a "fundamental postulate of constitutional law." [25] The approach requires that we "take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation." [26] These interests usually consist in the exercise by an individual of his basic freedoms on the one hand, and the government's promotion of fundamental public interest or policy objectives on the other. [27]

In the case at bar, on one end of the balancing pole is the private respondent's claim to due process predicated on Section 1, Article III of the Constitution, which provides that "No person shall be deprived of life, liberty, or property without due process of law . . ." Without a bubble of doubt, procedural due process of law lies at the foundation of a civilized society which accords paramount importance to justice and fairness. It has to be accorded the weight it deserves.

This brings us to the other end of the balancing pole. Petitioner avers that the Court should give more weight to our national commitment under the RP-US Extradition Treaty to expedite the extradition to the United States of persons charged with violation of some of its laws. Petitioner also emphasizes the need to defer to the judgment of the Executive on matters relating to foreign affairs in order not to weaken if not violate the principle of separation of powers.

Considering that in the case at bar, the extradition proceeding is only at its evaluation stage, the nature of the right being claimed by the private respondent is nebulous and the degree of prejudice he will allegedly suffer is weak, we accord greater weight to the interests espoused by the government thru the petitioner Secretary of Justice. In *Angara v. Electoral Commission*, we held that the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government." [28] Under our constitutional scheme, executive power is vested in the President of the Philippines. [29] Executive power includes, among others, the power to contract or guarantee foreign loans and the power to enter into treaties or international agreements. [30] The task of safeguarding that these treaties are duly honored devolves upon the executive department which has the competence and authority to so act in the international arena. [31] It is traditionally held that the President has power and even supremacy over the country's foreign relations. [32] The

executive department is aptly accorded deference on matters of foreign relations considering the President's most comprehensive and most confidential information about the international scene of which he is regularly briefed by our diplomatic and consular officials. His access to ultra-sensitive military intelligence data is also unlimited.[33] The deference we give to the executive department is dictated by the principle of separation of powers. This principle is one of the cornerstones of our democratic government. It cannot be eroded without endangering our government.

The Philippines also has a national interest to help in suppressing crimes and one way to do it is to facilitate the extradition of persons covered by treaties duly entered by our government. More and more, crimes are becoming the concern of one world. Laws involving crimes and crime prevention are undergoing universalization. One manifest purpose of this trend towards globalization is to deny easy refuge to a criminal whose activities threaten the peace and progress of civilized countries. It is to the great interest of the Philippines to be part of this irreversible movement in light of its vulnerability to crimes, especially transnational crimes.

In tilting the balance in favor of the interests of the State, the Court stresses that it is not ruling that the private respondent has no right to due process at all throughout the length and breadth of the extrajudicial proceedings. Procedural due process requires a determination of what process is due, when it is due, and the degree of what is due. Stated otherwise, a prior determination should be made as to whether procedural protections are at all due and when they are due, which in turn depends on the extent to which an individual will be "condemned to suffer grievous loss." [34] We have explained why an extraditee has no right to notice and hearing during the evaluation stage of the extradition process. As aforesaid, P.D. No. 1069 which implements the RP-US Extradition Treaty affords an extraditee sufficient opportunity to meet the evidence against him once the petition is filed in court. The time for the extraditee to know the basis of the request for his extradition is merely moved to the filing in court of the formal petition for extradition. The extraditee's right to know is momentarily withheld during the evaluation stage of the extradition process to accommodate the more compelling interest of the State to prevent escape of potential extraditees which can be precipitated by premature information of the basis of the request for his extradition. No less compelling at that stage of the extradition proceedings is the need to be more deferential to the judgment of a co-equal branch of the government, the Executive, which has been endowed by our Constitution with greater power over matters involving our foreign relations. Needless to state, this balance of interests is not a static but a moving balance which can be adjusted as the extradition process moves from the administrative stage to the judicial stage and to the execution stage depending on factors that will come into play. In sum, we rule that the temporary hold on private respondent's privilege of notice and hearing is a soft restraint on his right to due process which will not deprive him of fundamental fairness should he decide to resist the request for his extradition to the United States. There is no denial of due process as long as fundamental fairness is assured a party.

We end where we began. A myopic interpretation of the due process clause would not suffice to resolve the conflicting rights in the case at bar. With the global village shrinking at a rapid pace, propelled as it is by technological leaps in transportation and communication, we need to push further back our horizons and work with the rest of the civilized nations and move closer to the universal goals of "peace, equality, justice, freedom, cooperation and amity with all nations." [35] In the end, it is the individual who will reap the harvest of peace and prosperity from these efforts.

