Republic of the Philippines
Supreme Court
Baguio City

EN BANC

EFRAIM C. GENUINO, ERWIN F. GENUINO and SHERYL G. SEE,
Petitioners,

G.R. No. 197930

- versus -

HON. LEILA M. DE LIMA, in her capacity as Secretary of Justice, and RICARDO V. PARAS III, in his capacity as Chief State Counsel, CRISTINO L. NAGUIAT, JR. and the BUREAU OF IMMIGRATION,
Respondents.

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MA. GLORIA MACAPAGAL-ARROYO,
Petitioner,

G.R. No. 199034

- versus -

HON. LEILA M. DE LIMA, as Secretary of the Department of Justice and RICARDO A. DAVID, JR., as Commissioner of the Bureau of Immigration,
Respondents.

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JOSE MIGUEL T. ARROYO,
Petitioner,

G.R. No. 199046

Present:

SERENO,* *C.J.*,
CARPIO,
VELASCO, JR.,

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* On Indefinite leave.

- versus -

LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,**
MARTIRES,
TIJAM,
REYES, JR., and
GESMUNDO, *JJ.*

HON. LEILA M. DE LIMA, as Secretary of the Department of Justice and RICARDO V. PARAS III, as Chief State Counsel, Department of Justice and RICARDO A. DAVID, JR., in his capacity as Commissioner, Bureau of Immigration,
Respondents.

Promulgated:

April 17, 2018

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DECISION

REYES, JR., *J.*:

These consolidated Petitions for *Certiorari* and Prohibition with Prayer for the Issuance of Temporary Restraining Orders (TRO) and/or Writs of Preliminary Injunction Under Rule 65 of the Rules of Court assail the constitutionality of Department of Justice (DOJ) Circular No. 41, series of 2010, otherwise known as the "*Consolidated Rules and Regulations Governing Issuance and Implementation of Hold Departure Orders, Watchlist Orders and Allow Departure Orders*," on the ground that it infringes on the constitutional right to travel.

Also, in G.R. Nos. 199034 and 199046, the petitioners therein seek to annul and set aside the following orders issued by the former DOJ Secretary Leila De Lima (De Lima), pursuant to DOJ Circular No. 41, thus:

1. Watchlist Order No. ASM-11-237 dated August 9, 2011;[1]
2. Amended Watchlist Order No. 2011-422 dated September 6, 2011;[2] *and*

** No part.
[1] *Rollo* (G.R. No. 199034), Volume I, pp. 45-46.
[2] Id. at 47-48.

3. Watchlist Order No. 2011-573 dated October 27, 2011.[3]

In a Supplemental Petition, petitioner Gloria Macapagal-Arroyo (GMA) further seeks the invalidation of the Order[4] dated November 8, 2011, denying her application for an Allow-Departure Order (ADO).

Similarly, in G.R. No. 197930, petitioners Efraim C. Genuino (Efraim), Erwin F. Genuino (Erwin) and Sheryl Genuino-See (Genuinos) pray for the nullification of the Hold-Departure Order[5] (HDO) No. 2011-64 dated July 22, 2011 issued against them.

Antecedent Facts

On March 19, 1998, then DOJ Secretary Silvestre H. Bello III issued DOJ Circular No. 17, prescribing rules and regulations governing the issuance of HDOs. The said issuance was intended to restrain the indiscriminate issuance of HDOs which impinge on the people's right to travel.

On April 23, 2007, former DOJ Secretary Raul M. Gonzalez issued DOJ Circular No. 18, prescribing rules and regulations governing the issuance and implementation of watchlist orders. In particular, it provides for the power of the DOJ Secretary to issue a Watchlist Order (WLO) against persons with criminal cases pending preliminary investigation or petition for review before the DOJ. Further, it states that the DOJ Secretary may issue an ADO to a person subject of a WLO who intends to leave the country for some exceptional reasons.[6] Even with the promulgation of DOJ Circular No. 18, however, DOJ Circular No. 17 remained the governing rule on the issuance of HDOs by the DOJ.

On May 25, 2010, then Acting DOJ Secretary Alberto C. Agra issued the assailed DOJ Circular No. 41, consolidating DOJ Circular Nos. 17 and 18, which will govern the issuance and implementation of HDOs, WLOs, and ADOs. Section 10 of DOJ Circular No. 41 expressly repealed all rules and regulations contained in DOJ Circular Nos. 17 and 18, as well as all instructions, issuances or orders or parts thereof which are inconsistent with its provisions.

After the expiration of GMA's term as President of the Republic of the Philippines and her subsequent election as Pampanga representative,

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3 Id. at 49-58.
4 Id. at 106-116.
5 *Rollo* (G.R. No. 197930), pp. 30-35.
6 *Rollo* (G.R. No. 199034), Volume III, pp. 901-902.

criminal complaints were filed against her before the DOJ, particularly:

> (a) XVI-INV-10H-00251, entitled *Danilo A. Lihaylihay vs. Gloria Macapagal-Arroyo, et al.,* for plunder;[7]
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> (b) XVI-INV-11D-00170, entitled *Francisco I. Chavez vs. Gloria Macapagal-Arroyo, et al.*, for plunder, malversation and/or illegal use of OWWA funds, graft and corruption, violation of the Omnibus Election Code (OEC), violation of the Code of Conduct and Ethical Standards for Public Officials, and qualified theft;[8] and
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> (c) XVI-INV-11F-00238, entitled *Francisco I. Chavez vs. Gloria Macapagal-Arroyo, et al.*, for plunder, malversation, and/or illegal use of public funds, graft and corruption, violation of the OEC, violation of the Code of Conduct and Ethical Standards for Public Officials and qualified theft.[9]

In view of the foregoing criminal complaints, De Lima issued DOJ WLO No. 2011-422 dated August 9, 2011 against GMA pursuant to her authority under DOJ Circular No. 41. She also ordered for the inclusion of GMA's name in the Bureau of Immigration (BI) watchlist.[10] Thereafter, the BI issued WLO No. ASM-11-237,[11] implementing De Lima's order.

On September 6, 2011, De Lima issued DOJ Amended WLO No. 2011-422 against GMA to reflect her full name "Ma. Gloria M. Macapagal-Arroyo" in the BI Watchlist.[12] WLO No. 2011-422, as amended, is valid for a period of 60 days, or until November 5, 2011, unless sooner terminated or otherwise extended. This was lifted in due course by De Lima, in an Order dated November 14, 2011, following the expiration of its validity.[13]

Meanwhile, on October 20, 2011, two criminal complaints for Electoral Sabotage and Violation of the OEC were filed against GMA and her husband, Jose Miguel Arroyo (Miguel Arroyo), among others, with the DOJ-Commission on Elections (DOJ-COMELEC) Joint Investigation Committee on 2004 and 2007 Election Fraud,[14] specifically:

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7 Id. at 902.
8 Id.
9 Id. at 903.
10 Id.
11 *Rollo* (G.R. No. 199034), Volume I, pp. 45-46.
12 Id. at 47-48.
13 *Rollo* (G.R. No. 199034), Volume III, p. 904.
14 Id.

(a) DOJ-COMELEC Case No. 001-2011, entitled *DOJ-COMELEC Fact Finding Team vs. Gloria Macapagal-Arroyo et al., (for the Province of Maguindanao)*, for electoral sabotage/violation of the OEC and COMELEC Rules and Regulations;[15] and

(b) DOJ-COMELEC Case No. 002-2011, entitled *Aquilino Pimentel III vs. Gloria Macapagal-Arroyo, et al.*, for electoral sabotage.[16]

Following the filing of criminal complaints, De Lima issued DOJ WLO No. 2011-573 against GMA and Miguel Arroyo on October 27, 2011, with a validity period of 60 days, or until December 26, 2011, unless sooner terminated or otherwise extended.[17]

In three separate letters dated October 20, 2011, October 21, 2011, and October 24, 2011, GMA requested for the issuance of an ADO, pursuant to Section 7 of DOJ Circular No. 41, so that she may be able to seek medical attention from medical specialists abroad for her *hypoparathyroidism* and metabolic bone mineral disorder. She mentioned six different countries where she intends to undergo consultations and treatments: United States of America, Germany, Singapore, Italy, Spain and Austria.[18] She likewise undertook to return to the Philippines, once her treatment abroad is completed, and participate in the proceedings before the DOJ.[19] In support of her application for ADO, she submitted the following documents, *viz.*:

1. Second Endorsement dated September 16, 2011 of Speaker Feliciano Belmonte, Jr. to the Secretary of Foreign Affairs, of her Travel Authority;

2. First Endorsement dated October 19, 2011[20] of Artemio A. Adasa, OIC Secretary General of the House of Representatives, to the Secretary of Foreign Affairs, amending her Travel Authority to include travel to Singapore, Spain and Italy;

3. Affidavit dated October 21, 2011,[21] stating the purpose of travel to Singapore, Germany and Austria;

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15 Id.
16 Id.
17 Id. at 905.
18 Id. at 905-906.
19 Id. at 1028.
20 *Rollo* (G.R. No. 199034), Volume I, p. 76.
21 Id. at 82-83.

4. Medical Abstract dated October 22, 2011,[22] signed by Dr. Roberto Mirasol (Dr. Mirasol);

5. Medical Abstract dated October 24, 2011,[23] signed by Dr. Mario Ver;

6. Itinerary submitted by the Law Firm of Diaz, Del Rosario and Associates, detailing the schedule of consultations with doctors in Singapore.

To determine whether GMA's condition necessitates medical attention abroad, the Medical Abstract prepared by Dr. Mirasol was referred to then Secretary of the Department of Health, Dr. Enrique Ona (Dr. Ona) for his expert opinion as the chief government physician. On October 28, 2011, Dr. Ona, accompanied by then Chairperson of the Civil Service Commission, Francisco Duque, visited GMA at her residence in La Vista Subdivision, Quezon City. Also present at the time of the visit were GMA's attending doctors who explained her medical condition and the surgical operations conducted on her. After the visit, Dr. Ona noted that "*Mrs. Arroyo is recuperating reasonably well after having undergone a series of three major operations*."[24]

On November 8, 2011, before the resolution of her application for ADO, GMA filed the present Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court with Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction, docketed as G.R. No. 199034, to annul and set aside DOJ Circular No. 41 and WLOs issued against her for allegedly being unconstitutional.[25]

A few hours thereafter, Miguel Arroyo filed a separate Petition for *Certiorari* and Prohibition under the same rule, with Prayer for the Issuance of a TRO and/or a Writ of Preliminary Injunction, likewise assailing the constitutionality of DOJ Circular No. 41 and WLO No. 2011-573. His petition was docketed as G.R. No. 199046.[26]

Also, on November 8, 2011, De Lima issued an Order,[27] denying GMA's application for an ADO, based on the following grounds:

First, there appears to be discrepancy on the medical condition of

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22 Id. at 86.
23 Id. at 68-75.
24 *Rollo* (G.R. No. 199034), Volume III, p. 908.
25 Id. at 909.
26 Id.
27 *Rollo* (G.R. No. 199034), Volume I, pp. 122-132.

the applicant as stated in her affidavit, on the other hand, and the medical abstract of the physicians as well as her physician's statements to Secretary Ona during the latter's October 28, 2011 visit to the Applicant, on the other.

x x x x

Second, based on the medical condition of Secretary Ona, there appears to be no urgent and immediate medical emergency situation for Applicant to seek medical treatment abroad. x x x.

x x x x

Third, Applicant lists several countries as her destination, some of which were not for purposes of medical consultation, but for attending conferences. x x x.

x x xx

Fourth, while the Applicant's undertaking is to return to the Philippines upon the completion of her medical treatment, this means that her return will always depend on said treatment, which, based on her presentation of her condition, could last indefinitely. x x x.

x x x x

Fifth, x x x x. Applicant has chosen for her destination five (5) countries, namely, Singapore, Germany, Austria, Spain and Italy, with which the Philippines has no existing extradition treaty. x x x.

x x x x

IN VIEW OF THE FOREGOING, the application for an Allow Departure Order (ADO) of **Congresswoman MA. GLORIA M. MACAPAGAL-ARROYO** is hereby **DENIED** for lack of merit.

