

Republic of the Philippines  
**SUPREME COURT**  
Manila

MARK ANTHONY V. ZABAL,  
THITING ESTOSO JACOSALEM, and  
ODON S. BANDIOLA,

*Petitioners,*

G.R. No. \_\_\_\_\_

-versus-

RODRIGO R. DUTERTE, PRESIDENT  
OF THE REPUBLIC OF THE  
PHILIPPINES; SALVADOR C.  
MEDIALDEA, EXECUTIVE  
SECRETARY; EDUARDO M. AÑO,  
OFFICER-IN-CHARGE OF THE  
DEPARTMENT OF THE INTERIOR  
AND LOCAL GOVERNMENT,

*Respondents.*

For: Prohibition and  
(With Application for  
Temporary Restraining  
Order Preliminary  
Injunction, and/or  
Status Quo Ante Order)

X-----X

**PETITION FOR PROHIBITION  
AND MANDAMUS  
(WITH APPLICATION FOR TEMPORARY  
RESTRAINING ORDER, PRELIMINARY  
INJUNCTION, and/or STATUS QUO ANTE  
ORDER)**

**PETITIONERS**, through counsel and unto this Honorable Court, most respectfully state that:

**PREFATORY STATEMENT**

1. In explaining the right to travel, Justice Isagani A. Cruz once wrote:

“It is now required, to avoid abuse, particularly by petty administrators with less than the proper regard for the

Constitution, that the ascertainment of the grounds for the exception should be made by the executive officers only “*as may be provided by law*” specifying strict guidelines and appropriate standards. 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 should be strictly construed against the government and in favor of the individual.” (Cruz, *Constitutional Law*, 2007, page 173)

2. Now, more than any other time in recent history, the foregoing words hold greater relevance.

3. This petition raises the following questions of law:

**3.1. Does the President have the power, under the 1987 Constitution, to ban tourists and non-residents from Boracay Island?**

**3.2. Is the President’s order to close Boracay Island to tourists and non-residents, and the enforcement thereof, a violation of the principle of separation of powers?**

**3.3. Is it a violation of the right to travel to ban tourists and non-residents from Boracay Island?**

**3.4. Is it a violation of the right to due process of persons earning a living in Boracay Island to deprive them of their livelihood and source of income by banning tourists and non-residents therefrom?**

**3.5. Is it a violation of the right to due process to impose restrictions upon persons visiting or earning a living in Boracay Island even though they have not been found guilty of violating environmental laws?**

4. The instant case raises questions on the **limits of executive power** when these are being used to curtail or restrict the **right to travel** and the **right to due process**, as guaranteed under the 1987 Constitution.

## **STATEMENT OF THE CASE**

5. This is a petition for prohibition and *mandamus*, filed under Rule 65, seeking to enjoin the closure of Boracay Island to tourists and non-residents and/or to compel the respondents to allow the entry of the said persons to the island.

6. Respondents will implement the closure on April 26, 2018, leaving the petitioners with no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law other than recourse to this Court through the instant petition and an application for temporary restraining order and/or preliminary injunction.

7. Additional police and military personnel have already been deployed in Boracay Island and the Province of Aklan to enforce the closure on the aforementioned date.

8. The Department of the Interior and Local Government has also publicly issued guidelines for the closure.

9. Petitioners Mark Anthony V. Zabal and Thiting E. Jacosalem both earn a living in Boracay Island. Petitioner Zabal builds sandcastles for tourists, while petitioner Jacosalem acts as a driver for tourists and workers. Their livelihoods are dependent on the presence of tourists on the island.

10. Petitioner Odon S. Bandiola is a non-resident who occasionally goes to Boracay Island for business and pleasure. He would not be allowed entry beginning April 26, 2018.

11. All of the aforementioned petitioners are directly affected by the closure as their right to travel to Boracay Island and to work and earn a living thereat are being threatened.

12. The issues raised herein are also of **transcendental importance**, and the resolution thereof would have far-reaching consequences for all persons living and working in Boracay Island, for the Province of Aklan which is heavily-reliant on the island's tourism industry, and the country at large considering that this case involves unconstitutional acts on the part of the respondents and people's fundamental rights to travel and to due process. Verily, all the petitioners have *locus standi* as a concerned citizens.

13. Petitioners come directly before this Honorable Court seeking redress against **patent abuse of power and**

**reckless disregard of the law** in order to prevent great and irreparable damage to themselves and to all persons living and working in Boracay Island.

14. The instant case raises **genuine issues of constitutionality** involving the acts of the highest official in government and the head of one of its great branches, as well as the actions of various agencies under his control. Petitioners respectfully submit that these questions must be addressed at the most immediate time.

15. A resolution of these constitutional questions has **far-reaching implications**, and would guide both the bench and the bar on issues concerning the limits of executive power, the principle of separation of powers, the right to due process, and the right to travel.

16. Petitioners also humbly submit that this would be the first time issues are raised before this Court concerning a President's act of restricting the right to travel within the Philippines without so much as involving the Legislative Branch of government. Instead, the President, as head of the Executive Branch, is taking unilateral action to restrict constitutionally-guaranteed rights, relying solely on a general invocation of police power. Verily, it is a **case of first impression**.

17. There are no factual issues raised in this case, only questions of law as encapsulated by the four (4) queries posed in paragraph 3 hereof.

18. All told, the order for Boracay Island's closure to tourists and non-residents and the enforcement thereof are acts of patent nullity that threaten the constitutional rights of thousands of people. The **immediacy and exigency** of the situation warrants a direct resort to this Court, which is, by constitutional placement, the organ called upon to allocate constitutional boundaries.<sup>1</sup>

19. Apart from the violation of fundamental rights, the closure of the island to tourists and non-residents has far-reaching and seriously-damaging consequences for the rest of Aklan province, which is heavily centred on tourism.

