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SUPREME COURT
Manila

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OFFICE OF THE SOLICITOR GENERAL

**CHRISTIAN S. MONSOD,
IBARRA M. GUTIERREZ III,
MARIA CIELO D. MAGNO,
IMELDA M. NICOLAS, KATRINA
C. MONSOD, RAY PAOLO J.
SANTIAGO, HONORIO A.
POBLADOR III, AUGUSTO C.
LAGMAN, VICENTE R. ROMANO
III, REX C. DRILON II, AND
MIGUEL V. JUGO,**

Petitioners,

- versus -

G.R. NO. 269964

w/ 270599

**OFFICE OF THE VICE
PRESIDENT, as represented by
HONORABLE VICE PRESIDENT
SARA Z. DUTERTE, OFFICE OF
THE EXECUTIVE SECRETARY,
as represented by HONORABLE
EXECUTIVE SECRETARY LUCAS
P. BERSAMIN, AND
DEPARTMENT OF BUDGET AND
MANAGEMENT, as represented
by HONORABLE SECRETARY
AMENAH F. PANGANDAMAN,**

Respondents.

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COMMENT

RESPONDENTS, through the **OFFICE OF THE SOLICITOR GENERAL ("OSG"),** respectfully submit this

Comment in compliance with the Honorable Court's Resolution dated 14 November 2023,¹ and state:

STATEMENT OF THE CASE

1. The subject Petition for *Certiorari* seeks to declare the release of the amount PhP125 million from the Contingent Fund to respondent Office of the Vice President ("OVP") as unconstitutional for allegedly violating Sections 1 and 25(5) of Article VI and Section 1 of Article XI of the 1987 Constitution. Petitioners also consequently pray that the Honorable Court order the OVP to return the PhP 125 million to the government treasury.

STATEMENT OF ANTECEDENT FACTS AND PROCEEDINGS

2. On 30 December 2021, then President Rodrigo R. Duterte signed into law Republic Act No. 11639 or the General Appropriations Act of 2022 ("2022 GAA").² The 2022 GAA amounted to PhP 5.024 trillion and included expenditures for projects related to the country's recovery from the COVID-19 pandemic and recovery operations after Typhoon Odette.³

3. Under Clause XXXIX of the 2022 GAA, Congress appropriated a Contingent Fund in the amount of PhP7 billion. In the PhP7 billion appropriation, PhP4.5 billion was allotted for Maintenance and Other Operating Expenses and PhP2.5 billion for Capital Outlays.

4. Congress created the Contingent Fund to fund subsidies for contingencies. It operates as a floating fund source for multiple programs, projects, or activities⁴ specifically limited by its Special Provision. Under Special Provision No. 1, the fund was made to cover requirements of

¹ Received by the OSG on 27 December 2023. Subsequently, on 05 January 2024, Respondents filed a Motion for Extension praying that the period to file the Comment be extended by thirty (30) days from 06 January 2024 or until 05 February 2024.

² "Signing of the General Appropriations Act of 2022 and the Department of Migrant Workers Act," <https://rtvm.gov.ph/signing-of-the-general-appropriations-act-of-2022-and-the-department-of-migrant-workers-act/> (Last accessed: 04 January 2024).

³ *Id.*

⁴ *Belgica v. Executive Secretary* G.R. No. 210503, 08 October 2019.

new or urgent activities or projects of national government agencies as well as GOCCs and LGUs, **“such as, but not limited to the following:** (i) legal obligations of the government arising from final and executory decisions of competent authorities, such as compromise agreements, arbitral awards, mediation settlement agreement, and professional services in connection thereto; (ii) requirements of newly created offices; or (iii) deficiencies in the appropriations for local and external travels of the President of the Philippines.” It also provides that, while the fund is a source for contingencies as defined, in no case shall it be used to fund the “purchase of vehicles, including any improvement thereon.”