SO ORDERED.[28]

On November 9, 2011, De Lima, together with her co-respondents, Ricardo V. Paras, III, Chief State Counsel of the DOJ and Ricardo A. David, Jr., who was then BI Commissioner, (respondents) filed a Very Urgent Manifestation and Motion[29] in G.R. Nos. 199034 and 199046, praying (1) that they be given a reasonable time to comment on the petitions and the applications for a TRO and/or writ of preliminary injunction before any action on the same is undertaken by the Court; (2) that the applications for TRO and/or writ of preliminary injunction be denied for lack of merit, and; (3) that the petitions be set for oral arguments after the filing of comments thereto.[30]

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28 Id. at 110, 112, 113-114, 116.
29 Id. at 89-104; *Rollo* (G.R. No. 199046), pp. 59-70.
30 Id. at 102-103; id. at 68.

On November 13, 2011, GMA filed a Supplemental Petition[31] which included a prayer to annul and set aside the Order dated November 8, 2011, denying her application for ADO. On the following day, GMA filed her Comment/Opposition[32] to the respondents' Very Urgent Manifestation and Motion dated November 9, 2011, in G.R. No. 199034.

On November 15, 2011, the Court issued a Resolution,[33] ordering the consolidation of G.R. Nos. 199034 and 199046, and requiring the respondents to file their comment thereto not later than November 18, 2011. The Court likewise resolved to issue a TRO in the consolidated petitions, enjoining the respondents from enforcing or implementing DOJ Circular No. 41 and WLO Nos. ASM-11-237 dated August 9, 2011, 2011-422 dated September 6, 2011, and 2011-573 dated October 27, 2011, subject to the following conditions, to wit:

> (i) The petitioners shall post a cash bond of Two Million Pesos (P2,000,000.00) payable to this Court within five (5) days from notice hereof. Failure to post the bond within the aforesaid period will result in the automatic lifting of the temporary restraining order;
>
> (ii) The petitioners shall appoint a legal representative common to both of them who will receive subpoena, orders and other legal processes on their behalf during their absence. The petitioners shall submit the name of the legal representative, also within five (5) days from notice hereof; and
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> (iii) If there is a Philippine embassy or consulate in the place where they will be traveling, the petitioners shall inform said embassy or consulate by personal appearance or by phone of their whereabouts at all times;[34]

On the very day of the issuance of the TRO, the petitioners tendered their compliance[35] with the conditions set forth in the Resolution dated November 15, 2011 of the Court and submitted the following: (1) a copy of Official Receipt No. 0030227-SC-EP, showing the payment of the required cash bond of Two Million Pesos (₱2,000,000.00);[36] (2) certification from the Fiscal and Management and Budget Office of the Supreme Court, showing that the cash bond is already on file with the office;[37] (3) special powers of attorney executed by the petitioners, appointing their respective lawyers as their legal representatives; [38] and (4) an undertaking to report to the nearest consular office in the countries where they will travel. [39]

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31 *Rollo* (G.R. No. 199034), Volume I, pp. 133-174.
32 Id. at 189-206.
33 Id. at 208-210.
34 Id. at 208-209.
35 Id. at 337-339; 344-345.
36 Id. at 347.
37 Id. at 348.
38 Id. at 349-350.
39 Id. at 342.

At around 8:00 p.m. on the same day, the petitioners proceeded to the Ninoy Aquino International Airport (NAIA), with an *aide-de-camp* and a private nurse, to take their flights to Singapore. However, the BI officials at NAIA refused to process their travel documents which ultimately resulted to them not being able to join their flights.[40]

On November 17, 2011, GMA, through counsel, filed an Urgent Motion[41] for Respondents to Cease and Desist from Preventing Petitioner GMA from Leaving the Country. She strongly emphasized that the TRO issued by the Court was immediately executory and that openly defying the same is tantamount to gross disobedience and resistance to a lawful order of the Court.[42] Not long after, Miguel Arroyo followed through with an Urgent Manifestation,[43] adopting and repleading all the allegations in GMA's motion.

On November 16, 2011, the respondents filed a Consolidated Urgent Motion for Reconsideration and/or to Lift TRO,[44] praying that the Court reconsider and set aside the TRO issued in the consolidated petitions until they are duly heard on the merits. In support thereof, they argue that the requisites for the issuance of a TRO and writ of preliminary injunction were not established by the petitioners. To begin with, the petitioners failed to present a clear and mistakable right which needs to be protected by the issuance of a TRO. While the petitioners anchor their right *in esse* on the right to travel under Section 6, Article III of the 1987 Constitution, the said right is not absolute. One of the limitations on the right to travel is DOJ Circular No. 41, which was issued pursuant to the rule-making powers of the DOJ in order to keep individuals under preliminary investigation within the jurisdiction of the Philippine criminal justice system. With the presumptive constitutionality of DOJ Circular No. 41, the petitioners cannot claim that they have a clear and unmistakable right to leave the country as they are the very subject of the mentioned issuance.[45] Moreover, the issuance of a TRO will effectively render any judgment on the consolidated petitions moot and academic. No amount of judgment can recompense the irreparable injury that the state is bound to suffer if the petitioners are permitted to leave the Philippine jurisdiction.[46]

On November 18, 2011, the Court issued a Resolution,[47] requiring De Lima to show cause why she should not be disciplinarily dealt with or held

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40 Id. at 367.
41 Id. at 364-375.
42 Id. at 369.
43 Id. at 382-384.
44 Id. at 288-323.
45 Id. at 311.
46 Id. at 318-319.
47 Id. at 394-398.

in contempt of court for failure to comply with the TRO. She was likewise ordered to immediately comply with the TRO by allowing the petitioners to leave the country. At the same time, the Court denied the Consolidated Urgent Motion for Reconsideration and/or to Lift TRO dated November 16, 2011 filed by the Office of the Solicitor General.[48]

On even date, the COMELEC, upon the recommendation of the Joint DOJ-COMELEC Preliminary Investigation Committee, filed an information for the crime of electoral sabotage under Section 43(b) of Republic Act (R.A.) No. 9369 against GMA, among others, before the Regional Trial Court (RTC) of Pasay City, which was docketed as R-PSY-11-04432-CR[49] and raffled to Branch 112. A warrant of arrest for GMA was forthwith issued.

Following the formal filing of an Information in court against GMA, the respondents filed an Urgent Manifestation with Motion to Lift TRO.[50] They argue that the filing of the information for electoral sabotage against GMA is a supervening event which warrants the lifting of the TRO issued by this Court. They asseverate that the filing of the case vests the trial court the jurisdiction to rule on the disposition of the case. The issue therefore on the validity of the assailed WLOs should properly be raised and threshed out before the RTC of Pasay City where the criminal case against GMA is pending, to the exclusion of all other courts.[51]

Also, on November 18, 2011, the COMELEC issued a Resolution, dismissing the complaint for violation of OEC and electoral sabotage against Miguel Arroyo, among others, which stood as the basis for the issuance of WLO No. 2011-573. Conformably, the DOJ issued an Order dated November 21, 2011,[52] lifting WLO No. 2011-573 against Miguel Arroyo and ordering for the removal of his name in the BI watchlist.

Thereafter, the oral arguments on the consolidated petitions proceeded as scheduled on November 22, 2011, despite requests from the petitioners' counsels for an earlier date. Upon the conclusion of the oral arguments on December 1, 2011, the parties were required to submit their respective memoranda.[53]

Meanwhile, in G.R. No. 197930, HDO No. 2011-64 dated July 22,

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48 Id. at 394-395.
49 *Rollo* (G.R. No. 199034), Volume II, pp. 525-527.
50 Id. at 518-524.
51 Id. at 519-521.
52 *Rollo*, (G.R. No. 199034), Volume III, pp. 1017-1018.
53 Id. at 914.

2011[54] was issued against Genuinos, among others, after criminal complaints for Malversation, as defined under Article 217 of the Revised Penal Code (RPC), and Violation of Sections 3(e), (g), (h) and (i) of R.A. No. 3019 were filed against them by the Philippine Amusement and Gaming Corporation (PAGCOR), through its Director, Eugene Manalastas, with the DOJ on June 14, 2011, for the supposed diversion of funds for the film "Baler." This was followed by the filing of another complaint for Plunder under R.A. No. 7080, Malversation under Article 217 of the RPC and Violation of Section 3 of R.A. No. 3019, against the same petitioners, as well as members and incorporators of BIDA Production, Inc. Wildformat, Inc. and Pencil First, Inc., for allegedly siphoning off PAGCOR funds into the coffers of BIDA entities. Another complaint was thereafter filed against Efraim and Erwin was filed before the Office of the Ombudsman for violation of R.A. No. 3019 for allegedly releasing PAGCOR funds intended for the Philippine Sports Commission directly to the Philippine Amateur Swimming Association, Inc.[55] In a Letter[56] dated July 29, 2011 addressed to Chief State Counsel Ricardo Paras, the Genuinos, through counsel, requested that the HDO against them be lifted. This plea was however denied in a Letter[57] dated August 1, 2011 which prompted the institution of the present petition by the Genuinos. In a Resolution[58] dated April 21, 2015, the Court consolidated the said petition with G.R. Nos. 199034 and 199046.

The Court, after going through the respective memoranda of the parties and their pleadings, sums up the issues for consideration as follows:

I

WHETHER THE COURT MAY EXERCISE ITS POWER OF JUDICIAL REVIEW;

II

WHETHER THE DOJ HAS THE AUTHORITY TO ISSUE DOJ CIRCULAR NO. 41; *and*

III

WHETHER THERE IS GROUND TO HOLD THE FORMER DOJ SECRETARY GUILTY OF CONTEMPT OF COURT.

Ruling of the Court

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54 *Rollo* (G.R. No. 197930), pp. 30-35.
55 Id. at 7-8.
56 Id. at 36-42.
57 Id. at 43-45.
58 Id. at 417.

The Court may exercise its power of judicial review despite the filing of information for electoral sabotage against GMA

It is the respondents' contention that the present petitions should be dismissed for lack of a justiciable controversy. They argue that the instant petitions had been rendered moot and academic by (1) the expiration of the WLO No. 422 dated August 9, 2011, as amended by the Order dated September 6, 2011;[59] (2) the filing of an information for electoral sabotage against GMA,[60] and; (3) the lifting of the WLO No. 2011-573 dated November 14, 2011 against Miguel Arroyo and the subsequent deletion of his name from the BI watchlist after the COMELEC *en banc* dismissed the case for electoral sabotage against him.[61]

The power of judicial review is articulated in Section 1, Article VIII of the 1987 Constitution which reads:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[62]

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[63]

Except for the first requisite, there is no question with respect to the existence of the three (3) other requisites. Petitioners have the *locus standi*

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59 *Rollo* (G.R. No. 199034), Volume III, p. 921.
60 Id. at 923.
61 Id.
62 THE 1987 CONSTITUTION, Article VIII, Sec. 1.
63 *Lawyers Against Monopoly and Poverty (LAMP) v The Secretary of Budget and Management*, 686 Phil. 357, 369 (2012).

to initiate the petition as they claimed to have been unlawfully subjected to restraint on their right to travel owing to the issuance of WLOs against them by authority of DOJ Circular No. 41. Also, they have contested the constitutionality of the questioned issuances at the most opportune time.