20. Petitioners are also praying for the issuance of a temporary restraining order and/or a preliminary injunction

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<sup>1</sup> *Planas v. Gil*, 67 Phil. 62, 73-74 (1939).

immediately upon the filing of the instant petition to enjoin the respondents from enforcing the closure during the pendency of this action. Should the respondents enforce the closure after the instant petition is filed, petitioners pray, in the alternative, that a *status quo ante* order be issued restoring the condition prior to such enforcement.

## **PARTIES**

21. Petitioner Mark Anthony V. Zabal is a Filipino, of legal age, married, and a resident of Brgy. Manoc Manoc, Malay, Aklan. He earns a living by making sandcastles for tourists in the beaches of Boracay Island.

22. Petitioner Thiting E. Jacosalem is a Filipino, of legal age, single, and a resident of Brgy. Manoc Manoc, Malay, Aklan. He earns a living as a driver for tourists and workers in Boracay Island.

23. Petitioner Odon S. Bandiola is a Filipino, of legal age, married, and a resident of Brgy. Solido, Nabas, Aklan. He occasionally goes to Boracay Island for both business and pleasure. However, he is not a resident thereof.

24. Petitioners may be served with legal processes at the office address of undersigned counsels.

25. Respondent Rodrigo R. Duterte (hereafter, "President Duterte" for brevity) is being sued in his official capacity as President of the Republic of the Philippines. He may be served the necessary legal and judicial processes at the Office of the President, Malacañang Complex, J.P. Laurel Street, San Miguel, Manila.

26. Respondent Salvador C. Medialdea is being sued in his official capacity as Executive Secretary to the President. He may be served the necessary legal and judicial processes at the Office of the Executive Secretary, Bonifacio Hall, J.P. Laurel St., San Miguel, Manila.

27. Respondent Eduardo O. Año is being sued in his official capacity as Officer-in-Charge of the Department of the Interior and Local Government, of which department the Philippine National Police forms part. He may be served the necessary legal and judicial processes at the Office of the Secretary of the Interior and Local Government, DILG-

NAPOLCOM Center, EDSA corner Quezon Avenue, Quezon City.

28. A copy of the instant petition is also being furnished the Solicitor General of the Republic of the Philippines.

### **STATEMENT OF RELEVANT FACTS**

29. Boracay Island is a primary tourist destination situated in the Municipality of Malay, Province of Aklan.

30. It is composed of three (3) barangays, namely, Brgy. Manoc-Manoc, Brgy. Balabay, and Brgy. Yapak.

31. Boracay Island plays host to local and foreign tourists, as well as people who work there as employees of business establishments, entrepreneurs, vendors, tour guides, transport operators and drivers, and other people who earn a living on the island from tourism-related activities.

32. The economy of Boracay Island is centred on tourism. According to records from the Aklan Provincial Tourism Office, a total of 2,001,974 tourists visited the island in 2017,<sup>2</sup> while 553,074 tourists visited during the first quarter alone of 2018.<sup>3</sup>

33. Thousands of workers are employed by various establishments and businesses in Boracay Island, while thousands more earn a living as vendors, tour guides, craftsmen, massage therapists, entertainers, drivers and similar activities that cater to tourists on the island.

34. As stated earlier, petitioner Zabal earns a living building sandcastles for tourists, while petitioner Jacosalem works as a driver for tourists and workers in Boracay Island.

35. According to material published online by the Presidential Communications Operations Office, President Duterte, during a speech in February 2018, described Boracay Island as a “cesspool”, and ordered Department of

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<sup>2</sup> *Comparative Boracay Statistics for the Year 2016-2017*, Aklan Provincial Tourism Office, Annex “D”.

<sup>3</sup> *Monthly Summary of Boracay Visitor Arrivals*, Aklan Provincial Tourism Office, Annex “E”.

Environment and Natural Resources (DENR) Secretary Roy A. Cimatu to clean up the island.<sup>4</sup>

36. In another speech on March 6, 2018, President Duterte said he would place Boracay under a state of calamity.<sup>5</sup> He also warned the courts not to interfere by issuing a temporary restraining order (TRO).<sup>6</sup>

37. The following day, or on March 7, 2018, President Duterte threatened to arrest local officials who resisted and refused to cooperate, and to charge them with sedition.<sup>7</sup>

38. During the 24<sup>th</sup> Cabinet meeting on April 4, 2018, President Duterte approved the total closure of Boracay Island for a maximum period of six months beginning on April 26, 2018 to allow for its rehabilitation.<sup>8</sup>

39. The President's spokesperson, Harry L. Roque, claimed that the closure would not violate the right to travel, and that it was a police power measure to protect the environment.<sup>9</sup>

40. Around 630 police and military personnel have been deployed on Boracay Island, including personnel intended for crowd dispersal management.<sup>10</sup>

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<sup>4</sup> Presidential Communications Operations Office. *President Duterte to declare state of calamity in Boracay*, March 7, 2018.

[https://pcoo.gov.ph/news\\_releases/president-duterte-declare-state-calamity-boracay/](https://pcoo.gov.ph/news_releases/president-duterte-declare-state-calamity-boracay/).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Presidential Communications Operations Office. *President Duterte dangles arrest vs uncooperative local officials in Boracay*, March 8, 2018.

[https://pcoo.gov.ph/news\\_releases/president-duterte-dangles-arrest-vs-uncooperative-local-officials-boracay/](https://pcoo.gov.ph/news_releases/president-duterte-dangles-arrest-vs-uncooperative-local-officials-boracay/).

<sup>8</sup> Presidential Communications Operations Office. *Palace: Duterte approves 6-month total closure of Boracay*, April 5, 2018.

[https://pcoo.gov.ph/news\\_releases/palace-duterte-approves-6-month-total-closure-of-boracay/](https://pcoo.gov.ph/news_releases/palace-duterte-approves-6-month-total-closure-of-boracay/).

