

SUPREME COURT
MANILA
EN BANC

**BAYAN MUNA PARTY-LIST
REPRESENTATIVES CARLOS ISAGANI T.
ZARATE, et al,**

Petitioners,

versus -

PRESIDENT RODRIGO DUTERTE, et al,

Respondents.

GR NO. 252585

Consolidated with:

252578, 252579, 252580,
252613, 252623, 252624,
252646, 252702, 252726,
252733, 252736, 252741,
252747, 252755, 252759,
252765, 252768, 252767,
252802, 252809, 252903,
252904, 252905, 252916
and 252921

X - - - - - X

**MOTION FOR LEAVE
TO FILE ATTACHED OPPOSITION**

Petitioners in G.R. No. 252585, by counsel, most respectfully pray unto this Honorable Court for leave to file the attached Opposition to the Urgent Motion filed by the Office of the Solicitor General (OSG).

This Motion and its accompanying Opposition are not intended to delay this case but is being presented solely to serve the best interest of justice and to assist the Court in the complete resolution of the substantive issues.

Furthermore, the rights of Respondents will not be injured by these fair and reasonable Motion and Opposition.

RESPECTFULLY SUBMITTED on the 4th day of September 2020, Quezon City for the City of Manila.

By the Counsel for the Petitioners
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EXPLANATION

The foregoing Motion for Leave and Opposition will be personally filed with this Honorable Court and electronically served to the parties due to personnel constraints, except for ABRAHAN REY MONTECILLO ACOSTA and LAWRENCE A. YERBO, which copies were sent through registered mail.



MARIA CRISTINA YAMBOT

REPUBLIC OF THE PHILIPPINES
QUEZON CITY

AFFIDAVIT OF SERVICE

I, MARIA CRISTINA YAMBOT, of legal age, Filipino, with office address at

MAKABAYAN National Headquarters, Block 31 Lot 13 A, Bonifacio St. New Capitol Estates I Batasan Hills, Quezon City, after having been duly sworn to in accordance with law, depose and say:

On September 4, 2020, I served copies of the (i) **MOTION FOR LEAVE TO FILE ATTACHED OPPOSITION**; and (ii) **OPPOSITION**, both dated **September 2, 2020**, in **ZARATE vs. DUTERTE** (GR No.252585) and consolidated with GR Nos. **252578, 252579, 252580, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252768, 252767, 252802, 252809, 252903, 252904, 252905, 252916 and 252921**, pursuant to Rule 13 of the Rules of Court, as follows:

By electronic mail:

OFFICE OF THE SOLICITOR GENERAL

Counsel for all Respondents

OSG Anti Terrorism Act Team <osgateam@osg.gov.ph>

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By simultaneously sending an e-mail to the parties or to their counsel, copy furnishing them in the email filing the pleading, on September 2, 2020 using the email address maknational@gmail.com as evidenced by a screenshot of the Sent email.



Makabayan National <maknational@gmail.com>

Re: Calleja, et al. v. Executive Secretary, et al. GR. Nos. 252578-80, 252585, 252613, 252623-24, 252646, 252702, 252726, 252733, 252733, 252736, 252741, 252741, 252747, 252747, 252755, 252759, 252765, 252768, 252767, 252802, 252809, 252903,