The respondents, however, claim that the instant petitions have become moot and academic since there is no longer any actual case or controversy to resolve following the subsequent filing of an information for election sabotage against GMA on November 18, 2011 and the lifting of WLO No. 2011-573 against Miguel Arroyo and the deletion of his name from the BI watchlist after the dismissal of the complaint for electoral sabotage against him.

To be clear, "an actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is definite and concrete, touching the legal relations of parties having adverse legal interest; a real and substantial controversy admitting of specific relief."[64] When the issues have been resolved or when the circumstances from which the legal controversy arose no longer exist, the case is rendered moot and academic. "A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value."[65]

The Court believes that the supervening events following the filing of the instant petitions, while may have seemed to moot the instant petitions, will not preclude it from ruling on the constitutional issues raised by the petitioners. The Court, after assessing the necessity and the invaluable gain that the members of the bar, as well as the public may realize from the academic discussion of the constitutional issues raised in the petition, resolves to put to rest the lingering constitutional questions that abound the assailed issuance. This is not a novel occurrence as the Court, in a number of occasions, took up cases up to its conclusion notwithstanding claim of mootness.

In *Evelio Javier vs. The Commission on Elections*,[66] the Court so emphatically stated, thus:

> The Supreme Court is not only the highest arbiter of legal questions but also the conscience of the government. The citizen comes to us in quest of law but we must also give him justice. The two are not always the same. There are times when we cannot grant the latter because

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64 *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006).
65 Id.
66 228 Phil. 193, 211 (1986).

> the issue has been settled and decision is no longer possible according to the law. But there are also times when although the dispute has disappeared, as in this case, it nevertheless cries out to be resolved. Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint upon the future.[67]

In *Prof. David vs. Pres. Macapagal-Arroyo*,[68] the Court proceeded in ruling on the constitutionality of Presidential Proclamation (PP) No. 1017 in which GMA declared a state of national emergency, and General Order No. 5 (G.O. No. 5), which ordered the members of the Armed Forces of the Philippines and the Philippine National Police to carry all necessary actions to suppress acts of terrorism and lawless violence, notwithstanding the issuance of PP 1021 lifting both issuances. The Court articulated, thus:

> The Court holds that President Arroyo's issuance of PP 1021 did not render the present petitions moot and academic. During the eight (8) days that PP 1017 was operative, the police officers, according to petitioners, committed illegal acts in implementing it. **Are PP 1017 and G.O. No. 5 constitutional or valid? Do they justify these alleged illegal acts?** These are the vital issues that must be resolved in the present petitions. It must be stressed that **unconstitutional act is not a law, it confers no rights, it imposes no duties, it affords no protection; it is in legal contemplation, inoperative**.
>
> The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first,* there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third,* when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth,* the case is capable of repetition yet evading review.[69] (Citations omitted and emphasis supplied)

In the instant case, there are exceptional circumstances that warrant the Court's exercise of its power of judicial review. The petitioners impute the respondents of violating their constitutional right to travel through the enforcement of DOJ Circular No. 41. They claim that the issuance unnecessarily places a restraint on the right to travel even in the absence of the grounds provided in the Constitution.

There is also no question that the instant petitions involved a matter of public interest as the petitioners are not alone in this predicament and there can be several more in the future who may be similarly situated. It is not far

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67 Id. at 199.
68 Supra note 64, at 809.
69 Id. at 754.

Reyes

fetched that a similar challenge to the constitutionality of DOJ Circular No. 41 will recur considering the thousands of names listed in the watch list of the DOJ, who may brave to question the supposed illegality of the issuance. Thus, it is in the interest of the public, as well as for the education of the members of the bench and the bar, that this Court takes up the instant petitions and resolves the question on the constitutionality of DOJ Circular No. 41.

The Constitution is inviolable and supreme of all laws

We begin by emphasizing that the Constitution is the fundamental, paramount and supreme law of the nation; it is deemed written in every statute and contract.[70] If a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect.

The Constitution is a testament to the living democracy in this jurisdiction. It contains the compendium of the guaranteed rights of individuals, as well as the powers granted to and restrictions imposed on government officials and instrumentalities. It is that lone unifying code, an inviolable authority that demands utmost respect and obedience.

The more precious gifts of democracy that the Constitution affords us are enumerated in the Bill of Rights contained in Article III. In particular, Section 1 thereof provides:

> **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.

The guaranty of liberty does not, however, imply unbridled license for an individual to do whatever he pleases, for each is given an equal right to enjoy his liberties, with no one superior over another. Hence, the enjoyment of one's liberties must not infringe on anyone else's equal entitlement.

Surely, the Bill of Rights operates as a protective cloak under which the individual may assert his liberties. Nonetheless, "the Bill of Rights itself does not purport to be an absolute guaranty of individual rights and liberties. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's will. It is subject to the far more overriding demands and

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70 *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 403 (2011).

requirements of the greater number."[71]

It is therefore reasonable that in order to achieve communal peace and public welfare, calculated limitations in the exercise of individual freedoms are necessary. Thus, in many significant provisions, the Constitution itself has provided for exceptions and restrictions to balance the free exercise of rights with the equally important ends of promoting common good, public order and public safety.

The state's exercise of police power is also well-recognized in this jurisdiction as an acceptable limitation to the exercise of individual rights. In *Philippine Association of Service Exporters, Inc. vs. Drilon*,[72] it was defined as the inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society. It is rooted in the conception that men in organizing the state and imposing upon its government limitations to safeguard constitutional rights did not intend thereby to enable an individual citizen or a group of citizens to obstruct unreasonably the enactment of such salutary measures calculated to ensure communal peace, safety, good order, and welfare.[73]

Still, it must be underscored that in a constitutional government like ours, liberty is the rule and restraint the exception.[74] Thus, restrictions in the exercise of fundamental liberties are heavily guarded against so that they may not unreasonably interfere with the free exercise of constitutional guarantees.

The right to travel and its limitations

The right to travel is part of the "liberty" of which a citizen cannot be deprived without due process of law.[75] It is part and parcel of the guarantee of freedom of movement that the Constitution affords its citizen. Pertinently, Section 6, Article III of the Constitution provides:

> Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as maybe provided by law.

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71 *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 399 (1988).
72 Supra.
73 Id. at 399.
74 *Jesus P. Morfe v. Amelito R. Mutuc*, 130 Phil. 415, 430 (1968).
75 *Kent v. Dulles*, 357 U.S. 116.

Liberty under the foregoing clause includes the right to choose one's residence, to leave it whenever he pleases and to travel wherever he wills.[76] Thus, in *Zacarias Villavicencio vs. Justo Lucban*,[77] the Court held illegal the action of the Mayor of Manila in expelling women who were known prostitutes and sending them to Davao in order to eradicate vices and immoral activities proliferated by the said subjects. It was held that regardless of the mayor's laudable intentions, no person may compel another to change his residence without being expressly authorized by law or regulation.

It is apparent, however, that the right to travel is not absolute. There are constitutional, statutory and inherent limitations regulating the right to travel. Section 6 itself provides that the right to travel may be impaired only in the interest of national security, public safety or public health, as may be provided by law. In *Silverio vs. Court of Appeals*,[78] the Court elucidated, thus:

> Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without Court Order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "**national security, public safety, or public health**" **and** "**as may be provided by law**," a limitive phrase which did not appear in the 1973 text (The Constitution, Bernas, Joaquin G.,S.J., Vol. I, First Edition, 1987, p. 263). Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party.[79] (Emphasis ours)

Clearly, under the provision, there are only three considerations that may permit a restriction on the right to travel: national security, public safety or public health. As a further requirement, there must be an explicit provision of statutory law or the Rules of Court[80] providing for the impairment. The requirement for a legislative enactment was purposely added to prevent inordinate restraints on the person's right to travel by administrative officials who may be tempted to wield authority under the guise of national security, public safety or public health. This is in keeping with the principle that ours is a government of laws and not of men and also with the canon that provisions of law limiting the enjoyment of liberty

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76 Isagani A. Cruz, Constitutional Law, 2000 Edition, p. 168.
77 39 Phil. 778, 812 (1919).
78 273 Phil. 128, 135 (1991).
79 Id. at 133-134.
80 Joaquin G. Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 Edition, pp. 367-368.

should be construed against the government and in favor of the individual.[81]

The necessity of a law before a curtailment in the freedom of movement may be permitted is apparent in the deliberations of the members of the Constitutional Commission. In particular, Fr. Joaquin Bernas, in his sponsorship speech, stated thus:

> On Section 5, in the explanation on page 6 of the annotated provisions, it says that the phrase "and changing the same" is taken from the 1935 version; that is, changing the abode. The addition of the phrase WITHIN THE LIMITS PRESCRIBED BY LAW ensures that, whether the rights be impaired on order of a court or without the order of a court, the impairment must be in accordance with the prescriptions of law; that is, it is not left to the discretion of any public officer.[82]

It is well to remember that under the 1973 Constitution, the right to travel is compounded with the liberty of abode in Section 5 thereof, which reads:

> Section 5, 1973 Constitution: The **liberty of abode and of travel** shall not, be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health. (Emphasis ours)

The provision, however, proved inadequate to afford protection to ordinary citizens who were subjected to "hamletting" under the Marcos regime.[83] Realizing the loophole in the provision, the members of the Constitutional Commission agreed that a safeguard must be incorporated in the provision in order to avoid this unwanted consequence. Thus, the Commission meticulously framed the subject provision in such a manner that the right cannot be subjected to the whims of any administrative officer. In addressing the loophole, they found that requiring the authority of a law most viable in preventing unnecessary intrusion in the freedom of movement, *viz.*:

> MR. NOLLEDO. x x x x
>
> My next question is with respect to Section 5, lines 8 to 12 of page 2. It says here that the liberty of abode shall not be impaired except upon lawful order of the court or – underscoring the word "or" – when necessary in the interest of national security, public safety or public health. So, in the first part, there is the word "court"; in the second part, it seems that the question rises as to who determines whether it is in the interest of

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81 Isagani A. Cruz, Constitutional Law, 2000 Edition, p. 172.
82 Records of the Constitutional Commission, Volume 1, p. 674.
83 Id. at 715.