<sup>9</sup> Presidential Communications Operations Office. *Palace pushes alternative destinations in light of Boracay closure*, April 8, 2018.

[https://pcoo.gov.ph/news\\_releases/palace-pushes-alternative-destinations-in-light-of-boracay-closure/](https://pcoo.gov.ph/news_releases/palace-pushes-alternative-destinations-in-light-of-boracay-closure/). *Palace: Total closure "only way" to save Boracay island*, April 17, 2018. [https://pcoo.gov.ph/news\\_releases/palace-total-closure-only-way-to-save-boracay-island/](https://pcoo.gov.ph/news_releases/palace-total-closure-only-way-to-save-boracay-island/).

<sup>10</sup> *Over 100 anti-riot police ready to keep Boracay safe*, CNN Philippines, April 19, 2018, <http://cnnphilippines.com/news/2018/04/18/Boracay-closure-police-security.html>. *PNP: Increased security during Boracay shutdown to prevent violence*, Nestor P. Burgos, Jr., April 17, 2018, <http://newsinfo.inquirer.net/983038/pnp-increased-security-during-boracay-shutdown-to-prevent-violence>.

41. The DILG publicly released<sup>11</sup> the following guidelines for the closure of Boracay Island set to begin on April 26, 2018:

**“1. No going beyond Jetty Port.** Identified tourists will not be allowed into the island and will be stopped at the Jetty Port in Malay, Aklan.

**2. No ID, no entry.** Residents/workers/resort owners will be allowed entry into the island subject to the presentation of identification cards specifying a residence in Boracay. All government-issued IDs will be recognized. Non-government IDs are acceptable as long as they are accompanied by a barangay certification of residency.

**3. Swimming for locals only.** Generally, swimming shall not be allowed anywhere on the island. However, residents may be allowed to swim only at Angol Beach in station 3 from 6 am to 5 pm.

**4. One condition for entry.** No visitors of Boracay residents shall be allowed entry, except under emergency situations, and with the clearance of the security committee composed of DILG representative, police, and local government officials.

**5. Journalists need permission to cover.** Media will be allowed entry subject to **prior approval** from the Department of Tourism, with a definite duration and limited movement.

**6. No floating structures.** No floating structures shall be allowed up to 15 kilometers from the shoreline.

**7. Foreign residents to be checked.** The Bureau of Immigration will revalidate the papers of foreigners who have found a home in Boracay.

**8. One entry, one exit point.** There will only be one transportation point to Boracay Island. Authorities have yet to decide where.”

42. Only residents of Boracay Island will be allowed entry, subject to the presentation of identification documents showing residency. Tourists and non-residents will be denied entry.

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<sup>11</sup> *No visitors, no tourists: DILG releases Boracay rules during 6-month closure*, Dharel Placido, ABS-CBN News, April 17, 2018, <http://news.abs-cbn.com/news/04/17/18/no-visitors-no-tourists-dilg-releases-boracay-rules-during-6-month-closure>. *LIST: New Boracay rules during 6-month closure*, Rambo Talabong, April 12, 2018, <https://www.rappler.com/nation/200122-list-new-rules-boracay-closure>.



43. As of this writing, no executive order by President Duterte for the closure of Boracay Island to tourists and non-residents has been released.

44. Petitioners, through the undersigned counsel, wrote the DILG, DENR, and the DOT and requested for copies of any written executive order, administrative order, department order, or similar documents providing for the closure of Boracay Island. However, petitioners have not been provided therewith.

45. Clearly, the closure is proceeding upon the verbal orders of President Duterte. As such, petitioners could not attach any certified copy of a written order by the respondents for the closure of Boracay Island to tourists and non-residents.

46. Attached to the instant petition are the following documents:

- a) Affidavit of Mark Anthony V. Zabal, as Annex "A";
- b) Affidavit of Thiting E. Jacosalem, as Annex "B";
- c) Affidavit of Odon S. Bandiola, as Annex "C";
- d) *Comparative Boracay Statistics for the Year 2016-2017*, Aklan Provincial Tourism Office, Annex "D";
- e) *Monthly Summary of Boracay Visitor Arrivals*, Aklan Provincial Tourism Office, Annex "E";
- f) Letter addressed to the Department of the Interior and Local Government, as Annex "F";
- g) Letter addressed to the Department of Environment and Natural Resources, as Annex "G";
- h) Letter addressed to the Department of Tourism, as Annex "H".

47. Ever since President Duterte publicly pronounced that Boracay Island will be closed to tourists beginning April 26, 2018, fewer and fewer tourists have been engaging the services of petitioners Zabal and Jacosalem. Now, said petitioners earn barely enough to feed their families. They will suffer graver and irreversible damage once the closure is enforced.

48. They come before this Honorable Court seeking relief enjoining the respondents from proceeding with the closure. They do not seek an award of damages, only the protection of their rights and livelihoods.