WHEREFORE, the Urgent Motion for Reconsideration is GRANTED. The Decision in the case at bar promulgated on January 18, 2000 is REVERSED. The assailed Order issued by the public respondent judge on August 9, 1999 is SET ASIDE. The temporary restraining order issued by this Court on August 17, 1999 is made PERMANENT. The Regional Trial Court of Manila, Branch 25 is enjoined from conducting further proceedings

in Civil Case No. 99-94684.

SO ORDERED.

Davide, Jr., C.J., Mendoza, Purisima, Pardo, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.

Bellosillo, and Kapunan, JJ., joined the dissent of J. Melo & J. Ynares-Santiago.

Melo, J., see dissent.

Vitug, J., I join in the dissent and reiterate my separate opinion in the original ponencia.

Quisumbing, J., in the result.

Buena, J., I join the dissent of Justice Consuelo Y-Santiago.

Ynares-Santiago, J., see separate dissent.

[1] Rollo, pp. 442-443; Decision, Secretary of Justice v. Hon. Ralph C. Lantion and Mark B. Jimenez, G.R. No. 139465, January 18, 2000, pp. 39-40.

[2] Rollo, p. 495; Urgent Motion for Reconsideration, p. 4.

[3] "Prescribing the Procedure for the Extradition of Persons Who Have Committed Crimes in a Foreign Country" signed into law on January 13, 1977.

[4] Note, *The United States v. The Libelants and Claimants of the Schooner Amistad*, 10 L. Ed. 826 (1841), citing *The Amiable Isabella*, 6 Wheat. 1.

[5] Article 31(1), Vienna Convention on the Law of Treaties.

[6] *Glucksman v. Henkel*, 221 U.S. 508, 511 (1911), citing *Grin v. Shine*, 187 US 181, 184, 47 L. Ed. 130, 133, 23 S. Ct. Rep. 98, 12 Am. Crim. Rep. 366. See *Pierce v. Creecy*, 210 U.S. 387, 405, 52 L. Ed. 1113, 1122, 28 S. Ct. 714.

[7] *Kolovrat v. Oregon*, 366 US 187, 192 (1961); *Factor v. Laubheimer*, 290 U.S. 276, 295 (1933), citing *Nielsen v. Johnson*, 279 U.S. 52, 73 L. Ed. 610, 49 S. Ct. 223; *Charlton v. Kelly*, 229 U.S. 447, 468, 57 L. Ed. 1274, 1283, 33 S. Ct. 945, 46 L.R.A. (N.S.) 397.

[8] 210 SCRA 256, 261 (1992).

[9] Rollo, p. 399.

[10] See Original Records, pp. 467-482, Annex "B" of petitioner's Urgent Motion for Reconsideration entitled "Observations of the United States In Support of the Urgent Motion for Reconsideration by the Republic of the Philippines" signed by James K. Robinson, Asst. Attorney General and Bruce C. Swartz, Deputy Asst. Attorney General, Criminal Division, US Department of Justice and Sara Criscitelli, Asst. Director, Office of International Affairs, Criminal Division, Washington, D.C.

[11] See Original Records, pp. 506-507, Note 327/00 dated March 10, 2000 from the Embassy of Canada.

[12] See Original Records, p. 509, Note No. (34) in SBCR 1/27 16/80 Pt. 27 dated March 22, 2000 from the Security Bureau of the Hongkong SAR Government Secretariat.

[13] *Defensor-Santiago*, Procedural Aspects of the Political Offence Doctrine, 51 Philippine Law Journal 238, p. 258 (1976).

[14] *Elliot*, No Due Process Right to a Speedy Extradition, *Martin v. Warden, Atlanta Pen.*, 993 F.2d 824 (11th

Cir. 1993), 18 Suffolk Transnational Law Review 347, 353 (1995), citing *Jhirad v. Ferrandina*, 536 F.2d 478, 482 (2d Cir.).¹

[15] Wiehl, *Extradition Law at the Crossroads: The Trend Toward Extending Greater Constitutional Procedural Protections To Fugitives Fighting Extradition from the United States*, 19 Michigan Journal of International Law 729, 741 (1998), citing *United States v. Galanis*, 429 F. Supp. 1215 (D. Conn. 1977).

[16] Section 9, P.D. No. 1069.

[17] *Ibid.*

[18] Section 2, Rule 133, Revised Rules of Court.

[19] Section 10, P.D. No. 1069.

[20] See Article III of the RP-US Extradition Treaty.

[21] Note, *Executive Discretion in Extradition*, 62 Col. Law Rev., pp. 1314-1329.

[22] *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), citing *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, 895 (1961), 6 L. Ed. 2d 1230, 1236, 81 S. Ct. 1743 (1961).

[23] *Morrissey v. Brewer*, *supra*.

