G.R. No. 199034 –GLORIA MACAPAGAL-ARROYO v. HON. LEILA M. DE LIMA, in her capacity as SECRETARY OF THE DEPARTMENT OF JUSTICE, and RICARDO A. DAVID, JR., in his capacity as COMMISSIONER OF THE BUREAU OF IMMIGRATION

G.R. No. 199046 - JOSE MIGUEL T. ARROYO v. SEC. LEILA M. DE LIMA, in her capacity as SECRETARY, DEPARTMENT OF JUSTICE, RICARDO V. PARAS III, in his capacity as CHIEF STATE COUNSEL, and RICARDO A. DAVID, JR., in his capacity as COMMISSIONER, BUREAU OF IMMIGRATION

Promulgated:

November 15, 2011

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DISSENTING OPINION

SERENO, *J.*:

When this matter was called this morning, it was clear that not one among the members of this Court was suggesting that petitioners have no constitutional rights that this Court must vigilantly protect. No one was saying that petitioners should not be granted any remedy. The bone of contention before the Court was, simply, whether to allow public respondents their right to due process by giving them the right to comment on the petition within a non-extendible period of five (5) days immediately after which oral arguments were to be heard and the prayer for a Temporary Restraining Order (TRO) immediately decided, as suggested by the minority, or, to deny respondents such right by presuming fully the correctness of all the allegations of the petitions, and thus grant the prayer for TRO. On this matter, the vote of this Court was 8-5[1] denying the right of public respondents to be heard before the grant of petitioners' prayer for a TRO.

[1] Dissenting were Justices Antonio T. Carpio, Jose C. Mendoza, Maria Lourdes P.A. Sereno, Bienvenido L. Reyes, Jr., and Estela M. Perlas-Bernabe.

A. The Right of the State to be Heard versus the Right Claimed by Petitioners

The Rules of Court and jurisprudence prescribe very stringent requirements before a TRO can be issued. Among these is the requirement that the TRO "may be granted only when: (a) the application or proceeding is verified, and shows facts entitling the applicant to the relief demanded…" (Rule 58, Section 4)

A petition that contains a false verification can have many consequences among which are: (a) the Petition can be dismissed or denied, (b) the person making the false verification can be punished for contempt of court, and (c) the person making the false verification can be punished for perjury.

So strong is the requirement of truthful allegations in pleadings filed before the Court that many adverse inferences and disciplinary measures can be imposed against a person lying before the Court. This requirement of truthfullness is especially important when a provisional remedy, and more so when the remedy is sought to be granted *ex-parte*, is under consideration by the Court. When on its face, the material averments of a pleading contain self-contradictions, the least that the Court should do, is consider the other side of the claim.

This is the situation with the Petition of former President Gloria Macapagal-Arroyo. It appears that she has given inconsistent, and probably untruthful statements before this Court.

In the instant Petition, she claims that:

> It is petitioner GMA's desire to consult with medical experts of her choice and to receive specialized care and medical attention from other institutions. Having been immobilized by a debilitating condition for the last few months, and having been subject to long operations and their complications, she seeks other experts' perspective and to receive optimum care to ensure that she will not be disabled for the rest of her life

> and that her recovery will no longer be impeded by complications, which she has unfortunately experienced for the last few months. (par. 4.18, p 31 of the Petition)
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> The inability of petitioner GMA to leave for abroad to alleviate, or at least, prevent the aggravation of her hypoparathyroidism and metabolic bone disorder has given rise to the danger that the said conditions afflicting petitioner GMA may become permanent and incurable. (par. 5.02 [d], p. 35 of the Petition)

However, her own attachments belie the immediate threat to life she claims.