5. Likewise relevant to the present dispute is the provision on Confidential Funds found under Section 83 under the General Provisions of the 2022 GAA. The provision, which recurs in every appropriation act, defines confidential expenses as those related to “surveillance activities in civilian government agencies that are intended to support the mandate or operations of the agency” and instructs that the “implementation of its release shall be subject to COA-DBM-DILG-GCG-DND J.C. No. 2015-01 dated 08 January 2015 (“Joint Circular No. 2015-01”) and such other guidelines issued thereon.”

6. The 2022 GAA served as a transition budget between the term of the previous President Rodrigo R. Duterte and Vice-President Leni G. Robredo, and now incumbent President Ferdinand R. Marcos, Jr. and Vice-President Sara Z. Duterte (“Vice-President Duterte”), who were both elected in the May 2022 National Elections.

7. On 22 August 2022, Vice-President Duterte wrote to Respondent Secretary Amenah F. Pangandaman (“Secretary Pangandaman”) of the Department of Budget and Management (“DBM”) to request for the release, among others, of Confidential Funds in the amount of PhP250 million (“22 August 2022 OVP Letter”).⁵ The Confidential Funds were intended to be used for the “safe implementation of the various projects and activities under the Good Governance

⁵ Office of the Vice President Letter dated 22 August 2022, ANNEX “1.”

[P]rogram and the conduct of official engagements and functional representation in international and domestic events as instructed by the President.”⁶ The foregoing is in line with the current direction of the OVP to focus on and formulate programs, projects, and activities relevant to the national security and peace and order of the country.

8. The DBM, in a Letter dated 15 September 2022, communicated with the OVP to ask for further documents in support of its request, namely, a Physical and Financial Plan in accordance with Section 4.2 of Joint Circular No. 2015-01.⁷

9. The OVP, in a Letter dated 19 September 2022, complied with the DBM request and submitted: (1) Financial Accountability Report as of 31 August 2022; (2) Copy of the submitted computation in forecasting the requirement for medical assistance; and (3) Physical and Financial Plan.⁸

10. After receipt of the required documents and evaluation of the 22 August 2022 OVP Letter, the DBM submitted on 18 October 2022 to the Office of the Executive Secretary (“OES”) a Memorandum for the President, recommending a grant of Php125 million only, considering that the first half of the 2nd semester of FY 2022 had passed.⁹ The DBM, in the same Memorandum, identified the Contingent Fund as the fund source for the OVP Request.

11. On 28 November 2022, the OES, through Executive Secretary Lucas P. Bersamin (“Executive Secretary Bersamin”), released a Memorandum granting the release of the Php125 million from the Contingent Fund to the OVP with the condition that funds are available and the provisions of Section 83 of the 2022 GAA and Joint Circular No. 2015-01, and other pertinent budgetary and accounting, auditing laws and rules and regulations shall be complied with.¹⁰

⁶ *Id.*

⁷ Department of Budget and Management Letter dated 15 September 2022, ANNEX “2.”

⁸ Office of the Vice President Letter to the Department of Budget and Management dated 19 September 2022, ANNEX “3.”

⁹ Department of Budget and Management Memorandum for the President, ANNEX “4.”

¹⁰ ANNEX “5.”

12. Subsequently, on 13 December 2022, the DBM issued Special Allotment Release Order (SARO) No. BMB-CC-22-0012004 to the OVP for the requested Confidential Funds of PhP125 million to be sourced from the Contingent Fund.¹¹

13. Nearly a year later, on 13 November 2023, respondents, through the OSG, received the present Petition for *Certiorari*. The Petition assails the release of PhP125 million to the OVP, citing its emergence as an issue during the 2024 national budget deliberations.

14. On 27 December 2023, respondents, through the OSG, received the Honorable Court's Resolution dated 14 November 2023 directing them to file their Comment. Due to the complexity of the issues and the need to coordinate and gather evidence to draft their Comment, respondents filed a Motion for Extension on 05 January 2024, praying for a further period of thirty (30) days to file their Comment, or until 05 February 2024.

15. Hence, this Comment.

**GROUND FOR THE DISMISSAL OF THE
PETITION FOR CERTIORARI**

I.