[24] Comment on Petitioner's Urgent Motion for Reconsideration, p. 37.

[25] *Malayan Insurance Co. v. Smith, Bell & Co. (Phil.) Inc., et al.*, 101 SCRA 61 (1980), citing *Republic v. Purisima*, 78 SCRA 470 (1977).

[26] *Zaldivar v. Sandiganbayan*, 170 SCRA 1, 9 (1989), citing *Lagunzad v. Vda. de Gonzales*, 92 SCRA 476 (1979), citing Separate Opinion of the late Chief Justice Castro in *Gonzales v. Commission on Elections*, 27 SCRA 855, p. 899 (1960).

[27] *Blo Umpar Adiong v. Commission on Elections*, 207 SCRA 712, 716 (1992).

[28] 63 Phil. 139, 157 (1936).

[29] Section 1, Article VII, 1987 Constitution.

[30] *Id.*, sections 20-21.

[31] *Department of Foreign Affairs v. National Labor Relations Commission*, 262 SCRA 39, 48 (1996), citing *International Catholic Migration Commission v. Calleja*, 190 SCRA 130 (1990).

[32] *Marcos v. Manglapus*, 177 SCRA 668 (1989). See also *Salazar v. Achacoso*, 183 SCRA 145 (1990).

[33] *U.S. v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 57 S. Ct. 216, 81 L. Ed. 255 (1936).

[34] *Morrissey v. Brewer*, *supra* note 22, p. 481, citing *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168, 95 L. Ed. 817, 852, 71 S. Ct. 624 (1951) (Frankfurter, J., Concurring), quoted in *Goldberg v. Kelly*, 397 U.S. 254, 263, 25 L. Ed. 2d 287, 296, 90 S. Ct. 1011 (1970).

[35] Section 2, Article II, 1987 Constitution.

DISSENTING OPINION

MELO, J.:

With all due respect, I dissent.

In his motion for reconsideration, petitioner posits that: (1) the evaluation process antecedent to the filing of an extradition petition in court is substantially different from a preliminary investigation; the absence of notice and hearing during such process will not result in a denial of fundamental fairness and satisfies no higher objective; instituting another layer of notice and hearing, even when not contemplated in the treaty and in the implementing law would result in excessive due process; (2) the deliberate omission of the notice and hearing requirement in the Philippine Extradition Law is intended to prevent flight; (3) there is no need to balance the interests between the discretionary powers of government and the rights of an individual; (4) the instances cited in the majority opinion when the twin rights of notice and hearing may be dispensed with will result in a non sequitur conclusion; (5) by instituting a proceeding not contemplated by Presidential Decree No. 1069, the Court has encroached upon the constitutional boundaries separating it from the other two co-equal branches of government; and lastly, (6) bail is not a matter of right in proceedings leading to extradition or in extradition proceedings.

It need not be said that the issue of the case at bar touch on the very bonds of a democratic society which value the power of one - the single individual. Basic principles on democracy are underpinned on the individual. Popular control is hinged on the value that we give to people as self-determining agents who should have a say on issues that effect their lives, particularly on making life-plans. Political equality is founded on the assumption that everyone (or at least every adult) has an equal capacity for self-determination, and, therefore, an equal right to influence collective decisions, and to have their interests considered when these decisions are made (Saward, M., *Democratic Theory and Indices of Democratization*; in *Defining and Measuring Democracy*, David Beetham, ed., Human Rights Centre, University of Essex, Colchester/Charter 88 Trust, London, 1993, p. 7).

Affording due process to a single citizen is not contrary to the republican and democratic roots of our State, and is in fact true to its nature. Although there can be excessive layers of appeals and remedies, no due process rights may be deemed excessive. It is either the rights are given or not. The case at bar calls for the grant. Be it remembered that this is the first time that respondent Jimenez has come to court to raise the issues herein.

I am going to consider petitioner's arguments point by point.

Petitioner argues that the Court should have considered that preliminary investigation and the evaluation are similar in the sense that the right to preliminary investigation and the right to notice and hearing during the evaluation process are not fundamental rights guaranteed by the Constitution. In *Go vs. Court of Appeals* (206 SCRA 138 [1992]), we held that where there is a statutory grant of the right to preliminary investigation, denial of the same is an infringement of the due process clause. Hence, if a citizen is deprived of a right granted by statute, it still amounts to a violation of the due process clause. By analogy, the denial of the right to appeal (which is not a natural right nor is part of due process) constitutes a violation of due process if the right is granted by the Constitution or by statute.