5 messages

Makabayan National <maknational@gmail.com>

Fri, Sep 4, 2020 at 7:51 AM

To: "edcel.lagman@house.gov.ph" <edcel.lagman@house.gov.ph>, "karina_lagman@yahoo.com" <karina_lagman@yahoo.com>, "mstamaria2016@gmail.com" <mstamaria2016@gmail.com>, "maknational@gmail.com" <maknational@gmail.com>, "callejalaw@callejalaw.com" <callejalaw@callejalaw.com>, "prolaborlegalassistance@yahoo.com" <prolaborlegalassistance@yahoo.com>, "rpjlawoffice@yahoo.com" <rpjlawoffice@yahoo.com>, "ahrc.law@ateneo.edu" <ahrc.law@ateneo.edu>, "sanlakascoalition@gmail.com" <sanlakascoalition@gmail.com>, "sonnymatula.ffwpresident@yahoo.com" <sonnymatula.ffwpresident@yahoo.com>, "egulaw@gmail.com" <egulaw@gmail.com>, "algamar.latiph@gmail.com" <algamar.latiph@gmail.com>, "C.O.M.partnerslaw@gmail.com" <C.O.M.partnerslaw@gmail.com>, "rodeltaton@gmail.com" <rodeltaton@gmail.com>, "clclphilippines@gmail.com" <clclphilippines@gmail.com>, "lvliban@gmail.com" <lvliban@gmail.com>, "Abraham@AcostaLaw.ph" <Abraham@acostalaw.ph>, "centerlaw@protonmail.com" <centerlaw@protonmail.com>, "amcruz@ateneo.edu" <amcruz@ateneo.edu>, "nuplncr_2007@yahoo.com" <nuplncr_2007@yahoo.com>, "lrckskfoeph@gmail.com" <lrckskfoeph@gmail.com>, "publicinterestlawcenter@gmail.com" <publicinterestlawcenter@gmail.com>, "fojalaw.email@gmail.com" <fojalaw.email@gmail.com>, "sheformento.alg@gmail.com" <sheformento.alg@gmail.com>, "dsl@dargonlawfirm.com" <dsl@dargonlawfirm.com>, "dioknolawcenter@gmail.com" <dioknolawcenter@gmail.com>, "nupl2007@gmail.com" <nupl2007@gmail.com>, "emram@globelines.com.ph" <emram@globelines.com.ph>

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Gentlemen:

E-serving and please find attached (i) Motion for Leave to File Attached Opposition dated September 4, 2020, and (ii) Opposition To The Urgent Motion To Cancel Oral Arguments dated September 4, 2020.

Please acknowledge receipt of this email. Thank you.

Respectfully,
Counsel for the Zarate Petition (GR No. 252585)

By: Atty. Maria Cristina Yambot
MAKABAYAN National Headquarters
Block 31 Lot 13 A. Bonifacio St., New Capitol Estates I, Batasan Hills, 1126 Quezon City
Telephone: (02) 77550890
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2 attachments

Motion for Leave.pdf
125K

Opposition to the Urgent Motion to Cancel Oral Arguments.pdf
322K

Foja Law Office <fojalaw.email@gmail.com>

Fri, Sep 4, 2020 at 9:15 AM

To: Makabayan National <maknational@gmail.com>

Cc: "edcel.lagman@house.gov.ph" <edcel.lagman@house.gov.ph>, "karina_lagman@yahoo.com" <karina_lagman@yahoo.com>, "mstamaria2016@gmail.com" <mstamaria2016@gmail.com>, "callejalaw@callejalaw.com" <callejalaw@callejalaw.com>, "prolaborlegalassistance@yahoo.com" <prolaborlegalassistance@yahoo.com>, "rpjlawoffice@yahoo.com" <rpjlawoffice@yahoo.com>, "ahrc.law@ateneo.edu" <ahrc.law@ateneo.edu>, "sanlakascoalition@gmail.com" <sanlakascoalition@gmail.com>, "sonnymatula.ffwpresident@yahoo.com" <sonnymatula.ffwpresident@yahoo.com>, "egulaw@gmail.com" <egulaw@gmail.com>, "algamar.latiph@gmail.com" <algamar.latiph@gmail.com>, "C.O.M.partnerslaw@gmail.com" <C.O.M.partnerslaw@gmail.com>, "rodeltaton@gmail.com" <rodeltaton@gmail.com>, "clclphilippines@gmail.com" <clclphilippines@gmail.com>, "lvliban@gmail.com" <lvliban@gmail.com>, "Abraham@AcostaLaw.ph" <Abraham@acostalaw.ph>, "centerlaw@protonmail.com" <centerlaw@protonmail.com>, "amcruz@ateneo.edu" <amcruz@ateneo.edu>, "nuplncr_2007@yahoo.com" <nuplncr_2007@yahoo.com>, "lrckskfoeph@gmail.com" <lrckskfoeph@gmail.com>, "publicinterestlawcenter@gmail.com" <publicinterestlawcenter@gmail.com>, "sheformento.alg@gmail.com" <sheformento.alg@gmail.com>, "dsl@dargonlawfirm.com" <dsl@dargonlawfirm.com>, "dioknolawcenter@gmail.com" <dioknolawcenter@gmail.com>, "nupl2007@gmail.com" <nupl2007@gmail.com>, "emram@globelines.com.ph" <emram@globelines.com.ph>

Acknowledging receipt of your email. Thank you.

