

[ADMINISTRATIVE ORDER NO. 20, October 25, 2001]

IMPOSING UPON FORMER COMMISSIONER EDGARDO L. MENDOZA OF IMMIGRATION AND DEPORTATION THE PENALTIES OF CANCELLATION OF CIVIL SERVICE ELIGIBILITY AND FORFEITURE OF LEAVE CREDIT, IF ANY, AS WELL AS DISQUALIFICATION FOR RE-EMPLOYMENT/REINSTATEMENT IN THE GOVERNMENT SERVICE, AS ACCESSORY PENALTIES TO DISMISSAL FROM THE SERVICE FOR CAUSE

This refers to the complaint filed directly before the Presidential Commission Against Graft and Corruption (PCAGC) against former Commissioner Edgar L. Mendoza of the Bureau of Immigration and Deportation (BID) for violation of Section 3(a) and (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and Section 2 and 4 of Republic Act No. 7438.

In an amended complaint of February 7, 1997, complainant alleged that immigration agents, acting under the instructions of respondent, arrested three (3) aliens, Kato Kenji, (Japanese National), Ronald Mark Edgar, (Australian National) and Shahaz Hussain Shahid (Pakistan National) for violation of Section 37(a) (7) (overstaying) of the Philippine Immigration Act of 1940, as amended, without a final order of deportation issued by the Board of Commissioners (BOC) and the subsequent warrant of deportation issued by the Bureau of Immigration.

As recited in PCAGC resolution dated March 24, 1998, the following are the factual antecedents, to wit:

"By reason of the arrests, the above-named aliens were ordered detained and deprived of their liberty even without their waivers for their detention.

"Furthermore, the amended complaint alleges that, in what appeared to be custodial investigation, the detained aliens were not informed of their right to remain silent and right to counsel of their own choice. Neither was there a custodial investigation report as required by law.

"In compliance with the order of this Commission, respondent on May 2, 1997 filed his counter-affidavit denying the charges as 'pure harassment' and alleging: (a) that the above-named aliens were 'overstaying aliens' from the day following the last day of their authorized stay, they were, at the time of their arrest, 'openly and continuously' violating the immigration laws; (b) that in accordance with Sec. 5, Rule 13 of the Rules of Court, under certain conditions, arrest without warrant 'is justified'; (c) that the department of Justice in a Memorandum dated October 15, 1976, recognizes the validity of warrantless arrest of aliens, the same 'memorandum merely reminded the Bureau to be more

cautious in enforcing the same'; and (d) that as regards the allegation of failure to comply with the requirement of custodial investigation, respondent asserted that the hearing officer was an experienced investigator and conversant with the procedures and he engaged the presumption of the regularity in the performance of official function.

"On August 8, 1997, the case referred to the Secretary of Justice for his comment forwarding to him the records of the case consisting of three hundred ninety one (391) pages, and on February 20, 1998, the Department of Justice citing the case of 'Board of Commissioners (CID) vs. dela Rosa' (197 SCRA 853) found among other things, that 'the arrest of Kenji Kato, Ronald Mark Edgar and Shahaz Hussain Shahid, all foreign nationals, by immigration authorities are not valid because they were made without proper warrants and without a prior determination by the Board of Commissioners of their deportability.'

"Obviously, therefore, respondent Edgar L. Mendoza, Commissioner of the Bureau of Immigration, by ordering agents of the Bureau of Immigration to arrest the above-named foreign nationals without the requisite 'final order issued by the Board of Commissioners' for their deportation, he is guilty of violating Sec. 3(a) and (e) of Republic Act 3019 as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

"Sec. 3, pars. (a) and (e) of Republic Act 3019 as amended read as follows:

'Sec. 3. Corrupt Practices of Public Officers- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful.

'a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

'b) x x x

'e) Causing any undue injury to any party, including the government or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices on government corporations charged with the graft and licenses or permits or other concessions.'

"In the case of Salazar vs. Achacoso, 183 SCRA 145, the Supreme Court categorically stated thus –