The source of private respondent's basic due process rights is Section 1, Article III of the Constitution which is a self-executory provision, meaning, it is by itself directly or immediately applicable without need of statutory implementation, hence may be invoked by proper parties independently or even against legislative enactment. In contrast, a non-self-executory provision is one that remains dormant unless it is given vitality by legislative implementation. The latter gives the legislature the opportunity to determine when, or whether such provision shall be effective thus making it subordinate to the will of the lawmaking body, which could make it entirely

meaningless by simply refusing to pass the needed implementing statute.

Section 1, Article III of the Constitution is a breathing, pulsating provision, so to speak. The sovereign itself has given it life. It is properly invoked by respondent Jimenez particularly as a citizen of our country. The Extradition Law need not expressly provide for its applicability.

Petitioner also posits that instituting another layer of notice and hearing, even when not contemplated in the treaty and in the implementing law would result in excessive due process.

I disagree. As earlier stated, admittedly, there can be excessive layers of appeals and remedies. However, the observance of due process can hardly be tagged as excessive. Either it is afforded the citizen or not. In the first place, due process during the evaluation stage forms part of administrative due process. The notice and hearing afforded when the petition for extradition is filed in court form part of judicial due process. Ultimately, these requisites serve as restrictions on actions of judicial and quasi-judicial agencies of government (Nachura, *Outline/Reviewer in Political Law*, 1996 ed., p. 48) and are collectively called requisites of procedural due process. Moreover, it cannot be overemphasized that this is the first instance that respondent Jimenez has invoked his basic due process rights, and it is petitioner who has elevated the issue to this Court. There is thus nothing excessive in our act of heeding respondent now.

Petitioner also emphasizes that the technical assessment and review to determine sufficiency of documents are matters that can be done without need of intervention by a third party and that the issues that may be raised during the proceedings (whether the offense is a military offense or political offense or whether the request is politically motivated) can be done through research without need of intervention by a party. Petitioner, however, admits that the politically motivated request would pose some difficulties. Then he proceeds to say that the determination of whether a request is politically motivated naturally puts at issue the good faith of the other country making a request, and that to make this determination, one has to be fully aware of the political surroundings upon which the request is made, and finally, that this function can only be done by the Department of Foreign Affairs. But what actually happened in the instant case? The DFA perfunctorily skimmed through the request and threw the same to the Department of Justice to exercise its function. Now, petitioner would prohibit the prospective extraditee from being heard notwithstanding the fact that the DFA forsook and deserted its bounded duty and responsibilities and, instead, converted itself into what it calls a mere post office. Assuming *arguendo* that the request was indeed politically motivated, who would then give an objective assessment thereof when all the interests of the DOJ is to prepare a petition for extradition, and to complete the documents in support thereof? It is willing to assist the requesting state by advising that the papers are not in proper order (thus resulting in delay because of the long wait for the proper papers) but is not willing to afford the prospective extraditee, its own citizen, enjoyment of his basic rights to preserve his liberty and freedom.

Petitioner also stresses that the paramount interest involved in the instant case is not delay but the danger of a fugitive's flight. As mentioned above, immediacy is apparently not a primary concern. Petitioner has given the requesting state time to complete its documents, particularly by practically affording the U.S. Government an opportunity to submit the official English translation of Spanish documents and to have other documents properly authenticated. He even had time to file the instant case. To be straightforward, petitioner himself (particularly the former Secretary of Justice) has taken his time.

And as regards the apprehension of flight, petitioner is well versed in the use of a hold departure order which could easily lay his fear of private respondent's flight to rest. In accordance with Department circular No. 17 issued on March 19, 1998 by then Secretary of Justice Silvestre H. Bello III, a hold departure order (HDO) may be issued by the Secretary of Justice "upon the request of the Head of a Department of the Government; the head

of a constitutional body or a commission or agency performing quasi-judicial functions; the chief Justice of the Supreme Court for the Judiciary; or by the President of the Senate or the Speaker of the House of Representatives for the legislative body" when the interested party is the Government or any of its agencies or instrumentalities, "in the interest of national security, public safety or public health, as may be provided by law" (Paragraph 2 [d], Department Circular No. 17 [Prescribing Rules and Regulations Governing the Issuance of Hold Departure Orders]). This provision can easily be utilized by petitioner to prevent private respondent's flight.

Also in relation to flight, petitioner advances the applicability of the balance-of-interest test, which, as discussed in *American Communications Association vs. Douds* (339 U.S. 282), refers to a situation where particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, resulting in the duty of the courts to determine which of the conflicting interests demand the greater protection under the particular circumstances presented. In other words, if in a given situation it should appear that there is urgent necessity for protecting the national security against improvident exercise of freedom, but the interests of the State are not especially threatened by its exercise, the right must prevail.

