

**GOVERNMENT OF THE UNITED STATES OF AMERICA, REPRESENTED
BY THE PHILIPPINE DEPARTMENT OF JUSTICE, PETITIONER, VS.
HON. GUILLERMO G. PURGANAN, MORALES, AND PRESIDING JUDGE,
REGION...**

G.R. No. 148571. September 24, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In extradition proceedings, are prospective extraditees entitled to notice and hearing before warrants for their arrest can be issued? Equally important, are they entitled to the right to bail and provisional liberty while the extradition proceedings are pending? In general, the answer to these two novel questions is “No.” The explanation of and the reasons for, as well as the exceptions to, this rule are laid out in this Decision.

The Case

Before us is a Petition for Certiorari under Rule 65 of the Rules of Court, seeking to void and set aside the Orders dated May 23, 2001[1] and July 3, 2001[2] issued by the Regional Trial Court (RTC) of Manila, Branch 42.[3] The first assailed Order set for hearing petitioner’s application for the issuance of a warrant for the arrest of Respondent Mark B. Jimenez.

The second challenged Order, on the other hand, directed the issuance of a warrant, but at the same time granted bail to Jimenez. The dispositive portion of the Order reads as follows:

“WHEREFORE, in the light of the foregoing, the [Court] finds probable cause against respondent Mark Jimenez. Accordingly let a Warrant for the arrest of the respondent be issued. Consequently and taking into consideration Section 9, Rule 114 of the Revised Rules of Criminal Procedure, this Court fixes the reasonable amount of bail for respondent’s temporary liberty at ONE MILLION PESOS (Php 1,000,000.00), the same to be paid in cash.

“Furthermore respondent is directed to immediately surrender to this Court his passport and the Bureau of Immigration and Deportation is likewise directed to include the name of the respondent in its Hold Departure List.”[4]

Essentially, the Petition prays for the lifting of the bail Order, the cancellation of the bond, and the taking of Jimenez into legal custody.

The Facts

This Petition is really a sequel to GR No. 139465 entitled *Secretary of Justice v. Ralph C. Lantion*. [5]

Pursuant to the existing RP-US Extradition Treaty,[6] the United States Government, through diplomatic channels, sent to the Philippine Government Note Verbale No. 0522 dated June 16, 1999, supplemented by Note Nos. 0597, 0720 and 0809 and accompanied by duly authenticated documents requesting the extradition of Mark B. Jimenez, also known as Mario Batacan Crespo. Upon receipt of the Notes and documents, the

secretary of foreign affairs (SFA) transmitted them to the secretary of justice (SOJ) for appropriate action, pursuant to Section 5 of Presidential Decree (PD) No. 1069, also known as the Extradition Law.

Upon learning of the request for his extradition, Jimenez sought and was granted a Temporary Restraining Order (TRO) by the RTC of Manila, Branch 25.[7] The TRO prohibited the Department of Justice (DOJ) from filing with the RTC a petition for his extradition. The validity of the TRO was, however, assailed by the SOJ in a Petition before this Court in the said GR No. 139465. Initially, the Court -- by a vote of 9-6 -- dismissed the Petition. The SOJ was ordered to furnish private respondent copies of the extradition request and its supporting papers and to grant the latter a reasonable period within which to file a comment and supporting evidence.[8]

Acting on the Motion for Reconsideration filed by the SOJ, this Court issued its October 17, 2000 Resolution.[9] By an identical vote of 9-6 -- after three justices changed their votes -- it reconsidered and reversed its earlier Decision. It held that private respondent was bereft of the right to notice and hearing during the evaluation stage of the extradition process. This Resolution has become final and executory.

Finding no more legal obstacle, the Government of the United States of America, represented by the Philippine DOJ, filed with the RTC on May 18, 2001, the appropriate Petition for Extradition which was docketed as Extradition Case No. 01192061. The Petition alleged, inter alia, that Jimenez was the subject of an arrest warrant issued by the United States District Court for the Southern District of Florida on April 15, 1999. The warrant had been issued in connection with the following charges in Indictment No. 99-00281 CR-SEITZ: (1) conspiracy to defraud the United States and to commit certain offenses in violation of Title 18 US Code Section 371; (2) tax evasion, in violation of Title 26 US Code Section 7201; (3) wire fraud, in violation of Title 18 US Code Sections 1343 and 2; (4) false statements, in violation of Title 18 US Code Sections 1001 and 2; and (5) illegal campaign contributions, in violation of Title 2 US Code Sections 441b, 441f and 437g(d) and Title 18 US Code Section 2. In order to prevent the flight of Jimenez, the Petition prayed for the issuance of an order for his "immediate arrest" pursuant to Section 6 of PD No. 1069.

Before the RTC could act on the Petition, Respondent Jimenez filed before it an "Urgent Manifestation/Ex-Parte Motion,"[10] which prayed that petitioner's application for an arrest warrant be set for hearing.

In its assailed May 23, 2001 Order, the RTC granted the Motion of Jimenez and set the case for hearing on June 5, 2001. In that hearing, petitioner manifested its reservations on the procedure adopted by the trial court allowing the accused in an extradition case to be heard prior to the issuance of a warrant of arrest.

After the hearing, the court a quo required the parties to submit their respective memoranda. In his Memorandum, Jimenez sought an alternative prayer: that in case a warrant should issue, he be allowed to post bail in the amount of P100,000.

The alternative prayer of Jimenez was also set for hearing on June 15, 2001. Thereafter, the court below issued its questioned July 3, 2001 Order, directing the issuance of a warrant for his arrest and fixing bail for his temporary liberty at one million pesos in cash.[11] After he had surrendered his passport and posted the required cash bond, Jimenez was granted provisional liberty via the challenged Order dated July 4, 2001.[12]

Hence, this Petition.[13]

Issues

Petitioner presents the following issues for the consideration of this Court:

I.

“The public respondent acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in adopting a procedure of first hearing a potential extraditee before issuing an arrest warrant under Section 6 of PD No. 1069.

II.

“The public respondent acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in granting the prayer for bail and in allowing Jimenez to go on provisional liberty because:

- ‘1. An extradition court has no power to authorize bail, in the absence of any law that provides for such power.
- ‘2. Section 13, Article III (right to bail clause) of the 1987 Philippine Constitution and Section 4, Rule 114 (Bail) of the Rules of Court, as amended, which [were] relied upon, cannot be used as bases for allowing bail in extradition proceedings.
- ‘3. The presumption is against bail in extradition proceedings or proceedings leading to extradition.
- ‘4. On the assumption that bail is available in extradition proceedings or proceedings leading to extradition, bail is not a matter of right but only of discretion upon clear showing by the applicant of the existence of special circumstances.
- ‘5. Assuming that bail is a matter of discretion in extradition proceedings, the public respondent received no evidence of ‘special circumstances’ which may justify release on bail.
- ‘6. The risk that Jimenez will flee is high, and no special circumstance exists that will engender a well-founded belief that he will not flee.
- ‘7. The conditions attached to the grant of bail are ineffectual and do not ensure compliance by the Philippines with its obligations under the RP-US Extradition Treaty.
- ‘8. The Court of Appeals Resolution promulgated on May 10, 2001 in the case entitled ‘Eduardo T. Rodriguez et al. vs. The Hon. Presiding Judge, RTC, Branch 17, Manila,’ CA-G.R. SP No. 64589, relied upon by the public respondent in granting bail, had been recalled before the issuance of the subject bail orders.’”[14]

In sum, the substantive questions that this Court will address are: (1) whether Jimenez is entitled to notice and hearing before a warrant for his arrest can be issued, and (2) whether he is entitled to bail and to provisional liberty while the extradition proceedings are pending. Preliminarily, we shall take up the alleged prematurity of the Petition for Certiorari arising from petitioner’s failure to file a Motion for Reconsideration in the RTC and to seek relief in the Court of Appeals (CA), instead of in this Court.[15] We shall also preliminarily discuss five extradition postulates that will guide us in disposing of the substantive issues.

The Court’s Ruling

The Petition is meritorious.

Preliminary Matters

Alleged Prematurity of Present Petition

Petitioner submits the following justifications for not filing a Motion for Reconsideration in the Extradition Court: “(1) the issues were fully considered by such court after requiring the parties to submit their respective memoranda and position papers on the matter and thus, the filing of a reconsideration motion would serve no

useful purpose; (2) the assailed orders are a patent nullity, absent factual and legal basis therefor; and (3) the need for relief is extremely urgent, as the passage of sufficient time would give Jimenez ample opportunity to escape and avoid extradition; and (4) the issues raised are purely of law.”[16]

For resorting directly to this Court instead of the CA, petitioner submits the following reasons: “(1) even if the petition is lodged with the Court of Appeals and such appellate court takes cognizance of the issues and decides them, the parties would still bring the matter to this Honorable Court to have the issues resolved once and for all [and] to have a binding precedent that all lower courts ought to follow; (2) the Honorable Court of Appeals had in one case[17] ruled on the issue by disallowing bail but the court below refused to recognize the decision as a judicial guide and all other courts might likewise adopt the same attitude of refusal; and (3) there are pending issues on bail both in the extradition courts and the Court of Appeals, which, unless guided by the decision that this Honorable Court will render in this case, would resolve to grant bail in favor of the potential extraditees and would give them opportunity to flee and thus, cause adverse effect on the ability of the Philippines to comply with its obligations under existing extradition treaties.”[18]

As a general rule, a petition for certiorari before a higher court will not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This rule, though, has certain exceptions: (1) when the issue raised is purely of law, (2) when public interest is involved, or (3) in case of urgency.[19] As a fourth exception, the Court has also ruled that the filing of a motion for reconsideration before availment of the remedy of certiorari is not a sine qua non, when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court.[20] Aside from being of this nature, the issues in the present case also involve pure questions of law that are of public interest. Hence, a motion for reconsideration may be dispensed with.

Likewise, this Court has allowed a direct invocation of its original jurisdiction to issue writs of certiorari when there are special and important reasons therefor.[21] In *Fortich v. Corona*[22] we stated:

“[T]he Supreme Court has the full discretionary power to take cognizance of the petition filed directly [before] it if compelling reasons, or the nature and importance of the issues raised, warrant. This has been the judicial policy to be observed and which has been reiterated in subsequent cases, namely: *Uy vs. Contreras, et. al.*, *Torres vs. Arranz*, *Bercero vs. De Guzman*, and, *Advincula vs. Legaspi, et. al.* As we have further stated in *Cuaresma*:

‘x x x. A direct invocation of the Supreme Court’s original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. x x x.’

“Pursuant to said judicial policy, we resolve to take primary jurisdiction over the present petition in the interest of speedy justice and to avoid future litigations so as to promptly put an end to the present controversy which, as correctly observed by petitioners, has sparked national interest because of the magnitude of the problem created by the issuance of the assailed resolution. Moreover, x x x requiring the petitioners to file their petition first with the Court of Appeals would only result in a waste of time and money.

“That the Court has the power to set aside its own rules in the higher interests of justice is well-entrenched in our jurisprudence. We reiterate what we said in *Piczon vs. Court of Appeals*:[23]

‘Be it remembered that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Time and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require. In the instant petition, we

forego a lengthy disquisition of the proper procedure that should have been taken by the parties involved and proceed directly to the merits of the case.’

In a number of other exceptional cases,[24] we held as follows:

“This Court has original jurisdiction, concurrent with that of Regional Trial Courts and the Court of Appeals, over petitions for certiorari, prohibition, mandamus, quo warranto and habeas corpus, and we entertain direct resort to us in cases where special and important reasons or exceptional and compelling circumstances justify the same.”

In the interest of justice and to settle once and for all the important issue of bail in extradition proceedings, we deem it best to take cognizance of the present case. Such proceedings constitute a matter of first impression over which there is, as yet, no local jurisprudence to guide lower courts.

Five Postulates of Extradition

The substantive issues raised in this case require an interpretation or construction of the treaty and the law on extradition. A cardinal rule in the interpretation of a treaty or a law is to ascertain and give effect to its intent.[25] Since PD 1069 is intended as a guide for the implementation of extradition treaties to which the Philippines is a signatory,[26] understanding certain postulates of extradition will aid us in properly deciding the issues raised here.

1. Extradition Is a Major Instrument for the Suppression of Crime.

First, extradition treaties are entered into for the purpose of suppressing crime[27] by facilitating the arrest and the custodial transfer[28] of a fugitive[29] from one state to the other.

With the advent of easier and faster means of international travel, the flight of affluent criminals from one country to another for the purpose of committing crime and evading prosecution has become more frequent. Accordingly, governments are adjusting their methods of dealing with criminals and crimes that transcend international boundaries.

Today, “a majority of nations in the world community have come to look upon extradition as the major effective instrument of international co-operation in the suppression of crime.”[30] It is the only regular system that has been devised to return fugitives to the jurisdiction of a court competent to try them in accordance with municipal and international law.[31]

“An important practical effect x x x of the recognition of the principle that criminals should be restored to a jurisdiction competent to try and punish them is that the number of criminals seeking refuge abroad will be reduced. For to the extent that efficient means of detection and the threat of punishment play a significant role in the deterrence of crime within the territorial limits of a State, so the existence of effective extradition arrangements and the consequent certainty of return to the locus delicti commissi play a corresponding role in the deterrence of flight abroad in order to escape the consequence of crime. x x x. From an absence of extradition arrangements flight abroad by the ingenious criminal receives direct encouragement and thus indirectly does the commission of crime itself.”[32]

In *Secretary v. Lantion*[33] we explained:

“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 [into] 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.”

Indeed, in this era of globalization, easier and faster international travel, and an expanding ring of international crimes and criminals, we cannot afford to be an isolationist state. We need to cooperate with other states in order to improve our chances of suppressing crime in our own country.

2. The Requesting State Will Accord Due Process to the Accused

Second, an extradition treaty presupposes that both parties thereto have examined, and that both accept and trust, each other’s legal system and judicial process.[34] More pointedly, our duly authorized representative’s signature on an extradition treaty signifies our confidence in the capacity and the willingness of the other state to protect the basic rights of the person sought to be extradited.[35] That signature signifies our full faith that the accused will be given, upon extradition to the requesting state, all relevant and basic rights in the criminal proceedings that will take place therein; otherwise, the treaty would not have been signed, or would have been directly attacked for its unconstitutionality.

3. The Proceedings Are Sui Generis

Third, as pointed out in *Secretary of Justice v. Lantion*,[36] extradition proceedings are not criminal in nature. In criminal proceedings, the constitutional rights of the accused are at fore; in extradition which is sui generis -- in a class by itself -- they are not.

“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. 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 x x x.

x x x x x x x x

“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. In contradistinction to a criminal proceeding, the rules of evidence in an extradition proceeding allow admission of evidence under less stringent standards. In terms of the quantum of evidence to be satisfied, a criminal case requires proof beyond reasonable doubt for conviction while a fugitive may be ordered extradited ‘upon showing of the existence of a prima facie case.’ 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. 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.”

Given the foregoing, it is evident that the extradition court is not called upon to ascertain the guilt or the innocence of the person sought to be extradited.[37] Such determination during the extradition proceedings will only result in needless duplication and delay. Extradition is merely a measure of international judicial assistance through which a person charged with or convicted of a crime is restored to a jurisdiction with the best claim to try that person. It is not part of the function of the assisting authorities to enter into questions that are the prerogative of that jurisdiction.[38] The ultimate purpose of extradition proceedings in court is only to determine whether the extradition request complies with the Extradition Treaty, and whether the person sought is extraditable.[39]

4. Compliance Shall Be in Good Faith.

Fourth, our executive branch of government voluntarily entered into the Extradition Treaty, and our legislative

branch ratified it. Hence, the Treaty carries the presumption that its implementation will serve the national interest.

Fulfilling our obligations under the Extradition Treaty promotes comity^[40] with the requesting state. On the other hand, failure to fulfill our obligations thereunder paints a bad image of our country before the world community. Such failure would discourage other states from entering into treaties with us, particularly an extradition treaty that hinges on reciprocity.^[41]

Verily, we are bound by *pacta sunt servanda* to comply in good faith with our obligations under the Treaty.^[42] This principle requires that we deliver the accused to the requesting country if the conditions precedent to extradition, as set forth in the Treaty, are satisfied. In other words, “[t]he demanding government, when it has done all that the treaty and the law require it to do, is entitled to the delivery of the accused on the issue of the proper warrant, and the other government is under obligation to make the surrender.”^[43] Accordingly, the Philippines must be ready and in a position to deliver the accused, should it be found proper.

5. There Is an Underlying Risk of Flight

Fifth, persons to be extradited are presumed to be flight risks. This *prima facie* presumption finds reinforcement in the experience^[44] of the executive branch: nothing short of confinement can ensure that the accused will not flee the jurisdiction of the requested state in order to thwart their extradition to the requesting state.

The present extradition case further validates the premise that persons sought to be extradited have a propensity to flee. Indeed, extradition hearings would not even begin, if only the accused were willing to submit to trial in the requesting country.^[45] Prior acts of herein respondent -- (1) leaving the requesting state right before the conclusion of his indictment proceedings there; and (2) remaining in the requested state despite learning that the requesting state is seeking his return and that the crimes he is charged with are bailable -- eloquently speak of his aversion to the processes in the requesting state, as well as his predisposition to avoid them at all cost. These circumstances point to an ever-present, underlying high risk of flight. He has demonstrated that he has the capacity and the will to flee. Having fled once, what is there to stop him, given sufficient opportunity, from fleeing a second time?

First Substantive Issue:

Is Respondent Entitled to Notice and Hearing

Before the Issuance of a Warrant of Arrest?

Petitioner contends that the procedure adopted by the RTC --informing the accused, a fugitive from justice, that an Extradition Petition has been filed against him, and that petitioner is seeking his arrest -- gives him notice to escape and to avoid extradition. Moreover, petitioner pleads that such procedure may set a dangerous precedent, in that those sought to be extradited -- including terrorists, mass murderers and war criminals -- may invoke it in future extradition cases.

On the other hand, Respondent Jimenez argues that he should not be hurriedly and arbitrarily deprived of his constitutional right to liberty without due process. He further asserts that there is as yet no specific law or rule setting forth the procedure prior to the issuance of a warrant of arrest, after the petition for extradition has been filed in court; ergo, the formulation of that procedure is within the discretion of the presiding judge.

Both parties cite Section 6 of PD 1069 in support of their arguments. It states:

“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 any where 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. 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.” (Emphasis ours)

Does this provision sanction RTC Judge Purganan’s act of immediately setting for hearing the issuance of a warrant of arrest? We rule in the negative.

1. On the Basis of the Extradition Law

It is significant to note that Section 6 of PD 1069, our Extradition Law, uses the word “immediate” to qualify the arrest of the accused. This qualification would be rendered nugatory by setting for hearing the issuance of the arrest warrant. Hearing entails sending notices to the opposing parties,[46] receiving facts and arguments[47] from them,[48] and giving them time to prepare and present such facts and arguments. Arrest subsequent to a hearing can no longer be considered “immediate.” The law could not have intended the word as a mere superfluity but, on the whole, as a means of imparting a sense of urgency and swiftness in the determination of whether a warrant of arrest should be issued.

By using the phrase “if it appears,” the law further conveys that accuracy is not as important as speed at such early stage. The trial court is not expected to make an exhaustive determination to ferret out the true and actual situation, immediately upon the filing of the petition. From the knowledge and the material then available to it, the court is expected merely to get a good first impression -- a *prima facie* finding -- sufficient to make a speedy initial determination as regards the arrest and detention of the accused.