Sincerely,

And by Registered Mail:

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LAWRENCE A. YERBO

No. 74 Pit-os, Talamban, Cebu City

By depositing copies thereof in a sealed envelope plainly addressed to them, with postage fully prepaid, as evidenced by the Registry Receipt Nos. attached hereto after the name of the addressee, and with instructions to the postmaster to return the mail to the sender after 10 days if undelivered.

Quezon City, September 4, 2020.


MARIA CRISTINA YAMBOT
Affiant

SUBSCRIBED AND SWORN to before me this September 4, 2020 at QUEZON CITY, affiant exhibiting to me the following competent proof of identification: SSS ID No. 33-8726585-3

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Series of 2020

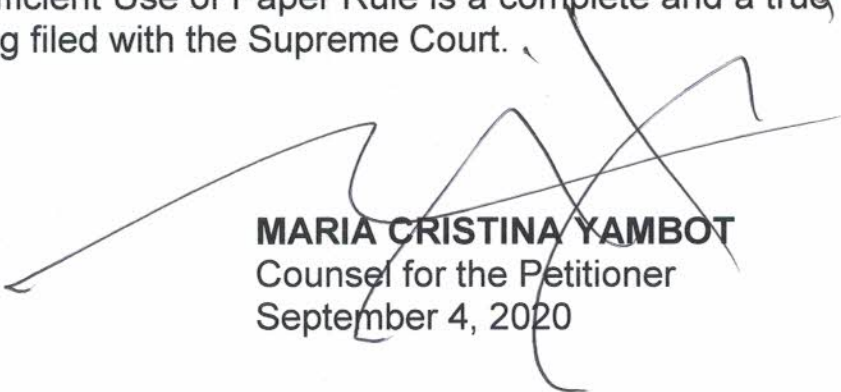
ATTY. JOSE FLORO P. CRISOLOGO
NOTARY PUBLIC
Adm. Matter No. NP-023 (2020-2021)
PTR No. 9270054-C / Jan. 2, 2020 / Q.C.
MCLE Compliance No. VI-0017262
IBP Lifetime No. LRN 03688 / Q.C.
Attorney Roll No. 49462
TIN No. 111-979-403
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VERIFIED DECLARATION

=====


I, **MARIA CRISTINA YAMBOT**, Filipino, of legal age, and with address at the MAKABAYAN National Headquarters, Block 31 Lot 13 A. Bonifacio St., New Capitol Estates I, Batasan Hills, 1126 Quezon City, under oath, do hereby attest and declare that the electronic copy of the (i) MOTION FOR LEAVE TO FILE ATTACHED OPPOSITION, AND (II) OPPOSITION, in the case of BAYAN MUNA PARTY-LIST REPRESENTATIVES **CARLOS ISAGANI T. ZARATE, et al** vs. DUTERTE, et al, (GR No. 252585) consolidated with GR Nos. **252578, 252579, 252580, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252768, 252767, 252802, 252809, 252903, 252904, 252905, 252916 and 252921**, and hereto submitted electronically in accordance with the Efficient Use of Paper Rule is a complete and a true copy of the same pleading filed with the Supreme Court.



MARIA CRISTINA YAMBOT
Counsel for the Petitioner
September 4, 2020

SUBSCRIBED AND SWORN to before me on this September 4 2020, affiant exhibited to me her SSS I.D. No. 33-8726585-3, which is a competent proof to establish her identity.

Doc. No. 207;
Page No. 74;
Book No. XII;
Series of 2020.



ATTY. JOSE FLORO P. CRISOLOGO
NOTARY PUBLIC
Adm. Matter No. NP-023 (2020-2021)
PTR No. 9270054-C / Jan. 2, 2020 / Q.C.
MCLE Compliance No. VI-0017262
IBP Lifetime No. LRN 03688 / Q.C.
Attorney Roll No. 49462
TIN No. 111-979-403
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252904, 252905, 252916
and 252921

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**OPPOSITION
TO THE URGENT MOTION TO CANCEL ORAL ARGUMENTS**

Petitioners in G.R. No. 252585, by counsel, most respectfully register their Opposition to the Urgent Motion filed by the Office of the Solicitor General (OSG) praying for the cancellation of the conduct of oral arguments, in court or otherwise.