First, her own attending physician, Dr. Juliet Gopez-Cervantes, certified that petitioner should fully recover from her spine surgery in six to eight months, barring any complications:

> This is to certify that Ms. Gloria Macapagal-Arroyo, 64 years old, female was confined at St. Like's Medical Center-Global City from July 25 to August 5, 2011 because of Cervical Spondylotic Radiculopathy secondary to mixed Degenerative Discs and Osteophytes with Multilevel Neural Canal Stenosis with Retrolisthesis C4C5 and C5C6.
>
> On July 29th, she underwent Anterior Cervical Decompression (Disectomy/Foraminotomy) and Fusion (ACDF) C3 to C7 with titanium locked plating/peek cages and demineralized bone matrix (DBM), which was performed by Dr. Mario R. Ver, an orthopedic spine surgeon.
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> On August 9th she was readmitted to St. Luke's because of implant failure. There was dislodgement of the titanium locked plate/screws and peek cages, secondary to adult idiopathic latent hypoparathyroidism and concomitant post-operative prevertebral infection.
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> On August 10th she underwent a second surgery by a surgical team headed by Dr. Mario R. Ver to remove the above-mentioned anterior cervical implants and to put new implants in place. Posterior instrumented fusion C3 to T2 using lateral mass titanium screws C3 to C6, titanium pedicle screws C7 to T2, with autologous bone graft from right posterior ilium was performed. A halo vest was applied in place.
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> On August 24th she underwent a third surgery, an anterior disectomy C7 to T1, "channel" copectomy C4 to C7 and fusion C3 to T1 using titanium mesh cage filed with autologous bone graft from the left anterior iliac crest (ICBG) and mixed with DBM. She was discharged ambulatory, with the halo vest in place, on September 2, 2011.
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> She was readmitted on September 14th for repeat CT scan, and on the same day the halo vest was removed and replaced with a Minerva Brace. She was discharged the following day. Subsequent X-Rays show there is some bone growth in the surgical site.

> Ms. Macapagal-Arroyo has metabolic bone disease and osteoporosis due to Hypoparathyroidism with electrolyte imbalance and Vitamin D deficiency. The Minerva Brace should remain in place for at least three months, and **barring any complications she should be fully recovered from her spine surgery in six to eight months**. Her metabolic bone disease needs lifetime maintenance treatment.[2]

This finding was also shared by Dr. Mario R. Ver, the same doctor who performed the surgeries on petitioner:

> Barring any complication she should be fully recovered from her cervical spine surgery six to eight months from the time of [discharge]. Her metabolic bone disease however needs lifetime maintenance.[3]

Second, petitioner's travel itinerary abroad, for which the instant provisional remedy is being sought, appears not solely for medical reasons as claimed. In the Letter dated 02 November 2011 of Atty. Anacleto M. Diaz, counsel for petitioner, only three countries were identified as part of petitioner's medical consultations, namely Singapore (24 October 2011, 31 October 2011 and 08 November 2011), Germany (17 November 2011) and Spain (14 November 2011).[4]

However, the travel authority issued by the House of Representatives on 19 October 2011 previously indicated other countries, specifically, the United States of America and Italy:

> Respectfully referred to the Honorable Secretary of Foreign Affairs, Manila, hereby amending the Travel Authority dated September 16, 2011, copy attached, of Honorable Gloria Macapagal-Arroyo to the United States of America and Germany and to include Singapore, Spain and Italy to seek medical consultations with specialists, for the period October 22 – December 5, 2011 instead of September 18 – October 11, 2011.. Honorable Macapagal-Arroyo will travel with her spouse, Atty. Jose Miguel T. Arroyo and to include her Aide-de-Camp, 1Lt. Jane B. Glova and private nurse, Ms. Maria Saharah V. Casuga.[5]

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[2] Medical Certificate dated 01 October 2011, Annex "I" of the Petition.
[3] Medical Certificate, Annex "F" of the Petition.
[4] Letter dated 02 November 2011, Annex "O" of the Petition.
[5] 1st Endorsement dated 19 October 2011 of Atty. Artemio A. Adasa, Jr., Officer-in-Charge of the Office of the Secretary General of the House of Representatives, Annex "M-2" of the Petition.

If there is indeed some medical urgency and necessity for petitioner to travel abroad, these should logically be limited only to locations where she seeks medical advice from known experts in the field. Why then should there be other countries of destinations that are included in her travel authority but not specifically mentioned for purposes of medical consultations? What is the non-medical purpose of her visit to these other countries?

