

M. H. NASSER, et al., Petitioners, v. MINISTER
OF JUSTICE, R.L., COMMISSIONER
OF IMMIGRATION, et al., Respondents.

APPEAL FROM RULING OF JUSTICE IN CHAMBERS GRANTING
ISSUANCE OF WRIT OF PROHIBITION.

Argued November 25, 1976. Decided December 3, 1976.

1. The Minister of Justice may order deportation of an alien only after it has been determined in accordance with the procedure for deportation prescribed by statute that the alien was in fact within one of the categories subject to deportation under section 7.1 of the Aliens and Nationality Law.
2. The Minister of Justice has the responsibility to aliens resident within the country, equally with citizens, to see that their rights are protected, and that any violation of law on their part is punished in accordance with due process of law.
3. An alien threatened with deportation because of commission of a serious crime may be deported only after conviction for that crime in a court of law.
4. On petition for a writ of prohibition, the question for determination is not whether another available remedy is adequate generally, but whether in view of the precise circumstances in which the petitioner finds himself, the other remedy is adequate in the particular instance.

Petitioners applied for a writ of prohibition to prevent the Minister of Justice and Commissioner of Immigration, respondents herein, from deporting them without according them the opportunity for a hearing and other procedural safeguards. Respondents sought to justify the deportation of petitioners by their alleged participation in a smuggling ring and their aid to other aliens to enter Liberia without the necessary travel documents. Respondents assert the right of the Minister of Justice to order deportation of an alien without prior administrative proceedings if the Minister determines that the alien has violated the laws of Liberia.

This was an appeal to the bench *en banc* from the granting of a peremptory writ by the Justice in chambers. The Supreme Court held that the Minister of Justice is obliged to follow the administrative procedure prescribed

by statute to determine deportability of an alien. The granting of the writ by the Justice in chambers was accordingly upheld. *Prohibition granted.*

J. Dossen Richards for petitioners. *Solicitor General E. Winfred Smallwood* for respondents.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

Smuggling is a crime in Liberia, punishment for the commission of which is fine or imprisonment or both. The merchandise involved, or its value, shall in every case be forfeited to the Government. 1956 Code 27:100. As far as our Penal Code has defined the crime, fine, imprisonment, and forfeiture of the goods smuggled constitute the only punishment for the commission of the offense.

In this case the petitioners have applied for prohibition to prevent their deportation because of alleged smuggling, without due process of law. They say that they are Lebanese nationals doing business in Liberia, and that as far as they are aware, they have not violated the immigration laws, nor have they been charged with the violation of any laws of the country, and are therefore entitled to protection of the law. They say further that they are being restrained of their liberties without due process of law, that they are threatened with deportation without a hearing or a deportation order, and that this deprives them of their rights under the Constitution of Liberia.

The respondents filed returns to the petition for prohibition, and did not deny the threatened deportation charged in the petition, but sought to justify their intention to deport by reasons stated in five counts; those counts read as follows:

"1. That respondents herein respectfully deny the averment contained in count one of petitioners' petition, in that apart from said petitioners being lawfully

and legally engaged in mercantile business, they have also been engaged in smuggling goods into Liberia. The evidence in a preliminary investigation held in Buchanan, Grand Bassa County, and Monrovia, revealed that petitioners were engaged in a smuggling ring where hundreds of cases of liquor and cigarettes were smuggled from a Spanish vessel lying off the coast of Grand Bassa County into Liberia. This behavior and conduct of petitioners while being under the protection of the law to carry on mercantile business contravenes and is in violation of the Alien and Nationality Law of Liberia. The Minister of Justice having been satisfied from the facts adduced during the course of the said preliminary investigation, he is clothed with the authority to have such aliens residing within Liberia deported under the provisions of the Aliens and Nationality Law. Respondents respectfully request this Court to deny the petitioners' petition in its entirety.

