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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 18, 2011

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DISSENTING OPINION

SERENO, *J.*:

At this morning's special session called exclusively to deliberate on the pending incidents in the above-consolidated Petitions, the Court voted on several matters:

The first voting was on whether the Resolution dated 15 November 2011 granting the prayer for Temporary Restraining Order (TRO) by petitioners is to be reconsidered or not. The justices who voted on the 15 November 2011 Resolution maintained the same vote, 8-5.

The issue in the second voting, proposed by one of the members of the Court, was on whether the TRO issued by the Clerk of Court should be recalled for failure to comply with one of the conditions, Condition Number 2, imposed for the issuance of the TRO. Condition No. 2 reads:

> (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; (Emphasis supplied.)

On this matter, the voting was 7–6[1] finding that there was no compliance with the second condition of the TRO.

The third voting proceeded from the result of the second voting – whether, considering that the Court found that there was a failure to comply with a condition imposed by the earlier resolution, the Court should explicitly state that the TRO was thereby suspended in the meantime pending compliance with Condition Number 2. The Court, by a vote of 7-6, decided there was no need to explicitly state the legal effect on the TRO of the noncompliance by petitioners with Condition Number 2 of the earlier Resolution.

The fourth vote that was taken was on whether the Court would direct public respondents to show cause why they should not be held in contempt for failure to comply with the TRO and to comply therewith. The vote was unanimous.

The fifth vote was on whether public respondent DOJ Secretary should be ordered to also show cause why she should not be held in contempt for showing disrespect for the Court. The voting on this was 9-4.

The sixth voting was on whether to reset the schedule of the oral arguments. This was unanimously denied.

A. On the Motion for Reconsideration of the TRO

In the deliberation this morning, I had produced for the Court a list containing Watch List Orders (WLO) that had been revoked and lifted by the Department of Justice since 1991. It appears that all the Secretaries of Justice of former President Gloria Macapagal Arroyo ordered hundreds of

[1] The seven justices who voted for the majority includes Justices Antonio T. Carpio, Roberto A. Abad, Martin S. Villarama, Jr., Jose C. Mendoza, Maria Lourdes P. A. Sereno, Bienvenido L. Reyes, and Estela M. Perlas Bernabe.

Watch List Orders. By granting the TRO, this Court may effectively be contributing to the undermining of this country's administrative institutions without hearing the Republic of the Philippines in oral arguments for it to be given the chance to defend the DOJ's long institutional practice of issuing Watch List Orders.

Watch List Orders, Hold Departure Orders, Off-loading for being suspected as attempting to violate foreign employment laws, criminal laws such as anti-trafficking statutes, requiring travel authorities from all government employees before they are allowed to fly out are part and parcel of the running of our Republic called the Philippine State.

The majority is indicating, by its issuance of the TRO without hearing the side of government, that it is giving *prima facie* validation to petitioners' proposition that only a strict interpretation of Article 3, Section 6 of the Bill of Rights is allowed. Meaning, the only justification for a valid restriction on the right to travel should be found only in one of the three exceptions provided therein – public safety, national safety or public health. On the other hand, this Court cannot ignore a basic constitutional precept: the presumption of validity of official actions. Especially when the practice of issuing watch list orders, has been practiced for decades by the Department of Justice, and many other analogous practices has been observed as well by many other governmental agencies, including this court, through analogous restrictive practices. This Court cannot turn to a blind eye what is involved in running a government. OFWs will have to cause to complain about the restrictions being imposed on them by many government agencies before they can work abroad. Off-loaded passengers would give legal nightmares to the Bureau of Immigration. It might, indeed, render impossible the effective administration of justice of our country's laws. What this all means is that a full hearing must be conducted before this Court decides to grant a TRO to petitioners, none of whom, by their very own documents, are under any life-threatening, emergency, medical situation.