Indeed, the inconsistencies of petitioner's travel purpose to these two countries were discussed in the Order dated 08 November 2011 Department of Justice, where it referred to the earlier travel authority issued by the House of Representatives.[6] The Order reads in part:

> 1. Second Endorsement dated September 1, 2011 of Speaker Feliciano Belmonte, Jr., to the Secretary of Foreign Affairs, of the Travel Authority granted to the Applicant **to participate in the "Clinton Global Initiative Meeting"**, aside from the medical consultations in New York, USA, and for medical consultation in Munich, Germany, both from September 28 to October 6, 2011, and **to participate in the Regional Consultation meetings of the International Commission Against Death Penalty** in Geneva, Switzerland on October 10-11, 2011. (p. 3 of the Order)
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> **In any case, the list of countries where Applicant seeks to be allowed to go is a travel tour of sorts, and which is patently incongruent with her purpose of seeking emergency medical treatment for a rare medical condition.** She seeks to travel, initially, to seven countries, six of them purportedly for medical consultations, and originally, two of them for conferences, in New York and Geneva. **This original itinerary of seven countries, before this Office required a definitive itinerary from Applicant, belies the so-called medical purpose or the emergency nature of Applicant's travel abroad. (p. 7 of the Order)** [emphasis supplied]

Contrary to her assertions of urgency and life-threatening health conditions, petitioner had expressed her intention to participate in two conferences abroad during her supposed medical tour. It seems incongruous for petitioner who has asked the Department of Justice and this Court to look with humanitarian concern on her precarious state of health, to commit

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[6] DOJ Order dated 08 November 2011, attached as Annex "1" of the Very Urgent Manifestation and Motion dated 09 November 2011.

herself to attend these meetings and conferences at the risk of worsening her physical condition.

If she has been shown to be prone to submitting to this Court documents belying her own allegations, this Court must pause, and at the very least, listen to the side of the Government. Indeed, petitioners' applications for authority to travel with the House of Representatives and the Endorsement of the Speaker of the House are crucial documentary evidence that should have been included and considered in the course of granting an *ex-parte* temporary restraining order, but these were unfortunately, not made available in their entirety by the petitioner in her Petition. That is why a two-sided hearing before the Court, and not a mere *ex-parte* proceeding should have occurred before the majority granted the TRO.

B. Petitioner Former President Arroyo Must Explain Why She Is Claiming That Her Constitutional Right Is Being Violated, When The Claimed Violation Is Being Caused By Her Own Administrative Issuance

To a certain degree, the doctrine on equitable *estoppel* should guide the hand of this Court. In its simplest sense, *estoppel* prevents a person from disclaiming his previous act, to the prejudice of another who relied on the representations created by such previous act. The logic behind the doctrine comes from the common societal value that a person must not be allowed to profit from his own wrong.

While this Court will not hesitate to protect former President Arroyo from the adverse effect of her own act – whose validity she now denounces – in order to protect her constitutional right, the minimum requirement of fairness demands that the government must be heard on the matter for two important reasons.

First, by adopting Department of Justice (DOJ) Circular No. 41, the Arroyo Government must be presumed to have believed in and implicitly represented that it is valid and constitutional. An explanation from her must be heard on oral argument on why this no longer seems to be the case. Such disclosure will reveal whether she is dealing in truth and good faith with this Court in respect of her allegations in her Petition, a fundamental requirement for her Petition to be given credence.

Second, it will reveal whether in fact her administration then believed that there was statutory basis for such issuance, which is important to resolving the question of the existence of a basis, including policy or operational imperatives, for the administrative issuance that is DOJ Circular No. 41.

Petitioner Arroyo comes before this Court assailing the constitutionality of the said Circular, which was issued by Alberto Agra, the Justice Secretary appointed by petitioner during her incumbency as president. This Circular thus bears the stamp of petitioner as President ordering the consolidation of the rules governing Watchlist Orders. Under the doctrine of *qualified political agency*, the acts and issuances of Agra are acts of the President and herein petitioner herself. As the Court recently ruled:

> The President's act of delegating authority to the Secretary of Justice by virtue of said Memorandum Circular is well within the purview of the doctrine of qualified political agency, long been established in our jurisdiction.
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> Under this doctrine, which primarily recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department; the heads of the various executive departments are assistants and agents of the Chief Executive; and, except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or

> reprobated by the Chief Executive, presumptively the acts of the Chief Executive."[7]

Thus, the acts which petitioner claims to have violated her constitutional rights are the acts of her alter ego, and consequently, her own.