Reyes

> national security, public safety, or public health. May it be determined merely by administrative authorities?
>
> FR. BERNAS. The understanding we have of this is that, yes, it may be determined by administrative authorities provided that they act, according to line 9, ***within the limits prescribed by law***. For instance when this thing came up; what was in mind were passport officers. If they want to deny a passport on the first instance, do they have to go to court? The position is, they may deny a passport provided that the denial is based on the limits prescribed by law. The phrase ***"within the limits prescribed by law"*** is something which is added here. That did not exist in the old provision.[84]

During the discussions, however, the Commission realized the necessity of separating the concept of liberty of abode and the right to travel in order to avoid untoward results. Ultimately, distinct safeguards were laid down which will protect the liberty of abode and the right to travel separately, *viz.*:

> MR. TADEO. Mr. Presiding Officer, anterior amendment on Section 5, page 2, line 11. Iminumungkahi kong alisin iyong mga salitang nagmumula sa "or" upang maiwasan natin ang walang pakundangang paglabag sa liberty of abode sa ngalan ng national security at pagsasagawa ng "hamletting" ng kung sinu-sino na lamang. Kapag inalis ito, maisasagawa lamang ang "hamletting" upon lawful order of the court. x x x.
>
> x x x x
>
> MR. RODRIGO. Aside from that, this includes the right to travel?
>
> FR. BERNAS. Yes.
>
> MR. RODRIGO. And there are cases when passports may not be granted or passports already granted may be cancelled. If the amendment is approved, then passports may not be cancelled unless it is ordered by the court. Is that the intention? x x x x
>
> FR. BERNAS. Yes
>
> MR. RODRIGO. But another right is involved here and that is to travel.
>
> SUSPENSION OF SESSION
>
> FR. BERNAS. Mr. Presiding Officer, may I request a suspension so that we can separate the liberty of abode and or changing the same from the right to travel, because they may necessitate different provisions.
>
> THE PRESIDING OFFICER (Mr. Bengzon). The session is suspended.

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[84] Id. at 677.

x x x x

RESUMPTION OF SESSION

x x x x

THE PRESIDING OFFICER (Mr. Bengzon). The session is resumed. Commissioner Bernas is recognized

FR. BERNAS. The proposal is amended to read:
"The liberty of abode and of changing the same within the limits prescribed by law, shall not be impaired except upon lawful order of the court. NEITHER SHALL THE RIGHT TO TRAVEL BE IMPAIRED EXCEPT IN THE INTEREST OF NATIONAL SECURITY, PUBLIC SAFETY, OR PUBLIC HEALTH AS MAYBE PROVIDED BY LAW.

THE PRESIDING OFFICER (Mr. Bengzon). The Committee has accepted the amendment, as amended. Is there any objection? (Silence) The Chair hears none; the amendment, as amended, is approved.[85]

It is clear from the foregoing that the liberty of abode may only be impaired by a lawful order of the court and, on the one hand, the right to travel may only be impaired by a law that concerns national security, public safety or public health. Therefore, when the exigencies of times call for a limitation on the right to travel, the Congress must respond to the need by explicitly providing for the restriction in a law. This is in deference to the primacy of the right to travel, being a constitutionally-protected right and not simply a statutory right, that it can only be curtailed by a legislative enactment.

Thus, in *Philippine Association of Service Exporters, Inc. vs. Hon. Franklin M. Drilon*,[86] the Court upheld the validity of the Department Order No. 1, Series of 1988, issued by the Department of Labor and Employment, which temporarily suspended the deployment of domestic and household workers abroad. The measure was taken in response to escalating number of female workers abroad who were subjected to exploitative working conditions, with some even reported physical and personal abuse. The Court held that Department Order No. 1 is a valid implementation of the Labor Code, particularly, the policy to "afford protection to labor." Public safety considerations justified the restraint on the right to travel.

Further, in *Leave Division, Office of the Administrative Services (OAS) – Office of the Court Administrator (OCA) vs. Wilma Salvacion P. Heusdens*,[87] the Court enumerated the statutes which specifically provide for

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85 Id. at 764-765.
86 Supra note 71, at 405.
87 678 Phil. 328 (2011).

the impairment of the right to travel, *viz.*:

> Some of these statutory limitations [to the right to travel] are the following:
>
> 1] *The Human Security Act of 2010 or [R.A.] No. 9372.* The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail.
>
> 2] *The Philippine Passport Act of 1996 or R.A. No. 8239.* Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.
>
> 3] *The "Anti- Trafficking in Persons Act of 2003" or R.A. No. 9208.* Pursuant to the provisions thereof, the [BI], in order to manage migration and curb trafficking in persons, issued Memorandum Order Radir No. 2011-011, allowing its Travel Control and Enforcement Unit to "offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from our ports.
>
> 4] *The Migrant Workers and Overseas Filipinos Act of 1995 or R. A. No. 8042, as amended by R.A. No. 10022.* In enforcement of said law, the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country.
>
> 5] *The Act on Violence against Women and Children or R.A. No. 9262.* The law restricts movement of an individual against whom the protection order is intended.
>
> 6] *Inter-Country Adoption Act of 1995 or R.A. No. 8043.* Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel "to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child."[88]

In any case, when there is a dilemma between an individual claiming the exercise of a constitutional right *vis-à-vis* the state's assertion of authority to restrict the same, any doubt must, at all times, be resolved in favor of the free exercise of the right, absent any explicit provision of law to the contrary.

The issuance of DOJ Circular No. 41 has no legal basis

Guided by the foregoing disquisition, the Court is in quandary of

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88 Id. at 339-340.

identifying the authority from which the DOJ believed its power to restrain the right to travel emanates. To begin with, there is no law particularly providing for the authority of the secretary of justice to curtail the exercise of the right to travel, in the interest of national security, public safety or public health. As it is, the only ground of the former DOJ Secretary in restraining the petitioners, at that time, was the pendency of the preliminary investigation of the Joint DOJ-COMELEC Preliminary Investigation Committee on the complaint for electoral sabotage against them.[89]

To be clear, DOJ Circular No. 41 is not a law. It is not a legislative enactment which underwent the scrutiny and concurrence of lawmakers, and submitted to the President for approval. It is a mere administrative issuance apparently designed to carry out the provisions of an enabling law which the former DOJ Secretary believed to be Executive Order (E.O.) No. 292, otherwise known as the "Administrative Code of 1987." She opined that DOJ Circular No. 41 was validly issued pursuant to the agency's rule-making powers provided in Sections 1 and 3, Book IV, Title III, Chapter 1 of E.O. No. 292 and Section 50, Chapter 11, Book IV of the mentioned Code.

Indeed, administrative agencies possess quasi-legislative or rule-making powers, among others. It is the "power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers."[90] In the exercise of this power, the rules and regulations that administrative agencies promulgate should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid.[91]

It is, however, important to stress that before there can even be a valid administrative issuance, there must first be a showing that the delegation of legislative power is itself valid. It is valid only if there is a law that (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard the limits of which are sufficiently determinate and determinable to which the delegate must conform in the performance of his functions.[92]

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89 *Rollo* (G.R. No. 199034), Volume III, p. 922.

90 *Holy Spirit Homeowners Association, Inc. v. Secretary Michael Defensor*, 529 Phil. 573, 585 (2006).

91 *SMART Communications, Inc. v National Telecommunications Commission*, 456 Phil. 145, 156 (2003).

92 *William C. Dagan v. Philippine Racing Commission*, 598 Phil. 406, 417 (2009).

A painstaking examination of the provisions being relied upon by the former DOJ Secretary will disclose that they do not particularly vest the DOJ the authority to issue DOJ Circular No. 41 which effectively restricts the right to travel through the issuance of WLOs and HDOs. Sections 1 and 3, Book IV, Title III, Chapter 1 of E.O. No. 292 reads:

> Section 1. Declaration of Policy.- It is the declared policy of the State to provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; **administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders** and administration of the correctional system; implement the laws on the admission and stay of aliens, citizenship, land titling system, and settlement of land problems involving small landowners and member of indigenous cultural minorities; and provide free legal services to indigent members of the society.
>
> x x x x
>
> Section 3. Powers and Functions.- to accomplish its mandate, the Department shall have the following powers and functions:
>
> (1) Act as principal law agency of the government and as legal counsel and representative thereof, whenever so required;
>
> (2) **Investigate the commission of crimes, prosecute offenders and administer the probation and correction system;**
>
> x x x x
>
> (6) **Provide immigration and naturalization regulatory services** and implement the laws governing citizenship and the admission and stay of aliens;
>
> (7) Provide legal services to the national government and its functionaries, including government-owned and controlled corporations and their subsidiaries;
>
> (8) **Such other functions as may be provided by law**. (Emphasis supplied)

A plain reading of the foregoing provisions shows that they are mere general provisions designed to lay down the purposes of the enactment and the broad enumeration of the powers and functions of the DOJ. In no way can they be interpreted as a grant of power to curtail a fundamental right as the language of the provision itself does not lend to that stretched construction. To be specific, Section 1 is simply a declaration of policy, the essence of the law, which provides for the statement of the guiding principle,

the purpose and the necessity for the enactment. The declaration of policy is most useful in statutory construction as an aid in the interpretation of the meaning of the substantive provisions of the law. It is preliminary to the substantive portions of the law and certainly not the part in which the more significant and particular mandates are contained. The suggestion of the former DOJ Secretary that the basis of the issuance of DOJ Circular No. 41 is contained in the declaration of policy of E.O. No. 292 not only defeats logic but also the basic style of drafting a decent piece of legislation because it supposes that the authors of the law included the operative and substantive provisions in the declaration of policy when its objective is merely to introduce and highlight the purpose of the law.

Succinctly, "a declaration of policy contained in a statute is, like a preamble, not a part of the substantive portions of the act. Such provisions are available for clarification of ambiguous substantive portions of the act, but may not be used to create ambiguity in other substantive provisions."[93]

In the same way, Section 3 does not authorize the DOJ to issue WLOs and HDOs to restrict the constitutional right to travel. There is even no mention of the exigencies stated in the Constitution that will justify the impairment. The provision simply grants the DOJ the power to investigate the commission of crimes and prosecute offenders, which are basically the functions of the agency. However, it does not carry with it the power to indiscriminately devise all means it deems proper in performing its functions without regard to constitutionally-protected rights. The curtailment of a fundamental right, which is what DOJ Circular No. 41 does, cannot be read into the mentioned provision of the law. Any impairment or restriction in the exercise of a constitutional right must be clear, categorical and unambiguous. For the rule is that:

> Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.[94]

The DOJ cannot also rely on Section 50, Chapter 11, Book IV of E.O. No. 292, which simply provides for the types of issuances that administrative agencies, in general, may issue. It does not speak of any authority or power but rather a mere clarification on the nature of the

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[93] 100 Lake, LLC v. Novak, 2012 IL App (2d) 110708, 971 N.E.2d 1195, 2012 Ill. App. LEXIS 506, 361 Ill. Dec. 673, 2012 WL 2371249 (Ill. App. Ct. 2d Dist. 2012)

[94] *SMART Communications, Inc. v National Telecommunications Commission*, supra note 91, at 156.

issuances that may be issued by a secretary or head of agency. The innocuous provision reads as follows:

> Section 50. General Classification of Issuances.- The administrative issuances of Secretaries and heads of bureaus, offices and agencies shall be in the form of circulars or orders.
>
> (1) **Circulars** shall refer to issuance prescribing policies, rules and regulations, and procedures promulgated pursuant to law, applicable to individuals and organizations outside the Government and designed to supplement provisions of the law or to provide means for carrying them out, including information relating thereto; and
>
> (2) **Orders** shall refer to issuances directed to particular offices, officials, or employees, concerning specific matters including assignments, detail and transfer of personnel, for observance or compliance by all concerned. (Emphasis Ours)

In the same manner, Section 7, Chapter 2, Title III, Book IV of E.O. 292 cited in the memorandum of the former DOJ Secretary cannot justify the restriction on the right to travel in DOJ Circular No. 41. The memorandum particularly made reference to Subsections 3, 4 and 9 which state:

> **Section 7.** *Powers and Functions of the Secretary.* - The Secretary shall:
>
> (1) Advise the President in issuing executive orders, regulations, proclamations and other issuances, the promulgation of which is expressly vested by law in the President relative to matters under the jurisdiction of the Department;
>
> (2) Establish the policies and standards for the operation of the Department pursuant to the approved programs of governments;
>
> (3) **Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects**;
>
> (4) **Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law**;
>
> x x x x
>
> (9) Perform such other functions **as may be provided by law**. (Emphasis Ours)

It is indisputable that the secretaries of government agencies have the

power to promulgate rules and regulations that will aid in the performance of their functions. This is adjunct to the power of administrative agencies to execute laws and does not require the authority of a law. This is, however, different from the delegated legislative power to promulgate rules of government agencies.