**PETITIONERS HAVE NO *LOCUS STANDI* TO
FILE THE INSTANT PETITION.**

II.

**THE MATTER IS NOT RIPE FOR
ADJUDICATION. THE COMMISSION ON AUDIT
(COA) HAS PRIMARY JURISDICTION OVER
THE SUBJECT MATTER OF THE CASE.**

¹¹ Special Allotment Release Order No. SARO-BMB-CC-22-0012004, ANNEX "6."

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III.

THE DIRECT FILING OF THE PETITION BEFORE THE HONORABLE COURT CONTRAVENES THE DOCTRINE OF HIERARCHY OF COURTS.

IV.

THE RELEASE OF CONFIDENTIAL FUNDS TO THE OVP DOES NOT VIOLATE SECTION 25 (5), ARTICLE VI OF THE CONSTITUTION AS IT IS NOT AN AUGMENTATION OR TRANSFER CONTEMPLATED BY SUCH PROVISION.

A. THE CONTINGENT FUND IS AN APPROPRIATION IN THE 2022 GAA, AND NOT A PROJECT FROM WHICH SAVINGS CAN BE HAD.

B. THE RELEASE OF FUNDS FROM THE CONTINGENT FUND IS DIFFERENT FROM A TRANSFER OF SAVINGS UNDER SECTION 25(5), ARTICLE VI OF THE CONSTITUTION.

V.

IN APPROVING THE RELEASE FROM THE CONTINGENT FUND, THE OFFICE OF THE PRESIDENT DID NOT USURP LEGISLATIVE POWER. RATHER, IT WAS A VALID EXERCISE OF THE EXECUTIVE'S POWER TO IMPLEMENT AND ENFORCE PROVISIONS OF LAW.

A. THE OFFICE OF THE PRESIDENT, BY APPROVING THE RELEASE FROM THE CONTINGENT FUND, DID NOT EXERCISE LEGISLATIVE POWERS BY CREATING A NEW ITEM OF APPROPRIATION.

B. THE FUNDS AT ISSUE WERE VALIDLY RELEASED TO EXISTING ITEMS UNDER THE BUDGET OF THE OVP, IN THE URGENCY OF THE SAFE

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**IMPLEMENTATION OF ITS NUMEROUS
ACTIVITIES UNDER THE GOOD
GOVERNANCE PROGRAM.**

VI.

**THE OVP'S REQUEST FOR FUNDING FALLS
WITHIN THE OVERALL PURPOSE OF THE
CONTINGENT FUND, AS IT COVERS NOT ONLY
"NEW" BUT ALSO "URGENT PROJECTS AND
ACTIVITIES THAT NEED TO BE IMPLEMENTED
DURING THE YEAR."**

VII.

**THERE IS NO CIRCUMVENTION OF
ACCOUNTABILITY. THE RELEASE FROM THE
CONTINGENT FUND TO THE OVP WAS
PURSUANT TO SPECIAL PROVISION NO. 1 OF
THE 2022 GAA AND FOLLOWED PROPER
PROCEDURE.**

VIII.

**ASSUMING *EX GRATIA ARGUMENTI* THAT THE
RELEASE OF FUNDS WAS ERRONEOUS, THE
OPERATIVE FACT DOCTRINE APPLIES TO THIS
CASE.**

DISCUSSION

**I. PETITIONERS HAVE NO
LOCUS STANDI TO FILE THE
INSTANT PETITION.**

16. Petitioners claim to possess *locus standi* to file the instant Petition by purportedly suing as concerned citizens and taxpayers. They anchor their legal standing on the premise that the issue at hand involves an illegal disbursement of public funds.

17. Petitioners' assertion lacks merit.

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18. The rule on *locus standi* requires that a party assailing the constitutionality of a law or any governmental act must have a direct and personal interest.¹² **Lagman v. Ochoa**¹³ expounded on this principle in this wise:

The requirement of *locus standi* then pertains to a party's personal and substantial interest in the case arising from the direct injury they sustained, or will sustain, as a result of the challenged governmental action. In *Anak Mindanao Party-List Group v. The Executive Secretary*:

Locus standi or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

It has been held that a party who assails the constitutionality of a statute must have a **direct and personal interest**. It must show not only that the law or any governmental act is invalid, but also that **it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that it suffers thereby in some indefinite way**. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of.