C. This Court Must Face The Risk Of Flight Frontally, And Ensure That It Is Not Unduly Favoring An Individual To The Prejudice Of The State, And To Do This, Must At Minimum, Allow Government To Be Heard Before Granting The TRO

The court cannot evade the question that is uppermost in the minds of many – is this request for a TRO driven by petitioners' desire to evade the investigatory and judicial process regarding their liability for certain alleged criminal acts? If the risk of flight is high, then this Court must adopt either of the following approaches: (1) deny the right to travel, or (2) allow travel subject to certain restrictions.

It was suggested by a colleague that, anyway, the State is not powerless to compel the return of petitioners in case they will seek to evade the jurisdiction of our courts or the service of sentence. It can request assistance from Interpol, invoke courtesies of comity with other countries, and seek mutual legal assistance and extradition from countries with which the Philippines has such treaties. The problem with such a proposition is that the Philippines has not had much success in waging international campaigns to recover the Marcos ill-gotten wealth or to effect the arrest of many criminal escapees. Operationally, such processes are very difficult and at times, illusory. Should this Court then lend itself to the possibility of creating the dilemma the country will face if, indeed, petitioners will evade

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[7] *Judge Angeles v. Hon. Manuel Gaite*, G.R. No. 176595, 23 March 2011.

the jurisdiction of local courts, by not simply deferring for a week the issuance of the TRO until the State has been heard on the merits? Obviously, the Court is wrong not to take the path of prudence.

Petitioners are presumed innocent until proven guilty, that is true. This does not mean, however, that the State should be deprived of the opportunity to be heard on the question of whether it has certain rights that must be protected *vis-à-vis* persons under investigation during a preliminary investigation.

It has been held in one case[8] that *it is not only through court order that the right to travel may be impaired.* In fact, the Supreme Court itself has issued stringent regulations on the right to travel, including the denial of the travel authority request of employees who may be undergoing preliminary investigation. An important question thus must be asked: why is the majority not even willing to hear the government before issuing the TRO, when, in the supervision of judiciary employees, a mere administrative officer of the Supreme Court, and not a judicial officer, may deny the right to travel?

It is possibly incongruent for the Court to hinder the exercise of the DOJ Secretary's power to issue a Watchlist Order restricting the right to travel of a person subject of its preliminary investigation, when the Court itself strictly regulates the travels of its own personnel. In A. M. No. 99-12-0-SC, as revised, the Court regulates the foreign travels of all court personnel by requiring them to secure a travel authority before leaving.[9] Hence, no official or employee of the Supreme Court in particular and the Judiciary in general shall leave for any foreign country, whether on official

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[8] *Silverio v. CA*, G.R. No. 94284, 8 April 1991, 195 SCRA 760.

[9] "II. To REFER to the Chairmen of the Divisions for their appropriate action or resolution, for and in behalf of the Court En Banc, administrative matters relating to, or in connection with,: … (h) Foreign travels of Justices of the Court of Appeals and the Sandiganbayan, Judges of the Court of Tax Appeals and the Lower Courts, and the officials and personnel of such courts; and the recall or revocation of the travel authority granted, as well as any matter arising from such travel authority or its recall or revocation. …" (A. M. No 99-12-08-SC, as revised, effective 01 May 2003).

business or official time or at one's own expense without first obtaining permission from the Supreme Court.[10]

In fact, the Chief Justice recently reiterated this policy, in light of the repeated practice of court personnel of going to foreign countries without obtaining prior permission or belatedly filing their leaves upon their return.[11] Personnel of the lower courts are even required to obtain clearance as to pending criminal and administrative cases filed against them, if any,[12] and those who shall leave the country without travel authority issued by the Office of the Court Administrator shall be subject to disciplinary action.[13] In several cases, the Court had held administratively liable and disciplined a Clerk of Court,[14] Court Stenographer,[15] Stenographic Reporter,[16] Deputy Sheriff,[17] and a Utility Worker,[18] for travelling without the necessary court authority. That means that the pendency of even an administrative case is sufficient basis to deny the right to travel of court employees. This denial is effected by the withholding of the necessary endorsements by the Supreme Court's administrative officers.