Attached to the Petition for Extradition, with a Certificate of Authentication among others, were the following: (1) Annex H, the Affidavit executed on May 26, 1999 by Mr. Michael E. Savage -- trial attorney in the Campaign Financing Task Force of the Criminal Division of the US Department of Justice; (2) Annexes H to G, evidentiary Appendices of various exhibits that constituted evidence of the crimes charged in the Indictment, with Exhibits 1 to 120 (duly authenticated exhibits that constituted evidence of the crimes charged in the Indictment); (3) Annex BB, the Exhibit I “Appendix of Witness [excerpts] Statements Referenced in the Affidavit of Angela Byers” and enclosed Statements in two volumes; (4) Annex GG, the Exhibit J “Table of Contents for Supplemental Evidentiary Appendix” with enclosed Exhibits 121 to 132; and (5) Annex MM, the Exhibit L “Appendix of Witness [excerpts] Statements Referenced in the Affidavit of Betty Steward” and enclosed Statements in two volumes.[49]

It is evident that respondent judge could have already gotten an impression from these records adequate for him to make an initial determination of whether the accused was someone who should immediately be arrested in order to “best serve the ends of justice.” He could have determined whether such facts and circumstances existed as would lead a reasonably discreet and prudent person to believe that the extradition request was *prima facie* meritorious. In point of fact, he actually concluded from these supporting documents that “probable cause” did exist. In the second questioned Order, he stated:

“In the instant petition, the documents sent by the US Government in support of [its] request for extradition of herein respondent are enough to convince the Court of the existence of probable cause to proceed with the hearing against the extraditee.”[50]

We stress that the *prima facie* existence of probable cause for hearing the petition and, *a priori*, for issuing an

arrest warrant was already evident from the Petition itself and its supporting documents. Hence, after having already determined therefrom that a prima facie finding did exist, respondent judge gravely abused his discretion when he set the matter for hearing upon motion of Jimenez.[51]

Moreover, the law specifies that the court sets a hearing upon receipt of the answer or upon failure of the accused to answer after receiving the summons. In connection with the matter of immediate arrest, however, the word “hearing” is notably absent from the provision. Evidently, had the holding of a hearing at that stage been intended, the law could have easily so provided. It also bears emphasizing at this point that extradition proceedings are summary[52] in nature. Hence, the silence of the Law and the Treaty leans to the more reasonable interpretation that there is no intention to punctuate with a hearing every little step in the entire proceedings.

“It is taken for granted that the contracting parties intend something reasonable and something not inconsistent with generally recognized principles of International Law, nor with previous treaty obligations towards third States. If, therefore, the meaning of a treaty is ambiguous, the reasonable meaning is to be preferred to the unreasonable, the more reasonable to the less reasonable x x x.”[53]

Verily, as argued by petitioner, sending to persons sought to be extradited a notice of the request for their arrest and setting it for hearing at some future date would give them ample opportunity to prepare and execute an escape. Neither the Treaty nor the Law could have intended that consequence, for the very purpose of both would have been defeated by the escape of the accused from the requested state.

2. On the Basis of the Constitution

Even Section 2 of Article III of our Constitution, which is invoked by Jimenez, does not require a notice or a hearing before the issuance of a warrant of arrest. It provides:

“Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or 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 place to be searched and the persons or things to be seized.”

To determine probable cause for the issuance of arrest warrants, the Constitution itself requires only the examination -- under oath or affirmation -- of complainants and the witnesses they may produce. There is no requirement to notify and hear the accused before the issuance of warrants of arrest.

In *Ho v. People*[54] and in all the cases cited therein, never was a judge required to go to the extent of conducting a hearing just for the purpose of personally determining probable cause for the issuance of a warrant of arrest. All we required was that the “judge must have sufficient supporting documents upon which to make his independent judgment, or at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause.”[55]

In *Webb v. De Leon*,[56] the Court categorically stated that a judge was not supposed to conduct a hearing before issuing a warrant of arrest:

“Again, we stress that before issuing warrants of arrest, judges merely determine personally the probability, not the certainty of guilt of an accused. In doing so, judges do not conduct a de novo hearing to determine the existence of probable cause. They just personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence.”

At most, in cases of clear insufficiency of evidence on record, judges merely further examine complainants and their witnesses.[57] In the present case, validating the act of respondent judge and instituting the practice of

hearing the accused and his witnesses at this early stage would be discordant with the rationale for the entire system. If the accused were allowed to be heard and necessarily to present evidence during the prima facie determination for the issuance of a warrant of arrest, what would stop him from presenting his entire plethora of defenses at this stage -- if he so desires -- in his effort to negate a prima facie finding? Such a procedure could convert the determination of a prima facie case into a full-blown trial of the entire proceedings and possibly make trial of the main case superfluous. This scenario is also anathema to the summary nature of extraditions.

That the case under consideration is an extradition and not a criminal action is not sufficient to justify the adoption of a set of procedures more protective of the accused. If a different procedure were called for at all, a more restrictive one -- not the opposite -- would be justified in view of respondent's demonstrated predisposition to flee.

Since this is a matter of first impression, we deem it wise to restate the proper procedure:

Upon receipt of a petition for extradition and its supporting documents, the judge must study them and make, as soon as possible, a prima facie finding whether (a) they are sufficient in form and substance, (b) they show compliance with the Extradition Treaty and Law, and (c) the person sought is extraditable. At his discretion, the judge may require the submission of further documentation or may personally examine the affiants and witnesses of the petitioner. If, in spite of this study and examination, no prima facie finding^[58] is possible, the petition may be dismissed at the discretion of the judge.

On the other hand, if the presence of a prima facie case is determined, then the magistrate must immediately issue a warrant for the arrest of the extraditee, who is at the same time summoned to answer the petition and to appear at scheduled summary hearings. Prior to the issuance of the warrant, the judge must not inform or notify the potential extraditee of the pendency of the petition, lest the latter be given the opportunity to escape and frustrate the proceedings. In our opinion, the foregoing procedure will "best serve the ends of justice" in extradition cases.

Second Substantive Issue:

Is Respondent Entitled to Bail?

Article III, Section 13 of the Constitution, is worded as follows:

"Art. III, Sec. 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required."

Respondent Mark B. Jimenez maintains that this constitutional provision secures the right to bail of all persons, including those sought to be extradited. Supposedly, the only exceptions are the ones charged with offenses punishable with reclusion perpetua, when evidence of guilt is strong. He also alleges the relevance to the present case of Section 4^[59] of Rule 114 of the Rules of Court which, insofar as practicable and consistent with the summary nature of extradition proceedings, shall also apply according to Section 9 of PD 1069.

On the other hand, petitioner claims that there is no provision in the Philippine Constitution granting the right to bail to a person who is the subject of an extradition request and arrest warrant.

Extradition Different from Ordinary Criminal Proceedings

We agree with petitioner. As suggested by the use of the word "conviction," the constitutional provision on bail quoted above, as well as Section 4 of Rule 114 of the Rules of Court, applies only when a person has been arrested and detained for violation of Philippine criminal laws. It does not apply to extradition proceedings,

because extradition courts do not render judgments of conviction or acquittal.

Moreover, the constitutional right to bail “flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom as thereafter he would be entitled to acquittal, unless his guilt be proved beyond reasonable doubt.”[60] It follows that the constitutional provision on bail will not apply to a case like extradition, where the presumption of innocence is not at issue.

The provision in the Constitution stating that the “right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended” does not detract from the rule that the constitutional right to bail is available only in criminal proceedings. It must be noted that the suspension of the privilege of the writ of habeas corpus finds application “only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.”[61] Hence, the second sentence in the constitutional provision on bail merely emphasizes the right to bail in criminal proceedings for the aforementioned offenses. It cannot be taken to mean that the right is available even in extradition proceedings that are not criminal in nature.

That the offenses for which Jimenez is sought to be extradited are bailable in the United States is not an argument to grant him one in the present case. To stress, extradition proceedings are separate and distinct from the trial for the offenses for which he is charged. He should apply for bail before the courts trying the criminal cases against him, not before the extradition court.

No Violation of Due Process

Respondent Jimenez cites the foreign case Paretti[62] in arguing that, constitutionally, “[n]o one shall be deprived of x x x liberty x x x without due process of law.”

Contrary to his contention, his detention prior to the conclusion of the extradition proceedings does not amount to a violation of his right to due process. We iterate the familiar doctrine that the essence of due process is the opportunity to be heard[63] but, at the same time, point out that the doctrine does not always call for a prior opportunity to be heard.[64] Where the circumstances -- such as those present in an extradition case -- call for it, a subsequent opportunity to be heard is enough.[65] In the present case, respondent will be given full opportunity to be heard subsequently, when the extradition court hears the Petition for Extradition. Hence, there is no violation of his right to due process and fundamental fairness.

Contrary to the contention of Jimenez, we find no arbitrariness, either, in the immediate deprivation of his liberty prior to his being heard. That his arrest and detention will not be arbitrary is sufficiently ensured by (1) the DOJ’s filing in court the Petition with its supporting documents after a determination that the extradition request meets the requirements of the law and the relevant treaty; (2) the extradition judge’s independent prima facie determination that his arrest will best serve the ends of justice before the issuance of a warrant for his arrest; and (3) his opportunity, once he is under the court’s custody, to apply for bail as an exception to the no-initial-bail rule.

It is also worth noting that before the US government requested the extradition of respondent, proceedings had already been conducted in that country. But because he left the jurisdiction of the requesting state before those proceedings could be completed, it was hindered from continuing with the due processes prescribed under its laws. His invocation of due process now has thus become hollow. He already had that opportunity in the requesting state; yet, instead of taking it, he ran away.

In this light, would it be proper and just for the government to increase the risk of violating its treaty obligations in order to accord Respondent Jimenez his personal liberty in the span of time that it takes to resolve the Petition for Extradition? His supposed immediate deprivation of liberty without the due process that he had previously

shunned pales against the government's interest in fulfilling its Extradition Treaty obligations and in cooperating with the world community in the suppression of crime. Indeed, "[c]onstitutional liberties do not exist in a vacuum; the due process rights accorded to individuals must be carefully balanced against exigent and palpable government interests." [66]

Too, we cannot allow our country to be a haven for fugitives, cowards and weaklings who, instead of facing the consequences of their actions, choose to run and hide. Hence, it would not be good policy to increase the risk of violating our treaty obligations if, through overprotection or excessively liberal treatment, persons sought to be extradited are able to evade arrest or escape from our custody. In the absence of any provision -- in the Constitution, the law or the treaty -- expressly guaranteeing the right to bail in extradition proceedings, adopting the practice of not granting them bail, as a general rule, would be a step towards deterring fugitives from coming to the Philippines to hide from or evade their prosecutors.

The denial of bail as a matter of course in extradition cases falls into place with and gives life to Article 14 [67] of the Treaty, since this practice would encourage the accused to voluntarily surrender to the requesting state to cut short their detention here. Likewise, their detention pending the resolution of extradition proceedings would fall into place with the emphasis of the Extradition Law on the summary nature of extradition cases and the need for their speedy disposition.

Exceptions to the "No Bail" Rule

The rule, we repeat, is that bail is not a matter of right in extradition cases. However, the judiciary has the constitutional duty to curb grave abuse of discretion [68] and tyranny, as well as the power to promulgate rules to protect and enforce constitutional rights. [69] Furthermore, we believe that the right to due process is broad enough to include the grant of basic fairness to extraditees. Indeed, the right to due process extends to the "life, liberty or property" of every person. It is "dynamic and resilient, adaptable to every situation calling for its application." [70]

Accordingly and to best serve the ends of justice, we believe and so hold that, after a potential extraditee has been arrested or placed under the custody of the law, bail may be applied for and granted as an exception, only upon a clear and convincing showing (1) that, once granted bail, the applicant will not be a flight risk or a danger to the community; and (2) that there exist special, humanitarian and compelling circumstances [71] including, as a matter of reciprocity, those cited by the highest court in the requesting state when it grants provisional liberty in extradition cases therein.

Since this exception has no express or specific statutory basis, and since it is derived essentially from general principles of justice and fairness, the applicant bears the burden of proving the above two-tiered requirement with clarity, precision and emphatic forcefulness. The Court realizes that extradition is basically an executive, not a judicial, responsibility arising from the presidential power to conduct foreign relations. In its barest concept, it partakes of the nature of police assistance amongst states, which is not normally a judicial prerogative. Hence, any intrusion by the courts into the exercise of this power should be characterized by caution, so that the vital international and bilateral interests of our country will not be unreasonably impeded or compromised. In short, while this Court is ever protective of "the sporting idea of fair play," it also recognizes the limits of its own prerogatives and the need to fulfill international obligations.

Along this line, Jimenez contends that there are special circumstances that are compelling enough for the Court to grant his request for provisional release on bail. We have carefully examined these circumstances and shall now discuss them.

1. Alleged Disenfranchisement

While his extradition was pending, Respondent Jimenez was elected as a member of the House of Representatives. On that basis, he claims that his detention will disenfranchise his Manila district of 600,000 residents. We are not persuaded. In *People v. Jalosjos*,^[72] the Court has already debunked the disenfranchisement argument when it ruled thus:

“When the voters of his district elected the accused-appellant to Congress, they did so with full awareness of the limitations on his freedom of action. They did so with the knowledge that he could achieve only such legislative results which he could accomplish within the confines of prison. To give a more drastic illustration, if voters elect a person with full knowledge that he is suffering from a terminal illness, they do so knowing that at any time, he may no longer serve his full term in office.

“In the ultimate analysis, the issue before us boils down to a question of constitutional equal protection.

“The Constitution guarantees: ‘x x x nor shall any person be denied the equal protection of laws.’ This simply means that all persons similarly situated shall be treated alike both in rights enjoyed and responsibilities imposed. The organs of government may not show any undue favoritism or hostility to any person. Neither partiality nor prejudice shall be displayed.

“Does being an elective official result in a substantial distinction that allows different treatment? Is being a Congressman a substantial differentiation which removes the accused-appellant as a prisoner from the same class as all persons validly confined under law?

“The performance of legitimate and even essential duties by public officers has never been an excuse to free a person validly [from] prison. The duties imposed by the ‘mandate of the people’ are multifarious. The accused-appellant asserts that the duty to legislate ranks highest in the hierarchy of government. The accused-appellant is only one of 250 members of the House of Representatives, not to mention the 24 members of the Senate, charged with the duties of legislation. Congress continues to function well in the physical absence of one or a few of its members. Depending on the exigency of Government that has to be addressed, the President or the Supreme Court can also be deemed the highest for that particular duty. The importance of a function depends on the need for its exercise. The duty of a mother to nurse her infant is most compelling under the law of nature. A doctor with unique skills has the duty to save the lives of those with a particular affliction. An elective governor has to serve provincial constituents. A police officer must maintain peace and order. Never has the call of a particular duty lifted a prisoner into a different classification from those others who are validly restrained by law.

“A strict scrutiny of classifications is essential lest[,] wittingly or otherwise, insidious discriminations are made in favor of or against groups or types of individuals.

“The Court cannot validate badges of inequality. The necessities imposed by public welfare may justify exercise of government authority to regulate even if thereby certain groups may plausibly assert that their interests are disregarded.

“We, therefore, find that election to the position of Congressman is not a reasonable classification in criminal law enforcement. The functions and duties of the office are not substantial distinctions which lift him from the class of prisoners interrupted in their freedom and restricted in liberty of movement. Lawful arrest and confinement are germane to the purposes of the law and apply to all those belonging to the same class.”^[73]

It must be noted that even before private respondent ran for and won a congressional seat in Manila, it was already of public knowledge that the United States was requesting his extradition. Hence, his constituents were or should have been prepared for the consequences of the extradition case against their representative, including his detention pending the final resolution of the case. Premises considered and in line with *Jalosjos*, we are

constrained to rule against his claim that his election to public office is by itself a compelling reason to grant him bail.

2. Anticipated Delay

Respondent Jimenez further contends that because the extradition proceedings are lengthy, it would be unfair to confine him during the pendency of the case. Again we are not convinced. We must emphasize that extradition cases are summary in nature. They are resorted to merely to determine whether the extradition petition and its annexes conform to the Extradition Treaty, not to determine guilt or innocence. Neither is it, as a rule, intended to address issues relevant to the constitutional rights available to the accused in a criminal action.

We are not overruling the possibility that petitioner may, in bad faith, unduly delay the proceedings. This is quite another matter that is not at issue here. Thus, any further discussion of this point would be merely anticipatory and academic.

However, if the delay is due to maneuverings of respondent, with all the more reason would the grant of bail not be justified. Giving premium to delay by considering it as a special circumstance for the grant of bail would be tantamount to giving him the power to grant bail to himself. It would also encourage him to stretch out and unreasonably delay the extradition proceedings even more. This we cannot allow.

3. Not a Flight Risk?

Jimenez further claims that he is not a flight risk. To support this claim, he stresses that he learned of the extradition request in June 1999; yet, he has not fled the country. True, he has not actually fled during the preliminary stages of the request for his extradition. Yet, this fact cannot be taken to mean that he will not flee as the process moves forward to its conclusion, as he hears the footsteps of the requesting government inching closer and closer. That he has not yet fled from the Philippines cannot be taken to mean that he will stand his ground and still be within reach of our government if and when it matters; that is, upon the resolution of the Petition for Extradition.

In any event, it is settled that bail may be applied for and granted by the trial court at anytime after the applicant has been taken into custody and prior to judgment, even after bail has been previously denied. In the present case, the extradition court may continue hearing evidence on the application for bail, which may be granted in accordance with the guidelines in this Decision.

Brief Refutation of Dissents

The proposal to remand this case to the extradition court, we believe, is totally unnecessary; in fact, it is a cop-out. The parties -- in particular, Respondent Jimenez -- have been given more than sufficient opportunity both by the trial court and this Court to discuss fully and exhaustively private respondent's claim to bail. As already stated, the RTC set for hearing not only petitioner's application for an arrest warrant, but also private respondent's prayer for temporary liberty. Thereafter required by the RTC were memoranda on the arrest, then position papers on the application for bail, both of which were separately filed by the parties.

This Court has meticulously pored over the Petition, the Comment, the Reply, the lengthy Memoranda and the Position Papers of both parties. Additionally, it has patiently heard them in Oral Arguments, a procedure not normally observed in the great majority of cases in this Tribunal. Moreover, after the Memos had been submitted, the parties -- particularly the potential extraditee -- have bombarded this Court with additional pleadings -- entitled "Manifestations" by both parties and "Counter-Manifestation" by private respondent -- in which the main topic was Mr. Jimenez's plea for bail.

A remand would mean that this long, tedious process would be repeated in its entirety. The trial court would again hear factual and evidentiary matters. Be it noted, however, that, in all his voluminous pleadings and verbal propositions, private respondent has not asked for a remand. Evidently, even he realizes that there is absolutely no need to rehear factual matters. Indeed, the inadequacy lies not in the factual presentation of Mr. Jimenez. Rather, it lies in his legal arguments. Remanding the case will not solve this utter lack of persuasion and strength in his legal reasoning.

In short, this Court -- as shown by this Decision and the spirited Concurring, Separate and Dissenting Opinions written by the learned justices themselves -- has exhaustively deliberated and carefully passed upon all relevant questions in this case. Thus, a remand will not serve any useful purpose; it will only further delay these already very delayed proceedings,[74] which our Extradition Law requires to be summary in character. What we need now is prudent and deliberate speed, not unnecessary and convoluted delay. What is needed is a firm decision on the merits, not a circuitous cop-out.