The considered opinion of Mr. Justice Carpio in *Abakada Guro Party List (formerly AASJS) et al. vs. Hon. Purisima et l.*[95] is illuminating:

> The inherent power of the Executive to adopt rules and regulations to execute or implement the law is different from the delegated legislative power to prescribe rules. The inherent power of the Executive to adopt rules to execute the law does not require any legislative standards for its exercise while the delegated legislative power requires sufficient legislative standards for its exercise.
>
> x x x x
>
> Whether the rule-making power by the Executive is a delegated legislative power or an inherent Executive power depends on the nature of the rule-making power involved. If the rule-making power is inherently a legislative power, such as the power to fix tariff rates, the rule-making power of the Executive is a delegated legislative power. In such event, the delegated power can be exercised only if sufficient standards are prescribed in the law delegating the power.
>
> If the rules are issued by the President in implementation or execution of self-executory constitutional powers vested in the President, the rule-making power of the President is not a delegated legislative power. x x x. The rule is that the President can execute the law without any delegation of power from the legislature. Otherwise, the President becomes a mere figure-head and not the sole Executive of the Government.[96]

The questioned circular does not come under the inherent power of the executive department to adopt rules and regulations as clearly the issuance of HDO and WLO is not the DOJ's business. As such, it is a compulsory requirement that there be an existing law, complete and sufficient in itself, conferring the expressed authority to the concerned agency to promulgate rules. On its own, the DOJ cannot make rules, its authority being confined to execution of laws. This is the import of the terms "when expressly provided by law" or "as may be provided by law" stated in Sections 7(4) and 7(9), Chapter 2, Title III, Book IV of E.O. 292 . The DOJ is confined to filling in the gaps and the necessary details in carrying into effect the law as enacted.[97] Without a clear mandate of an existing law, an administrative

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95 584 Phil. 246 (2008) [Carpio, J., Separate Concurring Opinion].

96 Id. at 296-297.

97 *Manila Electric Company v. Spouses Edito and Felicidad Chua*, 637 Phil. 80, 98 (2010).

issuance is *ultra vires*.

Consistent with the foregoing, there must be an enabling law from which DOJ Circular No. 41 must derive its life. Unfortunately, all of the supposed statutory authorities relied upon by the DOJ did not pass the completeness test and sufficient standard test. The DOJ miserably failed to establish the existence of the enabling law that will justify the issuance of the questioned circular.

That DOJ Circular No. 41 was intended to aid the department in realizing its mandate only begs the question. The purpose, no matter how commendable, will not obliterate the lack of authority of the DOJ to issue the said issuance. Surely, the DOJ must have the best intentions in promulgating DOJ Circular No. 41, but the end will not justify the means. To sacrifice individual liberties because of a perceived good is disastrous to democracy. In *Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform*,[98] the Court emphasized:

> One of the basic principles of the democratic system is that where the rights of the individual are concerned, the end does not justify the means. It is not enough that there be a valid objective; it is also necessary that the means employed to pursue it be in keeping with the Constitution. Mere expediency will not excuse constitutional shortcuts. There is no question that not even the strongest moral conviction or the most urgent public need, subject only to a few notable exceptions, will excuse the bypassing of an individual's rights. It is no exaggeration to say that a person invoking a right guaranteed under Article III of the Constitution is a majority of one even as against the rest of the nation who would deny him that right.[99]

The DOJ would however insist that the resulting infringement of liberty is merely incidental, together with the consequent inconvenience, hardship or loss to the person being subjected to the restriction and that the ultimate objective is to preserve the investigative powers of the DOJ and public order.[100] It posits that the issuance ensures the presence within the country of the respondents during the preliminary investigation.[101] Be that as it may, no objective will ever suffice to legitimize desecration of a fundamental right. To relegate the intrusion as negligible in view of the supposed gains is to undermine the inviolable nature of the protection that the Constitution affords.

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98 256 Phil. 777 (1989).
99 Id. at 809.
100 *Rollo* (G.R. No. 199034), Volume III, pp. 942.
101 Id. at 939.

Indeed, the DOJ has the power to investigate the commission of crimes and prosecute offenders. Its zealousness in pursuing its mandate is laudable but more admirable when tempered by fairness and justice. It must constantly be reminded that in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former.[102] Thus, in *Allado vs. Diokno*,[103] the Court declared, *viz.*:

> The sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice; hence, the State has every right to prosecute and punish violators of the law. This is essential for its self- preservation, nay, its very existence. But this does not confer a license for pointless assaults on its citizens. The right of the State to prosecute is not a *carte blanche* for government agents to defy and disregard the rights of its citizens under the Constitution.[104]

The DOJ stresses the necessity of the restraint imposed in DOJ Circular No. 41 in that to allow the petitioners, who are under preliminary investigation, to exercise an untrammelled right to travel, especially when the risk of flight is distinctly high will surely impede the efficient and effective operation of the justice system. The absence of the petitioners, it asseverates, would mean that the farthest criminal proceeding they could go would be the filing of the criminal information since they cannot be arraigned *in absentia*.[105]

The predicament of the DOJ is understandable yet untenable for relying on grounds other what is permitted within the confines of its own power and the nature of preliminary investigation itself. The Court, in *Paderanga vs. Drilon*,[106] made a clarification on the nature of a preliminary investigation, thus:

> A preliminary investigation is x x x an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial. x x x A preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well grounded belief that an offense has been committed and that the accused is probably guilty thereof.[107]

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102 *Allado v. Diokno*, 302 Phil. 213, 238 (1994).
103 Supra.
104 Id. at 238.
105 *Rollo* (G.R. No. 199034), Volume III, p. 943.
106 273 Phil. 290 (1991).
107 Id. at 299.

It bears emphasizing that the conduct of a preliminary investigation is an implement of due process which essentially benefits the accused as it accords an opportunity for the presentation of his side with regard to the accusation.[108] The accused may, however, opt to waive his presence in the preliminary investigation. In any case, whether the accused responds to a subpoena, the investigating prosecutor shall resolve the complaint within 10 days after the filing of the same.

The point is that in the conduct of a preliminary investigation, the presence of the accused is not necessary for the prosecutor to discharge his investigatory duties. If the accused chooses to waive his presence or fails to submit countervailing evidence, that is his own lookout. Ultimately, he shall be bound by the determination of the prosecutor on the presence of probable cause and he cannot claim denial of due process.

The DOJ therefore cannot justify the restraint in the liberty of movement imposed by DOJ Circular No. 41 on the ground that it is necessary to ensure presence and attendance in the preliminary investigation of the complaints. There is also no authority of law granting it the power to compel the attendance of the subjects of a preliminary investigation, pursuant to its investigatory powers under E.O. No. 292. Its investigatory power is simply inquisitorial and, unfortunately, not broad enough to embrace the imposition of restraint on the liberty of movement.

That there is a risk of flight does not authorize the DOJ to take the situation upon itself and draft an administrative issuance to keep the individual within the Philippine jurisdiction so that he may not be able to evade criminal prosecution and consequent liability. It is an arrogation of power it does not have; it is a usurpation of function that properly belongs to the legislature.

Without a law to justify its action, the issuance of DOJ Circular No. 41 is an unauthorized act of the DOJ of empowering itself under the pretext of dire exigency or urgent necessity. This action runs afoul the separation of powers between the three branches of the government and cannot be upheld. Even the Supreme Court, in the exercise of its power to promulgate rules is limited in that the same shall not diminish, increase, or modify substantive rights.[109] This should have cautioned the DOJ, which is only one of the many agencies of the executive branch, to be more scrutinizing in its actions especially when they affect substantive rights, like the right to travel.

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108 *Ocampo v. Judge Abando, et al.*, 726 Phil. 441, 459 (2014).

109 1987 CONSTITUTION, Article VIII, Section 5(5).

The DOJ attempts to persuade this Court by citing cases wherein the restrictions on the right to travel were found reasonable, *i.e. New York v. O'Neill*,[110] *Kwong vs. Presidential Commission on Good Government*[111] and *PASEI*.

It should be clear at this point that the DOJ cannot rely on *PASEI* to support its position for the reasons stated earlier in this disquisition. In the same manner, *Kant Kwong* is not an appropriate authority since the Court never ruled on the constitutionality of the authority of the PCGG to issue HDOs in the said case. On the contrary, there was an implied recognition of the validity of the PCGG's Rules and Regulations as the petitioners therein even referred to its provisions to challenge the PCGG's refusal to lift the HDOs issued against them despite the lapse of the period of its effectivity. The petitioners never raised any issue as to the constitutionality of Section 2 of the PCGG Rules and Regulations but only questioned the agency's non-observance of the rules particularly on the lifting of HDOs. This is strikingly different from the instant case where the main issue is the constitutionality of the authority of the DOJ Secretary to issue HDOs under DOJ Circular No. 41.

Similarly, the pronouncement is *New York* does not lend support to the respondents' case. In the said case, the respondent therein questioned the constitutionality of a Florida statute entitled "Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings," under which authority a judge of the Court of General Sessions, New York County requested the Circuit Court of Dade County, Florida, where he was at that time, that he be given into the custody of New York authorities and be transported to New York to testify in a grand jury proceeding. The US Supreme Court upheld the constitutionality of the law, ruling that every citizen, when properly summoned, has the obligation to give testimony and the same will not amount to violation of the freedom to travel but, at most, a mere temporary interference. The clear deviation of the instant case from *New York* is that in the latter case there is a law specifically enacted to require the attendance of the respondent to court proceedings to give his testimony, whenever it is needed. Also, after the respondent fulfils his obligation to give testimony, he is absolutely free to return in the state where he was found or to his state of residence, at the expense of the requesting state. In contrast, DOJ Circular No. 41 does not have an enabling law where it could have derived its authority to interfere with the exercise of the right to travel. Further, the respondent is subjected to continuing

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110 359 U.S. 1 (1959).
111 240 Phil. 219 (1987).

Reyes

restraint in his right to travel as he is not allowed to go until he is given, if he will ever be given, an ADO by the secretary of justice.

The DOJ cannot issue DOJ Circular No. 41 under the guise of police power

The DOJ's reliance on the police power of the state cannot also be countenanced. Police power pertains to the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."[112] "It may be said to be that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society."[113] Verily, the exercise of this power is primarily lodged with the legislature but may be wielded by the President and administrative boards, as well as the lawmaking bodies on all municipal levels, including the *barangay*, by virtue of a valid delegation of power.[114]

It bears noting, however, that police power may only be validly exercised if (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals.[115]

On its own, the DOJ cannot wield police power since the authority pertains to Congress. Even if it claims to be exercising the same as the alter ego of the President, it must first establish the presence of a definite legislative enactment evidencing the delegation of power from its principal. This, the DOJ failed to do. There is likewise no showing that the curtailment of the right to travel imposed by DOJ Circular No. 41 was reasonably necessary in order for it to perform its investigatory duties.