"2. Respondents respectfully contend and maintain that count two of petitioners' petition is unmeritorious in that petitioners have not been restrained of their physical liberties without due process. The petitioners have violated the Aliens and Nationality Law by engaging in the smuggling of liquor and cigarettes into Liberia, which act of petitioners has undermined the economy of the country. Petitioners were duly arrested in accordance with the Aliens and Nationality Law of Liberia. Respondents contend that petitioners were never detained at the Barclay Training Center as is averred in count 2 of the petition. Petitioners were detained at the Central Prison, Monrovia, pending deportation. The Commissioner of Immigration and Naturalization, one of respondents herein, was duly authorized to proceed with deportation in accordance with the Aliens and Nationality Law. In

view of the above, respondents respectfully request this Court not to grant petitioners' petition but to deny it.

"3. Respondents further deny that the petitioners are being arbitrarily and illegally deported. Under the provisions of law it is within the discretion of the Minister of Justice to order the deportation of any alien who has violated section 7.1(1) of the Aliens and Nationality Law in that they encouraged, induced, assisted, aided, and abetted another alien to enter Liberia without the necessary travel documents. Additionally, petitioners having been engaged in a smuggling ring violated the statute, which subjects them to deportation.

"Further to count 3 of petitioners' petition, respondents contend and maintain that in accordance with the Aliens and Nationality Law, it is not mandatory that a hearing be had before deportation takes place. The law gives the Minister of Justice the authority in his discretion to deport any alien who has violated any of the laws of Liberia. The proceedings of deportation are primarily administrative and not judicial and therefore hearing may be had only upon the authorization of the Minister of Justice, if he has not already determined deportability. The petition should be denied.

"4. Respondents further contend and maintain that count 4 of petitioners' petition is unmeritorious in that they were not arbitrarily and illegally arrested nor has any oppressive and discriminatory action been taken against them. Petitioners having wickedly and notoriously intended to undermine the economy of the State by violating the Aliens and Nationality Law, respondents pray for the dismissal of the petition.

"Further to count 4 of petitioners' petitions, respondents contend that there is no statutory requirement

that time should be given the undesirable alien to adjust his business or collect his debts in deportation proceedings.

“5. Respondents further contend and maintain that it is the responsibility and duty of Government to take all administrative and political measures conducive to the safety of the State and the welfare and protection of the citizens thereof. The Ministry of Justice having been satisfied that the petitioners herein having flagrantly violated the Aliens and Nationality Law to the detriment of the public interest, proceeded to have deported from the country such dangerous and undesirable aliens. Respondents pray for the dismissal of petitioners’ petition.”

The Justice in chambers, our distinguished colleague, Mr. Justice Horace, ordered issued the alternative writ, and assigned hearing of the matter. Both sides argued before him and submitted, and he ruled granting petitioners a peremptory writ of prohibition. The respondents took exception to the ruling and have brought their case on appeal before the bench *en banc*.

Deportation is a proceeding belonging to a court of law, since to effect it, there must be a decree after a hearing at which the intended deportee had been given an opportunity to defend himself. Witnesses must testify to the truthfulness of the grounds laid in the order, and the judge in a court of competent jurisdiction must render judgment. Thus would the alien to be deported have been afforded due process in keeping with law.

Deportation is an inherent sovereign power, and the Government has the duty, responsibility, and right to exclude from the country aliens whose presence or activities endanger the safety of our political society. But this power to deport undesirable aliens which is inherent in the Government does not confer upon the Executive Branch powers which under the Constitution it cannot exercise. Constitution of Liberia, Article I, Section 14th.

Under the new Aliens and Nationality Law approved May 15, 1973, the Attorney General, now Minister of Justice, has authority to deport any alien who falls within the definition of several grounds for exclusion of aliens from the country; among these in addition to smuggling is the ground laid in count 3 of respondents' returns, to the effect that petitioners "flagrantly violated section 7.1 (1) of the Aliens and Nationality Law in that they encouraged, induced, assisted, aided, and abetted another alien to enter Liberia without the necessary travel documents."