Then, there is also the suggestion that this Court is allegedly “disregarding basic freedoms when a case is one of extradition.” We believe that this charge is not only baseless, but also unfair. Suffice it to say that, in its length and breath, this Decision has taken special cognizance of the rights to due process and fundamental fairness of potential extraditees.

Summation

As we draw to a close, it is now time to summarize and stress these ten points:

1. The ultimate purpose of extradition proceedings is to determine whether the request expressed in the petition, supported by its annexes and the evidence that may be adduced during the hearing of the petition, complies with the Extradition Treaty and Law; and whether the person sought is extraditable. The proceedings are intended merely to assist the requesting state in bringing the accused -- or the fugitive who has illegally escaped -- back to its territory, so that the criminal process may proceed therein.
2. By entering into an extradition treaty, the Philippines is deemed to have reposed its trust in the reliability or soundness of the legal and judicial system of its treaty partner, as well as in the ability and the willingness of the latter to grant basic rights to the accused in the pending criminal case therein.
3. By nature then, extradition proceedings are not equivalent to a criminal case in which guilt or innocence is determined. Consequently, an extradition case is not one in which the constitutional rights of the accused are necessarily available. It is more akin, if at all, to a court's request to police authorities for the arrest of the accused who is at large or has escaped detention or jumped bail. Having once escaped the jurisdiction of the requesting state, the reasonable prima facie presumption is that the person would escape again if given the opportunity.
4. Immediately upon receipt of the petition for extradition and its supporting documents, the judge shall make a prima facie finding whether the petition is sufficient in form and substance, whether it complies with the Extradition Treaty and Law, and whether the person sought is extraditable. The magistrate has discretion to require the petitioner to submit further documentation, or to personally examine the affiants or witnesses. If convinced that a prima facie case exists, the judge immediately issues a warrant for the arrest of the potential extraditee and summons him or her to answer and to appear at scheduled hearings on the petition.
5. After being taken into custody, potential extraditees may apply for bail. Since the applicants have a history of absconding, they have the burden of showing that (a) there is no flight risk and no danger to the community; and (b) there exist special, humanitarian or compelling circumstances. The grounds used by the highest court in the requesting state for the grant of bail therein may be considered, under the principle of reciprocity as a special circumstance. In extradition cases, bail is not a matter of right; it is subject to judicial discretion in the

context of the peculiar facts of each case.

6. Potential extraditees are entitled to the rights to due process and to fundamental fairness. Due process does not always call for a prior opportunity to be heard. A subsequent opportunity is sufficient due to the flight risk involved. Indeed, available during the hearings on the petition and the answer is the full chance to be heard and to enjoy fundamental fairness that is compatible with the summary nature of extradition.

7. This Court will always remain a protector of human rights, a bastion of liberty, a bulwark of democracy and the conscience of society. But it is also well aware of the limitations of its authority and of the need for respect for the prerogatives of the other co-equal and co-independent organs of government.

8. We realize that extradition is essentially an executive, not a judicial, responsibility arising out of the presidential power to conduct foreign relations and to implement treaties. Thus, the Executive Department of government has broad discretion in its duty and power of implementation.

9. On the other hand, courts merely perform oversight functions and exercise review authority to prevent or excise grave abuse and tyranny. They should not allow contortions, delays and “over-due process” every little step of the way, lest these summary extradition proceedings become not only inutile but also sources of international embarrassment due to our inability to comply in good faith with a treaty partner’s simple request to return a fugitive. Worse, our country should not be converted into a dubious haven where fugitives and escapees can unreasonably delay, mummify, mock, frustrate, checkmate and defeat the quest for bilateral justice and international cooperation.

10. At bottom, extradition proceedings should be conducted with all deliberate speed to determine compliance with the Extradition Treaty and Law; and, while safeguarding basic individual rights, to avoid the legalistic contortions, delays and technicalities that may negate that purpose.

WHEREFORE, the Petition is GRANTED. The assailed RTC Order dated May 23, 2001 is hereby declared NULL and VOID, while the challenged Order dated July 3, 2001 is SET ASIDE insofar as it granted bail to Respondent Mark Jimenez. The bail bond posted by private respondent is CANCELLED. The Regional Trial Court of Manila is directed to conduct the extradition proceedings before it, with all deliberate speed pursuant to the spirit and the letter of our Extradition Treaty with the United States as well as our Extradition Law. No costs.

SO ORDERED.

Austria-Martinez, Corona, and Carpio-Morales, JJ., concur.

Davide, Jr., C.J., Mendoza, and Callejo, Sr., joins in the concurring opinion of Justice Carpio.

Bellosillo, J., see Separate Opinion.

Puno, J., see Separate Opinion.

Vitug, J., see Dissenting Opinion.

Quisumbing, J., concur in the separate opinion of Justice Puno.

Ynares-Santiago, J., see Dissenting Opinion.

Sandoval-Gutierrez, J., join in the Separate Opinion of Justice Ynares-Santiago.

Carpio, J., see concurring Opinion.

[1] Rollo, p. 74.

[2] Id., pp. 122-125.

[3] Presided by Judge Guillermo G. Purganan.

[4] Order dated July 3, 2001, p. 4; Rollo, p. 125.

[5] 322 SCRA 160, January 18, 2000; and 343 SCRA 377, October 17, 2000.

[6] Signed on November 13, 1994, and concurred in by the Philippine Senate on November 29, 1995.

[7] In Civil Case No. 99-94684.

[8] The 40-page Decision (322 SCRA 160, January 18, 2000) was penned by Justice Jose A. R. Melo with the concurrence of Justices Josue N. Bellosillo, Jose C. Vitug, Santiago M. Kapunan, Leonardo A. Quisumbing, Fidel P. Purisima, Arturo B. Buena, Consuelo Ynares-Santiago and Sabino R. de Leon Jr. Dissenting were Chief Justice Hilario Davide Jr.; and Justices Reynato S. Puno, Vicente V. Mendoza, Artemio V. Panganiban, Bernardo P. Pardo and Minerva P. Reyes, with Justices Puno and Panganiban writing separate Dissents.

[9] Penned by Justice Puno and concurred in by Chief Justice Davide; and Justices Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Reyes and De Leon Jr. Dissenting were Justices Bellosillo, Melo, Vitug, Kapunan, Buena and Santiago, with Justices Melo and Santiago writing separate Dissents (343 SCRA 377, October 17, 2000).

[10] Annex E of the Petition.

[11] Annex M of the Petition.

[12] Annex O (certified true xerox copy) of the Petition.

[13] The case was deemed submitted for resolution on July 3, 2002, upon receipt by this Court of respondent's Counter-Manifestation. Earlier, on September 3, 2001, this Court received petitioner's Memorandum signed by Undersecretary Ma. Merceditas N. Gutierrez and State Counsel Claro B. Flores. Filed on August 23, 2001 was private respondent's Memorandum signed by Attys. Mario Luza Bautista, Nick Emmanuel C. Villaluz and Brigitte M. da Costa of Poblador Bautista and Reyes.

[14] Petition, pp. 9-10; Rollo, pp. 10-11.

[15] During the Oral Argument on August 14, 2001, the Court asked the parties to discuss three issues: 1) the propriety of the filing of the Petition in this case before this Court; 2) whether Mr. Mark Jimenez is entitled to notice and hearing before the issuance of a warrant for his arrest; and 3) whether the procedure followed by respondent judge in issuing the warrant of arrest and granting bail was correct.

[16] Petition, p. 3; Rollo, p. 4.

[17] Government of the United States of America, represented by the Philippine Department of Justice v. The Regional Trial Court of Manila, Branch 47, and Nelson Marquez, CA-GR SP No. 61079, promulgated on May 7, 2001.

[18] Petition, pp. 3-4; Rollo, pp. 4-5.

[19] Phil. Air Lines Employees Association v. Phil. Air Lines, Inc., 111 SCRA 215, 219, January 30, 1982; citing Central Bank v. Cloribel, 44 SCRA 307 April 11, 1972.

[20] Progressive Development Corporation, Inc. v. Court of Appeals, 301 SCRA 637, January 22, 1999.

- [21] *Malonzo v. Zamora*, GR No. 137718, July 27, 1999, citing cases.
- [22] 289 SCRA 624, April 24, 1998, per Martinez, J.
- [23] 190 SCRA 31, 38, September 24, 1990, per Fernan, CJ.
- [24] *Philippine National Bank v. Sayo Jr.*, 292 SCRA 202, 232, July 9, 1999, per Davide, CJ, citing *People v. Cuaresma*, 172 SCRA 415, April 18, 1999; *Defensor-Santiago v. Vasquez*, 217 SCRA 633, January 27, 1993; *Manalo v. Gloria*, 236 SCRA 130, September 1, 1994. See also *Cruz v. Secretary of Environment and Natural Resources*, 347 SCRA 128, December 6, 2000; *Buklod ng Kawaning EIIB v. Zamora*, GR No. 142801-802, July 10, 2001.
- [25] *Agpalo*, *Statutory Construction*, 1995 ed., p. 37, citing *Macondray & Co. v. Eustaquio*, 64 Phil. 446, July 16, 1937; *Roldan v. Villaroman*, 69 Phil. 12, October 18, 1939; *Torres v. Limjap*, 56 Phil. 141, September 21, 1931; *Manila Lodge No. 761 v. Court of Appeals*, 73 SCRA 162, September 30, 1976; *People v. Concepcion*, 44 Phil. 126, November 29, 1922; *Tanada v. Cuenco*, 103 Phil. 1051, February 28, 1957; *Salaysay v. Castro*, 98 Phil. 364, January 31, 1956.
- [26] Last “Whereas” clause of PD 1069.
- [27] See “Whereas” clause of PD 1069 and preamble of the RP-US Extradition Treaty.
- [28] Bassiouni, *International Extradition*, 1987 ed., p.68.
- [29] In *Rodriguez v. Comelec* (259 SCRA 296, July 24, 1996), the Court defined fugitive from justice as one who flees after conviction to avoid punishment or who, after being charged, flees to avoid prosecution.
- [30] Bassiouni, *supra*, p. 21.
- [31] *Id.*, p. 67.
- [32] Shearer, *Extradition in International Law*, 1971 ed., pp. 19-20.
- [33] *Supra*, p. 392, October 17, 2000, per Puno, J.
- [34] Coquia, “On Implementation of the US-RP Extradition Treaty,” *The Lawyers Review*, August 31, 2000, p. 4.
- [35] See Bassiouni, *supra*, p. 546; citing 221 U.S. 508, 512 (1910).
- [36] *Supra*.
- [37] *Secretary of Justice v. Lantion*, *supra*.
- [38] Shearer, *Extradition in International Law*, 1971 ed., p. 157.
- [39] *Id.*, p. 545.
- [40] In line with the Philippine policy of cooperation and amity with all nations set forth in Article II, Section 2, Constitution.
- [41] The United States District Court, District of Nevada, Las Vegas, Nevada: “In the Matter of the Extradition of Charlie Atong Ang, a fugitive from the country of the Philippines,” [the court] has denied Mr. Ang’s motion for bail, per petitioner’s Manifestation dated June 5, 2002.
- [42] *Secretary of Justice v. Lantion*, *supra*.
- [43] *Wright v. Henkel*, 190 U.S. 40, 62, March 23, 1903.

- [44] See footnote no. 41, Petition for Certiorari, p. 18; Rollo p. 19; Manifestation dated June 5, 2002.
- [45] Persily, "International Extradition and the Right to Bail," 34 Stan. J. Int'l L. 407 (Summer, 1998).
- [46] Ibid.
- [47] 39 CJS 875, citing *People v. Blair*, 33 NYS 2d 183, 190, 191; *Amerada Petroleum Corporation v. Hester*, 109 P. 2d 820, 821, 188 Okl. 394.
- [48] Id.; citing *Independent Life Ins. Co. v. Rodgers*, 55 S.W. 2d 767, 165 Tenn. 447.
- [49] Petition for Extradition, pp. 2-3; Rollo pp. 49-50.
- [50] Order dated July 3, 2001, p. 3; Rollo, 124.
- [51] In the questioned July 3, 2001 Order (p. 4; Rollo, p. 125), respondent judge admitted that the Annexes of the Petition for Extradition had been received by the court a quo on May 25, 2001; yet, in its Order dated May 23, 2001 (Rollo, p. 74), it already set for hearing the issuance of the warrant of arrest.
- [52] See §9, PD 1069.
- [53] Bassiouni, *International Extradition*, supra, p. 87; citing 1 L. Oppenheim, *International Law*, (8th ed., 1955), pp. 952-53.
- [54] 280 SCRA 365, October 9, 1997.
- [55] Id., p. 381, per Panganiban, J.
- [56] 247 SCRA 652, 680, per Puno, J.
- [57] Ibid.; citing *Allado v. Diokno*, 233 SCRA 192, May 5, 1994.
- [58] Prima facie finding, not probable cause, is the more precise terminology because an extradition case is not a criminal proceeding in which the latter phrase is commonly used.
- [59] "SEC. 4. Bail, a matter of right; exception. – All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment."
- [60] *De la Camara v. Enage*, 41 SCRA 1, 6, September 17, 1971, per Fernando, J. (later CJ).
- [61] §18, Art. VII, Constitution.
- [62] *Paretti v. United States of America*, 122 F. 3d. 758, May 6, 1997.
- [63] *Garcia v. NLRC*, GR No. 110494, November 18, 1996; *Paat v. Court of Appeals*, January 10, 1997.
- [64] See *Central Bank of the Philippines v. Court of Appeals*, 220 SCRA 536, March 20, 1993.
- [65] Ibid. See also *Busuego v. Court of Appeals*, 304 SCRA 473, March 11, 1999.
- [66] Coquia, "On the Implementation of the US-RP Extradition Treaty," supra; citing *Kelso v. US Department of State*, 13 F Supp. 291 [DDC 1998].
- [67] It states: "If the person sought consents in writing to surrender to the Requesting State, the Requested State

may surrender the person as expeditiously as possible without further proceedings.”

[68] §1, Art. VIII, Constitution.

[69] §5, Art. VIII, Constitution.

[70] I.A. Cruz, Constitutional Law, 1998 ed., p. 98.

[71] Private respondent argues that the following cases -- In re Michell, 171 F. Rep. 289, June 30, 1909; United States v. Kirby, Brennan and Artt, 106 F. 3d. 855, February 27, 1997 and 158 F. 3d. 462, October 9, 1998. Beaulieu v. Hartigan, 460 F. Supp. 915, March 14, 1977; and 554 F. 2d 1, April 6, 1977 -- should be treated as examples of special circumstances. In our view, however, they are not applicable to this case due to factual differences. Hence we refrain from ruling on this argument of Jimenez.

[72] 324 SCRA 689, February 3, 2000, per Ynares-Santiago, J.

[73] Id., pp. 700-702.

[74] The US request for extradition was dated June 16, 1999; and yet, to date, more than three years later, the Petition for Extradition is still languishing in the trial court.

SEPARATE OPINION

BELLOSILLO, J.:

While I do not absolutely disagree with the well-reasoned ponencia of Mr. Justice Panganiban, I prefer nevertheless to surf with the reflections of Mr. Justice Puno expressed in his Separate Opinion which, in essence, espouse the balancing of the duty of the State to faithfully comply with its commitments under a treaty on one hand, and its responsibility to protect the fundamental rights of its citizens on the other.

I wish to express some concerns however, particularly the crucial issue of whether a potential extraditee may apply for and be released on bail during the pendency of the extradition proceedings. This to me should not be ignored.

In Northern PR Co. v. North Dakota,[1] Mr. Justice Frankfurter intoned: "The cardinal article of faith of our civilization is the inviolable character of the individual." Thus, fundamental rights and civil liberties, although not unlimited, occupy a place inferior to none in the hierarchy of constitutional values. These are among the most cherished privileges enjoyed by free men, of which it is the sacred duty of the State to maintain and protect against the erosion of possible encroachments, whether minute or extensive, foreign or domestic.

It is lamentable however that the position taken by the Government in the instant case amounts to an unpardonable abdication of the duty of protection which it owes to all within its territory under the expediency of a treaty.

The Government maintains that an extradition court has no power to authorize bail in the absence of any law conferring such power; and that the 1987 Constitution, as well as the Rules of Court, as amended, applies only to persons arrested and detained for violation of Philippine Laws, but not to extradition proceedings in which courts do not render judgments of conviction or acquittal.

The argument is as ingenious as it is fallacious. It is settled that the power to admit to bail exists in extradition proceedings, although as a matter of policy it may only be granted under "exceptional circumstances." This,

quintessentially, has been the doctrine advocated in a cavalcade of American cases starting with *Wright v. Henkel*, 190 US 40 (1902); and worth mentioning, of course, are *Paretti v. United States*, 112 F.3d 1363 (1977), *Bealieu v. Hartigan*, 430 F. Supp. 915 (1977), and *In re Kirby, et al.*, 106 F.3d 855(1996); which are also discussed extensively by Mr. Justice Puno.

Apart from these cases, there is likewise a considerable number of authorities which support the general view that the power to admit to bail is a necessary incident of the power to hear and determine cases.[2] In other words, one of the inherent powers of the judiciary with regard to proceedings before it has been the admission of a prisoner to bail where, in the exercise of his discretion, the judge deems it advisable. A fortiori, even in the absence of express statutory grant of authority to courts, judicial power to admit to bail parties properly within their jurisdiction must be deemed to exist. It must be mentioned, however, that this authority is not absolute for the Constitution, statutes and the Rules of Court render it readily subject to limitations.

Significantly, both the extradition treaty between the United States and the Philippines, and the Philippine Extradition Law (PD 1069) contain no provision expressly withholding from the courts the power to grant bail. Had the intention of the parties to the treaty been to totally nullify the pre-existing power of the extradition court on the matter of bail, they could have easily provided for it in the treaty. But since they had not done so, it would be reasonable to presume that they had not so intended. Indeed, the treaty fails to even remotely suggest such judicial limitation insisted upon by the Government.

Truly, there is neither logic nor persuasion to the suggestion that bail should only be allowed in criminal cases, or that class of cases where courts must "render judgments of conviction or acquittal." Bail as a remedy is available where there is deprivation of liberty prior or during trial. In the 1909 case of *United States v. Go Siaco*,[3] akin to the situation confronting us, but involving a deportation proceeding, this Court allowed the potential deportee to post bail although a deportation proceeding is not criminal in nature and there was then no law providing for bail in deportation cases -

x x x x we see no reason why bail should not be allowed in this class of cases. As is said by the Supreme Court, the defendant has committed no crime. In this particular case the defendant was born in this country, has lived here for more than 35 years and is now living here with his mother, a native of the Islands. There is no reason to think that his being at large will be any menace to the people in the locality where he resides, nor is there any reason to believe that his attendance at court abide the judgment which may be entered against him cannot be secured by the giving of bail as in ordinary cases. To refuse him bail is to treat him as a person is treated who has committed the most serious crime known to the law, and while we do not intend to say that this is a criminal proceeding, we do say that some of the machinery used for making the investigation required by Act No. 702 is the machinery of the criminal law, and to it are applicable those provisions of General Orders No. 58, relating to bail.