1. On August 24, 2020, Petitioners in G.R. No. 252585 (Zarate Petition) received through electronic mail the Urgent Motion bearing the same date.

2. Respondents cite four grounds for doing away with oral arguments in whatever mode, namely, that the rule on hierarchy of courts will be violated, that the Petitions allegedly failed to satisfy the requisites of judicial review, that “the conduct of oral arguments is not mandatory,” and that it is “unsafe and impractical.”

3. Petitioners note that the first two are merely reiterations of the Respondents arguments in their Consolidated Comment. In essence, these are arguments which require the Court and the Parties to delve into the procedural

issues and substantive merits of the Petitions. Petitioners reiterate their valid locus standi and that they have fulfilled the Court's procedural requisites such as ripeness, justiciability and hierarchy of courts, although these are best argued in a Reply to the Comment or in the Memorandum, should this Honorable Court require the submission, instead of being lengthily discussed in this "Opposition to the Motion to Cancel Oral Arguments".

4. The first and second grounds are issues which must be threshed out in full Court deliberations. In particular, it will be highly irregular if substantive issues are disposed of upon a mere "urgent motion" ostensibly for the dispensing of a procedural matter, in particular, how the Court is to conduct the deliberations. Thus, we return to—and fully agree with—the Order of the Honorable Court directing the conduct of oral arguments.

5. It should be noted that while the Motion only specifically prays for the cancelation of the oral arguments or the adoption of the State's proposed procedure in lieu of oral arguments, it also reiterates Respondents' prayer for the "outright dismissal" of the consolidated Petitions.

6. It should also be noted that of the four grounds cited by Respondents, only the latter two have the rational nexus with the conduct of oral arguments.

7. On these two points, Respondents are mistaken.

Oral arguments can be held with full compliance with minimum health standards against infection and spread of the novel coronavirus

8. Petitioners submit that, contrary to Respondents' belief, conducting the oral arguments *per se* does not pose an increased risk of anyone contracting COVID-19. **The conduct of oral arguments is not "unsafe and impractical."**¹

9. It is unthinkable that the Honorable Court will fail to implement minimum health standards and risk the health of court personnel during the course of in-court oral arguments. Indeed, the Supreme Court in its various issuances have set these standards and enjoined all users of the Court, at all levels, to strictly observe them.

10. Petitioners in G.R. No. 252585, for their part, undertake that they will strictly follow these protocols, as they always do in all their activities, whether related to this Petition or otherwise.

¹ Paragraphs 29 to 38 of the Urgent Motion

11. **It is therefore possible for the conduct of in-court oral arguments that is consistent with the said minimum health standards.** For certain, the Court will implement these precautions, to name just a few:

- a. proper mask wearing imposed from the first point of entry into the Supreme Court premises, and at all times inside the building including the Session Hall;
- b. temperature check prior to entry, and those having temperature 37.8°C and above or who exhibit symptoms will be refused entry;
- c. only those whose physical presence is necessary will be allowed entry, with the Session Hall at a capacity that enables everyone to practice the necessary health protocols; and
- d. frequent hand washing and disinfection of the Session Hall and common areas.

12. Petitioners note that all these are precautions already contained in the issuances on *Rising Cases of COVID-19 Infection*,² *Health Guidelines Due to COVID-19 Cases*,³ and in several others issued by the Court *En Banc* and the Office of the Court Administrator.

13. Respondents want to portray that no mass gathering is allowed in the Philippines when in truth they have been allowing many mass gatherings, other than the *mananita* party of Gen. Debold Sinas. Respondents allow mass gatherings on what they consider important, such as the thousands of people flocking to pay their taxes in BIR offices last April, hundreds of workers in mining operations⁴ as well as thousands of factory floors, and the thousands of people forced to gather during rush hours waiting for a transport because Respondents failed to effectively respond to the COVID pandemic with competence.

14. Petitioners are not saying that the above gatherings are not important. Rather we are asserting that oral arguments to thresh out the issues related to the most draconian law ever passed in Philippine history are as important as these other mass gatherings allowed by Respondents.