¹² *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. No. 178552, 05 October 2010.

¹³ G.R. No. 197422, 03 November 2020.

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For a concerned party to be allowed to raise a constitutional question, it must show that **(1) it has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action, and (3) the injury is likely to be redressed by a favorable action.**

Generalized grievance is not enough. The party must have a "material interest" affected by the official action taken, as distinguished from mere incidental interest. Unless one's constitutional rights are affected by the operation of a statute or governmental act, they have no standing. (Emphases supplied; citations omitted)

19. A cursory reading of the instant Petition would reveal that petitioners failed to allege, much less substantiate, that they have a direct and personal interest in the case such that they have suffered or will suffer actual or threatened injury resulting from the release and utilization of confidential funds by the OVP. If any, petitioners only make general statements on their alleged legal standing – “that as concerned citizens and taxpayers, they are imploring that the money of the Filipino people be spent correctly and accounted properly.”¹⁴

20. Verily, such hypothetical allegations fall short of the exacting requirements on *locus standi* long established by the Honorable Court.

21. Neither can the absence of *locus standi* be cured by petitioners' contention that the instant case involves a usurpation of legislative power by the Executive Department through the OES.

22. In a number of cases, the Honorable Court has accorded *locus standi* to a legislator where there is a claim of

¹⁴ Petition for *Certiorari* dated 06 November 2023, p. 2.

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infringement of prerogatives, powers, and privileges vested by the Constitution to his office.¹⁵ In ***Purissima v. Lazatin***,¹⁶ the Court upheld the legal standing of petitioner therein Carmelo F. Lazatin, in his capacity as Representative of the First District of Pampanga, when he filed a petition for prohibition and injunction before the Regional Trial Court of Angeles City to assail the constitutionality of Revenue Regulation No. 2-2012 issued by the Secretary of Finance. In so holding, the Court ruled:

In *Biraogo v. The Philippine Truth Commission*, we ruled that legislators have the legal standing to ensure that the prerogatives, powers, and privileges vested by the Constitution in their office remain inviolate. **To this end, members of Congress are allowed to question the validity of any official action that infringes on their prerogatives as legislators.**

Thus, members of Congress possess the legal standing to question acts that amount to a usurpation of the legislative power of Congress. Legislative power is exclusively vested in the Legislature. When the implementing rules and regulations issued by the Executive contradict or add to what Congress has provided by legislation, the issuance of these rules amounts to an undue exercise of legislative power and an encroachment of Congress' prerogatives.

To the same extent that the Legislature cannot surrender or abdicate its legislative power without violating the Constitution, so also is a constitutional violation committed when rules and regulations implementing legislative enactments are contrary to existing statutes. No law can be amended by a mere administrative rule issued for its implementation; administrative or executive acts are invalid if they contravene the laws or to the Constitution. (Emphases supplied; citations omitted)

¹⁵ *Del Mar v. Philippine Amusement and Gaming Corporation*, G.R. No. 138928, 29 November 2000; *Francisco v. House of Representatives*, G.R. No. 160261, 10 November 2003; *Tatad v. Garcia*, G.R. No. 114222, 06 April 1995.

¹⁶ G.R. No. 210588, 29 November 2016.

23. As will be discussed in the subsequent portions of this Comment, no usurpation of legislative power has occurred in this case. Furthermore, even if there were, no one among the petitioners is a member of the Congress as would satisfy the *locus standi* requirement for a legislator. Suffice it to state that petitioners cannot claim usurpation of powers which they themselves do not possess.

24. In fine, petitioners have no legal standing to file the instant Petition because: (a) they are neither members of the Senate nor of the House of Representatives; and (b) they failed to allege, much less substantiate, any direct and personal interest in the case to such extent that they have suffered or will suffer actual or threatened injury as a result of the alleged illegal conduct of the government.