Were we to adopt the view pressed upon us by the Government, it would restrict the reciprocal operation of the treaty, and create a striking lack of symmetry between the rights of Filipinos subject of extradition and that of American extraditees. Filipino citizens sought to be extradited by the United States government will be absolutely denied of the chance at provisional liberty during the pendency of the extradition proceedings against them; while American fugitives from justice sought to be extradited by the Philippine government could always exercise the right to petition for bail, and consequently, enjoy better chances of avoiding the inconvenience of incarceration during the pendency of the extradition proceedings. Certainly, there is no warrant for the discrimination. The Philippines and the United States dealt with each other as equals. Their extradition treaty discloses the intention that they shall stand on the same footing. The governing principles should always be reciprocity and equality.

We cannot curtail a citizen's right to freedom on speculations and fears where there exist reasonable mechanisms

appropriate to address them. To my mind, the risk of flight does not ipso facto call for denying his right to bail. Trial judges must henceforth weigh carefully and judiciously other methods to assure the presence of the accused during the proceedings and right after, when he ought to be deported already. Bail may be set at huge amounts or passports cancelled and hold-departure orders issued or border patrols heightened, in order that the extraditee may not flee from our jurisdiction. In this regard, while I agree that it is the extraditee's burden to prove the least likelihood of flight, the extradition court is also entitled to presume that the executive branch has done all it can to forestall his sudden disappearance. The executive branch cannot plead its helplessness and inutility to defeat the grant of bail to the extraditee.

In any event, all things being equal, the personal circumstances of respondent Jimenez would negate any idea of flight risk. He is a popular, even notorious, fellow whose face is more frequently than others plastered in the tri-media. His stature as representative for a congressional district in Manila makes escape from Philippine jurisdiction not only embarrassing for him but also constitutive of the offense of abandonment of duty. His family and business interests are said to be strategically placed in this country. Indeed, where respondent Jimenez has more to lose from flight, the possibility thereof appears remote and speculative.

Equity especially tilts in favor of respondent Jimenez in light of our ruling in *Montano v. Ocampo*[4] where we allowed bail to an elected senator of the country who was charged with the capital offenses of murder and frustrated murder. In resolving to grant bail in favor of Senator Montano, this Court took special notice of the accused's official and social standing as senator from which we concluded that flight was remote if not nil despite the capital crimes he had to face. In the same breath, respondent Jimenez is a duly elected Congressman with personal circumstances that will not risk the ignominy of flight, considering further the crimes he is charged with are far less severe and ignoble, since most of them had something to do with election campaign contributions than the seemingly serious indictment for murder and frustrated murder against Senator Montano.

If we grant for the sake of argument that the possibility of flight exists, still respondent Jimenez' detention would be unwarranted by law and the Constitution if the only purpose of the confinement is to eliminate a rare odd of danger that is by no means actual, present and uncontrollable. After all the Government is not powerless to deal with or prevent any threat by measures it has the ways and means to implement. The thought eloquently expressed by Mr. Justice Jackson of the United States Supreme Court in connection with the application for bail of ten (10) communists convicted by a lower court for advocacy of a violent overthrow of the United States Government is pertinent and elucidating in principle -

The Government's alternative contention is that defendants, by misbehavior after conviction, have forfeited their claim to bail. Grave public danger is said to result from what they may be expected to do, in addition to what they have done since their conviction. If I assume that defendants are disposed to commit every opportune disloyal act helpful to Communist countries, it is still difficult to reconcile with traditional American law the jailing of persons by the courts because of anticipated but as yet uncommitted crimes. Imprisonment to protect society from predicted but unconsummated offenses is so unprecedented in this country and so fraught with danger of excesses and injustice that I am loath to resort to it, even as a discretionary judicial technique to supplement conviction of such offenses as those of which defendants stand convicted x x x If, however, I were to be wrong on all of these abstract or theoretical matters of principle, there is a very practical aspect of this application which must not be overlooked or underestimated - that is the disastrous effect on the reputation of American justice if I should now send these men to jail and the full Court later decide that their conviction is invalid. All experience with litigation teaches that existence of a substantial question about a conviction implies a more than negligible risk of reversal. Indeed this experience lies back of our rule permitting and practice of allowing bail where such questions exist, to avoid the hazard of unjustifiably imprisoning persons with consequent reproach to our system of justice

x x x x Risks, of course, are involved in either granting or refusing bail. I am not naive enough to underestimate

the troublemaking propensities of the defendants. But, with the Department of Justice alert to the dangers, the worst they can accomplish in the short time it will take to end the litigation is preferable to the possibility of national embarrassment from a celebrated case of unjustified imprisonment of Communist leaders. Under no circumstances must we permit their symbolization of an evil force in the world to be hallowed and glorified by any semblance of martyrdom. The way to avoid that risk is not to jail these men until it is finally decided that they should stay jailed. If the commentary is not comparable with ours on the issues presented, its underlying principle is of universal application. If only to preserve our regime of civil liberties and stem a precedent where bail is unscrupulously disallowed, respondent Jimenez may be placed under the surveillance of the authorities or their agents in such form and manner as may be deemed adequate to insure that he will be available anytime when the Government is ready to extradite him, although the surveillance should be reasonable and the question of reasonableness should be submitted to the court a quo for remedial measures in case of abuse. He may also be required to put up a bond with sufficient surety or sureties to ensure that his extradition is not thwarted.

In our society - and even in the United States, I am sure - freedom from bodily restraint has always been at the core of the civil liberties protected by the Constitution. To unduly sacrifice the civil liberties of an individual by reason of an unfounded fear of being unable to fulfill treaty obligations, would be to render impotent the ideals of the dignity of the human person, thereby destroying something of what is noble in our way of life. Certainly, if civil liberties may be safely respected without imminently or actually impairing faithful compliance with treaty obligations, as in this case, then there is no valid reason for disregarding them.

I wish to emphasize, however, lest the best of my intentions be misconstrued, that it is not my purpose here to encourage, much less foment, dishonor of the treaty duly entered into by our Government. By all means we have to fulfill all our international commitments, for they are not mere moral obligations to be enforced at the whims and caprices of the State. They create legally binding obligations founded on the generally accepted principle in international law of *pacta sunt servanda* which has been adopted as part of the law of our land. But, in so doing, we must be ever conscious of the need to balance in one equation our commitments under the treaty, and the equally important right of the individual to freedom from unnecessary restraint.

As the vast powers and enormous resources of both the United States of America and the Republic of the Philippines are marshalled against a puny individual that is respondent Jimenez, he is certainly entitled to some measure of protection to ensure that no unwarranted intrusions or undue curtailment of his liberty is committed.

I vote to REMAND the petition to the court a quo to ensure that proper safeguards are afforded respondent in the course of the extradition proceedings.

[1] 236 U.S. 585.

[2] *United States v. Evans*, 6 Cir., 1880, 2F. 147; *In re Gannon*, D.C. Pa. 1928, 27 F.2d 362; *In re Chow Goo Pooi*, 9 Cir., 25 F. 77; *In re Ah Kee*, 9 Cir., 1884, 21 F. 701; *Whitfield v. Hanges*, 8 Cir., 222 F. 745; *Ewing v. United States*, 6 Cir., 1917, 240 F. 241.

[3] 12 Phil. 490.

[4] L-6352, Reso. dated 29 January 1953, 49 O.G. 1855.

Concurring Opinion

Carpio, J:

I concur with the well-written ponencia of Justice Panganiban. I write this concurring opinion to afford extraditees in this country the right to bail, in carefully limited exceptions, under the equity and rule making power of the Court. It is the constitutional duty and power of the Court to protect and enforce the fundamental rights^[1] of all persons in this country. This should include, to the extent that the Court can grant under its power, the right of extraditees in this country to avail of the same or similar remedies that courts in the countries of our treaty partners have accorded to their own extraditees.

The right to bail is a constitutional right available to an accused in domestic criminal proceedings except in offenses punishable by reclusion perpetua or higher when evidence of guilt is strong.^[2] An extraditee, however, cannot invoke this constitutional right in international extradition because extradition proceedings are not criminal proceedings. Extradition proceedings are like deportation and court martial proceedings where there is no constitutional right to bail.

Thus, in the leading case of *Ong See Hang v. Commissioner of Immigration*,^[3] the Court held that:

“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 (*Lao Tang Bun v. Fabre*, 81 Phil. 682; *U. S. ex rel. Zapp, et al. v. District Director of Immigration and Naturalization*, supra) and the order of deportation is not a punishment for a crime (*U. S. v. Go-Siaco*, 12 Phil. 490; *Mahler v. Eby*, 264 U. S. 32), it being merely for the return to his country of an alien who has broken the conditions upon which he could continue to reside within our borders (*U. S. v. De los Santos*, 33 Phil. 397, *Lao Tang Bun v. Fabre*, supra).”

This was reiterated in several cases, the most recent being *In RE Andrew Harvey v. Santiago*,^[4] decided under the 1987 Constitution. Here, the Court ruled that:

“The denial by respondent Commissioner of petitioners' release on bail, also challenged by them, was in order because in deportation proceedings, the right to bail is not a matter of right but a matter of discretion on the part of the Commissioner of Immigration and Deportation. Thus, Section 37(e) of the Philippine Immigration Act of 1940 provides that “any alien under arrest in a deportation proceeding may be released under bond or under such other conditions as may be imposed by the Commissioner of Immigration.” The use of the word “may” in said provision indicates that the grant of bail is merely permissive and not mandatory on the part of the Commissioner. The exercise of the power is wholly discretionary (*Ong Hee Sang vs. Commissioner of Immigration*, L-9700, February 28, 1962, 4 SCRA 442). “Neither the Constitution nor Section 69 of the Revised Administrative Code guarantees the right of aliens facing deportation to provisional liberty on bail.” (*Tiu Chun Hai, et al vs. Deportation Board*, 104 Phil. 949 [1958]). As deportation proceedings do not partake of the nature of a criminal action, the constitutional guarantee to bail may not be invoked by aliens in said proceedings (*Ong Hee Sang vs. Commissioner of Immigration*, supra).”

In *Commendador v. de Villa*,^[5] involving the court martial of military putschists against the Aquino Government, the Court held that:

“We find that the right to bail invoked by the private respondents in G.R. No(s). 95020 has traditionally not been recognized and is not available in the military, as an exception to the general rule embodied in the Bill of Rights. This much was suggested in *Arula*, where we observed that ‘the right to a speedy trial is given more emphasis in the military where the right to bail does not exist’.”

The justification for this exception was well explained by the Solicitor General as follows:

“The unique structure of the military should be enough reason to exempt military men from the constitutional coverage on the right to bail.

Aside from structural peculiarity, it is vital to note that mutinous soldiers operate within the framework of democratic system, are allowed the fiduciary use of firearms by the government for the discharge of their duties

and responsibilities and are paid out of revenues collected from the people. All other insurgent elements carry out their activities outside of and against the existing political system.

xxx

National security considerations should also impress upon this Honorable Court that release on bail of respondents constitutes a damaging precedent. Imagine a scenario of say 1,000 putschists roaming the streets of the Metropolis on bail, or if the assailed July 25, 1990 Order were sustained, on "provisional" bail. The sheer number alone is already discomfiting. But, the truly disquieting thought is that they could freely resume their heinous activity which could very well result in the overthrow of duly constituted authorities, including this Honorable Court, and replace the same with a system consonant with their own concept of government and justice.'

The argument that denial from the military of the right to bail would violate the equal protection clause is not acceptable. This guaranty requires equal treatment only of persons or things similarly situated and does not apply where the subject of the treatment is substantially different from others. The accused officers can complain if they are denied bail and other members of the military are not. But they cannot say they have been discriminated against because they are not allowed the same right that is extended to civilians."

Finally, in *Secretary of Justice v. Lantion*,^[6] the Court, speaking through Justice Reynato S. Puno, declared that:

"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. 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. 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.'

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. In contradistinction to a criminal proceeding, the rules of evidence in an extradition proceeding allow admission of evidence under less stringent standards. In terms of the quantum of evidence to be satisfied, a criminal case requires proof beyond reasonable doubt for conviction while a fugitive may be ordered extradited 'upon showing of the existence of a prima facie case.' 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. 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.

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." The concept of due process is flexible for "not all situations calling for procedural safeguards call for the same kind of procedure."

Clearly, in this jurisdiction there is no constitutional or statutory right to bail in non-criminal proceedings like in extradition. This doctrine is so well-entrenched in this jurisdiction that there is no need to belabor this point.

Courts in the countries of our treaty partners, however, have allowed bail to extraditees in their own countries even in the absence of a constitutional[7] or statutory[8] right to bail. This places our own citizens who face extradition proceedings in this country at a disadvantage in terms of available remedies. The United States, for example, allows bail to extraditees when “special circumstances”[9] are present. Canada also allows bail under a similar rule.[10]

This situation calls for equality in treatment by extending, in carefully limited exceptions, the right to bail to those facing extradition proceedings in this country. Nevertheless, we must insure that we do not cripple the ability of our Executive Department to comply in good faith with our treaty obligations under international law. This requires a calibrated balancing, on the one hand, of the State’s interest in cooperating with our treaty partners in international criminal law enforcement, and on the other hand, of the need to give our own citizens no lesser right and protection than what our treaty partners so zealously provide to their own citizens.

Thus, following the emerging trend in the United States,[11] and guided by our own experience in combating transnational crimes including international terrorism, the Court should rule that our extradition courts may, after the arrest of the extraditee, grant the extraditee bail if he establishes that he does not pose a flight risk or a danger to the community, and there is no other special circumstance that would warrant denial of bail. The burden of proving he is entitled to bail rests on the extraditee because by resisting the extradition to face a fair trial abroad, the extraditee is presumed to be a flight risk. This is why courts have consistently held that the presumption is against bail in extradition cases.[12]

The development of extradition law is still in its infancy in this country. We are fortunate that the present Constitution has empowered the Court to adopt rules to protect and enforce the fundamental rights of the people. In the United States, the grant of bail to extraditees is still largely governed by the 1903 case of *Wright v. Henkel*, with only the cryptic “special circumstances” as the standard prescribed by the U.S. Supreme Court for extradition courts in the U.S. to follow.[13] The instant case provides the opportunity for this Court to lay down a clear-cut guideline for our own extradition courts to follow. This will insure that our Executive Department can comply promptly with extradition requests as required by the nature of our treaty obligations while at the same time protecting the fundamental rights of our citizens.

In essence, extradition is police assistance extended by a state to arrest a person charged with a crime in another state and surrender him to the authorities of that state. The power to arrest by the assisting state is legitimized by a treaty, which has the force of a statute[14] and forms part of municipal law.[15] The benefit of extradition is the mutual assistance between states in criminal law enforcement across national boundaries. The assisting state acts as an arresting agent and in some jurisdictions the extradition process is mainly an executive function. Even under our extradition treaties, the final decision whether to extradite or not rests with the President of the Philippines, not with the courts.[16] Thus, ordinarily an assisting state does not grant bail to the extraditee whose recourse is to apply for bail before the court of the state where he is charged with a crime. The assisting state, however, for equity considerations may choose to accord bail to the extraditee. One equity consideration is to put extraditees in one country in equal footing with extraditees in the country of the treaty partner. Another equity consideration is to grant the right to bail, in carefully limited exceptions, to preserve and enforce fundamental rights.

This rule will not change the situation for extraditee Mark B. Jimenez in the instant case because Jimenez has failed to establish that he is not a flight risk. Having fled the United States just as he was about to be indicted for several serious crimes, Jimenez is presumed to be a flight risk for extradition purposes in this country. Jimenez has not successfully rebutted this presumption before the extradition court. Jimenez has also refused to honor his agreement with the U.S. Department of Justice, made in August 1998 through his U.S. counsel, to return to the United States[17] where he faces a maximum prison term of not less than 100 years if convicted on all counts.[18]

Given his resources, and the gravity of the charges against him, Jimenez remains a serious flight risk.

The “special circumstances” that Jimenez has alleged do not inspire confidence that he will not likely flee. Jimenez claims that he has been admitted to the Witness Protection Program which shows his lack of intent to flee. The Department of Justice, however, has disowned issuing to Jimenez a Certificate of Admission to the Witness Protection Program. The Department of Justice should know who have been admitted to the Witness Protection Program because the Department itself administers the Program. Under the Witness Protection, Security and Benefit Act, the issuance of the Certificate of Admission is the operative act that establishes admission to the Program.[19] Unless he can present a Certificate of Admission, Jimenez’s claim should be rejected, and even taken as an act of misrepresentation to the extradition court, in view of the statement by the Department of Justice that there is no record of Jimenez’s admission to the Program.[20]

For the same reason, Jimenez’s claim that he is a state witness in the plunder case against ex-President Joseph Estrada, and that “his flight would strip him of (the) immunity he is entitled to,”[21] cannot be given credence. Under the Witness Protection, Security and Benefits Act, the Certificate of Admission is essential to the discharge of the accused and his utilization as a state witness.[22] Without the Certificate of Admission, Jimenez is not entitled to immunity under the Program.[23] The Department of Justice will issue the Certificate of Admission only if it is satisfied with the proposed testimony of the witness as disclosed in his sworn statement. Since until now the Department of Justice has not issued a Certificate of Admission to Jimenez, it could mean that the Department is either not satisfied with what Jimenez is bargaining to testify against ex-President Joseph Estrada, or that Jimenez may not be the least guilty.[24] Unless Jimenez presents to the extradition court the Certificate of Admission, and this he has not done, Jimenez’s claim of being a state witness against ex-President Estrada is baseless and self-serving.

Jimenez claims that the Department of Justice knows his whereabouts because he is under 24-hour PNP protection. Jimenez asserts in his Sworn Statement[25] that the Department of Justice has provided him police protection because he “was admitted into the Witness Protection Program of the DOJ on 2 March 2001.” This is patently false. The Department of Justice states that there is no record of Jimenez’s admission to the Witness Protection Program. Jimenez has not presented a Certificate of Admission to the Program which under the Witness Protection, Security and Benefits Act would entitle him to the benefits, protection and immunities of the Program.

That Jimenez enjoys the privilege of a 24-hour PNP security detail does not establish that he is a state witness under the Witness Protection Program. As a member of the House of Representatives, Jimenez may have requested the PNP to provide him a security detail for his own benefit and protection. In such a case, the PNP security detail takes instructions from Jimenez and not from the Department of Justice. The 24-hour PNP security detail would hardly be effective in preventing Jimenez from fleeing the country.

The other “special circumstances” alleged by Jimenez, like his seven children residing in the Philippines, and his lack of visas to travel to other countries, deserve scant consideration. Considering his age, Jimenez’s seven children are all probably of age by now, and even if they are all still minors, they would hardly become public charges if left behind in the Philippines. The lack of visas has never deterred the flight of fugitives from any country. Besides, any Filipino can travel to any of our nine ASEAN neighbors without need of a visa.

Accordingly, I vote to grant the petition.

[1] Section 5 (5), Article VIII of the Constitution provides as follows: “The Supreme Court shall have the following powers: (1) x x x (5) Promulgate rules concerning the protection and enforcement of constitutional

rights, x x x.”

[2] Section 13, Article III of the Constitution.

[3] 4 SCRA 442 (1962).

[4] 162 SCRA 840 (1988).

[5] 200 SCRA 80 (1991).

[6] 343 SCRA 377 (2000).

[7] The Eighth Amendment to the United States Constitution provides: “Excessive bail shall not be required.” The excessive bail clause did not establish a constitutional right to bail. In *United States v. Salerno*, 481 U.S. 739 (1987), attached as Annex “7”, Memorandum for Private Respondent, the U.S. Supreme Court declared: “The Eighth Amendment addresses pretrial release by providing merely that ‘[e]xcessive bail shall not be required.’ This Clause, of course, says nothing about whether bail shall be available at all.”