15. **It is also possible for remote oral arguments to be conducted by teleconferencing and/or videoconferencing.** As the Honorable Court has

² Administrative Circular No. 31-2020

³ OCA Circular No. 101-2020

⁴ i.e. DENR Memorandum Order 2020-004 on "Guidelines for the Resumption of Mining and Mineral Processing Operations during GCO" dated May 8, 2020 provides the need for physical distancing in mining operations. The DENR, however, allows an exception to the physical distancing requirement when it stated under Sec. 4 (g) that "In activities that requires closer distancing between workers, risk assessment shall be conducted and appropriate engineering and administrative measures shall be implemented".

authorized lower courts, through several issuances,⁵ to conduct hearings via videoconference, the High Court itself can conduct oral arguments remotely.

16. Of course, all participants in remote oral argumentation, for all parties and the High Court, should also follow the health protocols and standards against COVID-19. Therefore, the Office of the Solicitor General is not required to all gather in a single space, or to oblige the personal appearance of senior citizens, or to even leave their homes. If a mass gathering cannot be avoided, it is not impossible to use an appropriate or well-ventilated area. Again, they should wear masks properly and other personal protective gear, maintain physical distancing, wash hands, disinfect spaces, and strictly implement all health protocols.⁶

17. The Solicitor General should update itself in current developments.⁷ High courts and lower courts in several jurisdictions the world over are now conducting hearings and remote argumentation by teleconferencing or videoconferencing, either fully remote or with limited in-person participation.

18. The Supreme Court of the United States, for instance, has resumed conducting oral arguments by teleconference in mid-April, *a few days after the April 4 report cited by the Solicitor General*.⁸ In its April 17 *Guidance*, it announced that “Some of the cases scheduled for March and April have been rescheduled for telephonic argument in May. The remainder of the cases that had been scheduled for March and April will be scheduled for argument during the October 2020 Term.”⁹

19. High courts in Europe and Asia, such as the supreme courts of the United Kingdom, Brazil, China, India, and Singapore also have resorted to remote hearings and oral argumentation since the COVID-19 pandemic.¹⁰

20. Back here in our country, data from the High Court itself has demonstrated that videoconferencing *is* possible, even successful at a high rate

⁵ Such as OCA Circular No. 130-2020, *Authority of All-Single Sala Courts to Conduct Videoconferencing Hearings*

⁶ Paragraphs 36 and 37 of the Urgent Motion

⁷ Paragraph 34 of the Urgent Motion

⁸ Press Release dated April 13, 2020 announcing that “[t]he Court will hear oral arguments by telephone conference on May 4, 5, 6, 11, 12 and 13 in a limited number of previously postponed cases,”

https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-13-20 (Last accessed on August 31, 2020.) Also in the April 30 Release (“Media Advisory Regarding May Teleconference Argument Audio,”

https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-30-20. Last accessed on September 1, 2020.)

⁹ *Guidance Concerning Clerk’ Office Operations* (Last accessed on September 1, 2020.)

¹⁰ *In the UK the Covid-19 lockdown has accelerated the use of virtual court hearings, but will it bring permanent changes to the judicial process?*, Fide (Fundación para la Investigación sobre el Derecho y la Empresa) (Last accessed on August 31, 2020.)

of 85%.¹¹ For sure, technological glitches will always arise, but they are not viewed by the Judiciary as barriers preventing it from conducting its constitutional functions, and the Office of the Solicitor General should adopt the same outlook. They should not be raised as high walls preventing the people from seeking recourse from the courts and expecting that their right to be informed and to participate in public discourse will be promoted.

21. To reiterate, it is not the conduct of an oral arguments that spreads the novel coronavirus, but the non-observance of the minimum health standards to prevent infection and minimize risks. **Petitioners maintain that holding oral arguments on the petitions assailing the Anti-Terrorism Act of 2020 is not inconsistent with the fight against COVID-19.**

The conduct of oral arguments is essential for complete and transparent deliberations into the constitutionality of the Anti-Terrorism Act of 2020

22. It is true that the oral arguments are not mandatory under the Rules, as pointed out by Respondents.¹² However, the Court *deemed it necessary* under the circumstances and thus, in the exercise of its discretion under its Internal Rules, issued its August 11 Order.