25. Suffice it to state that petitioners do not possess the requisite *locus standi* to file the instant Petition.

II. THE MATTER IS NOT RIPE FOR ADJUDICATION. THE COMMISSION ON AUDIT (COA) HAS PRIMARY JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

26. As held by this Honorable Court in the case of *Commission on Audit v. Hon. Ferrer et al.*,¹⁷

This jurisdiction acknowledges and respects the full authority given by the 1987 Constitution to the Commission on Audit (COA), as guardian of public funds, to make a determination on issues pertaining to audit of government accounts. Hence, the COA should be allowed to make a full disposition of specialized matters within its authority to decide. Settled is the rule that before a party may seek the intervention of the court, he or she should first avail of all the

¹⁷ G.R. No. 218870, 24 November 2020.

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means afforded him by administrative processes.¹⁸

27. Respondents submit that a complete resolution of the matters raised by the Petition before this Honorable Court initially requires the determination by COA of questions involving propriety of release, use, and expenditure of public funds. This is because COA is in possession of the appropriate technical and specialized knowledge, considering that it is a constitutional body tasked "to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities[.]"¹⁹

28. As explained by the Honorable Court in *Hon. Ferrer*,

The principle of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of the proper administrative bodies, **relief must first be obtained in an administrative proceeding before a remedy is supplied by the courts even if the matter may well be within their proper jurisdiction.** Courts cannot or will not determine a controversy involving a question within the jurisdiction of an administrative tribunal **prior to the resolution of that question** by that administrative tribunal, where the question demands the exercise of sound discretion requiring its special knowledge, experience, and services to determine technical and intricate matters of fact. The objective of the doctrine of primary jurisdiction is to guide the court in determining **whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.**²⁰

¹⁸ G.R. No. 218870, 24 November 2020.

¹⁹ PHIL. CONST. art. IX-D, § 2.

²⁰ G.R. No. 218870, 24 November 2020. (Emphases and underscoring supplied).

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29. In the case at bar, there are undeniably technical questions intertwined with the legal issues, which initially fall within the primary jurisdiction of COA. Thus, the entire case is not yet ripe for adjudication. This Honorable Court must first allow COA to exercise its power, within the scope of its auditing rules, before it can take cognizance of the attached legal matters herein. On this matter alone, the case must be dismissed.

30. Furthermore, Respondents respectfully submit that some matters raised in the petition are political in nature, taking the same out of the ambit of this Court's jurisdiction. The political question doctrine was discussed by the Honorable Court has in ***Casibang v. Aquino***²¹ as follows:

... The term 'political question' connotes what it means in ordinary parlance, namely, a question of policy. It refers to those questions which under the Constitution, are to be decided by the people in their sovereign capacity; **or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.**

A broader definition was advanced by U.S. Supreme Court Justice Brennan in *Baker v. Carr*: **'Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department;** or a lack of judicially discoverable and manageable standards for resolving it; **or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion;** or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of the government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious

²¹ G.R. No. L-38025, 20 August 1979.

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pronouncements by various departments on one question.²²

31. Based on the foregoing parameters, the Office of the President's (OP) approval of the OVP's request to release Confidential Funds is clearly a political question. The determination by the Chief Executive to fund the "safe implementation of the various projects and activities under the Good Governance [P]rogram and the conduct of official engagements and functional representation in international and domestic events" based no less on his own instructions is clearly a question of policy, which the courts have no authority to pass upon.

**III. THE DIRECT FILING OF THE
PETITION BEFORE THE
HONORABLE COURT
CONTRAVENES THE
DOCTRINE OF HIERARCHY
OF COURTS.**

32. The doctrine of hierarchy of courts requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. As a rule, "direct recourse to the Supreme Court is improper because it is a court of last resort and must remain so for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket."²³

33. Here, Petitioners filed the case directly before this Honorable Court despite the concurrent jurisdiction of the Court of Appeals and the Regional Trial Courts to issue writs of *certiorari*. Petitioners invoke "transcendental importance"²⁴ to justify the direct filing of their Petition with the Honorable Court.