[8] The U.S. Bail Reform Act of 1984 does not grant the right to bail in extradition cases.

[9] *Wright v. Henkel*, 190 U.S. 40 (1903), attached as Annex “2”, Memorandum for Private Respondent.

[10] *Canada v. Pitman*, 1986 WL602917 (Ont. H.C.), Supreme Court of Ontario.

[11] *Parretti v. United States*, 122 F.3d 758 (9th Cir. 1997), attached as Annex “5”, Memorandum for Private Respondent.

[12] *United States v. Lui Kin-Hong*, 83 F.3d 523 (1st Cir. 1996), attached as Annex “8”, Memorandum for Private Respondent.

[13] U.S. lower courts have differed in their interpretation of the “special circumstances” standard. See *A Recommended Approach to Bail in International Extradition Cases*, Jeffrey A. Hall, *Michigan Law Review*, December, 1987.

[14] *La Chemise Lacoste v. Fernandez*, 129 SCRA 373 (1984); *Ram Singh v. Insular Collector of Customs*, 38 Phil. 862. In *Secretary of Justice v. Lantion*, 322 SCRA 160 (2000), the Court stated: “Accordingly, the principle *lex posterior derogat priori* takes effect - a treaty may repeal a statute and a statute may repeal a treaty.”

[15] *Guerrero’s Transport Services, Inc. v. Blaylock Trans. Services Employees Association-Kilusan*, 71 SCRA 621 (1976).

[16] Paragraph 2, Article 2 of the RP-US Extradition Treaty.

[17] Letter dated August 23, 2001 written by Mr. John E. Harris, Director, Office of the International Affairs, U.S. Department of Justice, addressed to Undersecretary Merceditas Gutierrez of the Philippine Department of Justice, attached to Petitioner’s Memorandum.

[18] Page 17, Petition for Certiorari.

[19] Section 11 of R.A. No. 6981 provides as follows: “ x x x If after said examination of said person, his sworn statement and other relevant facts, the Department is satisfied that the requirement of this Act and its implementing rules are complied with, it may admit such person into the Program and issue the corresponding certificate.”

[20] Pages 28-29, Petitioner's Memorandum.

[21] Page 46, Memorandum for Private Respondent.

[22] Section 12 of R.A. No. 6981 provides as follows: "The certificate of admission into the Program by the Department shall be given full faith and credit by the provincial or city prosecutor who is not required to include the Witness in the criminal complaint or information and if included therein, to petition the court for his discharge in order that he can be utilized as a state Witness. x x x."

[23] Section 12 of R.A. No. 6981 provides that "[a]dmission into the Program shall entitle such State Witness to immunity from criminal prosecution for the offense or offenses in which his testimony will be given or used x x x."

[24] Section 10, R.A. No. 6981.

[25] Annex "A-1" of Private Respondent's Comment.

SEPARATE OPINION

PUNO, J:

This is a case of first impression involving not only the state's interest to comply with its extradition treaty with the United States but also its equally imperative duty to protect the constitutional rights of its citizens to liberty and to due process. Our decision will affect important rights of all our citizens facing extradition in foreign countries. Personalities should not therefore bend our decision one way or the other for the protection of the Bill of Rights extends indifferently to all alike.

We begin with the unfudged facts. The records reveal that when the private respondent learned of the filing of the petition for extradition against him and before the extradition court could issue any summons, he filed a motion to be furnished a copy of the petition and to set for hearing petitioner's request for the issuance of warrant of arrest. Alternatively, he prayed that he be allowed to post bail for his temporary liberty. Respondent judge granted private respondent's motion. After hearing, he issued a warrant for the arrest of private respondent but allowed him to post bail.

Petitioner assails the orders of the respondent judge and submits the following issues for resolution by this Court:

"I.

The public respondent acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in adopting a procedure of first hearing a potential extraditee before issuing an arrest warrant under Section 6 of P.D. No. 1069.

II.

The public respondent acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in granting the prayer for bail and in allowing Jimenez to go on provisional liberty because:

1. An extradition court has no power to authorize bail in the absence of any law that provides for such power.
2. Section 13, Article III (right to bail clause) of the 1987 Constitution and section 4, Rule 114 (Bail) of the Rules of Court, as amended, which were relied upon, cannot be used as bases for allowing bail in extradition

proceedings.

3. The presumption is against bail in extradition proceedings or proceedings leading to extradition.

4. On the assumption that bail is available in extradition proceedings or proceedings leading to extradition, bail is not a matter of right but only of discretion upon clear showing by the applicant of the existence of special circumstances.

5. Assuming that bail is a matter of discretion in extradition proceedings, the public respondent received no evidence of 'special circumstances' which may justify release on bail.

6. The risk that Jimenez will flee is high, and no special circumstance exists that will engender a well-founded belief that he will not flee.

7. The conditions attached to the grant of bail are ineffectual and do not ensure compliance by the Philippines with its obligations under the RP-US Extradition Treaty.

8. The Court of Appeals resolution promulgated on May 10, 2001 in the case entitled 'Eduardo T. Rodriguez, et al. vs. Hon. Presiding Judge, RTC, Branch 17 Manila,' CA- G.R. SP No. 64589, relied upon by the public respondent in granting bail, had been recalled before the issuance of the subject bail orders."

The substantive issues are shortlisted in the majority opinion as follows: (1) whether or not the private respondent is entitled to notice and hearing before a warrant for his arrest can be issued; and (2) whether or not he is entitled to post bail for his provisional liberty while the extradition proceedings are pending.

With due respect, I offer the following views on the issues as hewn in the majority opinion, viz:

I.

The right to notice and hearing of private respondent as an extraditee.

The first issue demands a two-tiered analysis based on the following questions:

(1) Can the private respondent, as potential extraditee, demand as a matter of right, that he be furnished a copy of the petition for extradition before the summons and/or the warrant of arrest are issued by the extraditing court?

(2) Can he demand a hearing for the purpose of determining the necessity and propriety of the issuance of a warrant for his arrest?

The majority opinion submits that neither P.D. No. 1069 nor the Constitution authorize respondent judge to give the private respondent a copy of the petition for extradition and immediately set for hearing the request for a warrant of arrest against the latter.

I beg to disagree. There can be no disagreement that P.D. No. 1069 deserves an interpretation that would blend with the purpose of the RP-US Extradition Treaty, i.e., the minimization of flight risk and the facilitation of an extraditee's surrender to the requesting state. But this stance should not be taken to mean that this Court can cast a blind eye to the private respondent's constitutional rights to life, liberty and to due process. While this Court is obliged to accord due respect to the state's interests to comply with its treaty obligations, it cannot also shirk from its duty to protect the fundamental rights of its citizens. Thus, a full and careful weighing of these warring interests is imperative as we did in its predecessor case *Secretary of Justice vs. Lantion*.^[1] With due respect, it is my humble submission that the majority failed to allocate the proper weight due to the constitutional rights of the private respondent to life, liberty and to due process. These rights are now conceded in the civilized world as universal in character and it was never the intent of the RP-US Extradition Treaty to trivialize their significance.

It bears emphasis that this Court's ruling in *Secretary of Justice vs. Lantion* did not per se negate the constitutional rights of a potential extraditee to liberty and due process. If we rejected private respondent's invocation of these rights in said case, it was only because (1) the threat to his liberty by provisional arrest has already passed;^[2] and (2) the threat to his liberty upon the filing of the petition for extradition was merely hypothetical.^[3] At that time, the government of the United States has not requested for the provisional arrest of the private respondent. Likewise, the petition for extradition has not yet been filed before the extradition court. Thus, after carefully balancing the conflicting interests of the parties at the evaluation stage of the extradition proceedings, we upheld the state's interests under its extradition treaty with the United States, viz:

"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.' The approach requires that we 'take conscious and detailed consideration of the interplay of interests observable in a given type of situation.' These interests usually consist in the exercise of the individual of his basic freedoms on the one hand, and the government's promotion of fundamental public interests or policy objectives on the other.

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 of its laws. Petitioner also emphasized 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 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."^[4]

We stressed that the denial of the private respondent's privilege of notice and hearing during the evaluation stage of the extradition proceeding is merely a soft restraint on his right to due process, viz:

"In tilting the balance in favor of the interests of the State, we stress 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 not 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."^[5]

The extradition process against the private respondent has, however, moved away from the stage of evaluation of documents by the executive officials of the Philippine government. A formal petition for the extradition of the private respondent has now been filed with our court of justice. With this development, the competing interests of our government and of the private respondent have developed new dimensions and they need to be rebalanced. I respectfully submit the following propositions, viz.

(a) A potential extraditee has the right to be notified of the filing of the petition for extradition.

It is my humble submission that from the moment the petition for extradition is filed before the extradition court,

a potential extraditee has the right to demand that he be furnished a copy of the petition. This right inheres from the duty imposed by P.D. No. 1069 to the extradition judge to summon a potential extraditee to appear and answer the petition “as soon as practicable.” It is a mandatory duty that should be carried out by the extradition judge; the law does not give him any discretion.

This submission is in accord with our ruling in *Secretary of Justice vs. Lantion*,^[6] where we held that: “P.D. No. 1069 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 the supporting papers, i.e., after the filing of the extradition in the extradition court.”

(b) The need for a hearing to determine whether a warrant of arrest should be issued against an extraditee is addressed to the sound discretion of the extraditing judge.

The majority opinion holds that the private respondent extraditee is not entitled to notice and hearing before the issuance of a warrant of arrest. It relies on 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 serve the ends of justice. 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 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 accused.” (emphasis supplied)

The majority interprets this provision as follows:

“It is significant to note that section 6 of PD 1069, our Extradition Law, uses the word ‘immediate’ to qualify the arrest of the accused. This qualification would be rendered nugatory by setting for hearing the issuance of the arrest warrant. Hearing entails sending notices to the opposing parties, receiving facts and arguments from them, and giving them time to prepare and present such facts and arguments. Arrest subsequent to hearing can no longer be considered ‘immediate.’ The law could have intended the word as a mere superfluity but, on the whole, as means of imparting a sense of urgency and swiftness in the determination of whether a warrant of arrest should issue.”

Clearly, the majority leans heavily on the use of the word “immediate” which qualified the arrest of an extraditee. It holds that “the qualification would be rendered nugatory by setting for hearing the issuance of the arrest warrant.”

Again, I beg to disagree. I submit that the decision whether to send notice to an extraditee and hear him before ordering his arrest should be left to the sound discretion of the extraditing judge. This is crystal clear from section 6 of P.D. No. 1069 which provides:

“x x x He 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 serve the ends of justice.” (Italics supplied)

Under this provision, the issuance of a warrant of arrest is dependent on a big “if,” or to an all important condition - - - if it will serve the ends of justice. The determination of whether a warrant of arrest against an extraditee will serve the ends of justice is certainly not a cut and dried duty. It involves the appreciation of highly contentious

facts, both objective and subjective in nature. Their appreciation requires a judicial mind honed in the law of evidence. The history of extradition will reveal that, initially, the task of determining whether an extraditee should be immediately arrested was given to the executive authorities of the extraditing state. The matter, in other words, was treated purely as an executive function but unfortunately, the practice was given to abuses. Recognizing that certain human rights are universal in nature and beyond violation, the task of adjudging whether a potential extraditee should be immediately arrested pending his extradition proceeding was transferred to judges. The office of the judge was called upon to insure that fundamental fairness is not denied to a potential extraditee. The extraditing judge is not to act as a stamp pad but has to exercise his sound discretion on whether to issue the warrant. Under our law on extradition, P.D. No. 1069, section 6, the discretion of the extradition judge on whether to order the arrest of the extraditee is guided by the following consideration - - - whether the arrest will serve the ends of justice. The grant of this judicial discretion will be rendered naught if we subject the action of the extraditing judge to unnecessary fetters. With due respect, the view that the extraditing judge has no discretion to determine whether to notify and hear a potential extraditee before ordering his arrest cuts too much on the freedom of action of the extraditing judge. I submit that we should give the extraditing judge more discretion on the matter. If the extraditing judge feels that the notice and hearing will allow an extraditee to flee, I have no doubt, he will immediately order his arrest. If, however, he believes that notice and hearing will not pose such danger and that he needs to hear the parties to make a better determination on whether the immediate arrest of an extraditee will serve the ends of justice, let us not deny him the discretion to do so. The essence of discretion is freedom of action and we negate that essence when we impose needless limits on the judge's freedom of action.

Prescinding from these premises, I cannot also subscribe to the submission of the majority that the phrase "if it appears" in section 6 of P.D. No. 1069 conveys the message that accuracy is not as important as speed in issuing a warrant of arrest against a potential extraditee. We are concerned here with the priceless right to life and liberty, with the right to due process before one's liberty is taken away. We are not dealing with chattels. We should not lay down the doctrine that speed should be preferred to accuracy for speed breeds recklessness and we cannot be reckless with our right to life and liberty.

I agree with the majority that the trial court should not be expected to make an exhaustive determination of the facts of the case before issuing a warrant of arrest. To be sure, that is not expected of any judge, not even from a judge of a criminal case. In the case at bar, however, the extraditing judge ordered the hearing only to have a better basis for determining whether the immediate arrest of the private respondent will best serve the ends of justice. A careful look at the petition for extradition will show that it does not provide enough basis for the extraditing judge to determine whether the immediate issuance of warrant of arrest will serve the ends of justice. I quote the majority opinion on the documents attached to the petition for extradition, viz:

"Attached to the Petition for Extradition, with a Certificate of Authentication among others, were the following: (1) Annex H, the Affidavit executed on May 26, 1999 by Mr. Michael E. Savage – trial attorney in the Campaign Financing Task Force of the Criminal Division of the US Department of Justice; (2) Annexes H to G, evidentiary Appendices of various exhibits that constituted evidence of the crimes charged in the Indictment, with Exhibits 1 to 120 (duly authenticated exhibits that constituted evidence of the crimes charged in the Indictment); (3) Annex BB, the Exhibit I 'Appendix of Witness [excerpts] Statements Referenced in the Affidavit of Angela Byers' and enclosed Statements in two volumes; (4) Annex GG, the Exhibit J 'Table of Contents for Supplemental Evidentiary Appendix' with enclosed Exhibits 121 to 132; and (5) Annex MM, the Exhibit L 'Appendix of Witness [excerpts] Statements Referenced in the Affidavit of Betty Steward' and enclosed Statements in two volumes."

Even a cursory reading of these documents will not sustain the thesis of the majority that "it is evident that the respondent could have already gotten an impression from these records adequate for him to make an initial

determination of whether the accused was someone who should immediately be arrested in order to best serve the ends of justice.” The documents are evidence tending to prove the guilt of the private respondent in regard to the cases filed against him in the United States. They are not evidence, however, to prove that the private respondent will flee the Philippine jurisdiction while his extradition petition is being heard. In other words, the petition for extradition may be in due form but it does not establish sufficient factual basis to justify the immediate issuance of warrant of arrest against the private respondent. The probability of his flight from our jurisdiction is central to the question of whether he should be arrested. In the absence of evidence establishing that private respondent will flee, I cannot join the majority in holding that the respondent extraditing judge gravely abused his discretion in calling for a hearing so that the parties can adduce evidence on the issue.

Likewise, the majority holds:

“Moreover, the law specifies the court’s setting a hearing upon receipt of the answer or upon failure of the accused to answer after receiving the summons. In connection with the matter of immediate arrest, however, the word ‘hearing’ is notably absent from the provision. Evidently, had the holding of a hearing at that stage been intended, the law could have easily so provided. It also bears emphasizing at this point that extradition proceedings are summary in nature. Hence, the silence of the Law and the Treaty leans to the more reasonable interpretation that there is no intention to punctuate with a hearing every little step in the entire proceedings.” Once more, I beg to disagree from the reading of our law on extradition by the majority. The law, it is true, did not provide that the extraditing judge must hold a hearing before he issues a warrant of arrest. The call for a hearing is not mandatory but neither is it prohibited. Ergo, the matter of whether there ought to be a hearing before issuance of warrant of arrest is addressed to the discretion of the extraditing judge. The exercise of this discretion depends on the configuration of the facts of each case.

II.

The right to bail of a potential extraditee during the pendency of the petition for extradition.

I respectfully submit that a potential extraditee can hinge his right to bail in our Constitution. The mere silence of our extradition treaty with the United States and our extradition law (P.D. No. 1069) does not negate the right to bail of a potential extraditee. Our adherence to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as international norms, customs and practices support an extraditee’s right to bail. But while an extraditee may apply for bail, its grant depends on presentation of clear and convincing evidence that the extraditee will not frustrate the ends of justice by fleeing from our jurisdiction. Again, I proffer the following propositions:

First. The right to bail inheres from the rights to life, liberty and to due process.

Our Constitution jealously guards every person’s right to life and liberty against unwarranted state intrusion; indeed, no state action is permitted to invade this forbidden zone except upon observance of due process of law.[7] Like the privilege of the writ of habeas corpus, the right to bail gives flesh to the guarantee to liberty, without which, the right to liberty can prove meaningless, and due process will only be an empty slogan.

However, unlike the privilege of habeas corpus which is principally a remedy against illegal restraint on liberty,[8] the right to bail is available even when the reason for the detention is lawful. The purpose of bail is to relieve a person the rigors of prolonged imprisonment until the main case against him is resolved, and at the same time, insure his attendance when required by the authorities.[9] It is the prospect of prolonged detention, not the detention itself, which offends the constitutional right to due process.

In *Teehankee vs. Rovira*,[10] this Court rejected the view which limits the right to bail to persons charged with

criminal offenses. We ruled that the constitutional right to bail applies to all persons, viz:

“This constitutional mandate refers to all persons, not only to persons against whom a complaint or information has already been filed; it lays down the rule that all persons shall before conviction be bailable except those charged with capital offense and the evidence of his guilt is strong. Of course, only those persons who have either been arrested, detained or otherwise deprived of their liberty may have the occasion to seek the benefit of said provision. But in order that a person can invoke this constitutional precept, it is not necessary that he should wait until a formal complaint or information is filed against him. From the moment he is placed under arrest, detention or restraint by officers of the law, he can claim this guarantee of Bill of Rights, and this right he retains unless and until he is charged with a capital offense and the evidence against him is strong. Indeed, if, as admitted on all sides, the precept protects those already charged under a formal complaint or information, there seems to be no legal or just reason for denying its benefit to one against whom the proper authorities may yet conclude that there exists no sufficient evidence of guilt. To place the former in a more favored position than the latter would be, to say the least, anomalous and absurd. If there is presumption of innocence in favor of one already formally charged with a criminal offense, a fortiori this presumption should be induced in favor of one yet so charged although arrested or detained.” (emphasis supplied)

In *United States vs. Go-Siaco*,^[11] this Court held that while deportation proceedings are not criminal in nature, an alien deportee may avail of the constitutional right to bail, viz:

“The order of deportation is not a punishment for a crime. It is not a banishment, in the sense which that word is often applied to the expulsion of citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the Government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend. He has not, therefore, been deprived of life, liberty, or property without due process of law; and the provisions of the Constitution securing the right of trial by jury and prohibiting unreasonable searches and seizures, and cruel and unusual punishments, have no application.