The two other tests which evolved in the context of prosecution of crimes involving the overthrow of the government also gain applicability on other substantive evils which the state has the right to prevent even if these evils do not clearly undermine the safety of the Republic (Bernas, the 1987 Constitution of the Republic of the Philippines, 1996 ed., p. 219). By analogy, let us consider the legislation subject of this controversy - the Philippine Extradition Law. The substantive evil that the State would like to prevent is the flight of the prospective extraditee. A lot lies in how we respond to the following considerations:

- (1) If the prospective extraditee were given notice and hearing during the evaluation stage of the extradition proceedings, would this result in his flight? Would there be a dangerous or natural tendency that the prospective extraditee might flee from the country? Is flight the probable effect of affording him his basic due process rights?
- (2) If the prospective extraditee were afforded these basic due process rights, would this create a clear and present danger that it will inevitably result in his flight?
- (3) Should the Court balance the interest of the government (which refers to the prevention of the flight of the prospective extraditee from the country and the breach of international commitments) and that of the individual (referring to possible indefinite incarceration)? For whom do we tilt the balance?

Both the treaty and the Extradition Law clearly provide for the incarceration of the prospective extraditee. Although the matter has been fully discussed in the then majority opinion of the Court now being reconsidered, it is significant to survey such provisions, as follows:

- (1) The prospective extraditee faces provisional arrest pending the submission of the request for extradition based on Paragraph (1), Article 9 of the RP-US Extradition Treaty which provides that a contracting party may request the provisional arrest of the person sought pending presentation of the request, but he shall be automatically discharged after 60 days if no request is submitted (paragraph 4). The Extradition Law provides for a shorter period of 20 days after which the arrested person could be discharged (Section 20 [d]). And as observed in my ponencia, although the Extradition Law is silent in this respect, the provisions mean that once a request for extradition is forwarded to the Requested State, the prospective extraditee may be continuously detained, or if not, subsequently rearrested (Paragraph[5], Article 9, RP-US Extradition Treaty), for he will only be discharged if no request is later submitted.
- (2) The prospective extraditee may also be subject to temporary arrest during the pendency of the extradition petition in court (Section 6, Presidential Decree No. 1069). With the patent insistence of the requesting state to

have the RP-US Extradition Treaty strictly enforced, as well as the noticeable zeal and attention of the Department of Justice on the extradition of respondent Jimenez, one cannot but conclude that the filing of a petition for extradition by the Department of Justice is an absolute certainty. This is especially obvious from the fact that the Department of Justice has even allowed the requesting state to correct the deficiencies of the documents in support of the request.

Petitioner likens the evaluation procedure to the cancellation of passports held by persons facing criminal prosecution. This situation is discussed in the vintage case of *Suntay vs. People* (101 Phil. 833 [1957]) where an accused in a criminal case for seduction applied for and was granted a passport by the Department of Foreign Affairs and later left the Philippines for the United States. We held that due to the accused's sudden departure from the country in such a convenient time which could readily be interpreted to mean as a deliberate attempt on his part to flee from justice, the Secretary of Foreign Affairs had the discretion to withdraw or cancel the accused's passport even without a hearing, considering that such cancellation was based upon an undisputed fact- the filing of a serious criminal charges against the passport holder.

The situation in the case at bar is different precisely because we are looking at a situation where we have a Filipino countryman facing possible exile to a foreign land. Forget the personality and controversial nature involved.

Imagine the inconvenience brought about by incarceration when, on the extreme, the prospective extraditee could prevent it by pointing out that, for instance, the request is politically motivated. We are not only referring to private respondent, who petitioner himself describes as one who luckily has access to media. The ruling in the case at bar also affects the lives of ordinary Filipinos who are far from the limelight. Shall we allow them to be subjected to incarceration just because they have no access to information about imminent dangers to their liberty? What should stop us from protecting our own Filipino brethren?

In *Lao Gi vs. Court of Appeals* (180 SCRA 756 [1989]), we held that deportation proceedings do not partake of the nature of a criminal action, however, considering that said proceedings are harsh and extraordinary administrative matters affecting the freedom and liberty of a person, the constitutional right of such person to due process should not be denied. Thus, the provisions of the Rules of Court particularly on criminal procedure are applicable to deportation proceedings. And this protection was given to Lao Gi, a former Filipino citizen whose citizenship was set aside on the ground that it was founded on fraud and misrepresentation, resulting in a charge for deportation filed against him, his wife, and children. If an alien subject to the State's power of deportation (which is incidentally a police measure against undesirable aliens whose presence in the country is found to be injurious to the public good and domestic tranquility of the people) is entitled to basic due process rights, why not a Filipino?

On the other hand, let us put the executive department's international commitments in perspective.