## **GROUND FOR GRANTING THE PETITION**

**I. THE 1987 CONSTITUTION DOES NOT GRANT THE PRESIDENT THE POWER TO CLOSE BORACAY ISLAND TO TOURISTS AND NON-RESIDENTS;**

**II. PRESIDENT DUTERTE'S ORDERS TO CLOSE BORACAY ISLAND, AND THE ENFORCEMENT THEREOF, ARE IN VIOLATION OF THE PRINCIPLE OF SEPARATION OF POWERS;**

**III. CLOSING BORACAY ISLAND TO TOURISTS AND NON-RESIDENTS IS A VIOLATION OF THEIR RIGHT TO TRAVEL;**

**IV. CLOSING BORACAY ISLAND TO TOURISTS AND NON-RESIDENTS IS A VIOLATION OF THE RIGHT TO DUE PROCESS OF PERSONS EARNING A LIVING IN BORACAY ISLAND BY DEPRIVING THEM OF THEIR LIVELIHOOD AND SOURCE OF INCOME; and**

**V. IMPOSING RESTRICTIONS UPON PERSONS VISITING BORACAY ISLAND OR DEPRIVING PERSONS EARNING A LIVING THEREIN, EVEN THOUGH THEY HAVE NOT BEEN FOUND GUILTY OF VIOLATING ENVIRONMENTAL LAWS, IS ARBITRARY, WHIMSICAL, AN UNREASONABLE INTRUSION INTO INDIVIDUAL RIGHTS, AND A VIOLATION OF THE RIGHT TO DUE PROCESS.**

## **DISCUSSION**

49. Being interrelated, the aforementioned grounds will be discussed simultaneously.

**The instant petition as a remedy against the orders of President Duterte for the closure of Boracay Island and its enforcement**

50. In ordering the closure of Boracay Island to tourists and non-residents, President Duterte gravely abused and

exceeded his authority under the Constitution. He exercised powers that are legislative in nature, in violation of the principle of *separation of powers*. By issuing the said orders, President Duterte acted without authority under the 1987 Constitution or statutory law.

51. As discussed further below, President Duterte's aforementioned order, and the enforcement thereof by the other respondents, infringe on the constitutional rights of the petitioners, tourists, and non-residents, particularly, their **right to travel** and the **right to due process**.

52. Respondents act with grave abuse of discretion amounting to lack or excess of jurisdiction.

53. Petitions for *certiorari* and **prohibition** are appropriate remedies to **raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials**.<sup>12</sup>

54. On the other hand, **mandamus** will issue against a respondent who fails to perform a legal duty, **or unlawfully excludes another from the enjoyment of an entitled right** or office, to do the act required to be done to protect the rights of the petitioner.<sup>13</sup> In *Imbong v. Ochoa*,<sup>14</sup> the Court held:

**“As far back as *Tanada v. Angara*, the Court has unequivocally declared that certiorari, prohibition and mandamus are appropriate remedies to raise constitutional issues and to review and / or prohibit / nullify, when proper, acts of legislative and executive officials, as there is no other plain, speedy or adequate remedy in the ordinary course of law.** This ruling was later on applied in *Macalintal v. COMELEC*, *Aldaba v. COMELEC*, *Magallona v. Ermita*, and countless others. In *Tanada*, the Court wrote:

In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the

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<sup>12</sup> *Francisco v. Toll Regulatory Board*, G.R. No. 166910, October 19, 2010. *Ermita v. Aldecoa-Delorino*, G.R. No. 177130. June 7, 2011.

<sup>13</sup> *Reliance Surety & Insurance Co., Inc. v. Hon. Amante, Jr.*, G.R. No. 150994, June 30, 2005. *Spouses Cachopero v. Celestial*, G.R. No. 146754, March 21, 2012.

<sup>14</sup> G.R. No. 204819, April 8, 2014.

judiciary to settle the dispute. "The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld." Once a "controversy as to the application or interpretation of constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide. [Emphasis supplied]" (emphasis ours; citations omitted)

55. Hence, petitioners come before this Honorable Court protesting a grave injustice and a wanton abuse of power.

**The 1987 Constitution does not give the President power to restrict the movement of people within the country; Violation of the principle of *separation of powers***

56. President Duterte and the other respondents maintain that the closure is an exercise of police power aimed at rehabilitating the island. With all due respect, such a position lacks basis.

57. Police power is exercised through **legislative bodies**. It is the plenary power **vested in the legislature** to make **statutes** and **ordinances** to promote the health, morals, peace, education, good order or safety and general welfare of the people.<sup>15</sup> Even when such laws are enacted, they must be tested against the standards and limitations imposed by the Constitution. As held in *MMDA v. Romulo*<sup>16</sup>:

**“Police power is the plenary power vested in the legislature to make, ordain, and establish wholesome and reasonable laws, statutes and ordinances, not repugnant to the Constitution, for the good and welfare of the people.** This power to prescribe regulations to promote the health, morals, education, good order or safety, and general welfare of the people flows from the recognition that *salus*

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<sup>15</sup> *Social Justice Society v. Atienza, Jr.*, G.R. No. 156052, February 13, 2008.

<sup>16</sup> G.R. No. 170656, August 15, 2007.

*populi est suprema lex* – the welfare of the people is the supreme law.” (emphasis ours; citations omitted)

58. All of the respondents are officials belonging to the executive branch of government. Their offices do not grant them law-making powers, nor can they exercise a delegation thereof in a manner that lacks statutory basis.

59. Despite holding the highest position in the land, President Duterte simply cannot, under our system of law, arrogate unto himself a power which the Constitution does not give him.

60. Any order he issues, whether verbal or written, that curtails or limits the enjoyment of **fundamental rights** can never be valid and must be struck down by the courts if it finds no statutory or constitutional basis. Such is the clear import of the principles of *checks and balances* and the *separation of powers* as embodied in our legal system.

61. As held in *Belgica v. Ochoa*,<sup>17</sup> the powers of government were intentionally divided among its three great branches, precisely, to avoid the concentration thereof in any one branch, and to prevent such branch “*from lording it over the other branches or the citizenry.*” Said the Court:

“xxx. The principle of separation of powers and its concepts of autonomy and independence stem from the notion that **the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry.** To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates. Lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others.