We do not hesitate to declare that where this allegation had been shown by evidence to be true, the Minister of Justice had every legal right to have proceeded to order deportation. However, the Minister under obligation of his oath of office must follow the procedure for deportation prescribed by statute to prove that the said aliens did indeed violate the law; and at this hearing petitioners must have had an opportunity to be heard and to defend themselves. Otherwise, they would be deprived of the right already given them to remain in the country, without due process of law. Due process means they must have been taken into custody upon proper warrant, furnished with a copy of the charge which was the basis of the warrant, confronted with the witnesses against them and also given compulsory process for having witnesses testify for them, and given opportunity to cross-examine witnesses against them, and the exclusion from the country ordered only if and when the charges had been shown by evidence to have been proven. Constitution of Liberia, Article I, Section 7th.

In the ruling of our colleague granting the petition for prohibition, he very clearly reviewed the point sought to be made by the Ministry of Justice, to the effect that for the purpose of shortening deportation procedure in respect to these petitioners, effort had been made to forego necessary provisions of the statute with respect to depor-

tation. Here is what he said, and what we have upheld: "§ 7.1. *Grounds for deportation.* Any alien in Liberia shall, upon the order of the Attorney General [now Minister of Justice] be deported who . . ." and continuing with subsections (2) through (m) which list the grounds for deportation.

It seems from the returns of respondents and the argument of counsel that the phrase "upon order of the Attorney General" makes the Minister of Justice the sole arbiter of the rights of an alien residing in Liberia. We find it very difficult to accept such a theory, for if we did, the entire chapter on *Deportation* as found in the new Aliens and Nationality Law would be senseless and meaningless. To illustrate this point let us look at some other sections of the statute:

"§ 7.3. *Proceedings to determine deportability.*

"I. *Hearing by special hearing officer.* A hearing officer designated by the Attorney General shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien and witnesses, and, as authorized by the Attorney General, shall make determinations, including orders of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before a specially designated hearing officer, at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the Attorney General shall prescribe necessary and proper safeguards for the rights and privileges of such alien. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the hearing officer may

proceed to a determination in like manner as if the alien were present. . . .

"3. Regulations to govern proceedings: rights of alien. Proceedings before a hearing officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this chapter, as the Attorney General shall prescribe. Such regulations shall include requirements that:

"(a) The alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceeding will be held;

"(b) The alien shall have the privilege of being represented by counsel of his choosing;

"(c) The alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

"(d) No decision of deportability shall be valid unless it is based upon reasonable, substantial and probative evidence.

"4. Appeal to Office of Immigration Appeals. From an adverse decision of a hearing officer, an alien may appeal to the Office of Immigration Appeals.

"5. Procedure to be exclusive for determining deportability. The procedure prescribed in this section shall be the sole and exclusive procedure for determining the deportability of an alien. The decision of the Office-of Immigration Appeals may be appealed to the Attorney General whose decision shall be the final administrative decision. From a decision by the Attorney General to deport, the alien may appeal to the Circuit Court." [Emphasis supplied.]

To our mind the sections just quoted are clear and unambiguous. That is the procedure for determining deportability which must be followed; for to do otherwise

would be depriving the resident alien of his statutory rights. The authority of the Minister of Justice is by no means diminished when he abides by the statutes.

If, as was stated in their argument before us, respondents feel that the procedure is too long drawn out, then they should recommend a change in the law, but not ignore it. Better still, they could expedite the process rather than attempt to bypass it.

In the performance of his duties the Minister of Justice has a responsibility to the Government to see that its laws are obeyed, and to protect it against those who might subvert it, undermine its authority, or adversely affect its economy. The Minister of Justice has an equal responsibility to the citizens and residents within our gates, to see that their rights are also protected, and that where they violate the laws which give them protection, they will be punished by due process of that law. The argument of shortening the procedure laid down in the law for deporting undesirable aliens is a flimsy excuse to violate the law, and is not in accordance with due process, nor is it in accordance with the Minister's oath, when he swore to protect and enforce the statute laws of the country.

Our distinguished colleague correctly stated in his ruling from which the Minister has appealed, that:

"No sane person would hold that a resident alien breaching the laws of the country in which he resides should not be deported. His very act in this respect would take him out of the pale of the protection he would be entitled to were he law-abiding. Equally so, no sane person would agree that in order to fight the illegal acts of a resident alien, the law controlling should be either abridged or ignored. That would be fighting an illegal act by illegal means."