²² G.R. No. L-38025, 20 August 1979. (Emphases supplied, citations omitted).

²³ PHAPi v. Hon. Salvador Medialdea, G.R. No. 234448, 06 November 2018.

²⁴ Petition for *Certiorari* dated 06 November 2023, pp. 13-14.

34. Petitioners' reliance on "transcendental importance," however, is not a magical formula to excuse them from complying with the rules. In ***Montemayor v. Inter-Agency Task Force on COVID and Emerging Infectious Diseases***,²⁵ citing its ruling in ***Gios-Samar, Inc. v. Department of Transportation and Communications***,²⁶ the Honorable Court ruled that the implementation of the doctrine of hierarchy of courts "is not just 'mere policy' but rather a 'constitutional imperative.'" While the invocation of the Court's original jurisdiction to issue extraordinary writs may be allowed on the grounds of special and important reasons or transcendental importance, direct recourse is allowed only when the issues presented are purely legal. Thus, in determining whether direct recourse to the Court shall be allowed, the decisive factor is the nature of the question raised by the parties.²⁷

35. Although petitioners assert that their case only involves purely legal questions, their arguments rely on facts that have not been established on record nor admitted by the parties.²⁸ They contend that the transfer of the funds from the Contingent Fund of the OP to the Confidential Fund of the OVP is unconstitutional.²⁹ However, how the Contingent Fund was administered by the OP, how the application for funds was evaluated and approved by the DBM and OP respectively, and whether the OVP's expenses constitute improper confidential expenses are questions of fact that require the reception of evidence.

36. This only highlights that the concerns being raised by petitioners are premature. Apart from containing questions of fact better ventilated before trial courts, the matter of proper government spending still must be settled by the COA. Either way, it is evident that absent a final resolution from a different body or tribunal, this Honorable Court must refrain from taking cognizance of the issues raised in the instant Petition.

²⁵ G.R. No. 258619, 11 July 2023.

²⁶ G.R. No. 217158, 12 March 2019.

²⁷ *Montemayor v. IATF*, G.R. No. 258619, 11 July 2023.

²⁸ Petition for *Certiorari* dated 06 November 2023, pp. 36-40.

²⁹ *Id.* at p. 38.

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IV. THE RELEASE OF CONFIDENTIAL FUNDS TO THE OFFICE OF THE VICE PRESIDENT DOES NOT VIOLATE SECTION 25 (5), ARTICLE VI OF THE CONSTITUTION AS IT IS NOT AN AUGMENTATION NOR TRANSFER CONTEMPLATED BY SUCH PROVISION.

37. Petitioners assert that the “transfer” of funds from the OP’s Contingent Fund to the OVP is, in reality, an augmentation that could not have been validly made within the meaning of Section 25 (5), Article VI of the Constitution. They maintain that the Contingent Fund is not savings and that there is no actual line-item deficiency that needs to be supplemented.³⁰

38. Petitioners are gravely mistaken.

39. Section 25 (5), Article VI of the Constitution provides:

(5) No law shall be passed authorizing any transfer of appropriations; However, the President, the President of the Senate, The Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.³¹

40. The above-cited provision pertains to the power to transfer savings or the power of augmentation, which the Constitution exclusively vests to the President, the President

³⁰ Petition for *Certiorari* dated 06 November 2023, pp. 31-36, 39.

³¹ PHIL. CONST. Art. VI, § 25 (5).

of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions and no other.³² In ***Araullo v. Aquino***,³³ the Honorable Court held that the following requisites must be present for the transfer of savings or augmentation to be valid under Section 25 (5), Article VI of the Constitution:

(a) There is a law authorizing the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of the Constitutional Commissions to transfer funds within their respective offices;

(b) The funds to be transferred are savings generated from the appropriations for their respective offices; and

(c) The purpose of the transfer is to augment an item in the general appropriations law for their respective offices.³⁴

41. Meanwhile, "augmentation" is defined under Section 76 of the 2022 GAA³⁵ as the "act of the constitutional officers authorized to use current year savings in their respective appropriations to cover actual current year deficiencies in any existing item of appropriation within their respective offices."