While in the end we may ultimately strike down the issuance of Watch List Orders by the Department of Justice or uphold such orders and additionally provide standards before the power to restrict travel of persons under preliminary investigation can be exercised, what is at stake this very day is a fundamental question of whether we should presume that officials can perform the functions they have been performing for ages – in order that we maintain order in the running of a country. Therefore, with all due respect, it is completely wrong for this Court to bend over backwards to accommodate the request of petitioners for a TRO to be issued *ex parte* without hearing the side of the government. Government must be asked whether it is even physically possible to maintain the infrastructure of our system of laws if administrative offices were not given the limited power to regulate the right to travel. The ability of the Philippine Republic to keep its territorial integrity may even hinge on that question. To what extent is this Court contributing to the weakening of the Philippine State?

It has been argued that this government is not without recourse to reach petitioners should they fail to return to the country, and that the appointment of a substitute to accept processes and notices on her behalf effectively precludes a defense based on her lack of physical presence within the country's jurisdiction. Should such eventuality happen, however, we just have to look at the sorry state of this country's many futile attempts to employ the "long arm of the law" in reaching those who have been accused of multitudes of crimes during the long years of Martial Law to realize that this argument is illusory.

When out of the country's jurisdiction, by being corporeally absent therefrom, public respondents' legal remedies against petitioners will be subject to the jurisdiction and the pleasure of the various countries where they will flee. Out of the countries that had been mentioned by petitioners to be subject of her medical tour, only two (2) of the countries cited have extradition treaties with the Philippines. It still needs verification whether

the extradition with Spain has already been rendered effective through concurrence to the same by the Senate.

The moment she flies out of Philippine air space, our country's ability to enforce its laws will now be subject to the wishes of a foreign government. A PhP2 Million Peso bond is crumbs for one who, if proven, has actually obtained multiples more from the country's coffers. Neither will the appointment of a substitute replace the effective justice that can be enforced only when a State has physical custody of a person who has been proven guilty of violation of the state laws. A conviction against her may lie as a formal judgment, but there may effectively be no service of sentence. That is of course, all premised on the theory that petitioners may ultimately be convicted for one of the crimes for which they are charged. That result can only add to the very long saga of our people's desperate attempts to try to redeem its self-respect by showing to the world that contrary to the common observation of outsiders, impunity is not allowed to reign in this country. Should the Court contribute to such possible despair by not waiting for the oral argument on 22 November 2011 before issuing a TRO?

The principal physician of former President Gloria Macapagal-Arroyo, Dr. Juliet Gopez-Cervantes, and her surgeon, Dr. Mario Ver, have all certified to her continuing recovery and her positive prognosis, especially after 6 to 8 months. There has been no allegation in her pleadings that those certifications are false, nor that her doctors are incompetent. They should then be believed by this Court that there is no medical emergency warranting an immediate flight. What is waiting four (4) more days from today, when oral arguments are conducted, compared with the possibility that there is genuine, and not just publicly-imagined intention, on the part of the petitioners to evade legal processes. This Court can afford to wait until 22 November 2011, without prejudicing any of the constitutional rights of the petitioner, considering the potentials that loom in the distance and the fears that weigh on the minds of our people - that justice will be again be

frustrated if the simple operation of bringing back an accused person from abroad, will prove to be impossible to effect, even by this Court.

In G.R. No. 197930, this Court denied Efraim Genuino's prayer for a TRO against Watchlist Order No. 2011-422, issued under the authority of the same DOJ Circular No. 41 that is the subject of these petitions. Genuino also cited constitutional grounds, although he did not allege any medical emergency. The Court denied the prayer because it wanted to await the Comment of respondent DOJ Secretary. Considering that petitioners herein are not under any medical emergency, as certified by petitioner Gloria Arroyo's own doctors, can this Court not just wait for the Comment and the oral arguments to be shortly conducted?

B. On the Show-Cause Order directed to a public respondent Leila de Lima For her public display of disrespect towards this Court.