Broadly speaking, there is a violation of the separation of powers principle when one branch of government unduly encroaches on the domain of another. US Supreme Court decisions instruct that the principle of separation of powers may be violated in two (2) ways: firstly, “one branch may interfere impermissibly with the other’s performance of its constitutionally assigned function”; and “alternatively, the

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<sup>17</sup> G.R. No. 208566, November 19, 2013.

doctrine may be violated when one branch assumes a function that more properly is entrusted to another." In other words, there is a violation of the principle when there is impermissible (a) interference with and/or (b) assumption of another department's functions." (emphasis ours; citations omitted)

62. A dangerous concentration of powers in one branch – one person, in fact – is precisely the situation in which we find ourselves. President Duterte's orders to close Boracay Island to tourists and non-residents, and the enforcement thereof, is marked by single-handedness, arbitrariness, and the usurpation of authority vested by the Constitution in another branch.

63. *Villavicencio v. Lukban*<sup>18</sup> railed against the notion that one man can place another person's liberty and livelihood under his will. Justice George A. Malcom wrote:

"Law defines power. Centuries ago Magna Charta decreed that — "No freeman shall be taken, or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we pass upon him nor condemn him, but by lawful judgment of his peers or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right." (Magna Charta, 9 Hen., 111, 1225, Cap. 29; 1 eng. stat. at Large, 7.) **No official, no matter how high, is above the law. The courts are the forum which functionate to safeguard individual liberty and to punish official transgressors. "The law," said Justice Miller, delivering the opinion of the Supreme Court of the United States, "is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives."** (U.S. *vs. Lee* [1882], 106 U.S., 196, 220.) **"The very idea," said Justice Matthews of the same high tribunal in another case, "that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."** (Yick Wo *vs. Hopkins* [1886], 118 U.S., 356, 370.) All this explains the motive in issuing the writ of *habeas corpus*, and

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<sup>18</sup> No. L-14639, March 25, 1919.

makes clear why we said in the very beginning that **the primary question was whether the courts should permit a government of men or a government of laws to be established in the Philippine Islands.**” (emphasis ours).

64. The 1987 Constitution provides the limits of the President's power. In this case, he clearly exceeded them.

**Banning petitioners, tourists,  
and non-residents from  
Boracay Island violates  
their right to travel**

65. The closure of Boracay Island violates the right to travel of tourists and non-residents who wish to go to the island for business or pleasure.

66. The right to travel is a **fundamental right** safeguarded under the Bill of Rights. Section 6, Article III of the 1987 Constitution reads:

“Sec. 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 may be provided by law.”

67. The right guarantees not merely the freedom to go to other countries but, also, and perhaps even more importantly, the freedom to travel to different places within the Philippines.

68. Liberty of abode and the right to travel, under Section 6, emphasize **freedom of movement** – a freedom also protected, in general terms, by the *due process* clause. As Justice Cruz explained:

“The purpose of the guaranty is to further emphasize the individual's liberty as safeguarded in general terms by the due process clause. **Liberty under that clause includes the right to choose one's residence, to leave it whenever he pleases, and to travel wherever he wills.** Section 6 is a **specific safeguard** of these rights and is intended to underline their importance in a free society.” (Cruz, *Constitutional Law*, 2007, page 169; emphasis ours);

69. Indeed, the right to travel is an aspect of individual liberty without which the other fundamental rights cannot be enjoyed.

70. The right to travel is a right **distinct from liberty of abode**, and may be invoked by persons – tourist or not – who wish to go to Boracay Island even if they are not already residents thereof, nor plan to be so.

71. Proceeding therefrom, Section 6 clearly states that **the right to travel may be restricted only if: (a) there is a law restricting the said right, and (b) the restriction is based on national security, public safety, or public health.** Both requirements must concur in order for the restriction to be considered constitutional.

72. As discussed in *Silverio v. Court of Appeals*<sup>19</sup>:

**“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 (See *Salonga vs. Hermoso & Travel Processing Center*, No. 53622, 25 April 1980, 97 SCRA 121).” (emphasis ours);

73. Furthermore, **the existence of grounds for the application of the exceptions to the right to travel can be determined by executive officers only as provided by law**, and any such law must be **construed strictly against the government** and in favor of the individual.<sup>20</sup>

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<sup>19</sup> G.R. No. 94284, April 8, 1991.

<sup>20</sup> Cruz, *Constitutional Law*, 2007, page 173.



74. Because the right to travel is a fundamental right, any restriction thereof must satisfy the **strict scrutiny test**. As held in *Samahan ng mga Progresibong Kabataan v. Quezon City*<sup>21</sup>:

“That being said, this Court finds it improper to undertake an overbreadth analysis in this case, there being no claimed curtailment of free speech. **On the contrary, however, this Court finds proper to examine the assailed regulations under the strict scrutiny test.**

**The right to travel is recognized and guaranteed as a fundamental right under Section 6, Article III of the 1987 Constitution, to wit:**

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 may be provided by law. (Emphases and underscoring supplied)

**Jurisprudence provides that this right refers to the right to move freely from the Philippines to other countries or within the Philippines. It is a right embraced within the general concept of liberty.** Liberty - a birthright of every person - includes the power of locomotion and the right of citizens to be free to use their faculties in lawful ways and to live and work where they desire or where they can best pursue the ends of life.

**The right to travel is essential as it enables individuals to access and exercise their other rights, such as the rights to education, free expression, assembly, association, and religion.** The inter-relation of the right to travel with other fundamental rights was briefly rationalized in *City of Maquoketa v. Russell*, as follows:

Whenever the First Amendment rights of freedom of religion, speech, assembly, and association require one to move about, such movement must necessarily be protected under the First Amendment.

Restricting movement in those circumstances to the extent that First Amendment Rights cannot be exercised without violating the law is equivalent to a denial of those rights. One court has eloquently pointed this out:

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<sup>21</sup> G.R. No. 225442, August 8, 2017.