It will be seen that this declaration is not inconsistent with the view that while the proceeding is not a trial or sentence of a crime or offense, it may in so far use the machinery of the criminal law as to admit of application the provisions in such law relating to bail x x x.

x x x We see no reason why bail should not be allowed in this class of cases. As is said by the Supreme Court, the defendant has committed no crime x x x To refuse him bail is to treat him as a person who has committed the most serious crime known to the law, and while we do not intend to say that this is a criminal proceeding, we do say that some of the machinery used for making the investigation required by Act No. 702 is the machinery of the criminal law x x x.”

This ruling is reiterated in *United States vs. Benito*^[12] and in *Pagado vs. Aldanese*.^[13]

The case of *Ong Hee Sang, et al. vs. Commissioner of Immigration and Portugal*^[14] is not a departure from our previous rulings on the right to bail of a deportee. In said case, the Court ruled that the grant or denial of an alien’s application for bail lies within the discretion of the Commissioner of Immigration and Deportation pursuant to section 37 (9) (e) of the Philippine Immigration Act of 1940, which states: “Any alien under arrest in a deportation proceeding may be released under a bond or under such other conditions as may be imposed by the Commissioner of Immigration.”^[15] The Court ratiocinated as follows:

“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 and the order of deportation is not a punishment for a crime, it being merely for the return to his country of an alien who has broken the conditions upon which he could continue to reside with our borders.”

The Court explained the difference of the Go Siaco case as follows:

“The case of U.S. vs. Go Siaco is not in point because said case was a proceeding brought under the provisions of Act No. 702 which falls, by provision of said law, under the jurisdiction of the courts of justice. The case at bar is deportation proceeding under the Philippine Immigration Act of 1940, which expressly vests in the Commissioner of Immigration the exclusive and full discretion to determine whether an alien subject to deportation should or should not be granted.”

It is apparent, therefore, that the ruling in the Ong Hee Sang does not negate the right to bail. It merely meant that the standard for granting or denying bail under the Constitution is different in deportation proceedings. It is different because there is a specific law which provides for such standard in deportation proceedings, i.e., Commonwealth Act No. 613 or the Philippine Immigration Act of 1940. Neither did the case preclude the grant of bail on due process grounds as in the case *Mejoff vs. Director of Prisons*,^[16] where this Court held that while “temporary detention is a necessary step in the process of exclusion and expulsion of undesirable aliens and that pending arrangements for his deportation, the Government has a right to hold the undesirable alien under confinement for a reasonable length of time, too long a detention may justify the issuance of a writ of habeas corpus”^[17] and entitle an alien to be released on bail, viz:

“The protection against deprivation of liberty without due process of law and except for crimes committed against the laws of the land is not limited to Philippine citizens but extends to all residents, except enemy aliens, regardless of nationality x x x

Moreover, by its Constitution (Art. II, sec. 3), the Philippines ‘adopts the generally accepted principles of international law as part of the law of the Nation.’ And in a resolution entitled ‘Universal Declaration of Human Rights’ and approved by the General Assembly of the United Nations of which the Philippines is a member at its plenary meeting on December 10, 1948, the right to life and liberty and all other fundamental rights as applied to all human beings were proclaimed. It was there resolved that ‘All human beings are born free and equal in degree and rights’ (Art. 1); that ‘Everyone is equal and is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, nationality or social origin, property, birth, or other status’ (Art. 2); that ‘Every one has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law’ (Art. 8); that ‘No one shall be subjected to arbitrary arrest, detention or exile’ (Art. 9, etc.)”^[18]

It must be noted that the *Mejoff* case was decided when C.A. No. 613 was already in effect. Similarly, in *Chirskoff vs. Commission of Immigration*^[19] the Court released the alien deportee on bail because his prolonged detention violates his right to liberty, viz:

“[F]oreign nationals, not enemy, against whom no criminal charges have been formally made or judicial order issued, may not be indefinitely kept in detention; that in the ‘Universal Declaration of Human Rights’ approved by the General Assembly of the United Nations of which the Philippines is a member, the right to life and liberty and all other fundamental rights as applied to human beings were proclaimed; that the theory on which the court is given power to act is that the warrant of deportation, not having been executed, is *functus officio* and the alien is being held without any authority of law; and that the possibility that the petitioner might join or aid disloyal elements if turned out at large does not justify prolonged detention, the remedy in that case being to impose conditions in the order of release and exact bail in reasonable amount with sufficient sureties.”

In the case of *Lao Gi vs. Court of Appeals*,^[20] this Court again held that although a deportation proceeding does not partake of a criminal action, the constitutional right of a person to due process should be protected therein, viz:

“Although a deportation proceeding does not partake of the nature of a criminal action, however, considering

that it is a harsh and extraordinary administrative proceeding affecting the freedom and liberty of a person, the constitutional right of such person to due process shall not be denied. Thus, the provisions of the Rules of Court of the Philippines particularly on criminal procedure are applicable to deportation proceedings.

X X X X X X X X

Before any charge should be filed in the CID a preliminary investigation must be conducted to determine if there is sufficient cause to charge respondent for deportation. The issuance of warrants of arrest, arrests without a warrant and service of warrant should be in accordance likewise with Rule 113 of the 1985 Rules of Criminal Procedure; search warrants issued by the CID shall be governed by Rule 126 of the 1985 Rules of Criminal Procedure; and so the matter of bail, motion to quash, trial, among others.”[21] (emphasis supplied).

There is no reason why an extraditee should be denied the right to apply for bail. While an extradition proceeding is not criminal in nature, it is a harsh and extraordinary process. It may involve a restraint of liberty that under some circumstances can be greater than in an ordinary criminal case.[22] For in extradition proceedings, the extraditee will be transported and tried to another jurisdiction of which laws he may be unfamiliar.[23]

Second. The right of an extraditee to apply for bail should be treated in light of our other treaty obligations, especially those concerning the promotion and protection of human rights.[24]

Under the Vienna Convention on the Law of Treaties, to which the Philippines is a party, a treaty shall be interpreted “in their context and in the light of its object and purpose,”[25] taking into account the “relevant rules of international law applicable in the relations between the parties.”[26]

As members of the family of nations, the Philippines and the United States have the responsibility to uphold fundamental human rights, and the dignity and worth of the human person. They are mandated to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.[27]

Being signatories to the Universal Declaration of Human Rights[28] and the International Covenant on Civil and Political Rights,[29] both countries are committed to protect and promote the right of every person to liberty and to due process, ensuring that those detained or arrested can take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention, and order his release if the detention is not lawful.[30]

Although the right to liberty is a relative right and may be suspended or derogated in exceptional circumstances,[31] it is a generally accepted principle in international law that the presumption lies in favor of the existence of the right, and the burden lies with the authorities to justify the lawfulness of the arrest or detention. This presumption creates an obligation on state authorities to make effective remedies available to every person under detention for the enjoyment of his fundamental right to liberty.

Third. There is no customary rule of international law prohibiting bail in extradition cases.

At present, there is no customary norm prohibiting bail in extradition cases. On the contrary, most countries, including Canada, Australia, the United Kingdom, South Africa and Pakistan, among others, allow a potential extraditee to be released on bail. Members of the European Union have recently ratified the European Convention on Extradition, which also provides a procedure for bail.

Fourth. Even the United States grants bail to an extraditee, albeit in exceptional circumstances.

In the United States, the ruling case law upholds the right of a potential extraditee to apply for bail. The US Supreme Court in the landmark case of *Wright vs. Henckel*,[32] recognized the authority of the circuit courts to

receive application for and grant bail in certain exceptional case, thus:

“We are unwilling to hold that the circuit courts possess no power in respect of admitting to bail other than as specifically vested by statutes, or that, while bail should not be ordinarily granted in cases of foreign extradition, those courts may not in any case, and whatever the special circumstances, extend that relief.”

This dictum planted the seeds of the current federal common law on bail in international extradition proceedings.[33] It recognized the existence of the right to bail based on “exceptional circumstances”[34] which the extraditee must prove. The following are some of the instances which were considered “special circumstances” to warrant the grant of bail:

- (a) age, background of defendant, and lack of any suitable facility to hold him;[35]
- (b) parity with other defendant on similar charge, granting bail would promote harmony among factions in x x dispute, likelihood of delay, and pending constitutional challenge to the extradition statute;[36]
- (c) need to participate in litigation in which entire fortune depended;[37]
- (d) likelihood of delay and bailable offense in seeking extradition;[38] and
- (e) provisional arrest justifies grant of bail and disparity of treatment of persons on same charge.[39]

The trend in recent years is for courts to liberalize the bail standard as they place primary emphasis on the accused’s risk of flight.[40] The rationale of this trend was succinctly laid down in *Beaulieu vs. Hartigan*,[41] to wit:

“In none of the cases dealing with the issue of bail in an extradition setting was a district judge who granted bail subsequently reversed by a reviewing court. Analysis of these cases leads me to the conclusion that the ‘special circumstances’ doctrine of *Wright*, though still viable, must be viewed, in the light of modern concepts of fundamental fairness, as providing a district judge with flexibility and discretion in considering whether bail should be granted in these extradition cases. The standard scrutiny and concern exercised by a district judge should be greater than in the typical bail situation, given the delicate nature of international relations. But one of the basic questions facing a district judge in either situation is whether, under all circumstances, the petitioner is likely to return to court when directed to do so. Fundamentally, it is a judgment call by the district court based on the totality of circumstances, including extremely important consideration of the country’s treaty agreements with other nations; a district judge should approach the bail situation in an extradition case with an added degree of caution, given the additional factor of an international treaty.”

Fifth. While an extraditee may apply for bail, its grant is discretionary depending on whether it will frustrate the ends of justice.

In extradition cases, the extradition court does not inquire into the guilt or innocence of the accused. Neither does the court measure the injury caused to the community, as the offense was not committed within its jurisdiction. The court, therefore, cannot base its decision to grant or deny bail on the gravity of the offense, as it could in criminal cases. Rather, it should base its decision on whether it will frustrate the ends of justice. The risk of flight of an extraditee is an important factor to consider in determining whether his bail will frustrate justice.

Whether or not a potential extraditee is a flight risk is determined by two factors: (1) capacity to flee; and (2) intent to flee. The combination of these two factors determines the degree of risk that the trial court must assess and weigh. While there is no mathematical formula to guide the court in gauging the precise risk posed by a particular combination of these two factors, it is commonsensical to assume that one without the other would not result to any risk at all. For while one has the capacity to flee, if he does not intend to flee, the fear of flight would be for naught, and vice versa.

Sixth. The burden of proof to justify the arrest and detention of the potential extraditee initially rests on the petitioning executive authorities.

Under our extradition treaty and law, a potential extraditee may be arrested and detained under any of the following circumstances: (a) upon the receipt of the request for the arrest of the potential extraditee and even before the filing of the request for extradition; (b) upon the filing of the petition for extradition before the extradition court; or (c) during the hearing of the petition for extradition.

In all the above circumstances, the issuance of a warrant of arrest depends on a showing that it will serve the ends of justice. Initially, it is the burden of the petitioning executive authorities to prove that the warrant against the extraditee will serve the ends of justice.

Seventh. After the warrant of arrest is issued, the burden of proof on the right to be admitted to bail shifts on the potential extraditee.

In criminal cases, the presumption lies in favor of granting bail. This is so because of the constitutional presumption of innocence, which is not overturned by the finding of probable cause upon which the warrant of arrest against the accused was issued.

However, the presumption of innocence, from which the ordinary presumption in favor of granting bail emanates, is inoperative in extradition cases. The issuance of the warrant of arrest in extradition cases is not based on the finding that the accused is probably guilty of the offense for which he was charged in the requesting State. The warrant is predicated on the finding that it will serve the ends of justice. Once issued, it raises a presumption of the continuing presence of the circumstances upon which the issuance of the warrant was based. More often than not, this circumstance is the probability that the extraditee will flee from the jurisdiction of the extraditing court. The burden of proving admittance to bail is thus shifted to the extraditee.

It should be underscored that due process, which is the basis of bail in extradition proceeding, merely grants the potential extraditee the opportunity to avail of the remedy of bail; it does not give him the right to demand that he be released on bail under any circumstance. What the right to due process prohibits is the outright denial of the remedy of bail; it does not prohibit a reasonable denial of the application for bail after carefully weighing all the circumstances at hand.

III.

There is need to remand the case at bar to the extradition court in fairness to the parties.

I respectfully submit that in fairness to both parties, the case should be remanded to the extradition court so that the proper procedure and standard to determine the right to bail can be complied with. I put no blame on the extradition court nor to the parties in this regard for we are still developing our jurisprudence on extradition. There is need for remand for the following reasons, viz:

First. As aforediscussed, the petitioner has the burden of proof to show that the issuance of a warrant of arrest against the private respondent will serve the ends of justice. This burden of proof can not be satisfied by the petitioner in the case at bar by merely relying on the petition for extradition and its annexes. The petition and its annexes do not prove that the private respondent is a flight risk. They only show that he has been indicted in the court of the United States.

Second. On the issue of whether the private respondent is entitled to bail, the petitioner cannot rely on the presumption against bail in extradition proceedings. The presumption against bail in extradition proceedings is founded on the assumption that the extraditee is a fugitive from justice. Thus, it was explained in *Beaulieu vs.*

Hartigan,[42] viz:

“The vast majority of fugitives from justice in foreign countries fled from those countries knowing that charges have been, or were likely to be, brought against them. Thus the typical subject of an extradition request has a demonstrated propensity to flee rather than face charges and in general is likely to continue his flight if released pending extradition.”[43]

The presumption against bail therefore arises only when the extraditee is a “fugitive from justice.” To avail of this presumption, it is a condition sine qua non that competent evidence be proffered that the extraditee is a fugitive from justice.

In *Marquez, Jr. vs. COMELEC*,[44] we ruled that the term fugitive from justice “includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, flee to avoid prosecution.”[45] In *Rodriguez vs. COMELEC*,[46] we clarified that this definition indicates that “the intent to evade is the compelling factor that animates one’s flight from a particular jurisdiction. And obviously, there can only be an intent to evade prosecution or punishment when there is knowledge by the fleeing subject of an already instituted indictment, or of a promulgated judgment of conviction.”[47]

From the records, it appears that the claim of the petitioner that the private respondent is a fugitive from justice is based on the following allegations: (a) that an investigation for the charges against him was then on going; and (b) that upon learning that he was about to be charged, he fled from the United States. Thus, petitioner alleged:

“Learning that an investigation involving his violations of United States federal laws was about to be terminated and that he was about to be charged, Jimenez fled the United States jurisdiction. Under United States law, he is therefore a fugitive from justice. A “fugitive from justice” is a person who commits a crime within a state and withdraws himself from such jurisdiction (Ex Parte Montoya, 135 P.2d 281, 282, 170 Or. 499). Because he has fled once, there is a greater likelihood that he will flee to another jurisdiction once more and frustrate extradition. Thus, he poses a serious risk flight. The interest of justice will be best served if he is arrested and detained pending extradition proceedings, which after all, is summary in nature.”[48]

It is clear, however, that the warrant of arrest in connection with Indictment No. 99-00281-CR-SEITZ against the private respondent was issued on April 15, 1999.[49] Private respondent claims that he was already in the Philippines when the indictment against him was filed and the warrant for his arrest was issued. During the oral argument of the case at bar, the following exchange between the counsels of the parties took place, viz:

“USec Gutierrez: It may be mentioned that the proposed extraditee stands charge (sic) of several charges from the United States of America and a warrant of arrest was issued against him and he fled the jurisdiction of the United States of America to evade prosecution and there would again be another risk of plight (sic) and to ensure the proposed extraditee will be present during the extradition proceeding, therefore this request on the part of the petitioner for the issuance of warrant of arrest.[50]

x x x x x x x x

Atty. Bautista: The Honorable Counsel has declared gratuitously that Mr. Mark Jimenez is a fugitive from the United States, left the United States because of the indictment against him. That is totally false. The petition itself says that a warrant for the arrest of Mr. Jimenez was issued in the United States in April 1999. Mr. Jimenez was here in the Philippines on May 1998 and he has not left the country since then. So he left the United States long before, a year before the warrant of arrest was issued, so how can we say that he is a fugitive from justice?”[51]

That private respondent arrived in the country on May 10, 1998 is evidenced by the records and is not contradicted by the petitioner.[52] On the other hand, petitioner’s claim that private respondent knew of the

ongoing investigation as well as of the existence of the charges against him when he fled from the United States is devoid of evidence. Therefore, it would be fatal for the petitioner to rely alone on the presumption against bail in extradition cases to justify the denial of bail of the private respondent.

In Rodriguez, petitioner arrived in the Philippines on June 25, 1985 and the complaint in Los Angeles was filed on November 2, 1985. We ruled that “it was clearly impossible for Rodriguez to have known about such felony complaint and arrest warrant - much less conviction- to speak of yet at such time.” We rejected the contention that Rodriguez would have known the on-going investigation, viz:

“It is acknowledged that there was an attempt by the private respondent to show Rodriguez’ intent to evade the law. This was done by offering for admission a voluminous copy of an investigation report on the alleged crimes committed which led to the filing of the charges against petitioner. It was offered for the sole purpose of establishing the fact that it was impossible for the petitioner not to have known of said investigation due to its magnitude. Unfortunately, such conclusion misleads because investigations of this nature, no matter how extensive or prolonged, are shrouded with utmost secrecy to afford law enforcers the advantage of surprise and effect the arrest of those who would be charged.”[53]

Furthermore, we held that “the circumstantial fact that it was seventeen (17) days after Rodriguez’ departure that charges against him were filed cannot overturn the presumption of good faith in his favor. The same suggests nothing more than the sequence of events, which transpired. A subjective fact as that of petitioner’s purpose cannot be inferred from the objective data at hand in absence of further proof to substantiate that claim.”

Third. In granting bail to the private respondent, the standard used by the extraditing court is not clear. An extradition proceeding is *sui generis*, hence, neither the standard of proof beyond reasonable doubt in criminal cases nor the standard of proof of preponderance of evidence in civil cases can apply. Thus, in Lantion,[54] we explained:

“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. 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. 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.’

There are other differences between an extradition proceeding and a criminal proceeding. An extradition proceeding is summary in nature while a criminal proceeding involve a full blown trial. In contradistinction to a criminal proceeding, the rules of evidence in an extradition proceeding allow admission of evidence under less stringent standards. In terms of the quantum of evidence to be satisfied, a criminal case requires proof beyond reasonable doubt for conviction while a fugitive may be ordered extradited ‘upon showing of the existence of a *prima facie* case.’ 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. 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.”

With humility, I submit that the Court should fashion out a higher standard to govern the grant of bail to a possible extraditee. The higher standard is demanded by the fact that our extradition treaty obligates us to assure

that an extraditee will not abscond from our jurisdiction. Failure to comply with this obligation will expose our country to international embarrassment. It will defeat the purpose of extradition treaties, i.e., the suppression of crimes, especially transnational crimes to which the Philippines is very vulnerable. The standard, I propose, is the standard of clear and convincing evidence which is higher than mere preponderance of evidence but lower than proof beyond reasonable doubt. If this new and stricter standard would be adopted, it ought to follow that the parties should be given a chance to offer evidence to meet the same. Contrary to the claim of the majority, the voluminous pleadings already filed by the parties are insufficient to resolve the issue of whether the private respondent is entitled to bail. These pleadings proffer legal arguments but not proof of facts. The remand of the case at bar is therefore not a cop-out but is proper and it will not delay the proceedings. The extradition court can be ordered to finish the hearing on the limited issue of bail within one (1) week. After all, extradition proceedings are summary in nature.