The statute which gives the Minister authority to order deportation does not give the right to violate any law nec-

essary to effect the deportation. In fact, the Minister should seek to scrupulously abide by the law, in order to emphasize the Government's fairness in its administration of justice and of the laws of the country.

It has been argued that the Minister of Justice has discretion with regard to excluding undesirable aliens from the country. In the context in which this argument was made, we would like to know what is the discretion which the Minister enjoys with respect to the matter? In this case the Minister has contended that the petitioners committed the crime of smuggling and thereby rendered themselves undesirable for having sought by their act to undermine the economy.

We have no quarrel with that conclusion of the Minister, if he can show that the accused are indeed guilty of the offense. His right to exclude them from the country on that ground would appear to be without dispute or fault where he had shown that this was the case. On the other hand, not having shown this to be so, his intended act was arbitrary. He could only show this fact by trial before a court of law, and upon judgment of that court. But he elected not to try them for the crime they were accused of having committed, but instead proceeded on the basis of the commission of the alleged crime to deport them, even though deportation is not the statutory punishment for smuggling according to the Penal Code, as we have said herein before. It is not within the discretion of the Minister to seek to punish in any manner, other than as is provided by law. It is his duty to prosecute crime, and see that its commission is punished.

Moreover, it has also been contended that the petitioners had aided and abetted other aliens to enter the country without travel documents. In any and every such case, the Minister has undisputed authority to exclude such aliens from the country; but he has no discretion in determining how he should proceed to do so, since the law has

laid down the procedure for him. Aliens and Nationality Law, approved May 15, 1973, ch. 7, Deportation. Rev. Code, 4:7.1-7.9.

We have not been able to find any grounds upon which to reverse the ruling of the Justice in chambers in granting the writ of prohibition. On the contrary, we are of the considered opinion that prosecuting crime is the only means whereby the Ministry of Justice can hope to either eliminate or check the increase of crime in the country. Prosecuting crime vigorously and effectively is the Minister's solemn responsibility. Speaking to this point Mr. Justice Horace said:

"The economy of the country and its safety should be the concern of everyone residing in it, be he citizen or alien. That is our bounden duty. The enormity of extensive smuggling should be rigidly dealt with, but let everyone beware of permitting his zeal in executing the law to override his respect for the law as it is.

"We would remark here that nowhere in their returns have respondents said that prohibition will not lie. Their principal position is that because of the particular circumstances attending the case, that is, smuggling, which tends to undermine the economy the writ should be denied. . . . 'There is no general rule of universal application by which the adequacy or inadequacy of a remedy can be ascertained, but the question is one to be determined on the facts of each particular case, and rests, in large part, in the discretion of the court. The delay and expense of an appeal or other available remedy ordinarily furnish no sufficient reasons for holding that the remedy by appeal is not adequate or speedy, although there are many instances in which the expense and delay of an appeal have, in part at least, impelled the superior court to grant the writ. But whenever, as incidental to the action of the court, there is involved an infringement of property rights, or a subjection to a multiplicity of suits in such

a way as to make its acts oppressive, there is no adequate remedy by appeal, and it is proper to issue the writ of prohibition; and this is true whether the court in which the proceeding is instituted has acted or not, if the effect of the void authority under which it is assuming to act stands as a vexatious menace to personal liberty or the destruction of property rights.

“The mere existence and availability of another remedy is not, in itself, necessarily sufficient to warrant denial of the writ of prohibition; such other remedy must be plain, speedy, and adequate in the circumstances of the particular case. The question for determination is not whether the other remedy is adequate generally, but whether, in view of the precise circumstances in which the petitioner for prohibition finds himself, the other remedy is adequate in the particular instance.’ 63 AM. JUR. 2d, *Prohibition*, § 9 (1972).”

Being in complete agreement with the position taken by our colleague in chambers, we have upheld his ruling granting the peremptory writ of prohibition. Where deportation is necessary or authorized, the Minister of Justice should follow the law controlling deportation, as it was enacted by the Legislature. It is error for him to introduce procedure contrary to statute. Costs in these proceedings are disallowed. And it is so ordered.

Prohibition granted.