In any case, the exercise of police power, to be valid, must be reasonable and not repugnant to the Constitution.[116] It must never be utilized to espouse actions that violate the Constitution. Any act, however noble its intentions, is void if it violates the Constitution.[117] In the clear

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112 *Philippine Association of Service Exporters, Inc. v. Hon Franklin M. Drilon*, supra note 73, at 398.

113 Id. at 399.

114 *Executive Secretary v. Southwing Heavy Industries, Inc.*, 518 Phil. 103, 117 (2006).

115 *Department of Education, Culture and Sports v. Roberto Rey Sandiego*, 259 Phil. 1016, 1021 (1989).

116 *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, 557 Phil. 121, 140 (2007).

117 *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, supra note 70, at 406.

language of the Constitution, it is only in the interest of national security, public safety and public health that the right to travel may be impaired. None one of the mentioned circumstances was invoked by the DOJ as its premise for the promulgation of DOJ Circular No. 41.

DOJ Circular No. 41 transcends constitutional limitations

Apart from lack of legal basis, DOJ Circular No. 41 also suffers from other serious infirmities that render it invalid. The apparent vagueness of the circular as to the distinction between a HDO and WLO is violative of the due process clause. An act that is vague "violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid and leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle."[118] Here, the distinction is significant as it will inform the respondents of the grounds, effects and the measures they may take to contest the issuance against them. Verily, there must be a standard by which a HDO or WLO may be issued, particularly against those whose cases are still under preliminary investigation, since at that stage there is yet no criminal information against them which could have warranted the restraint.

Further, a reading of the introductory provisions of DOJ Circular No. 41 shows that it emanates from the DOJ's assumption of powers that is not actually conferred to it. In one of the whereas clauses of the issuance, it was stated, thus:

> **WHEREAS,** while several Supreme Court circulars, issued through the Office of the Court Administrator, clearly state that "[HDO] shall be issued only in criminal cases within the exclusive jurisdiction of the [RTCs]," said circulars are, however, silent with respect to cases falling within the jurisdiction of courts below the RTC as well as those pending determination by government prosecution offices;

Apparently, the DOJ's predicament which led to the issuance of DOJ Circular No. 41 was the supposed inadequacy of the issuances of this Court pertaining to HDOs, the more pertinent of which is SC Circular No. 39-97.[119] It is the DOJ's impression that with the silence of the circular with regard to the issuance of HDOs in cases falling within the jurisdiction of the MTC and those still pending investigation, it can take the initiative in filling in the deficiency. It is doubtful, however, that the DOJ Secretary may undertake such action since the issuance of HDOs is an exercise of this

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118 *James M. Imbong v. Hon. Paquito N. Ochoa*, 732 Phil. 1, 108-109 (2014).

119 Guidelines in the Issuance of Hold-Departure Orders.

Court's inherent power "to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused."[120] It is an exercise of judicial power which belongs to the Court alone, and which the DOJ, even as the principal law agency of the government, does not have the authority to wield.

Moreover, the silence of the circular on the matters which are being addressed by DOJ Circular No. 41 is not without good reasons. Circular No. 39-97 was specifically issued to avoid indiscriminate issuance of HDOs resulting to the inconvenience of the parties affected as the same could amount to an infringement on the right and liberty of an individual to travel. Contrary to the understanding of the DOJ, the Court intentionally held that the issuance of HDOs shall pertain only to criminal cases within the exclusive jurisdiction of the RTC, to the exclusion of criminal cases falling within the jurisdiction of the MTC and all other cases. The intention was made clear with the use of the term "only." The reason lies in seeking equilibrium between the state's interest over the prosecution of the case considering the gravity of the offense involved and the individual's exercise of his right to travel. Thus, the circular permits the intrusion on the right to travel only when the criminal case filed against the individual is within the exclusive jurisdiction of the RTC, or those that pertains to more serious crimes or offenses that are punishable with imprisonment of more than six years. The exclusion of criminal cases within the jurisdiction of the MTC is justified by the fact that they pertain to less serious offenses which is not commensurate with the curtailment of a fundamental right. Much less is the reason to impose restraint on the right to travel of respondents of criminal cases still pending investigation since at that stage no information has yet been filed in court against them. It is for these reasons that Circular No. 39-97 mandated that HDO may only be issued in criminal cases filed with the RTC and withheld the same power from the MTC.

Remarkably, in DOJ Circular No. 41, the DOJ Secretary went overboard by assuming powers which have been withheld from the lower courts in Circular No. 39-97. In the questioned circular, the DOJ Secretary may issue HDO against the accused in criminal cases within the jurisdiction of the MTC[121] and against defendants, respondents and witnesses in labor or administrative cases,[122] no matter how unwilling they may be. He may also issue WLO against accused in criminal cases pending before the RTC,[123] therefore making himself in equal footing with the RTC, which is authorized by law to issue HDO in the same instance. The DOJ Secretary may likewise issue WLO against respondents in criminal cases pending preliminary

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120 *Miriam Defensor Santiago v. Conrado M. Vasquez*, 291 Phil. 664, 680 (1993).
121 Section 1(a). DOJ Circular No. 41.
122 Section 1(b). DOJ Circular No. 41.
123 Section 2(a). DOJ Circular No. 41.

investigation, petition for review or motion for reconsideration before the DOJ.[124] More striking is the authority of the DOJ Secretary to issue a HDO or WLO *motu proprio*, even in the absence of the grounds stated in the issuance if he deems necessary in the interest of national security, public safety or public health.[125]

It bears noting as well that the effect of the HDO and WLO in DOJ Circular No. 41 is too obtrusive as it remains effective even after the lapse of its validity period as long as the DOJ Secretary does not approve the lifting or cancellation of the same. Thus, the respondent continually suffers the restraint in his mobility as he awaits a favorable indorsement of the government agency that requested for the issuance of the HDO or WLO and the affirmation of the DOJ Secretary even as the HDO or WLO against him had become *functus officio* with its expiration.

It did not also escape the attention of the Court that the DOJ Secretary has authorized himself to permit a person subject of HDO or WLO to travel through the issuance of an ADO upon showing of "exceptional reasons" to grant the same. The grant, however, is entirely dependent on the sole discretion of the DOJ Secretary based on his assessment of the grounds stated in the application.

The constitutional violations of DOJ Circular No. 41 are too gross to brush aside particularly its assumption that the DOJ Secretary's determination of the necessity of the issuance of HDO or WLO can take the place of a law that authorizes the restraint in the right to travel only in the interest of national security, public safety or public health. The DOJ Secretary has recognized himself as the sole authority in the issuance and cancellation of HDO or WLO and in the determination of the sufficiency of the grounds for an ADO. The consequence is that the exercise of the right to travel of persons subject of preliminary investigation or criminal cases in court is indiscriminately subjected to the discretion of the DOJ Secretary.

This is precisely the situation that the 1987 Constitution seeks to avoid— for an executive officer to impose restriction or exercise discretion that unreasonably impair an individual's right to travel-- thus, the addition of the phrase, "as maybe provided by law" in Section 6, Article III thereof. In *Silverio*, the Court underscored that this phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested

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124 Section 2(b). DOJ Circular No. 41.

125 Sections 1(c) and 2(c), DOJ Circular No. 41.

party.[126] The qualifying phrase is not a mere innocuous appendage. It secures the individual the absolute and free exercise of his right to travel at all times unless the more paramount considerations of national security, public safety and public health call for a temporary interference, but always under the authority of a law.

The subject WLOs and the restraint on the right to travel.

In the subject WLOs, the illegal restraint on the right to travel was subtly incorporated in the wordings thereof. For better illustration, the said WLOs are hereby reproduced as follows:

WLO No. ASM-11-237[127]
(Watchlist)

In re: **GLORIA M. MACAPAGAL-ARROYO**
x----------x

ORDER

On 09 August 2011, Hon. Leila M. De Lima, Secretary of the Department of Justice issued an order docketed as Watchlist Order No. 2011-422 directing the Bureau of Immigration to include the name **GLORIA M. MACAPAGAL-ARROYO** in the Bureau's Watchlist.

It appears that **GLORIA M. MACAPAGAL-ARROYO** is the subject of an investigation by the Department of Justice in connection with the following cases:

Docket No.	Title of the Case	Offense/s Charged
XVI-INV-10H-00251	Danilo A. Lihaylihay vs. Gloria Macapagal-Arroyo	Plunder
XVIX-INV-11D-00170	Francisco I. Chavez vs. Gloria Macapagl-Arroyo	Plunder, Malversation and/or Illegal use of OWWA Funds, Graft and Corruption, Violation of The Omnibus Election Code, Violation of the Code of Ethical Standards for Public Officials, and Qualified Theft
XVI-INV-11F-00238	Francisco I. Chavez vs.	Plunder,

126 Supra note 78, at 133-134 (1991).
127 *Rollo* (G.R. No. 199034), Volume I, pp. 45-46.

	Gloria Macapagl-Arroyo Jocelyn "Joc-Joc" Bolante, Ibarra Poliquit et al.	Malversation and/or Illegal use of Public Funds, Graft and Corruption, Violation of The Omnibus Election Code, Violation of the Code of Ethical Standards for Public Officials, and Qualified Theft

Based on the foregoing and *pursuant to Department of Justice Circular No. 41 (Consolidated Rules and Regulations Governing the Issuance and Implementation of Hold Departure Orders, Watchlist Orders, and Allow Departure Orders) dated 25 May 2010*, we order the inclusion of the name **GLORIA M. MACAPAGAL-ARROYO** in the Watchlist.

This watchlist shall be valid for sixty (60) days unless sooner revoked or extended.

The Airport Operation Division and Immigration Regulation Division Chiefs shall implement this Order.

Notify the Computer Section.

SO ORDERED.

09 August 2011 (Emphasis ours)

Watchlist Order No. 2011-422[128]

In re: Issuance of Watchlist
Order against **MA. GLORIA M. MACAPAGAL-ARROYO**
x----------x

AMENDED ORDER

Whereas, **Ma. Gloria M. Macapagal-Arroyo** is the subject of an investigation by this Department in connection with the following cases:

Docket No.	Title of the Case	Offense/s Charged
XVI-INV-10H-00251	Danilo A. Lihaylihay versus Gloria Macapagal-Arroyo	Plunder
XVIX-INV-11D-00170	Francisco I. Chavez versus Gloria Macapagal-Arroyo	Plunder, Malversation and/or Illegal Use of

[128] Id. at 47-48.

		OWWA Funds, Graft and Corruption, Violation of the Omnibus Election Code, Violation of the Code of Ethical Standards for Public Officials, and Qualified Theft
XVI-INV-11F-00238	Francisco I. Chavez versus Gloria Macapagal-Arroyo Jocelyn "Joc-Joc" Bolante, Ibarra Poliquit et al.	Plunder, Malversation and/or Illegal Use of Public Funds, Graft and Corruption, Violation of the Omnibus Election Code, Violation of the Code of Ethical Standards for Public Officials, and Qualified Theft

Pursuant to Section 2(c) of Department Circular (D.C.) No. 41 dated May 25, 2010 (Consolidated Rules and Regulations Governing the Issuance and Implementation of Hold Departure Orders, Watchlist Orders, and Allow Departure Orders), the undersigned hereby *motu proprio* issues a Watchlist Order against **Ma. Gloria M. Macapagal-Arroyo.**

Accordingly, the Commissioner of Immigration, Manila, is hereby ordered to INCLUDE in the Bureau of Immigration's Watchlist the name of Ma. Gloria M. Macapagal-Arroyo.

