

[CID LAW INSTRUCTIONS NO. 11, February 16, 1988]

ARREST AND DETENTION OF ALIENS

Warrant of Arrest — The Constitution provides in Article III:

SECTION 2.xxx — No 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 person to be seized."

Suit has been brought in the Supreme Court to question the Commissioner's right to issue warrant of arrest. The undersigned Commissioner's position is that the word "judge" in Article III, Section 2 should not be literally construed. Instead, it should be construed in a generic sense, so as to include any officer authorized by law to perform quasi-judicial functions, which require the power of arrest as a necessary adjunct.

In any event, because of the pending case in the Supreme Court, the Commissioner shall voluntarily refrain from issuing a warrant of arrest, unless absolutely necessary.

Warrantless Arrest — The 1985 Rules of Criminal Procedure, Rule 113 provides:

"SECTION 5. Arrest without warrant, when lawful — A peace officer or a private person may, without a warrant, arrest a person:

"(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

"(b) When an offense has in fact just been committed, and he has personal knowledge of the facts indicating that the person to be arrested has committed it;

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"In cases falling under para . (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station, or jail, and he shall be proceeded against in accordance with Rule 112, Section 7. (On preliminary investigation)

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"SECTION 8. Method of arrest by officer without arrest: When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the