The very essence of a sovereign state is that it has no superior. Each sovereign state is supreme upon its own limits. It is, therefore, fundamental in Private International Law that it is within the power of such state at any time to exclude any or all foreign laws from operating within its borders to the extent that if it cannot do this, it is not sovereign. Hence, when effect is given to a foreign law in any territory, it is only because the municipal law of that state temporarily abdicates its supreme authority in favor of the foreign law, which for the time being, with reference to that particular matter, becomes itself, by will of the state, its municipal law (Paras, Phil. Conflict of Laws, 1996 ed., p. 5). However, to be precise, the instant case involves principles of public international law which describe a sovereign state as independent and not a dependency of another state (Salonga & Yap, Public International Law, 1992 ed., p. 7).

If this were a case before international tribunals, international obligations would undoubtedly reign supreme over national law. However, in the municipal sphere, the relationship between international law and municipal law is determined by the constitutional law of individual states (Ibid., pp. 11-12). In the Philippines, the doctrine of incorporation is observed with respect to customary international law in accordance with Article II, Section 2 of the 1987 Constitution which in essence provides that the Philippines "adopts the generally accepted principles of international law as part of the law of the land."

The Extradition Treaty on the other hand is not customary international law. It is a treaty which may be invalidated if it is in conflict with the Constitution. And any conflict therein is resolved by this Court, which is the guardian of the fundamental law of the land. No foreign power can dictate our course of action, nor can the observations of a handful of American lawyers have any legal bearing, as if they were law practitioners in this country.

One last point. Petitioner argues that one can search the RP-US Extradition Treaty in vain for any provision saying that notice and hearing should be had during the evaluation process. But it is also silent on other points-on the period within which the evaluation procedure should be done; on the propriety of the act of the Requested State advising the Requesting State what papers are proper to be submitted in support of the extradition request (specifically on authentication and on translation); yet these matters are not in question. And as regards the matter of bail, suffice it to state that the Court is not harboring the idea that bail should be available in extradition proceedings. It merely rhetorically presented one of the legal implications of the Extradition Law. This matter is not even in issue.

In closing, it is significant to reiterate that in the United States, extradition begins and ends with one entity-the Department of State-which has the power to evaluate the request and the extradition documents in the beginning, and in the person of the secretary of State, the power to act or not to act on the court's determination of extraditability. Let us hope that after the extradition petition has been filed and heard by the proper court, the executive department, represented in our country by the Department of Foreign Affairs, will this time dutifully discharge its function, like its American counterpart, in making the final and ultimate determination whether to surrender the prospective extraditee to the foreign government concerned. Anyway, petitioner himself has argued that it is the entity knowledgeable of whether the request was politically motivated in the first place. The possibility of the prospective extraditee's exile from our land lies in its hands.

WHEREFORE, I vote to DENY the instant motion for reconsideration.

DISSENTING OPINION

YNARES-SANTIAGO, J.:On January 18, 2000, I was one of the nine (9) members of the Court who voted to dismiss the petition of the secretary of Justice. My vote was intended to grant any Filipino citizen, not Mr. Mark Jimenez alone, a fair and early opportunity to find out why he should be forcibly extradited from his homeland to face criminal trial in a foreign country with all its unfamiliar and formidable consequences.

After going over the grounds given by the Government in support of the motion for reconsideration, I regret that I cannot go along with the new ruling of the Court's recent majority. I am convinced that there is greater reason to strike the balance in favor of a solitary beleaguered individual against the exertion of overwhelming Government power by both the Philippines and the United States. To grant the respondent his right to know will not, in any significant way, weaken or frustrate compliance with treaty objectives. But it will result in jurisprudence which reasserts national dignity and gives meaningful protection to the rights of any citizen who is presumed innocent

until proven guilty.

The basic considerations behind my vote to deny the petition have not changed inspite of the detailed explanations in the motion for reconsideration. On the contrary, I recognize the grant of the respondent's request even more justified and compelling.

In the first place, I find nothing unreasonable, illegal or repugnant for a man about to be brought to trial to ask for the charges raised against him. It is a perfectly natural and to be-expected request. There is also nothing in the RP-US Extradition Treaty that expressly prohibits the giving of such information to an extraditee before trial. On the other hand, its grant is in keeping with basic principles of fairness and even-handed justice.

I find petitioner's reasons for rejecting the exercise of the right to know as more illusory than real. Delay is not an issue. Delays were incurred in the United States before the request for extradition was finalized. Delays in the Philippines are inevitable unless a skilled prosecutor and a competent Judge will ably control the course of the trial in a court with clogged dockets. It is these delays that should be addressed. Why should a few days given to an "accused" to study the charges against him be categorized as unwarranted and intolerable delay?