Pursuant to Section 4 of D.C. No. 41, this Order is valid for a period of sixty (60) days from issuance unless sooner terminated or extended.

SO ORDERED.

City of Manila, September 6, 2011. (Emphasis ours)

Watchlist Order (WLO)
No. 2011- 573[129]

IN RE: Issuance of WLO against
BENJAMIN ABALOS, SR. et al.

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129 Id. at 49-59.

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ORDER

Pursuant to Section 2(c) of Department Circular No. 41 dated May 25, 2010 (Consolidated Rules and Regulations Governing the Issuance and Implementation of Hold Departure Orders, Watchlist Orders, and Allow Departure Orders), after careful evaluation, finds the Application for the Issuance of WLO against the following meritorious;

x x x x

12. MA. GLORIA M. MACAPAGAL-ARROYO
Address: Room MB-2, House of Representatives
Quezon City

x x x x

Ground for WLO Issuance:	Pendency of the case, entitled "*DOJ-COMELEC Fact Finding Committee v. Benjamin Abalos Sr., et al.*," for Electoral Sabotage/Omnibus Election Code docketed as DOJ-COMELEC Case No. 001-2011

1. MA. GLORIA M. MACAPAGAL-ARROYO
Address: Room MB-2, House of Representatives
Quezon City

2. JOSE MIGUEL TUASON ARROYO
Address: L.T.A. Bldg. 118 Perea St.
Makati City

x x x x

Ground for WLO Issuance:	Pendency of the case, entitled "*Aquilino Pimentel III v. Gloria Macapagal-Arroyo, et Al.*," for Electoral Sabotage docketed as DOJ-COMELEC Case No. 002-2011.

Accordingly, the Commissioner of Immigration, Manila. is hereby ordered to INCLUDE in the Bureau of Immigration's Watchlist, the names of the above-named persons.

This Order is valid for a period of sixty (60) days from the date of its issuance unless sooner terminated or otherwise extended.

SO ORDERED.

On the other hand, HDO No. 2011-64 issued against the petitioners in G. R. No. 197930 pertinently states:

Hold Departure Order (HDO)
No. 2011- 64[130]

In re: Issuance of HDO against
EFRAIM C. GENUINO, ET AL.
x----------x

ORDER

After a careful evaluation of the application, including the documents attached thereto, for the issuance of Hold Departure Order (HDO) against the above-named persons filed pursuant to this *Department's Circular (D.C.) No. 41 (Consolidated Rules and Regulations Governing the Issuance and Implementation of Hold Departure Orders, Watchlist Orders, and Allow Departure Orders) dated May 25, 2010*, we find the application meritorious.

Accordingly, the Commissioner of Immigration, Manila, is hereby ordered to INCLUDE in the Bureau of Immigration's Watchlist the names of EFRAIM C. GENUINO, SHERYLL F. GENUINO-SEE, ERWIN F. GENUINO, RAFAEL "BUTCH" A. FRANCISCO, EDWARD "DODIE" F. KING, RENE C. FIGUEROA, ATTY, CARLOS R. BAUTISTA, JR., EMILIO "BOYET" B. MARCELO, RODOLFO SORIANO, JR., AND JOHNNY G. TAN.

Name:	EFRAIM C. GENUINO
Nationality:	Filipino
Last known address:	No. 42 Lapu Lapu Street, Magallanes Village, Makati City
Ground for HDO Issuance:	Malversation, Violation of the Anti-Graft and Corrupt Practices Act, Plunder
Details of the Case:	Pending before the National Prosecution Service, Department of Justice (NPS Docket No. XV-INV-11F-00229 Pending before the Office of the Ombudsman (Case No. CPL-C-11-1297) Pending before the National Prosecution Service, Department of Justice (I.S. No. XVI-INV-11G-00248)
Name:	SHERYLL F. GENUINO-SEE
Nationality:	Filipino

130 *Rollo* (G.R. No. 197930), pp. 30-35.

Last known address:	No. 32-a Paseo Parkview, Makati City
Ground for HDO Issuance:	Malversation, Violation of the Anti-Graft and Corrupt Practices Act, Plunder
Details of the Case:	Pending before the National Prosecution Service, Department of Justice (I.S. No. XVI-INV-11G-00248)
Name:	ERWIN F. GENUINO
Nationality:	Filipino
Last known address:	No. 5 J.P. Rizal Extension, COMEMBO, Makati City
Ground for HDO Issuance:	Malversation, Violation of the Anti-Graft and Corrupt Practices Act, Plunder
Details of the Case:	Pending before the National Prosecution Service, Department of Justice (NPS Docket No. XV-INV-11F-00229 Pending before the National Prosecution Service, Department of Justice (I.S. No. XVI-INV-11G-00248)

x x x x

Pursuant to Section 1 of D.C. No. 41, this Order is valid for a period of five (5) years unless sooner terminated.

SO ORDERED. (Emphasis ours)

On its face, the language of the foregoing issuances does not contain an explicit restraint on the right to travel. The issuances seemed to be a mere directive from to the BI officials to include the named individuals in the watchlist of the agency. Noticeably, however, all of the WLOs contained a common reference to DOJ Circular No. 41, where the authority to issue the same apparently emanates, and from which the restriction on the right to travel can be traced. Section 5 thereof provides, thus:

> **Section 5. HDO/WLO Lifting or Cancellation-** In the lifting or cancellation of the HDO/WLO issued pursuant to this Circular, the following shall apply:
>
> (a) The HDO may be lifted or cancelled under any of the following grounds:
>
> 1. When the validity period of the HDO as provided for in the preceding section has already expired;

2. **When the accused subject of the HDO has been allowed to leave the country during the pendency of the case,** or has been acquitted of the charge, or the case in which the warrant/order of arrest was issued has been dismissed or the warrant/order of arrest has been recalled;
3. When the civil or labor case or case before an administrative agency of the government wherein the presence of the alien subject of the HDO/WLO has been dismissed by the court or by appropriate government agency, or the alien has been discharged as a witness therein, or the alien has been allowed to leave the country;

(b) The WLO may be lifted or cancelled under any of the following grounds:

1. When the validity period of the WLO as provided for in the preceding section has already expired;
2. **When the accused subject of the WLO has been allowed by the court to leave the country during the pendency of the case,** or has been acquitted of the charge; and
3. **When the preliminary investigation is terminated, or when the petition for review, or motion for reconsideration has been denied and/or dismissed.**

x x x x

That the subject of a HDO or WLO suffers restriction in the right to travel is implied in the fact that under Sections 5(a) (2) and 5(b) (2), the concerned individual had to seek permission to leave the country from the court during the pendency of the case against him. Further, in 5 (b) (3), he may not leave unless the preliminary investigation of the case in which he is involved has been terminated.

In the same manner, it is apparent in Section 7 of the same circular that the subject of a HDO or WLO cannot leave the country unless he obtains an ADO. The said section reads as follows:

Section 7. Allow Departure Order (ADO)- Any person subject of HDO/WLO issued pursuant to this Circular who intends, for some exceptional reasons, to leave the country may, upon application under oath with the Secretary of Justice, be issued an ADO.

The ADO may be issued upon submission of the following requirements:

(a) Affidavit stating clearly the purpose, inclusive period of the date of travel, and containing an undertaking to immediately report to the DOJ upon return; and

(b) Authority to travel or travel clearance from the court or appropriate government office where the case upon which the issued HDO/WLO was based is pending, or from the investigating prosecutor in charge of the subject case.

By requiring an ADO before the subject of a HDO or WLO is allowed to leave the country, the only plausible conclusion that can be made is that its mere issuance operates as a restraint on the right to travel. To make it even more difficult, the individual will need to cite an exceptional reason to justify the granting of an ADO.

The WLO also does not bear a significant distinction from a HDO, thereby giving the impression that they are one and the same or, at the very least, complementary such that whatever is not covered in Section 1,[131] which pertains to the issuance of HDO, can conveniently fall under Section 2,[132] which calls for the issuance of WLO. In any case, there is an identical provision in DOJ Circular No. 41 which authorizes the Secretary of Justice

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131 **Section 1.** *Hold Departure Order.* - The Secretary of Justice may issue an HDO, under any of the following instances:

(a) Against the accused, irrespective of nationality, in criminal cases falling within the jurisdiction of courts below the Regional Trial Courts (RTCs).

If the case against the accused is pending trial, the application under oath of an interested party must be supported by (a) a certified true copy of the complaint or information and (b) a Certification from the Clerk of Court concerned that criminal case is still pending.

(b) Against the alien whose presence is required either as a defendant, respondent, or witness in a civil or labor case pending litigation, or any case before an administrative agency of the government.

The application under oath of an interested party must be supported by (a) a certified true copy of the subpoena or summons issued against the alien and (b) a certified true copy complaint in civil, labor or administrative case where the presence of the alien is required.

(c) The Secretary of Justice may likewise issue an HDO against any person, either *motu proprio*, or upon the request by the Head of a Department of the Government; the head of a constitutional body or commission; the Chief Justice of the Supreme Court for the Judiciary; the Senate President or the House Speaker for the Legislature, when the adverse party is the Government or any of its agencies or instrumentalities, or in the interest of national security, public safety or public health.

132 **Section 2.** *Watchlist Order.* - The Secretary of Justice may issue a WLO, under any of the following instances:

(a) Against the accused, irrespective of nationality, in criminal cases pending trial before the Regional Trial Court.

The application under oath of an interested party must be supported by (a) certified true copy of an Information filed with the court, (b) a certified true copy of the Prosecutor's Resolution; and (c) a Certification from the Clerk of Court concerned that criminal case is still pending.

(b) Against the respondent, irrespective of nationality, in criminal cases pending preliminary investigation, petition for review, or motion for reconsideration before the Department of Justice or any of its provincial or city prosecution offices.

The application under oath of an interested party must be supported by (a) certified true copy of the complaint filed, and (b) a Certification from the appropriate prosecution office concerned that the case is pending preliminary investigation, petition for review, or motion for reconsideration, as the case may be.

(c) The Secretary of Justice may likewise issue a WLO against any person, either *motu proprio*, or upon the request of any government agency, including commissions, task forces or similar entities created by the Office of the President, pursuant to the "Anti-Trafficking in Persons Act of 2003" (R.A. No. 9208) and/or in connection with any investigation being conducted by it, or in the interest of national security, public safety or public health.

to issue a HDO or WLO against anyone, *motu proprio*, in the interest of national security, public safety or public health. With this all-encompassing provision, there is nothing that can prevent the Secretary of Justice to prevent anyone from leaving the country under the guise of national security, public safety or public health.

The exceptions to the right to travel are limited to those stated in Section 6, Article III of the Constitution

The DOJ argues that Section 6, Article III of the Constitution is not an exclusive enumeration of the instances wherein the right to travel may be validly impaired.[133] It cites that this Court has its own administrative issuances restricting travel of its employees and that even lower courts may issue HDO even on grounds outside of what is stated in the Constitution.[134]

The argument fails to persuade.

