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## Aliens - Exclusion - Detention of Non-Deportable Aliens

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## RECENT CASES

**ALIENS—EXCLUSION — DETENTION OF NON-DEPORTABLE ALIENS.** Petitioner brings habeas corpus proceeding for review of the cause of his detention on Ellis Island, where he has been detained four months since being ordered excluded from the United States as an inadmissible alien. The government has practically admitted its inability to deport him. Petitioner, a seaman, had originally been detained at Baltimore upon his return from a voyage as a member of the crew of an American vessel to France, and his application for entry into the United States made at that time formed the basis of his exclusion. Previous to that time, since 1911, he had claimed residence in the United States and had served as a seaman on American ships during most of that period, including merchant marine service in two world wars. The exclusion order, based upon findings of a Special Board of Inquiry which were subsequently affirmed on appeal to the Board of Immigration Appeals, stated that petitioner was inadmissible because he lacked a proper immigration visa<sup>1</sup> or unexpired passport from the country to which he owed allegiance;<sup>2</sup> he had been convicted of a crime involving moral turpitude—perjury;<sup>3</sup> and he previously had been deported and had not been granted permission to seek re-entry.<sup>4</sup> His entry in 1911 was from Poland but the Polish consul has advised him that he is no longer a Polish subject, and it appears that France, the country from which he embarked for his latest entry into the United States also would not accept him. It is the contention of petitioner that he is a man without a country. *Held*, petitioner should be released on his own recognizance until such time as the government can effect his deportation and until such time, petitioner must report monthly by mail to immigration authorities his place of employment and where he may be reached. *Staniszewski v. Watkins*, 80 F. Supp. 132 (S. D. N. Y. 1948).

The facts in the instant case are unique and tax the flexibility of the immigration statutes.<sup>5</sup> The result is in accord with the weight of the cases, which hold that an alien who has been detained longer than a reasonable time pending execution of an order of deportation must be released.<sup>6</sup> As to what constitutes a reasonable time,

<sup>1</sup> 43 Stat. 161 (1924), as amended, 8 U. S. C. § 213 (a) (1946).

<sup>2</sup> 50 Stat. 164 (1937), as amended, 8 U. S. C. § 102 (Supp. 1950).

<sup>3</sup> 39 Stat. 875 (1917), as amended, 8 U. S. C. § 136 (e) (1946).

<sup>4</sup> 45 Stat. 1551 (1929), 8 U. S. C. § 180 (a) (1946).

<sup>5</sup> See generally Title 8 U. S. C. (1946).

<sup>6</sup> *In re Krajcivovic*, 87 F. Supp. 379 (D. Mass. 1949) (imprisonment beyond two months unlawful); *United States v. Nicolls*, 47 F. Supp. 201 (D. Mass. 1942); *United States v. Uhl*, 47 F. Supp. 165 (S. D. N. Y. 1942); accord, *Saksagansky v. Weedon*, 53 F. 2d 13 (9th Cir. 1931); see *United States v. Wallis*, 279 F. 401, 404 (2d Cir. 1922); *United States v. Shaughnessy*, 88 F. Supp. 91, 92 (S. D. N. Y. 1950) (lengthy detention not improper where due to alien bringing collateral habeas corpus proceeding). But cf. *Bauer v. Watkins*, 171 F.2d 492 (2d Cir. 1948).

there is much variance<sup>7</sup> and the better rule appears to be stated in *Moraitis v. Delany*,<sup>8</sup> which holds that the circumstances of the cases may vary the length of the detention. It is, however, agreed and constantly emphasized that deportation is not a criminal process<sup>9</sup> and the right to confine an alien is merely incidental to the right to exclude and expel.<sup>10</sup> Abuse of this right is imprisonment contrary to the Thirteenth Amendment of the Federal Constitution,<sup>11</sup> although the alien may be held during the deportation proceedings and for a reasonable period thereafter.<sup>12</sup> At least one case, *Petition of Brooks*,<sup>13</sup> sustains the proposition that such conditional release as is found in the instant case is unjustified and the alien must be deported or released. Should the court choose to follow *United States ex rel. Doukas v. Wiley*,<sup>14</sup> petitioner might, on the other hand, be subject to deportation as long as 24 years after the issuance of the original order of deportation. It appears that laches does not deprive the order of its effectiveness,<sup>15</sup> although in *Petition of Popper*,<sup>16</sup> the court said a deportation order was *functus officio* where the government failed to exercise its right of deportation. In that case it was held that such an order was not a bar to naturalization.

The deposition of the *Staniszewski* case, however, appears not to be a conclusive adjudication of the rights of petitioner since the government by its own admission cannot dispose of him as the deportation order directs. It would seem that the court has temporarily sidestepped the issue. If, as in *Petition of Popper*,<sup>17</sup> where the fact situation has aspects similar to the instant case, the government is ever to remain silent on the order, then the rule in *Petition of Brooks*<sup>18</sup> would serve the same purpose more efficiently and judiciously.

**CODE PLEADING—JOINDER OF PARTIES AND CAUSES OF ACTION—RIGHT TO JOIN LIABILITY INSURER WITH INSURED AS PARTIES DEFENDANT.** A Fargo, North Dakota, ordinance<sup>1</sup> requires taxicab operators within that

<sup>7</sup> *Caranica v. Nagle*, 28 F.2d 955 (9th Cir. 1928) (two months detention reasonable); *United States v. Wallis*, *supra* note 6 (four months detention reasonable); *Saksoganski v. Weedin*, *supra* note 6 (30 days reasonable.)

<sup>8</sup> 46 F. Supp. 425 (D. Md. 1942).

<sup>9</sup> *Bugajewitz v. Adams*, 228 U.S. 585 (1913); *Fong Yue Ting v. United States*, 1949 U.S. 698, 730 (1893).

<sup>10</sup> *Petition of Brooks*, 5 F.2d 238 (D. Mass. 1925.)

<sup>11</sup> *Petition of Brooks*, *supra* note 10.

<sup>12</sup> *Bauer v. Watkins*, 171 F.2d 492 (2d Cir. 1948).

<sup>13</sup> *Petition of Brooks*, 5 F.2d 238 (D. Mass. 1925).

<sup>14</sup> 760 F.2d 92 (7th Cir. 1947).

<sup>15</sup> *Restivo v. Clark*, 90 F.2d 847 (1st Cir. 1937); *Scif v. Nagle*, 14 F.2d 416 (9th Cir. 1926).

<sup>16</sup> 79 F. Supp. 530 (S.D.N.Y. 1948).

<sup>17</sup> *Ibid.*

<sup>18</sup> 5 F.2d 238 (D. Mass. 1925), holding that alien must be deported or unconditionally released.

<sup>1</sup> Fargo Revised Ordinances, art. 22, § 306 (1939), as amended by Ordinance No. 700 (Dec. 29, 1943).