**We would not deny the relatedness of the rights guaranteed by the First Amendment to freedom of travel and movement.** If, for any reason, people cannot walk or drive to their church, their freedom to worship is impaired. If, for any reason, people cannot walk or drive to the meeting hall, freedom of assembly is effectively blocked. If, for any reason, people cannot safely walk the sidewalks or drive the streets of a community, opportunities for freedom of speech are sharply limited. **Freedom of movement is inextricably involved with freedoms set forth in the First Amendment.** (Emphases supplied)

Nevertheless, grave and overriding considerations of public interest justify restrictions even if made against fundamental rights. Specifically on the freedom to move from one place to another, jurisprudence provides that this right is not absolute. **As the 1987 Constitution itself reads, the State may impose limitations on the exercise of this right, provided that they: (1) serve the interest of national security, public safety, or public health; and (2) are provided by law.**" (emphasis ours; citations omitted);

75. *Samahan ng mga Progresibong Kabataan* also reiterated that limitations to the right to travel must be: (a) in the interest of national security, public safety, or public health; and (b) provided by law.

76. In this case, **the grounds for the restriction have not been shown to exist.** There is no national security, public safety, or public health situation calling for the curtailment of the right to travel.

77. More importantly, there is **no law** restricting access to Boracay Island. By that fact alone, the respondents' act of closing the same to tourists and non-residents is clearly unconstitutional.

78. *Even assuming*, however, that there is statutory basis for the closure of Boracay Island, it has not been shown that such a measure is **reasonable** or **narrowly-tailored** to achieve a compelling governmental interest.

79. Respondents' measures infringe upon a fundamental right, thus, making them **inherently suspect.** Therefore, the presumption of constitutionality is reversed, and

the respondents carry the **burden** of showing that that there is, **first**, a law supporting a compelling governmental interest – which, in this case, must pertain to national security, public safety, or public health – and, **second**, that the means employed by such a law are reasonable and narrowly-tailored. Otherwise, the measure is **presumed to be unconstitutional**.

80. The arbitrary, sweeping, and unreasonable nature of the closure of Boracay Island is also the reason it violates the *due process* clause, as more thoroughly discussed below.

### **Closing Boracay Island to petitioners, tourists, and non-residents violates their right to due process**

81. The *due process* clause under Section 1, Article III of the 1987 Constitution serves as a guaranty against **arbitrary regulation**. It reads:

“Sec. 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.”

82. Liberty, as used in the context of the *due process* clause, extends beyond mere freedom from physical restraint and freedom of movement. In *City of Manila v. Laguio*,<sup>22</sup> it was held that:

**“Liberty as guaranteed by the Constitution was defined by Justice Malcolm to include "the right to exist and the right to be free from arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the facilities with which he has been endowed by his Creator, subject only to such restraint as are necessary for the common welfare." In accordance with this case, the rights of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; and to pursue any avocation are all deemed embraced in the concept of liberty.”** (emphasis ours; citations omitted)

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<sup>22</sup> G.R. No. 118127, April 12, 2005.

83. *Due process* also covers and protects, as **property rights**, the **right to work and earn a living**. As held in *JMM Promotion and Management, Inc. v. Court of Appeals*<sup>23</sup>:

“A profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong.”

84. The closure of Boracay Island restricts the liberty of all tourists and non-residents who wish to visit the said place. At the same time, the petitioners and all those who work, do business, or earn a living on the island, are **deprived of their livelihood**.

85. **Even Boracay residents who would be allowed to remain thereon would be adversely affected.** Tourism drives the economy of the entire island, and without it, the people who live and work there lose their source of income.

86. The closure would have the direct effect of curtailing the property rights of both residents and non-residents who earn a living on the island.

87. Liberty and property rights may be restricted only by laws not repugnant to the Constitution. As discussed earlier, however, there is, in this case, **no law** authorizing the President or any of the other respondents to close Boracay Island to tourists and non-residents. Verily, the *due process* clause is violated with the enforcement thereof.

88. Even assuming that there is statutory basis to close Boracay Island, doing so would be both **unreasonable, arbitrary, and excessive**.

89. Environmental laws and regulations provide for penalties in the event that these are violated by business establishments. It is the violator, however, who must be prosecuted and penalized for the transgression.

90. A sweeping governmental measure that curtails the rights of persons who have not been found guilty of such violations flies in the face of *due process*. Respondents cannot

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<sup>23</sup> G.R. No. 120095, August 5, 1996.

simply impose restrictions that are detrimental to **all persons** working on the island *irrespective* of individual liability. It would be tantamount to painting them all with the same brush and imposing penalties *en masse*.

91. Substantive due process demands that a police power measure must: (a) have a lawful object; and (b) employ a **lawful method**. Thus:

“xxx. A legislative act based on the police power requires the concurrence of a lawful subject and a lawful method. In more familiar words, (a) the interests of the public generally, as distinguished from those of a particular class, should justify the interference of the state; and (b) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.” (*Drugstores Association of the Philippines, Inc. v. National Council on Disability Affairs*, G.R. No. 194561, September 14, 2016)

92. Indeed, the clean-up of Boracay Island and the prosecution of those violating environmental laws are laudable objectives. **Yet, the end cannot justify the means, especially when the means involved are oppressive.**

93. The validity of a police measure is determined, in part, by ascertaining whether it is reasonable and not unduly oppressive to individuals. *Chavez v. Viron Transportation Co., Inc*<sup>24</sup> explained the test in the following manner:

“In a number of cases, we laid down the **test to determine the validity of a police measure**, thus:

(1) The interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power; and

**(2) The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.**

Deeper reflection will reveal that the test merely reiterates the essence of the constitutional guarantees of **substantive due process, equal protection, and non-impairment of property rights.**” (emphasis ours)

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<sup>24</sup> G.R. No. 157036, June 9, 2004.

94. Closing Boracay Island to tourists and non-residents, as a police power measure, utterly fails in terms of reasonableness. It is unduly oppressive to workers who will lose their jobs with the closure of establishments, with no tourists to patronize these businesses.