It bears reiterating that the power to issue HDO is inherent to the courts. The courts may issue a HDO against an accused in a criminal case so that he may be dealt with in accordance with law.[135] It does not require legislative conferment or constitutional recognition; it co-exists with the grant of judicial power. In *Defensor-Santiago vs. Vasquez*,[136] the Court declared, thus:

> Courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or essential to the existence, dignity and functions of the court, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.[137]

The inherent powers of the courts are essential in upholding its integrity and largely beneficial in keeping the people's faith in the institution by ensuring that it has the power and the means to enforce its jurisdiction.

As regards the power of the courts to regulate foreign travels, the

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133 *Rollo* (G.R. No. 199034), Volume III, p. 971.
134 Id. at 975.
135 *Silverio v. Court of Appeals*, supra note 78, at 133-134.
136 *Miriam Defensor Santiago v. Conrado M. Vasquez*, supra note 120.
137 Id. at 679.

Court, in *Leave Division,* explained:

> With respect to the power of the Court, Section 5 (6), Article VIII of the 1987 Constitution provides that the ***Supreme Court shall have administrative supervision over all courts and the personnel thereof.*** This provision empowers the Court to oversee all matters relating to the effective supervision and management of all courts and personnel under it. Recognizing this mandate, Memorandum Circular No. 26 of the Office of the President, dated July 31, 1986, considers the Supreme Court exempt and with authority to promulgate its own rules and regulations on foreign travels. Thus, the Court came out with OCA Circular No. 49-2003 (B).
>
> Where a person joins the Judiciary or the government in general, he or she swears to faithfully adhere to, and abide with, the law and the corresponding office rules and regulations. These rules and regulations, to which one submits himself or herself, have been issued to guide the government officers and employees in the efficient performance of their obligations. When one becomes a public servant, he or she assumes certain duties with their concomitant responsibilities and gives up some rights like the absolute right to travel so that public service would not be prejudiced.[138]

It is therefore by virtue of its administrative supervision over all courts and personnel that this Court came out with OCA Circular No. 49-2003, which provided for the guidelines that must be observed by employees of the judiciary seeking to travel abroad. Specifically, they are required to secure a leave of absence for the purpose of foreign travel from this Court through the Chief Justice and the Chairmen of the Divisions, or from the Office of the Court Administrator, as the case maybe. This is "to ensure management of court dockets and to avoid disruption in the administration of justice."[139]

OCA Circular No. 49-2003 is therefore not a restriction, but more properly, a regulation of the employee's leave for purpose of foreign travel which is necessary for the orderly administration of justice. To "restrict" is to restrain or prohibit a person from doing something; to "regulate" is to govern or direct according to rule.[140] This regulation comes as a necessary consequence of the individual's employment in the judiciary, as part and parcel of his contract in joining the institution. For, if the members of the judiciary are at liberty to go on leave any time, the dispensation of justice will be seriously hampered. Short of key personnel, the courts cannot properly function in the midst of the intricacies in the administration of justice. At any rate, the concerned employee is not prevented from pursuing

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138 *Leave Division-Office of Administrative Services- Office of the Court Administrator v. Wilma Salvacion Heusdens*, supra note 87, at 341-342.

139 *Office of the Administrative Services-Office of the Court Administrator v. Judge Ignacio B. Macarine*, 691 Phil. 217, 222 (2012).

140 Id.

his travel plans without complying with OCA Circular No. 49-2003 but he must be ready to suffer the consequences of his non-compliance.

The same ratiocination can be said of the regulations of the Civil Service Commission with respect to the requirement for leave application of employees in the government service seeking to travel abroad. The Omnibus Rules Implementing Book V of E.O. No. 292 states the leave privileges and availment guidelines for all government employees, except those who are covered by special laws. The filing of application for leave is required for purposes of orderly personnel administration. In pursuing foreign travel plans, a government employee must secure an approved leave of absence from the head of his agency before leaving for abroad.

To be particular, E.O. No. 6 dated March 12, 1986, as amended by Memorandum Order (MO) No. 26 dated July 31, 1986, provided the procedure in the disposition of requests of government officials and employees for authority to travel abroad. The provisions of this issuance were later clarified in the Memorandum Circular No. 18 issued on October 27, 1992. Thereafter, on September 1, 2005, E.O. No. 459 was issued, streamlining the procedure in the disposition of requests of government officials and employees for authority to travel abroad. Section 2 thereof states:

> **Section 2.** Subject to Section 5 hereof, **all other government officials and employees seeking authority to travel abroad shall henceforth seek approval from their respective heads of agencies**, regardless of the length of their travel and the number of delegates concerned. For the purpose of this paragraph, heads of agencies refer to the Department Secretaries or their equivalents. (Emphasis ours)

The regulation of the foreign travels of government employees was deemed necessary "to promote efficiency and economy in the government service."[141] The objective was clearly administrative efficiency so that government employees will continue to render public services unless they are given approval to take a leave of absence in which case they can freely exercise their right to travel. It should never be interpreted as an exception to the right to travel since the government employee during his approved leave of absence can travel wherever he wants, locally or abroad. This is no different from the leave application requirements for employees in private companies.

The point is that the DOJ may not justify its imposition of restriction

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[141] Executive Order No. 6 dated March 12, 1986 as amended by Memorandum Order (MO) No. 26 dated July 31, 1986.

on the right to travel of the subjects of DOJ Circular No. 41 by resorting to an analogy. Contrary to its claim, it does not have inherent power to issue HDO, unlike the courts, or to restrict the right to travel in anyway. It is limited to the powers expressly granted to it by law and may not extend the same on its own accord or by any skewed interpretation of its authority.

The key is legislative enactment

The Court recognizes the predicament which compelled the DOJ to issue the questioned circular but the solution does not lie in taking constitutional shortcuts. Remember that the Constitution "is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights are determined and all public authority administered."[142] Any law or issuance, therefore, must not contradict the language of the fundamental law of the land; otherwise, it shall be struck down for being unconstitutional.

Consistent with the foregoing, the DOJ may not promulgate rules that have a negative impact on constitutionally-protected rights without the authority of a valid law. Even with the predicament of preventing the proliferation of crimes and evasion of criminal responsibility, it may not overstep constitutional boundaries and skirt the prescribed legal processes.

That the subjects of DOJ Circular No. 41 are individuals who may have committed a wrong against the state does not warrant the intrusion in the enjoyment of their basic rights. They are nonetheless innocent individuals and suspicions on their guilt do not confer them lesser privileges to enjoy. As emphatically pronounced in *Secretary of National Defense vs. Manalo, et al.*,[143] "the constitution is an overarching sky that covers all in its protection. It affords protection to citizens without distinction. Even the most despicable person deserves the same respect in the enjoyment of his rights as the upright and abiding.

Let it also be emphasized that this Court fully realizes the dilemma of the DOJ. The resolution of the issues in the instant petitions was partly aimed at encouraging the legislature to do its part and enact the necessary law so that the DOJ may be able to pursue its prosecutorial duties without trampling on constitutionally-protected rights. Without a valid legislation, the DOJ's actions will perpetually be met with legal hurdles to the detriment of the due administration of justice. The challenge therefore is for the legislature to address this problem in the form of a legislation that will

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142 *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374, 464 (2010).
143 589 Phil. 1, 10 (2008).

identify permissible intrusions in the right to travel. Unless this is done, the government will continuously be confronted with questions on the legality of their actions to the detriment of the implementation of government processes and realization of its objectives.

In the meantime, the DOJ may remedy its quandary by exercising more vigilance and efficiency in the performance of its duties. This can be accomplished by expediency in the assessment of complaints filed before its office and in the prompt filing of information in court should there be an affirmative finding of probable cause so that it may legally request for the issuance of HDO and hold the accused for trial. Clearly, the solution lies not in resorting to constitutional shortcuts but in an efficient and effective performance of its prosecutorial duties.

The Court understands the dilemma of the government on the effect of the declaration of unconstitutionality of DOJ Circular No. 41, considering the real possibility that it may be utilized by suspected criminals, especially the affluent ones, to take the opportunity to immediately leave the country. While this is a legitimate concern, it bears stressing that the government is not completely powerless or incapable of preventing their departure or having them answer charges that may be subsequently filed against them. In his Separate Concurring Opinion, Mr. Justice Carpio, pointed out that Republic Act No. (R.A.) 8239, otherwise known as the *Philippine Passport Act of 1996*, explicitly grants the Secretary of Foreign Affairs or any of the authorized consular officers the authority to issue verify, restrict, cancel or refuse the issuance of a passport to a citizen under the circumstances mentioned in Section 4[144] thereof. Mr. Justice Tijam, on the other hand, mentioned Memorandum Circular No. 036, which was issued pursuant to R.A. No. 9208 or the *Anti-Trafficking in Persons Act of 2003*, as amended by R.A. No. 10364 or the *Expanded Anti-Trafficking in Persons Acts of 2012*, which authorizes the BI to hold the departure of suspected traffickers or trafficked individuals. He also noted that the Commissioner of BI has the authority to issue a HDO against a foreigner subject of deportation proceedings in order to ensure his appearance therein. Similarly, the proposal of Mr. Justice Velasco for the adoption of new set of rules which

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[144] SEC. 4. *Authority to Issue, Deny, Restrict or Cancel.* – Upon the application of any qualified Filipino citizen, the Secretary of Foreign Affairs or any of his authorized consular officer may issue passports in accordance with this Act.

Philippine consular officers in a foreign country shall be authorized by the Secretary to issue, verify, restrict, cancel or refuse a passport in the area of jurisdiction of the Post in accordance with the provisions of this Act.

In the interest of national security, public safety and public health, the Secretary or any of the authorized consular officers may, after due hearing and in their proper discretion, refuse to issue a passport, or restrict its use or withdraw or cancel a passport: *Provided, however*, That such act shall not mean a loss or doubt on the person's citizenship: *Provided, further*, That the issuance of a passport may not be denied if the safety and interest of the Filipino citizen is at stake: *Provided, finally*, That refusal or cancellation of a passport would not prevent the issuance of a Travel Document to allow for a safe return journey by a Filipino to the Philippines.

will allow the issuance of a precautionary warrant of arrest offers a promising solution to this quandary. This, the Court can do in recognition of the fact that laws and rules of procedure should evolve as the present circumstances require.

Contempt charge against respondent De Lima

It is well to remember that on November 18, 2011, a Resolution[145] was issued requiring De Lima to show cause why she should not be disciplinarily dealt or be held in contempt for failure to comply with the TRO issued by this Court.

In view, however, of the complexity of the facts and corresponding full discussion that it rightfully deserves, the Court finds it more fitting to address the same in a separate proceeding. It is in the interest of fairness that there be a complete and exhaustive discussion on the matter since it entails the imposition of penalty that bears upon the fitness of the respondent as a member of the legal profession. The Court, therefore, finds it proper to deliberate and resolve the charge of contempt against De Lima in a separate proceeding that could accommodate a full opportunity for her to present her case and provide a better occasion for the Court to deliberate on her alleged disobedience to a lawful order.

WHEREFORE, in view of the foregoing disquisition, Department of Justice Circular No. 41 is hereby declared **UNCONSTITUTIONAL**. All issuances which were released pursuant thereto are hereby declared **NULL and VOID**.

The Clerk of Court is hereby **DIRECTED to REDOCKET** the Resolution of the Court dated November 28, 2011, which required respondent Leila De Lima to show cause why she should not be cited in contempt, as a separate petition.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

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145 *Rollo* (G.R. No. 199034), Volume I, pp. 394-397.

WE CONCUR:

(On indefinite leave)
MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Acting Chief Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS J. JARDELEZA
Associate Justice

(No part)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Acting Chief Justice