23. The Order of the Honorable Court for the conduct of oral arguments, therefore, is consistent with its Internal Rules and the Rules of Court. More importantly, it is consistent with the mandate of the 1987 Constitution which puts premium on information on matters of public concern as one of the rights of the people, and an indispensable one towards nation-building.¹³

24. To date, 31 petitions have already been filed assailing the constitutionality of the Anti-Terrorism Act of 2020. Petitioners came from Luzon, Visayas, and Mindanao, and from various sectors of Philippine society—the youth, women, social media representatives, media practitioners, the religious, academics, human rights workers, activists, progressive lawmakers, the political opposition, lawyers, several framers of the Constitution, and to name a few. More petitions could be filed, making the Anti-Terrorism Act of 2020 one of the most contested, if not *the* most contested law in Philippine history.

25. This fact alone indicates that the issues surrounding the law have attracted the attention of a vast portion of the country and is one of the foremost national issues occupying the minds of Filipinos, even in the midst of the overwhelming and long-drawn-out health and economic crises. Rightly

¹¹ OCA Circular No. 130-2020

¹² Paragraphs 19 and 20 of the Urgent Motion

¹³ Section 7, Article III and Section 24, Article II

so, as the provisions of the Anti-Terrorism Act of 2020 and the vast powers it grants to law enforcement agents have extensive effects on the personal and political lives on every single Filipino.

26. Filipinos *want* to be involved in the deliberations of the Anti-Terrorism Act, even just by tuning in to the radio, television, or streaming feed. They want to hear and see why Petitioners say that the Anti-Terrorism Act presents a multitude of threats to their freedoms, and how the government would defend the law. At the end of every session, they would want to use all they have learned from the proceedings, and formulate, affirm, or amend their own thoughts on the issues and then contribute to another's. The debates before the Court pave the way for a robust public discourse not only on the Anti-Terrorism Act in particular but also on the general issues of democracy, human rights, and other issues greatly affecting the people, consistent with the tenets of the Constitution.

27. This is how the conduct of oral arguments will greatly contribute to the development of public discourse on a matter of great public concern. This is how the proceedings before the Honorable Court will better serve the tenets of public information and people's participation, as mandated by the Constitution.

28. We are certain that this is one of the factors that the Honorable Court considered when it ordered the conduct of oral arguments. This factor, the Respondents must never shy away from.

29. As the Court has aptly said, "The Constitution and our laws are not suspended, and our courts are not shutting down in times of emergencies."¹⁴

30. To this, Petitioners add: The pandemic will not prevent us from doing our duties as citizens and vanguards for human rights. We may be interrupted by the need to wash our hands frequently or by audio and video lags. We may be a meter apart from each other. But for Petitioners, we are ready to argue our case, Your Honors.

THE FOREGOING CONSIDERED, Petitioners respectfully pray that the Honorable Court:

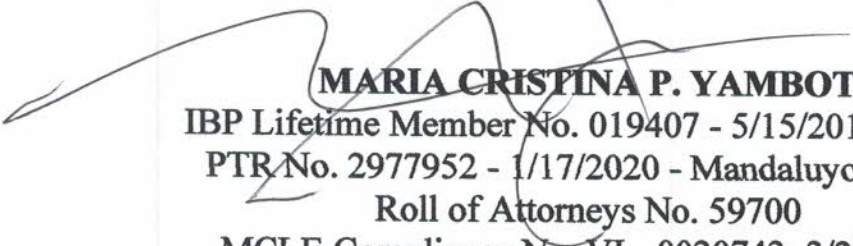
1. Deny Respondents' Urgent Motion and
2. Proceed with the oral arguments per its August 11, 2020 Order and set, in the soonest time possible, the dates thereof and that for the Preliminary Conference.

¹⁴ Administrative Circular No. 31-2020

All reliefs just and equitable under the premises are also prayed for.

RESPECTFULLY SUBMITTED on the 4th day of September 2020, Quezon City for the City of Manila.

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EXPLANATION

The foregoing Motion for Leave and Opposition will be personally filed with this Honorable Court and electronically served to the parties due to personnel constraints, except for ABRAHAN REY MONTECILLO ACOSTA and LAWRENCE A. YERBO, which copies were sent through registered mail.



MARIA CRISTINA YAMBOT