CONCLUSION

In conclusion, I offer the following views:

First. The filing of a petition for extradition does not per se justify the issuance of a warrant of arrest against an extraditee. The petition, in some instances, may not contain sufficient allegations and proof on the issue of whether the possible extraditee will escape from the jurisdiction of the extraditing court.

Second. When the petition for extradition does not provide sufficient basis for the arrest of the possible extraditee or the grant of bail as in the case at bar, it is discretionary for the extradition court to call for a hearing to determine the issue.

Third. An extraditee has the right to apply for bail. The right is rooted in the due process clause of the Constitution. It cannot be denied simply because of the silence of our extradition treaty and law on the matter. The availability of the right to bail is buttressed by our other treaties recognizing civil and political rights and by international norms, customs and practices.

Fourth. The extraditee may apply for bail but its grant depends on the discretion of the extraditing court. The court must satisfy itself that the bail will not frustrate the ends of justice.

Fifth. In deciding whether to grant bail or not to a possible extraditee, the extraditing court must follow a higher and stricter standard. The extraditee must prove by clear and convincing evidence that he will not flee from the jurisdiction of the extraditing court and will respect all its processes. In fine, that he will not frustrate the ends of justice.

As emphasized, the case at bar has entered a new stage and the competing interests of the state and the rights of the private respondent as an extraditee need to be rebalanced on the scale of justice. These competing rights and interests have to be rebalanced for they have developed new dimensions and some facts may have to be accorded greater or lesser weights to meet the more paramount interest of our people. This paramount interest is always in motion as it is affected by the inexorable changes wrought in time both by man and machine.

In rebalancing these conflicting interests, we should take care not to diminish to a disturbing degree an extraditee's fundamental rights to life, liberty and due process. These rights have evolved as universal rights and extradition treaties for all their utility were never meant to disparage, let alone, derogate them to inutility.

Likewise, in rebalancing these interests, we should not weaken the role of courts in tempering the harshness of extradition proceedings. We should not therefore dilute the discretionary power of courts to determine whether a hearing should be called before ordering the immediate arrest of a possible extraditee.

In counter-balance, we should not be soft on extraditees who are facing charges in countries where we have

extradition treaties. While rights are being universalized, so too are crimes being internationalized. We should not allow our country to be the sanctuary of criminals who demand rights but deny the rights of others. Thus, there is need to impose a higher and stricter standard before we grant bail to potential extraditees.

We are in the difficult step by step process of developing our jurisprudence in extradition. In *Lantion*, our first extradition case, we held that an extraditee has no right to demand examination of the documents of extradition while the request for extradition is just being processed and evaluated by the Departments of Foreign Affairs and Justice. In the case at bar, our second extradition case, we have the opportunity to impose a higher and stricter standard that will govern a plea for bail of an extraditee. I urge the Court to seize the rare opportunity for this can well be our humble contribution to man's relentless search for elusive peace.

Prescinding from all these premises, I vote to remand the case at bar to the extradition court so that it can follow the proper procedure and higher standard in determining the right to bail of the private respondent.

[1] 343 SCRA 377 (2000).

[2] *Id.*, p. 389. "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."

[3] *Id.*, p. 390. "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 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."

[4] *Id.*, pp. 390-391.

[5] *Id.*, pp. 392-393.

[6] *Supra* note 1.

[7] 1987 Constitution, Article III, section 1. "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

[8] The writ of habeas corpus is an order issued by a court directed to a person detaining another, commanding him to produce the body of the person whose liberty is being restrained at a designated time and place, and asking him to show sufficient cause for the continued custody of the person so detained. See Rule 102, Revised Rules of Court.

[9] *Paderanga vs. Court of Appeals*, 247 SCRA 741 (1995), citing *Almeda vs. Villaluz*, 66 SCRA 38 (1975).

[10] 75 Phil. 634 (1945).

[11] 12 Phil. 490 (1909).

[12] 37 Phil. 53 (1917).

[13] 42 Phil. 415 (1921).

[14] 114 Phil. 368 (1962).

[15] Tiu Chuan Hai, et al., vs. Deportation Board, 104 Phil. 949 (1958).

[16] 90 Phil. 70 (1951).

[17] Id., p. 72.

[18] Id., pp. 73-74.

[19] 90 Phil. 257 (1951).

[20] 180 SCRA 756 (1989).

[21] Id., pp. 762-763.

[22] “A Recommended Approach to Bail in International Extradition Cases,” 86 Mich. L. Rev. 599, 607 (1987).

[23] Michigan v. Doran, 439 U.S. 282, 296 (1978). The US Supreme Court opined: “The extradition process involves an extended restraint of liberty following arrest even more severe than that accompanying detention with a single State. Extradition involves, at a minimum, administrative processing in both the asylum State and the demanding State, and forced transportation in between. It surely is a significant restraint on liberty.”

[24] In Europe for instance, a State Party to an extradition treaty may refuse extradition on the ground that the basic human rights of the fugitives will be violated by the requesting state if he is extradited. The primacy of human rights norms over extradition treaties arises from the notion of jus cogens--- or those peremptory norms which the Vienna Convention on the Law of Treaties acknowledges to be superior than any treaty obligation because they form part of the ordre public of the international community or of a particular region. See Article 53 of Vienna Convention on the Law of Treaties. See also, J. Dugard and C. Wyngaert, “Reconciling Extradition with Human Rights,” 92 AJIL 187-212 (1998).

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

[26] Id., Art. 31 (3) (b).

[27] Preamble, United Nations Charter. Concern for human rights is also embodied in Article 13, par. 1 (b), Article 55 (c) and Article 62(2) of the U.N. Charter.

[28] The Universal Declaration of Human Rights (hereinafter cited as UDHR) was adopted by the United Nations General Assembly on December 10, 1948. Although not a treaty, the principles of freedom contained in the UDHR have been generally regarded as customary, hence, binding among the members of the international community. See Mejooff vs. Director of Prisons, supra.

[29] The UN General Assembly adopted the International Covenant on Civil and Political Rights (hereinafter cited as ICCPR) on December 16, 1966. The Philippines signed the convention on December 19, 1966 but ratified it only on October 23, 1986. On the other hand, the United States signed the convention on October 5, 1977 but ratified it only on June 8, 1992.

[30] The UDHR provides that:

“Article 1. All human beings are born free and equal in degree and rights;

Article 2. Everyone is entitled to all the rights and freedom set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, nationality or social origin, property,

birth, or other status;

x x x x x x x x

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law;

Article 9. No one shall be subjected to arbitrary arrest, detention or exile”

Similarly, Article 9 of the ICCPR provides:

“1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him;

3. Anyone arrested or detained in a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within reasonable time or to release.

4. Anyone who was deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been a victim of unlawful arrest or detention shall have an enforceable right to compensation.”

[31] Absolute rights are those which may not be suspended or derogated in any circumstance. Examples of “absolute” or “non-derogable” rights are freedom from torture and arbitrary killing. On the other hand, “relative” or “derogable” rights are those which may be suspended or derogated under circumstances such as the occurrence of public emergency or commission of an offense.

[32] 190 US 40 (1902).

[33] Persily, International Extradition and the Right to Bail, 34 Stan. J. Int’l. L. 407, 408 (1998).

[34] The ordinary presumption in favor of granting bail is modified when a person faces a warrant of extradition. 18 U.S.C.A. § 3146, 3184.

[35] Hu Yau-Leung vs. Soscia, 649 F. 2d 914 (1981).

[36] In re Kirby, et al., 106 F. 3d 855 (1996).

[37] In re Mitchell, 171 F. 289 (1909).

[38] In re Gannon, supra.

[39] Hall, Bail in International Extradition, supra at 604.

[40] Ibid.

[41] 430 F. Supp. 915 (1977).

[42] 554 F. 2d 1 (1977).

[43] Persily, *supra*, p. 429, citing Reform of the Extradition Laws of the United States: Hearings on H.R. 2643 Before the Subcommittee On Crime of the House Committee On Judiciary, 98th Cong. 42-43 (1983).

[44] 243 SCRA 538 (1995).

[45] *Id.*, p. 542, citing Philippine Law Dictionary, Third Edition, p. 300 by F. B. Moreno; Black's Law Dictionary, Sixth Edition, p. 671; *King vs. Noe*, 244 S.C. 344, 137 S.E. 2d 102, 103; *Hughes vs. PFlanz*, 138 F. 980; *Tobin vs. Casaus*, 275 P. 2d 792.

[46] 259 SCRA 296 (1996).

[47] *Id.*, p. 307.

[48] Petitioner's Memorandum Re: Prayer for Jimenez' Arrest, Rollo, p. 87.

[49] Petition for Extradition, pp. 7-8; Rollo, pp. 54-55.

[50] TSN June 5, 2001, pp. 11- 15; Rollo, pp. 267-271.

[51] *Id.*, pp. 24-25; *Id.*, pp. 280-281.

[52] Sworn Statement, Rollo, p. 195.

[53] *Supra* note 1, p. 308.

[54] *Ibid.*

DISSENTING OPINION

YNARES-SANTIAGO, J.:

With all due respect, I am disturbed by the majority opinion's disregard of basic freedoms when a case is one of extradition. The majority opinion is too sweeping and dogmatic for a case of first impression. I find the views on the indiscriminate denial of fundamental rights too open-ended and heedless of entrenched jurisprudence on Bill of Rights protections.

The sheer novelty of the world's only superpower asking that a Filipino be brought before it to face criminal prosecution seems to mesmerize policy makers and this Court alike into depriving that citizen of constitutional protections. The issue before the respondent court is a fairly innocuous one – whether or not the petition for extradition is meritorious. We are not concerned with the guilt or innocence of the respondent. He is presumed innocent of the crimes charged until he is convicted by a foreign court. He is likewise presumed innocent of the demands found in the request for his extradition. But the majority opinion has chosen to adopt a presumption of guilt. It presumes that the petition calling for the forcible separation of the respondent from his homeland, family, occupation, and friends is correct even before the merits are ascertained. It presumes that he will flee.

A person convicted of a crime, except for the most serious offenses, is allowed bail while an appeal is pending. Respondent Jimenez has not been convicted of any crime. His guilt or innocence is not in issue before the respondent court. The only legal affront he has committed is his refusal to leave the pleasures of life in his country and go to a place where he fears the reception to him would be disagreeable and much less pleasant. Eventually after trial in the respondent court, respondent may be compelled to undergo what he fears. But until that decision is rendered and becomes executory, he must be presumed innocent of any crime or any affront to law or treaty. There can be no deprivation of basic rights and freedoms merely because the case is one of extradition.

I submit that we must consider the implications of a ruling that in criminal proceedings, the constitutional rights of the accused must be protected, but in a case neither criminal nor civil, one which we call “sui generis,” basic freedoms become irrelevant and non-available. A non-criminal proceeding, less onerous and repulsive to society than prosecution for crime, and where the penalty is only to be brought for trial before the court with jurisdiction, is stripped of guarantees and protections given to hard-boiled recidivists pending arrest and trial.

We have denied a prospective extraditee the right to be informed before trial of the nature and cause of the charges against him.[1] Due process is essential in all court proceedings – criminal, civil, investigatory, administrative, or even sui generis, a class the Court uses as an excuse to justify deprivation of that most elemental of rights, the right of notice.[2] The Court has ruled that respondent Mark Jimenez or any other person sought to be extradited must first be exposed to the indignity, expense, and anxiety of a public denunciation in court before he may be informed of what the requesting State has against him. The right to notice before trial is denied.

The majority opinion states that a prospective extraditee is not entitled to notice and hearing before a warrant of arrest can be issued against him. Worse, he is denied the right to bail and provisional liberty while the extradition proceedings are pending.

All the jurisprudence explaining the parameters of the unreasonable searches and seizures provision of the Constitution[3] becomes inapplicable. The petition for extradition and its attachments take the place of probable cause. The right against unreasonable search and seizure is available to all persons including those not charged with any crime.[4] But now, we create an unusual exception. It is not available to one who may be seized against his will for possible extradition to a country where his innocence or guilt will first be determined. Arrest and imprisonment will become virtually certain in extradition proceedings. The only thing required of the Court is to go over the request for extradition and its supporting documents. Arrest is virtually assured because of the absence of notice and hearing. It is inconceivable that the officials of a requesting State would be so dense or careless as to fail to include in the request for extradition a prima facie showing that the respondent deserves to be seized and forcibly brought to the foreign country for trial. According to the majority opinion, from the forwarded documents, we expect the trial court to “merely xxx xxx xxx get a good first impression sufficient to make a speedy initial determination as regards the arrest and detention of the accused.” This novel doctrine justifying the near certainty of automatic arrest and detention goes against this Court’s decisions, too numerous to mention, protecting citizens and aliens alike from unreasonable arrests or seizures. Can we expect anything other than a “good first impression” to arise from the mere reading of a request for extradition?

In criminal prosecutions, the judge must personally determine probable cause for the arrest. Facts and circumstances must first be presented which would lead a reasonably discreet and prudent man to believe that an offense has been committed and the accused is probably guilty of the offense.[5] In the majority opinion, the request for extradition by the foreign country takes the place of a hearing for probable cause. After trial, it is possible that the petition for extradition may be denied. Under the majority opinion, the possibility of a judgment of denial does not influence the immediate arrest and indefinite detention of the respondent since notice and hearing before arrest are not required. He must be jailed while the grant or denial of the petition is being considered.

The majority opinion gives five (5) postulates of extradition. With all due respect, I fail to see how compliance with these postulates should result in a disregard for constitutional liberties.

I agree with the first postulate. It is a general proposition that extradition is a major instrument for the suppression of crime and the Philippines should cooperate in facilitating the arrest and custodial transfer of a fugitive from one

State to another. However, I cannot see how compliance with the requirements for notice and hearing and the ascertainment of reasonable cause would hamper the suppression of crime. If they do, why should they appear in our laws and in the decisions of this Court? Does obedience to the dictates of due process and the prohibition against unreasonable seizures mean any lesser determination to eradicate crime? Effective extradition arrangements and deterrence of flight abroad by felons are not incompatible with fundamental liberties. The act of according due process and reasonable seizures does not make the Philippines an isolationist state. The employment of beneficial objectives to justify the repression of far more worthy values is pejorative in nature, one in which the Court should not engage.

The second postulate is based on the apriorism that the two parties to an extradition treaty accept and trust each other's legal system and judicial processes. We trust the fairness of the American system of justice. However, why should we assume that it is a breach of trust which the requesting country will look upon with disfavor if we accord notice and hearing to the respondent before a warrant of arrest is issued? If bail is allowed while the extradition petition is pending before the trial court, does this signify a lack of confidence on our part in the capacity and the willingness of the other state to protect the basic rights of the person sought to be extradited?

The Constitution of the United States provides that "(t)he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue, but on probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized." [6] The offenses upon which the request for extradition is premised are relatively light. Undoubtedly, bail will be given by the American courts on the basis of a presumption of innocence and the lack of gravity of the offenses. If the alleged offenses themselves are bailable both here and in the United States, I see no connection between the grant of the right against unreasonable seizures or the right of bail and the gratuitous assertion of the majority opinion that this is an absence of trust and confidence in the American legal system and judicial process.

The guarantees of the Philippine Bill of Rights are derived from American sources. Why should we withhold them out of a misplaced fear that their grant may be interpreted as a lack of faith in the American judicial system?

The third postulate states that extradition proceedings are *sui generis*. It is a dogma pernicious in its consequences to declare that a classification of *sui generis* lifts a court proceeding beyond constitutional protections. The trial before the respondent court is not criminal in nature. It is less onerous than a criminal prosecution. Yet, the majority opinion confers upon one accused of grave crimes far greater rights than an extraditee whose guilt of lesser offenses is not even in issue. Classifying a proceeding as *sui generis* does not mean that procedural guarantees available in criminal prosecutions, civil trials, or administrative proceedings are thereby waived or become irrelevant. The classification should not mean exemption from notice or hearing for the issuance of a warrant of arrest. It cannot result in non-entitlement to bail.

The process of extradition does not involve the determination of the guilt of an accused. The majority opinion states that extradition is merely a measure of international judicial assistance to restore a person charged with crime to the jurisdiction with the best claim to try him. If so why should the person sought to be extradited be imprisoned without bail while the grant of assistance is pending? With more reason should constitutional protections be given to him. The correctness of a decision to forcibly remove a person from his homeland, family, and friends should not be taken lightly. In determining whether the extradition request complies with the extradition treaty, the trial court should not be encouraged by a postulate to act in a cavalier manner or treat the proceedings as inconsequential in nature.

The majority opinion states as its fourth postulate that compliance with treaties shall be in good faith. If the

respondent court grants bail to the respondent in extradition proceedings, does this constitute a failure to fulfill our obligations under the extradition treaty? I am not aware of any treaty which requires the incarceration of a respondent while the court determines whether or not he falls under the treaty provisions. Why should the furnishing of notice and the holding of a hearing for an arrest warrant paint a bad picture of our country before the world community? There should be a contrary impression of adherence to fairness and justice. We cannot fault the trial court for adopting procedural safeguards which help insure the correctness of its decision. If compliance in good faith with the treaty requires that the respondent be immediately seized and confined in the national penitentiary, why should an extradition trial still be held? We might as well give full faith and credence to the request for extradition and without any trial or hearing, place the respondent in the next airplane leaving for the requesting country. The discussion in the majority opinion of the postulates of extradition implies that the implementation of an extradition treaty rarely or never results in a refusal to allow extradition and that the court proceedings do not amount to anything more than a formality. Otherwise, why should he languish in the penitentiary while his extradition case is pending?

The fifth and last postulate uses the underlying risk of flight. To say that all persons sought to be extradited have a propensity to flee is too sweeping a statement to be adopted as an axiom. In every criminal prosecution, the prosecution can, with greater reason, argue that the accused will escape and go into hiding. But never has the possibility of flight sufficed to always require incarceration while court proceedings are going on. The opposite practice is the one we have adopted. The right to bail has been elevated into a constitutional guarantee. Only for the most serious of offenses when evidence of guilt is strong may an accused be denied freedom upon the posting of bail prior to his conviction.[7] In fact, the Revised Rules of Criminal Procedure, as amended, provide that any person in custody who is not yet charged in court may apply for bail with any court in the province, city, or municipality where he is held.[8] The respondent is not charged of any crime before our courts.

The five postulates of extradition outlined in the majority opinion are motherhood statements over which there can be no quarrel. However, these postulates should be interpreted in a manner that preserves procedural safeguards instead of being used to support the petitioner's intent to cut corners. Compliance with treaty obligations does not mean unquestioning obedience to everything stated in a petition for extradition. The allegations will still be proved, refuted, and determined. Much less does it result in instant seizure without notice and hearing or incarceration without any recourse to legal methods of gaining provisional liberty.

Is the respondent entitled to notice and hearing before the issuance of a warrant of arrest?

The majority opinion agrees with the Department of Justice that the Regional Trial Court committed grave abuse of discretion when it informed the respondent that an extradition petition had been filed against him and that petitioner was seeking his arrest. The opinion states that the exercise of discretion by the judge is a notice to escape and to avoid extradition.

The truth is that long before January 18, 2000 when G.R. No. 139465 was decided,[9] respondent was fully aware of the information which this Court now declares should not have been given to him. Respondent could have fled but he did not do so. Instead, he made himself more visible; he ran for Congress and engaged in various civic activities always in the public eye.