95. The closure also divests tour guides, craftsmen, vendors, massages therapists, drivers, and small entrepreneurs, such as the petitioners herein, of their source of income.

96. Furthermore, the closure prevents non-residents who have been earning a living in Boracay Island from continuing with their livelihood.

97. All told, the impending closure on April 26, 2018 is a glaringly **disproportionate response** in relation to the objectives sought to be attained.

98. The Court, in *City of Manila v. Laguio*,<sup>25</sup> held that where the strict scrutiny test is used, such as for protecting fundamental rights, substantive due process is met only if the government can prove that **no other alternative** for the accomplishment of the purpose less intrusive of private rights can work. Thus:

“To successfully invoke the exercise of police power as the rationale for the enactment of the *Ordinance*, and to free it from the imputation of constitutional infirmity, not only must it appear that the interests of the public generally, as distinguished from those of a particular class, require an interference with private rights, but the means adopted must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. **It must be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work. A reasonable relation must exist between the purposes of the police measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded.**

Lacking a concurrence of these two requisites, the police measure shall be struck down as an **arbitrary**

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<sup>25</sup> *Id.* at No. 22.

**intrusion into private rights a violation of the due process clause.**<sup>26</sup> (emphasis ours; citations omitted)

99. In the case at hand, there is no showing that extreme measures such as the total closure of Boracay Island – damaging to tens of thousands of person living and working therein – are at all necessary for the conduct of the rehabilitation.

100. In *White Light Corporation v. City of Manila*,<sup>27</sup> the Court reiterated the ruling in *City of Manila v. Laguio*, and further ruled that the **petitioners therein could invoke the constitutional rights of their patrons.** Thus:

“In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. **The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access and interstate travel.**

If we were to take the myopic view that an Ordinance should be analyzed strictly as to its effect only on the petitioners at bar, then it would seem that the only restraint imposed by the law which we are capacitated to act upon is the injury to property sustained by the petitioners, an injury that would warrant the application of the most deferential standard the rational basis test. **Yet as earlier stated, we recognize the capacity of the petitioners to invoke as well the constitutional rights of their patrons those persons who would be deprived of availing short time access or wash-up rates to the lodging establishments in question.**

**Viewed cynically, one might say that the infringed rights of these customers were are trivial since they seem shorn of political consequence. Concededly, these are not the sort of cherished rights that, when proscribed, would impel the people to tear up their *cedulas*. Still, the Bill of Rights does not shelter *gravitas* alone. Indeed, it is those trivial yet**

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<sup>26</sup> *Id.*

<sup>27</sup> G.R. No. 122846, January 20, 2009.

**fundamental freedoms which the people reflexively exercise any day without the impairing awareness of their constitutional consequence that accurately reflect the degree of liberty enjoyed by the people.** Liberty, as integrally incorporated as a fundamental right in the Constitution, is not a Ten Commandments-style enumeration of what may or what may not be done; but rather an atmosphere of freedom where the people do not feel labored under a Big Brother presence as they interact with each other, their society and nature, in a manner innately understood by them as inherent, without doing harm or injury to others.” (emphasis ours);

101. The Court's decision in *White Light Corporation* also emphasized that **even though a governmental measure is well-intentioned, individual rights should not be arbitrarily and whimsically restrained thereby.** Thus:

**“We reiterate that individual rights may be adversely affected only to the extent that may fairly be required by the legitimate demands of public interest or public welfare.** The State is a leviathan that must be restrained from needlessly intruding into the lives of its citizens. **However well-intentioned the Ordinance may be, it is in effect an arbitrary and whimsical intrusion into the rights of the establishments as well as their patrons. The Ordinance needlessly restrains the operation of the businesses of the petitioners as well as restricting the rights of their patrons without sufficient justification.** The Ordinance rashly equates wash rates and renting out a room more than twice a day with immorality without accommodating innocuous intentions.” (emphasis our)

102. Respondents should not be allowed to enforce the ban against tourists and non-residents. Their actions would be in excess of their authority under the 1987 Constitution and the law, an abuse of discretion amounting to lack or excess of jurisdiction, and a violation of the petitioners' constitutional rights.



## **APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND/OR STATUS QUO ANTE ORDER**

103. Petitioners adopt and re-plead the foregoing allegations, insofar as these may be relevant, and further allege that:

104. Petitioners are entitled to the reliefs demanded, and such reliefs, in part, consist of restraining and enjoining the respondents from enforcing the closure of Boracay Island against the petitioners and other tourists and non-residents.

105. The implementation of the closure as scheduled on April 26, 2018, and its continued enforcement during the pendency of this action, will work a grave injustice on the petitioners, violate their rights respecting the subject of this action, and render ineffectual any relief it may later obtain.

106. Petitioners Zabal and Jacosalem's daily earnings from their tourism-related activities are absolutely necessary to put food on the table, send their children to school, and cover the daily expenses of their families.

107. Without such sources of income – even if only for a period of six (6) months – said petitioners' families will go hungry and, worse, be uprooted or forced to relocate to other places. Such a development would disrupt their children's schooling and work untold hardships upon their families.

108. Petitioners have every right to continue to earn a living in the manner they so choose which, and depriving them of their livelihood violates such right and creates untold hardships for them and their families.

109. Respondents, on the other hand, have no authority to impose travel restriction on the petitioners, or any other tourist or non-resident who wishes to enter Boracay Island.

110. In fine, petitioners will suffer a grave injustice and great or irreparable injury from the unlawful acts of the respondents unless a **Temporary Restraining Order and/or Preliminary Injunction** is issued against the latter.

111. Respondents are adamant in enforcing the closure, as scheduled, on April 26, 2018, and have already placed

hundreds of police and military personnel on the island to carry it out. Thus, there is a need for a temporary restraining order and preliminary injunction, to be effective for the duration of these proceedings, in order not to render the judgment ineffectual.