This Court need not aggravate the present situation. The Court, *motu proprio,* even without the motion from petitioner's herein, is ordering public respondent De Lima to show cause why she should not be held for indirect contempt by showing disrespect to the Court. The majority has explained that this order is anyway, to just require an explanation from her, and is thus not out of the ordinary. I believe however, that to order her now to show cause for "showing disrespect to the Court" signals a message to the public that it is most unfortunate. It must be remembered that the failure to comply with the lawful order of this Court is already disrespect of this Court. If her her explanation regarding her failure to comply with the resolution of 15 November 2011 is already satisfactory, then the second item to explain is already rendered moot. On the other hand, if the explanation proves unsatisfactory, it already implies disrespect for this Court's orders. For she has said nothing that can be deemed disrespectful, independent of her statement that she would not comply with the 15 November 2011 Resolution

of this Court. But at this very sensitive juncture, when people's passions are highly inflamed, for the Court to show sensitivity to what it presumably perceives as disrespect unnecessarily feeds those passions. What is called for right now is utmost restraint. The Court should show that it has the ability to tolerate, to a limited degree, expressions of passion and deep beliefs in some fundamental ends or values, considering what is in the public thought right now. It is sad that such a show cause order might possibly only bring harm with no foreseeable good at all. Thus, I voted against the inclusion of such phrase in the Show-Cause Order.

C. Effectivity of the TRO

The majority, by a 7-6 voting, denied the minority's proposition that a resolution be issued including a phrase that the TRO is suspended pending compliance with the second condition of the 15 November 2011 Resolution. The majority argued that such a clarification is unnecessary, because it is clear that the TRO is conditional, and cannot be made use of until compliance has been done. It was therefore the sense of the majority that, as an offshoot of the winning vote that there was failure by petitioners to comply with Condition Number 2, the TRO is implicitly deemed suspended until there is compliance with such condition. Everyone believed that it would be clear to all that a conditional TRO is what it is, conditional.

Below is the relevant excerpt from the Special Power of Attorney dated 15 November 2011, the failed compliance of petitioners with Condition Number 2 in our Resolution dated 15 November 2011:

> That I, **GLORIA MACAPAGAL ARROYO,** of legal age, married, Filipino with residence at 14 Badjao Street, Pansol, Quezon City, do hereby name, constitute and appoint **ATTY. FERDINAND TOPACIO**, likewise of legal age, Filipino, with office address at Ground floor, Skyway Twin Towers, H. Javier St., Ortigas Center, Pasig, Metro Manila, as my legal representative in the Philippines and to be my true and lawful attorney-in-fact, for my name, place and stead, to do and perform the following acts and things, to wit:

1. To sign, verify, and file a written statement;

2. To make and present to the court an application in connection with any proceedings in the suit;

3. To produce summons or receive documentary evidence;

4. To make and file compromise or a confession of judgment and to refer the case to arbitration;

5. To deposit and withdraw any money for the purpose of any proceeding;

6. To obtain copies of documents and papers; and

7. Generally to do all other lawful acts necessary for the conduct of the said case. (Emphasis supplied.)

While this opinion was being written, Court Administrator and Acting Chief of the Public Information Office (PIO) Atty. Midas Marquez informed the press that the Temporary Restraining Order (TRO) was effective, i.e., "in full force and effect." Contrary to this interpretation, as stated, it was the understanding of a majority that the TRO is "suspended pending compliance" with our earlier Resolution. The operational ineffectivity of the TRO is implied – for it is a basic principle that the failure of petitioners to comply with one of the conditions in the Resolution dated 15 November 2011 is a jurisdictional defect that suspends, at the least, the effectivity of the TRO. Therefore, the TRO, until faithful compliance with the terms thereof, is legally ineffective. It was a human mistake, understandable on the part of the Clerk of Court, considering the way the TRO was rushed, to have issued the same despite non-compliance by petitioners with one of the strict conditions imposed by the Court. Nevertheless, good faith and all, the legal effect of such non-compliance is the same – petitioners cannot make use thereof for failure to comply faithfully with a condition imposed by this Court for its issuance.

The Court Administrator cum Acting Chief of the PIO is hereby advised to be careful not to go beyond his role in such offices, and that he

has no authority to interpret any of our judicial issuances, including the present Resolution, a function he never had from the beginning.

Furthermore, it is hereby clarified that it is mandatory for the Clerk of Court to ensure that there is faithful compliance with all the conditions imposed in our 15 November 2011 resolution, including our second condition, before issuing any certification that the compliance with the TRO has been made, and only then can the TRO become effective.

MARIA LOURDES P. A. SERENO
Associate Justice