Paraphrasing the ruling in G.R. No. 139465 on the motion for reconsideration, the threat of private respondent's flight from the Philippines has passed. It is more imagined than real at this time.[10]

Petitioner states that the procedure requiring notice and hearing will set a dangerous precedent. The Court agrees that those sought to be extradited – including terrorists, mass murderers and war criminals – may invoke it in future extradition cases.

To lump up respondent Jimenez and all persons in extradition proceedings with terrorists, mass murderers, and war criminals is contrary to all rules of reasonable and valid classification. Respondent is charged before the district court of Florida with conspiracy to defraud, attempted tax evasion, fraud through the use of radio – television, false statements, and unlawful election contributions. There is absolutely no indication of terrorism, mass murder, or war crimes against him. He is definitely not a candidate for confinement in the Guantanamo Prison Compound. The fear of terrorists is not reason to deprive all subjects of extradition proceedings any and all constitutional protections. Methods of dealing with terrorists should not be used against suspected tax evaders or violators of election laws. The fact that terrorists are denied bail is not reason to deny this constitutional guarantee to persons being tried for offenses where no individual is a victim.

It is error to expect that all persons against whom charges have been filed would voluntarily and cheerfully submit to trial. There are procedural safeguards such as preliminary investigation intended to secure a person presumed innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense, and anxiety of a public trial and also to protect the state from useless and expensive trials.[11] For both the State and the accused, there could be sound reasons to oppose or avoid prosecution.

If there is reason in some cases for the State not to prosecute, there is greater reason for a prospective accused to take all steps that would prevent his having to go before a criminal court. We may assume that any fears of oppressive prosecution in the mind of the private respondent are unfounded and imagined. This should not lead the Court to conclude that a natural aversion to criminal prosecution is always based on ignoble or indefensible reasons. Neither should a natural desire to avoid unpleasant situations be used to deny basic rights and privileges.

I submit that it is a dangerous precedent for this Court to rule that the *prima facie* existence of probable cause for a warrant of arrest can be derived from a mere reading of the petition for extradition and its supporting documents. The determination of probable cause is effectively taken away from the judge and transferred to the Department of Justice. Worse, the determination could come directly from an office not equipped to make it, namely the Department of Foreign Affairs. In either case, the Constitution is infringed.

The majority opinion is overly influenced by the fear that a person sought to be extradited would be tempted to flee. Of course, it is natural for any person facing court litigation of any kind to try to avoid it. An accused already being tried in court or an appellant who appeals a judgment of conviction has greater reason to flee if possible. Yet, this is not cause to deny him notice of proceedings or the right of provisional liberty while his case is pending. If bail is going to be denied respondent Jimenez, it should be after a full hearing and with the application of all constitutional guarantees.

The majority opinion states that under the Constitution only the complainants and the witnesses he may produce are required to be examined.[12] It overlooks that in this case no complainant and no witness has been examined. A warrant of arrest is ordered issued on the sole basis of documents. There may be no requirement to notify and hear the accused before a warrant of arrest is issued. But neither is there any prohibition against the judge hearing an accused before a warrant is issued; more so if he is already in court and strongly opposes his being arrested pending trial. In his search for the truth, the judge should not be restrained in the exercise of sound discretion.

In this case, the petition has already been filed. The respondent has submitted himself to the jurisdiction of the trial court. The motion to have him arrested and detained is an incident of the pending case. There is no need to take him into custody in order to make him forthcoming for trial.[13] Mr. Jimenez appears to be more than willing and, in fact, is already answering the request for extradition. He is not before the court to answer for any crime. But he is there. Strangely, the court would deny him provisional liberty in a case not criminal in nature but which

could make him answer for alleged offenses in another country if the court should decide against him. What cannot be denied to him in the criminal prosecution is denied in a case which may or may not lead to such prosecution.

The absence of logic behind the majority opinion's denial of basic rights becomes clearer when it comes to the issue on the right to bail. The reason given for the denial of the right to bail is not merely deceptive; it has dangerous implications. It states that the constitutional provision on bail applies only when a person has been arrested and detained for violation of Philippine Criminal Law. The reasoning states, that ergo, the right to bail does not exist in non-criminal prosecutions. The absence of a constitutional provision on the right to bail of a person subject to extradition is simply based on the fact that the idea of incarcerating a person for something other than crime never occurred to the framers of the Constitution. There can be no forcible detention in non-criminal situations. Incarceration for something not related to crime would be arbitrary detention or illegal detention. It could even be slavery or involuntary servitude. In all these cases, the issue of bail does not arise. If we insist on classifying extradition as a proceeding not covered by the protections given to accused persons, we should rule that bail is not provided because the respondent is not supposed to be imprisoned. There is no need for bail because the detention is illegal in cases not related to crime. Extradition cases may not be criminal in nature. But they assist and precede criminal prosecutions.

The petitioner twists the right to bail out of context when it argues that the right available during criminal prosecutions is irrelevant and should be disregarded when the court action is non-criminal in nature and, therefore, it is not available in civil, administrative, regulatory, and extradition proceedings. The fallacy of the argument is readily apparent.

I cannot go along with the proposition that a person who tries to avoid criminal prosecution is always a criminal, coward, or weakling who prefers to run and hide. There are many reasons why people will fear trial in criminal cases. It is not overprotection or excessively liberal treatment to enforce constitutional guarantees in extradition cases. It is fairness and adherence to the rule of law. The judge has discretion on whether or not he should allow bail. He should have a sound basis for the probability or likelihood of flight.

The majority opinion starts by asking two questions. (1) Are prospective extraditees entitled to notice and hearing before warrants for their arrest are issued? and (2) Are they entitled to bail and provisional liberty while extradition proceedings are pending? The answer is a curt "No". By the brevity and terse nature of the answer, it seems absolute and inflexible.

Towards the end of the majority opinion,[14] however, two exceptions are allowed. First, the applicant is not a flight risk. Second, there exist special and compelling circumstances.

To my mind, the issues in this case should be framed differently. On the first question, the present provisions of law and decisions of this Court on arrests and seizures should be assumed and followed. On the second question, the Court should apply the same principles on the right to bail found in the Constitution to persons facing trial for extradition. Thus, all persons, except those where the probability of flight is clear and present or the crimes for which extradition is sought are heinous, shall before judgment in the extradition proceedings, be bailable by sufficient sureties or be released on recognizance as may be provided by law. The right to bail shall not be impaired even where the requesting country is one with which the Philippines maintains strong ties. Excessive bail shall not be required.[15]

The majority opinion cites my ponencia in *People v. Jalosjos*.^[16] Jalosjos was already convicted and his appeal was pending when he was re-elected. The crime of statutory rape where a minor is involved is particularly heinous. The evidence of guilt was not merely strong; it was beyond reasonable doubt as found in our decision.

Disenfranchisement of constituents is not reason for his release.

The case of Congressman Jimenez is an entirely different one. Respondent has not even faced trial as yet. There can be no proof of strong evidence against him. All we have are still accusations.

Respondent is not charged with heinous crimes. The alleged tax evasion is at the stage of attempt. The defraudation is part of a conspiracy. Perjury and illegal election contributions are relatively not so serious offenses as to support denial of the right to bail.

The respondent's being a Congressman should be viewed from the aspect of possibility of flight. Why should a person run for Congress, campaign all over his district, and expose himself regularly to newspaper media and television if he intends to flee the country? There is a hold-order against him found in all ports of exit and entry. When his constituents voted Jimenez to Congress knowing fully well that an extradition case was or could be filed against him, it was an expression of confidence that he would not run away. Their faith may be misplaced or proved wrong later, but today, it must be taken at face value as against mere suppositions, fears, and apprehensions. The rules on denial of bail where possibility of flight is established must be followed.

The request for extradition comes from the United States. In the course of the most perilous period in the life of that nation, the American Supreme Court stated that "the constitution is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. xxx xxx xxx no doctrine involving more pernicious consequences was ever invented by the next of man than that its provisions can be suspended during any of the great exigencies of government." [17]

The extradition of respondent is not an exigency of government. The provisions of the Bill of Rights of the two States which entered into the treaty are fully applicable in extradition. If a person is to be arrested and detained, current laws and procedures for arrests and detentions should be employed. The novelty of extradition cases in the Philippines cannot result in any suspension or disregard of basic liberties whether here or in the United States. The mantle of constitutional protections should cover persons covered by extradition requests.

I vote to dismiss the petition.

[1] Secretary of Justice v. Lantion, 343 SCRA 377 (2000).

[2] Constitution, Art. III, Sec. 1 and Sec. 14(2); People v. Mencias, 46 SCRA 88 [1972] .

[3] Constitution, Art. III, Sec. 2.

[4] Moncado v. Peoples Court, 80 Phil. 1.

[5] People v. Syjuco, 64 Phil. 667 (1937); Alvarez v. Court of First Instance, 64 Phil. 33 (1937); U.S. v. Addison, 28 Phil. 566 (1914); Burgos v. Chief of Staff, 133 SCRA 800 (1984).

[6] American Bill of Rights, Amendment No. IV of the U.S. Constitution.

[7] Constitution, Art. III, Sec. 13.

[8] Revised Rules of Criminal Procedure, Rule 114, Sec. 17 (c).

[9] 328 SCRA 160 (2000).

[10] 343 SCRA 377, 389 (2000).

[11] *Salonga v. Hon. Pano et al.*, 134 SCRA 438 (1985).

[12] Constitution, Art. III, Sec. 2.

[13] Rule 113, Section 1 of the Revised Rules of Criminal Procedure defines arrest as “the taking of a person into custody in order that he may be bound to answer for the commission of an offense.”

[14] Decision, p. 34.

[15] See Constitution, Art. III, Sec. 13.

[16] 324 SCRA 689 (2000).

[17] *Ex parte Milligan*, 4 Wallace 2 (1866); 71 U.S. 2; 18 L. Ed. 281.

SEPARATE OPINION**VITUG, J.:**

"The State values the dignity of every human person and guarantees full respect for human rights." [1]

The proposal to curtail the right of an individual to seek bail from the courts of law, acting in extradition cases, as well as his right to notice and hearing before being arrested, brings to mind the not so distant past of the Spanish Inquisition and an uneasy realization that we have yet to totally free ourselves from the grip of a dark page in history.

My reservation on the draft ponencia is premised on the following theses – first, it would ignore constitutional safeguards to which all government action is defined, and second, it would overstep constitutional restraints on judicial power.

Treaty laws, particularly those which are self-executing, have equal stature as national statutes and, like all other municipal laws, are subject to the parameters set forth in the Constitution. The Constitution, being both a grant and a circumscription of government authority by the sovereign people, presents the ultimate yardstick of power and its limitation upon which an act of government is justly measured. This instrument contains a rule for all agencies of the government and any act in opposition thereto can only be struck down as being invalid and without effect.[2] When the great Charter gives a mandate, the government can do no less than to accept it; its rejection would be an act of betrayal. The edict in its Bill of Rights granting to all persons, without distinction, the fundamental right to bail, is clear. No statute or treaty can abrogate or discard its language and its intent.

The draft ponencia would assume that the Constitution confines the grant of provisional liberty to criminal cases, and that it has no application to extradition proceedings. This assumption would have reason for being if it were solely in criminal cases that a person could face an imminent threat of deprivation of his right to life or liberty, for indeed, it is this threat, rather than case nomenclature, that must be the focus and it would be superficial to think otherwise. While defying a neat definition, extradition has all the earmarks of a criminal process --- an extraditee would suffer deprivations, be denied his freedom and restricted in his movements, not much unlike a criminal indictee. Extradition proceedings involve an extended restraint of liberty following arrest, peculiar to an accused in a criminal case, which can even be more severe than an accompanying detention in a single state, for, at a minimum, it can mean protracted proceedings in both the asylum state and the demanding state and a forced

transportation in between.[3] In *Herras Teehankee vs. Rovira*,[4] the Court observed that bail is constitutionally available to all persons, even those against whom no formal charges are filed.

"Indeed, if, as admitted on all sides, the precept protects those already charged under a formal complaint or information, there seems no legal and just reason for denying its benefits to one against whom the proper authorities may not even yet conclude that there exists no sufficient evidence of guilt. To place the former in a more favored position than the latter would be, to say the least, anomalous and absurd. If there is a presumption of innocence in favor of one already formally charged with criminal offenses ... a fortiori, this presumption should be indulged in favor of one not yet so charged although arrested and detained."

"x x x x x x x x

"We reiterate now that under the Constitution, all persons, without distinction, whether formally charged or not yet so charged with any criminal offense, 'shall before conviction be bailable,' the only exception being when charge is for a capital offense and the court finds that the evidence of guilt is strong."

Notably, our extradition law (P.D. 1069, paragraph. 1, Section 9 thereof), expressly provides that in the hearing of the extradition petition, the provisions of the Rules of Court, insofar as practicable and not inconsistent with the summary nature of the proceedings, shall apply. In this regard, Section 3, Rule 114, of our Rules of Criminal Procedure is unequivocal ---

"All persons in custody shall, before final conviction, be entitled to bail as a matter of right, except those charged with capital offenses or an offense which, under the law at the time of its commission and the time of the application for bail, is punished by reclusion perpetua, when evidence of guilt is strong."

Nowhere in the Extradition Treaty with the United States is the grant of bail mentioned but so also it is not prohibited. This obscurity must not be held to negate the right to bail; on the contrary, it should be viewed as allowing, at the very least, the evident intendment and spirit of the fundamental law to prevail.

A Constitution does not deal with details, but only enunciates general tenets that are intended to apply to all facts that may come about and be brought within its directions.[5] Behind its conciseness is its encompassing inclusiveness. It is not skin-deep; beneath that surface is what gives it real life and meaning. It can truly be said that the real essence of justice does not emanate from quibbling over patchwork but proceeds from its gut consciousness and dynamic role as a brick in the ultimate development of the edifice.[6]

Resort to overly rigid procedures is being justified as a need to keep in line with our treaty obligations. Verily, comity in our relations with sovereign states is important, but there are innate rights of individuals which no government can negotiate or, let alone, bargain away.

Analogy between extradition process and proceedings where the right to bail is said to be unavailing, i.e., deportation proceedings and proceedings before a military tribunal, would not at all be apropos. Deportation proceedings are no more than inquiries and just involve the simple fact of whether or not an alien has an authorized entry within a named country or, if authorized, whether or not he has complied with the conditions for a continued stay thereat. A subject found to be illegally staying in a country is merely transported back to his place of origin. Most importantly, such a person is not considered to be under judicial custody. Proceedings before a military tribunal, upon the other hand, are confined to members of the military organization who give consent to its jurisdiction. The stringent proceedings before such tribunals place emphasis on summary procedures, a speedy resolution of the case being vital in maintaining discipline, obedience and fitness among the ranks[7] that cannot obviously be compromised in any sound military establishment.

The draft ponencia would rely heavily on foreign jurisprudence, notably American cases, to belabor the point that

the right to bail is extraneous to extradition proceedings. The citation, particularly of the jurisprudence obtaining in the United States, could be predicated on the Eighth Amendment of the US Federal Constitution. This amendment however, recognizes merely by implication the right to bail by simply disallowing excessive bail; it does not expressly provide for the grant of bail.[8] Individual states have incorporated into their own state constitutions various versions – some give it as a matter of right and some do not – a fact which partially explains the lack of uniformity in state jurisprudence on the matter. Where some states provide for a constitutional right to bail, the same is almost invariably viewed as affording a greater right than that provided in the federal charter.[9]

In contrast, the Philippine Constitution strongly and clearly mandates that, except for those charged with offenses punishable by reclusion perpetua, when evidence of guilt is strong, bail is an undeniable right of every person ---

"All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required."[10]

Thus, grappling in this jurisdiction with the compatibility of the grant of bail in extradition proceedings with basic constitutional guarantees has not been and should not be a predicament. Absent any standard, except for the constitutional limitation that the same be not excessive, the grant of bail in the United States largely rests on judicial discretion under the umbrella of judicial power. And so it has been so regarded in *Wright v. Henkel*,[11] the primary case governing access to bail in United States extradition proceedings, where the Court has held:

"We are unwilling to hold that the Circuit Courts possess no power in respect of admitting bail other than as specifically vested by statute or that, while bail should not ordinarily be granted in cases of foreign extradition, those courts may not, in any case, and whatever the special circumstances, extend that relief."

Henkel, decided by the US Supreme Court in 1903, has been criticized to have imposed an amorphous standard and has resulted in an incoherent and inconsistent approach to bail.[12] While the clamor for its re-examination appears to be getting persistent by the day,[13] it has nevertheless become the forerunner in the judicially-prescribed "special circumstances" standard in deciding whether the bail should be granted or denied.[14] These "special circumstances" vary – from reasons of ill-health to material prejudice – depending on the peculiarities of the case.

In *In re Mitchel*,[15] to cite an example, the court there caused the release of an extraditee who was charged with larceny by the requesting state based on the assertion that his continued detention rendered him incapable of consulting with his counsel. The court was careful to emphasize that it had become imperative for him to obtain advice of counsel because his entire fortune depended upon his doing so. The court then added that while he had knowledge for a long time of the extradition, he had made no attempt to flee.[16]

But Philippine courts need not really bother borrowing from dicta in foreign jurisdictions. The absoluteness of the constitutional grant under Section 13, Article, III of the Constitution precludes any need for further standards than those explicitly expressed by it. Judicial discretion is confined to the issue of whether or not the offense charged is a capital crime and a determination of whether or not the evidence of guilt is strong. The rule may appear to be too simplistic but it is the correct approach. At all events, I would not be comfortable in developing a "special circumstances" standard on the basis of mere pro hac vice pronouncements from elsewhere. In *Herras Teehankee vs. Director of Prisons*[17], this Court has expressed unqualified acquiescence to the deeply ingrained policy of restraint against unwarranted judicial adventurism that can otherwise easily get out of hand.

Given the foregoing, the trial court did not err, let alone commit a grave abuse of discretion, in the grant of bail to the extraditee.

WHEREFORE, I vote to DENY the Petition.

[1] Section II, Article II, 1987 Constitution.

[2] Bernas, 1987 Constitution, 1st Edition, Bk. 2, p. 1.

[3] Jeffrey A. Hall, "A Recommended Approach to Bail in International Extradition Cases," Michigan Law Review, December 1987.

[4] 66 SCRA 38, 43.

[5] 16th AmJur 2d.

[6] See the writer's opinion in G.R. No. 146710-15.

[7] Reid vs. Covert, 354 U.S. 683, 694 (1969), cited in Bernas, Ibid. p. 370.

[8] U.S. ex. re. Keating vs. Bensinger, D.C. Ill. 1971, 322 F. Supp. 784, Mastrian vs. Hedman, C.A. Minn. 1964, 326 F2d 708, certiorari denied 84 S.Ct. 1128, 376 U.S. 965, 11 L. Ed. 2d 982. The eighth Amendment of the U.S. Federal Constitution merely provides –

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

[9] Ray vs. State, 679 N.E. 2d 1364 (Ind. Ct. App. 1997).

[10] Section 13, Article III, 1987 Philippine Constitution.

[11] 190 U.S. 40 (1903).

[12] Jeffrey Hall, Ibid.

[13] Ibid.

[14] M. Cherif Bassiouni, "International Extradition United States Law and Practice," Vol. II, November 1987, Oceana Publications, Inc., p. 535.

[15] 171 F, 289 (S.D. N.Y 1909), cited in Bassiouni, Ibid., at p. 535.

[16] Ibid.

[17] 76 Phil 756, 769.

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