I reject the argument that public interest, international commitments and national dignity would be compromised if Mr. Mark B. Jimenez is shown the extradition treaty so he can more adequately prepare his defense. Merely raising insuperable grounds does not insure their validity. I find the above concerns totally inapplicable under the circumstances of this case.

I beg the Court's indulgence as I discuss one by one the reasons for the Court's change of mind and the grounds for the grant of the motion for reconsideration.

I dissent from the first ground which implies that a claim shall be rejected and a protection may not be allowed if it is not found in the express provisions of the RP-US Extradition Treaty. It should be the other way around. Any right not prohibited by the Treaty which arises from Philippine law, custom or traditions of decency and fairness should be granted and not denied. The referral by the Department of Foreign Affairs to the Department of Justice and the high profile collaboration between the two powerful Departments, found in Presidential Decree No. 1069, is not also provided for in the Treaty. Does that mean it is prohibited?

There is no provision in the Treaty which mandates that an extraditee should be kept in the dark about the charges against him until he is brought to trial. The Treaty deals only with the trial proper. It cannot possibly cover everything. Our law and jurisprudence are not superseded by the mere absence of a specific provision in a treaty. What is not prohibited should be allowed.

The respondent is not asking for any favor which interferes with the evaluation of an extradition request. While two powerful institutions, the Department of Foreign Affairs and the Department of Justice, are plotting the course of a citizen's life or liberty, I see no reason why the person involved should not be given an early opportunity to prepare for trial. There is no alteration or amendment of any Treaty provision. Section 6 of Presidential Decree No. 1069, which provides for service of the summons and the warrant of arrest once the extradition court takes over, is a minimum requirement for the extraditee's protection. Why should it be used against him? Why should it be treated as a prohibition against the enjoyment of rights to which a citizen may be entitled under a liberal interpretation of our laws, treaties and procedures?

With all due respect, I find the second reason in the Court's Resolution, ostensibly based on the intent behind the RP-US Extradition Treaty, to be inapplicable, exaggerated and unfair. Does the grant of an early opportunity to prepare for one's defense really diminish our country's commitment to the suppression of crime? How can a person's right to know what blows will strike him next be a State's coddling of a perpetrator of a crime? Why

should the odious crimes of terrorism and drug trafficking be used as inflammatory arguments to decide cases of more subjective and problematical offenses like tax evasion or illegal election campaign contributions? Terrorism and drug trafficking are capital offenses in the Philippines. There should be no legal obstacles to speedily placing behind bars a Filipino terrorist or drug dealer or summarily deporting a non-citizen as an undesirable alien. But this should in no way lessen a greater care and more humane handling of an offense not as clear-cut or atrocious. The use of epithetical arguments is unfair.

In this particular case, it is not the respondent's request for copies of the charges which is delaying the extradition process. Delay is caused by the cumbersome procedures coupled with ostentatious publicity adopted by two big Departments --- the Department of Foreign Affairs and the Department of Justice --- to evaluate what is really a simple question: whether or not to file extradition proceedings. But we are unfairly laying the blame on Mark Jimenez and using it as an excuse to deny a basically reasonable request which is to him of paramount importance.

I find this case not so much a violation of any international commitment as it is an unnecessary exertion of the strong arm of the law and an unfortunate display of dominant Government power.

The third factor mentioned by the majority of the Court is based on a mistaken premise. It assumes that furnishing a potential extraditee with a copy of the extradition request is prohibited by the Treaty. It is not. The silence of the Treaty on the matter does not mean it cannot be done. To view silence as prohibition is completely anathema to statutory construction of constitutional protections.

Canada, Hong Kong, and the United States may not furnish copies of the charges during the evaluation stage. But this could be due to their use of an entirely different and abbreviated evaluation process. Absent clear and specific prohibitions in a treaty, the procedure by which rights are enforced and wrongs redressed is primarily one of national regulation and control. There is no universal uniform procedure required of all countries. Every State has the prerogative of devising its own guidelines in securing essential justice. The fact that certain countries do not follow the practice does not mean that we cannot adopt measures that are fair, protective of private interests to life and liberty, and not really damaging to Philippine and American governmental concerns. Is there anything in the request of Mark Jimenez which is offensive to the principles of ordered liberty and justice treated as fundamental? It is the Government which is acting in an uncustomary, frigid and unfeeling manner in this case.

Regarding the fourth reason for the majority decision, I agree that an extradition proceedings is *sui generis*. It may not yet involve the determination of innocence or guilt. But certainly, such is the only result of extradition. A person's good name, dignity, reputation and honor are at stake. In no way should these values be treated lightly simply because proceedings have not yet reached the criminal trial proper. The preliminary procedure request by the respondent may be different from preliminary investigations under our law. But the right to some kind of proper notice is fundamental.