112. Should the respondents enforce the closure after the instant petition is filed, petitioners respectfully pray that, in the alternative, a **Status Quo Ante Order** be issued restoring and maintaining the condition prior to such enforcement.

113. Petitioners most ardently and respectfully come before this Court seeking relief from a blatantly oppressive governmental measure that would deprive them of their livelihoods, violate their rights, and cause suffering for them, their families, and thousands of other persons living and working on the island.

## **PRAYER**

**WHEREFORE**, in view of the foregoing, it is most respectfully prayed of this Honorable Court that this petition be given DUE COURSE and that:

(a) Upon the filing of this petition, a TEMPORARY RESTRAINING ORDER (TRO) and/or a WRIT OF PRELIMINARY PROHIBITORY INJUNCTION be immediately issued RESTRAINING and/or ENJOINING the respondents, and all persons acting under their command, order, and responsibility from enforcing a closure of Boracay Island or from banning the petitioners, tourists, and non-residents therefrom, and a WRIT OF PRELIMINARY MANDATORY INJUNCTION directing the respondents, and all persons acting under their command, order, and responsibility to ALLOW all of the said persons to enter and/or leave Boracay Island unimpeded;

(b) In the alternative, if the respondents enforce the closure after the instant petition is filed, that a STATUS QUO ANTE Order be issued restoring and maintaining the condition prior to such closure;

(d) After proper proceedings, a judgment be rendered PERMANENTLY RESTRAINING and/or ENJOINING the respondents, and all persons acting under their command, order, and responsibility from enforcing a closure of Boracay

Island or from banning the petitioners, tourists, and non-residents therefrom, and further DECLARING the closure of Boracay Island or the ban against petitioners, tourists, and non-residents therefrom to be UNCONSTITUTIONAL.

Other reliefs just and equitable under the premises are similarly prayed for.

Iloilo City for Manila, Philippines. April 24, 2018.

**NATIONAL UNION OF PEOPLE'S LAWYERS (NUPL)-Panay**

*Counsel for the Petitioners*  
2<sup>nd</sup> Floor, Centennial Building  
CPBC, Fajardo St., Jaro  
5000 Iloilo City

By:

**RENE C. ESTOCAPIO**

Roll of Attorneys No. 56433, April 29, 2009  
IBP No. 1017323 / January 3, 2018 / Iloilo City  
PTR No. 5801036 / January 3, 2018 / Iloilo City  
MCLE Compliance No. V-0005887, January 20, 2015  
[turin7893@yahoo.com](mailto:turin7893@yahoo.com)

**SULPICIO G. GAMOSA, JR.**

Roll of Attorneys No. 45466, May 23, 2001  
IBP No. 035272 / March 20, 2018 / Iloilo City  
PTR No. 5825763 / January 15, 2018 / Iloilo City  
MCLE Compliance No. V-0023202, August 4, 2016  
[sulpiciogamosajr@gmail.com](mailto:sulpiciogamosajr@gmail.com)

**ANGELO KARLO T. GUILLEN**

Roll of Attorneys No. 62919, May 6, 2014  
IBP Lifetime (O.R.) No. 1067693 / 1-10-17 / Iloilo City  
PTR No. 5811837 / 1-5-18 / Iloilo City  
MCLE Compliance No. V-0009596, August 5, 2015  
[angelokarlo87@gmail.com](mailto:angelokarlo87@gmail.com)

and

**NATIONAL UNION OF PEOPLES' LAWYERS (NUPL)**

*Co-counsel for the Petitioners*  
3/F Erythrina Building  
No. 1 Maaralin corner Matatag Sts.,  
Central District, Quezon City  
Telefax No: (632) 920 6660  
Email: [nupl2007@gmail.com](mailto:nupl2007@gmail.com)

By:

**NERI JAVIER COLMENARES**

IBP LR No. 010437- Quezon City  
PTR No. 5566289C- 1/4/18- Quezon City  
Roll of Attorneys No. 43060  
MCLE Exemption No. - 002613- 6/28/2017

**EPHRAIM B. CORTEZ**

IBP No. 021330 - 1/5/18 – Isabela  
PTR No. 5566291C- 1/4/18- Quezon City  
Roll of Attorneys No. 41366  
MCLE Compliance No. V-0019328 - 04/22/2016

**MARIA KRISTINA C. CONTI**

IBP LR No. 012641 - Batangas  
PTR No. 5609696 - 01/08/18 - Quezon City  
Roll of Attorneys No. 63574  
MCLE Compliance No. V-0019325 - 04/22/2016

**KATHERINE A. PANGUBAN**

IBP No. 020933 – 1/4/18 – Manila IV  
PTR No. 5521596 – 1/4/18 – Quezon City  
Roll of Attorneys No. 65486  
Admitted to the Bar June 2016

**COPY FURNISHED:**

**Rodrigo R. Duterte**

*President*

Office of the President  
Malacañang Complex  
J.P. Laurel Street, San Miguel  
Manila

**Salvador C. Medialdea**

*Executive Secretary*

Office of the Executive Secretary  
Bonifacio Hall  
J.P. Laurel St., San Miguel  
Manila

**Eduardo O. Año**

*Officer-in-Charge*

Office of the Secretary  
Department of the Interior and Local Government  
DILG-NAPOLCOM Center  
EDSA corner Quezon Avenue  
Quezon City

**Hon. Jose C. Calida**

*Solicitor General*

Office of the Solicitor General  
134 Amorsolo St., Legaspi Village  
Makati City

**EXPLANATION**

This pleading is being served/filed by Registered Mail, personal service being impracticable on account of the distance between the office of the undersigned and the office/residence of opposing counsel/party and/or the Court/Commission.

**ANGELO KARLO T. GUILLEN**