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[10] SC Memorandum Order No. 14-2000 dated 06 November 2000.

[11] "NOW, THEREFORE, for consistency and uniformity and to protect the interest of the public service, the Court reiterates the policy of securing prior permission or authority from the Court for foreign travels of its officials and employees even at the travellers' expense. Application for foreign travel shall be coursed through and evaluated and recommended for appropriate action by the Chiefs of Offices for Supreme Court Officials and employees. Applications for leave of absence for travel outside the country without the required permission or authority shall forthwith be denied." (Memorandum Order No. 32-11 dated 20 September 2011)

[12] OCA Circular No. 49-2003 dated 20 May 2003, signed by then Court Administrator Presbitero J. Velasco, Jr.

[13] Id.

[14] Ms. Larizza Paguio-Bacani, the Branch Clerk of Court II of the Municipal Trial Court of Meycauayan, Bulacan, was found guilty of dishonesty by falsifying her Daily Time Records and leaving the country without the requisite travel authority, and was ordered suspended from the service for one (1) year, without pay. (*Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Paguio-Bacani*, A. M. No. P-06-2217 [Formerly, OCA IPI No. 06-2375-P] dated 30 July 2009, 594 SCRA 242)

[15] Raquel S. Bautista, Stenographer I of the Municipal Trial Court of Guiguinto, Bulacan, decided to work overseas, but failed to secure the required clearances for travel abroad because the job offered to her in Dubai was urgently needed. (*Reyes v. Bautista*, A. M. No. P-04-1873, 13 January 2005, 448 SCRA 95)

[16] Virginia G. Lim, a Stenographic Reporter of the Regional Trial Court of Makati City, Branch 135, was dismissed from the service, for among others, disregarding the judge's orders to transcribe the long-pending stenographic notes and choosing instead to go on leave, even when her application for leave has not been approved by the Office of the Court Administrator. (*Ibay v. Lim*, A. M. No. P-99-1309, 11 September 2000, 340 SCRA 107)

[17] Victorio M. Acuña, a Deputy Sheriff of the Metropolitan Trial Court of San Juan, was also dismissed from the service because he had left for Saipan to be a contract worker there, without securing permission from the Court. (*Recio v. Acuña*, A. M. No. P-90-452 and P-92-667, dated 07 April 1993, 221 SCRA 70)

[18] Rodrigo C. Calacal, a Utility Worker I of the Municipal Trial Court of Alfonso-Lista Aguinaldo, Ifugao, was reprimanded and warned for having left for Singapore from 15 May 2008 to 06 June 2008, without securing permission from the Office of the Court Administrator. (*OAS-OCA v. Calacal*, A. M. No. P-09-2670, 16 October 2009, 604 SCRA 1)

It appears that the Court, by its own administrative actions, has acknowledged the state's limited power to abridge the right to travel. At the very least therefore, the State must be heard on the extent of this limited power to regulate the right to travel.

The majority cites the right to life as an underlying value that its Resolution is trying to protect. Petitioner Arroyo's own documentary submissions however, belie the existence of any threat to such life. It also cites petitioner's right to travel as a primordial constitutional right that must be so zealously protected. The majority is completely bereft, however, of any explanation on why it will protect those rights through a premature TRO in the face of untruthful statements in the Petitions herein and when its own practice in its backyard is one of curtailment of judicial employees' own rights to travel. *The only proposition that the minority has posed in today's session is that the State first be heard before any decision to grant a TRO is reached.* Surely, that is fully conformable with the requirements of the Rules of Court before a TRO can be issued.

Considering there is absolutely no medical emergency that is evidenced by any of the documents submitted by petitioner Arroyo, the allegations on the matter remain but mere allegations, and do not satisfy the evidentiary requirements for a TRO than can be issued *ex-parte.*

IN VIEW THEREOF, I vote to: (a) defer action on the prayer for a Temporary Restraining Order; (b) order the public respondents to Comment on the consolidated Petitions no later than 21 November 2011; and (c) conduct oral arguments on 22 November 2011 at 2:00 p.m. Immediately thereafter, the prayer for a temporary restraining order will be decided.

MARIA LOURDES P. A. SERENO
Associate Justice