A proposed extraditee should not be denied a reasonable opportunity to prepare for trial. In an extradition trial, there may be reasons for the exercise of special care and caution. It is not a casual occurrence to give up your citizen to another country's criminal justice system. I do not want to sound unduly jingoistic but in certain Western countries, especially those using the jury system, a second-class citizen or a colored non-citizen may not always get equal justice in spite of protestations to the contrary. The prospective extraditee, therefore, deserves every lawful consideration which his poor third-world country can give him. Instead of being influenced by non-applicable doomsday pronouncements regarding terrorists, drug dealers, and internationally syndicated criminals being pampered, all we need to apply is plain common-sense coupled with a compassionate and humane approach.

The fifth factor influencing the Court regarding threats to respondent's liberty should not be dismissed as fancied or imaginary. The insistent denial of a simple right to be informed is the best argument that the Treaty is being interpreted in an unduly strict manner contrary to our established rules on transparency and candidness. At this early stage, we are already interpreting the RP-US Extradition Treaty in a most restrictive manner. The terms of any law or treaty can be interpreted strictly or liberally. What reasons do we have to adopt a rigidly strict interpretation when what is involved is human liberty?

While extradition treaties should be faithfully observed and interpreted, with a view of fulfilling the nation's obligations to other powers, this should be done without sacrificing the constitutional rights of the accused.[1]

I repeat that what Mark Jimenez requests is only an opportunity to know the charges against him. We are not judging a game where the Government may spring a surprise on him only at the trial. I find nothing revolting in the respondent's request. And this brings me to the sixth ground given by the latest Resolution of the Court.

We have to be cautious in relying on the so-called balancing of the sovereign powers of the State against private interests of a wretched solitary individual. What chance does any person have against this kind of argument unless the Court approaches the problem in a libertarian manner?

I do not see any "important State interests" or any "government's promotion of fundamental public interests or policy objectives" being prejudiced. The respondent's right to know the charges against him early does not clash in any way with any paramount national interest. The invocation of State interests by the Secretary of Justice is more illusive and rhetorical than real.

There is nothing nebulous in an extraditee's request to prepare for trial. Whether or not the degree of prejudice to be suffered by the respondent is weak depends on the particular circumstance of each case. A blanket denial in all cases cannot be based in an all-embracing invocation of public interest or sovereign power. Neither should separation of powers be pleaded. Whether or not to extradite is a judicial function. The protection of human rights has never been denied on grounds of comity among the three great departments of Government. The power to enter into treaties is an executive function but its implementation on whether or not certain protections may be accorded is judicial.

The invocation of executive prerogatives against a judicial interference has to be carefully studied. I admit that the balancing of individual liberty and governmental authority is a delicate and formidable task. It should, however, be accepted that the balance is an ever-shifting one. There should be no setting down of a permanent rule of denial even under changed circumstances.

With all due respect, I disagree with the Court's majority as it uses principles which to me are not applicable under the circumstances of this petition. Unless there are compelling reasons, which do not exist in this case, the balance should not be tilted in favor of interference with a legitimate defense of life or liberty.

The considerations towards the end of the Court's Resolution about the national interest in suppressing crime, the irreversible globalization of non-refugee to criminals, and, more specifically, the mention of transnational crimes, are hardly relevant to the subject matter of this case.

Illegal campaign contributions and tax evasions are not transnational crimes. Mr. Mark B. Jimenez is not a refugee criminal until he is proven guilty and then runs away.[2] The Court is prejudging his guilt when in fact it is an American court that still has to try him.

The kind of protection advocated by the Court should not be directed towards hypothetical cases of terrorism or international drug trafficking. There are more than enough valid measures to insure that criminals belonging to

international syndicates do not escape apprehension and trial. Hypothetical fears of non-applicable crimes should not be conjured in this particular case for a blanket denial of the right to information under all circumstances. To grant the respondent's request would have no truly dangerous consequences to the administration of justice.

I respectfully urge the Court to rescue libertarian principles from the overzealous and sometimes inexplicable efforts of executive officers to tread upon them. Let us not unnecessarily distance ourselves from the felt and accepted needs of our citizens in this novel and, for us, uncharted field of extradition. The Court is tasked to defend individual liberty in every major area of governance including international treaties, executive agreements, and their attendant commitments.

In view of the foregoing, I vote to DENY the motion for reconsideration and to DISMISS the petition.

[1] 31 A Am Jur 2d Extradition § 19.

[2] Hughes v. Pflanz, 138 Fed. 980.

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