42. From the foregoing, it is clear that Section 25 (5), Article VI of the Constitution will not apply as the Contingent Fund under the 2022 GAA is a specific item of appropriation and not simply a project from which savings can be had and

³² *Araullo v. Aquino*, G.R. No. 209287, 01 July 2014.

³³ *Id.*

³⁴ *Id.*

³⁵ Sec. 76. Rules on Augmentation. Augmentation is the act of the constitutional officers authorized to use current year savings in their respective appropriations to cover actual current year deficiencies in any existing item of appropriation within their respective offices. A deficiency in an item of appropriation may result from:

- (a) Unforeseen modifications of adjustments in the program, activity or project; or
- (b) Re-assessment in the use, prioritization and/or distribution of resources.

An item of appropriation shall pertain to the amount appropriated for an activity or project authorized in this Act.

The particulars of the expenditures to be funded from savings should be within the scope of, or covered by an existing activity or project. The existence of an activity or project regardless of the availability of allotment class/es is sufficient for the purpose of augmentation.

In no case shall a non-existent activity or project be funded by augmentation from savings or by the use of an appropriations authorized in this Act.

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later on transferred to augment an existing line-item appropriation, as shall be discussed hereunder.

A. CONTINGENT FUND AS AN APPROPRIATION IN THE 2022 GAA, NOT A PROJECT FROM WHICH SAVINGS CAN BE HAD.

43. Special Provision No. 1 under the 2022 GAA provides for the Contingent Fund as follows:

1. Contingent Fund. The amount of Seven Billion Pesos (P7,000,000,000) appropriated herein shall cover the funding requirements of new or urgent activities or projects of national government agencies, GOCCs, and LGUs that need to be implemented or paid during the year, such as, but not limited to the following: (i) legal obligation of the government arising from final and executory decisions of competent authorities, such as compromise agreements, arbitral awards, mediation settlement agreement, and professional services in connection thereto; (ii) requirements of newly created offices; or (iii) deficiencies in the appropriations for local and external travels of the President of the Philippines.

In no case shall this Fund be used for the purchase of motor vehicles, including any improvements thereon.

Release of funds shall be made directly to the agencies concerned, except for GOCCs and LGUs which shall be made through the BTr, subject to the approval by the President of the Philippines, other than payment resulting from final and executory decisions of competent authorities, which shall be subject to the approval of the DBM.

The DBM shall include information on the releases from the Contingent Fund in its quarterly and annual reports submitted to Congress.

44. Relatedly, an appropriation has been defined "as nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the Treasury"³⁶ while appropriation made by law refers to "the act of the legislature setting apart or assigning to a particular use a certain sum to be used in the payment of debt or dues from the State to its creditors."³⁷

45. A Contingent Fund is a type of special purpose fund provided "to cover expenditures for specific purposes for which recipient departments/agencies have not yet been identified during budget preparation and legislation. These are then made available for allocation to agencies in addition to their built-in appropriations during budget execution, pursuant to special provisions and conditions pertaining the special purpose fund."³⁸

46. It is logical to assume that within a budget execution period, unexpected projects that are urgent and new or budget shortages will occur. Also, it is reasonable not to expect the several departments of the government to predict and anticipate all the upcoming needed projects or problems that will occur during the budget execution year. Thus, to be responsive to these contingencies, Congress created the Contingent Fund.³⁹

47. Evidently, the Contingent Fund is a lump-sum fund because it is projected to answer for multifarious projects, activities, and programs. However, this does not make it illegal *per se* nor prevent it from being considered an item of appropriation.

48. In ***Greco Belgica v. Executive Secretary (2019)***,⁴⁰ the Honorable Court explained that a Contingent Fund, albeit a lump-sum fund, **is a line-item appropriation**. To reiterate, an appropriation is "an authorization made by

³⁶ *Gonzales v. Hon. Narvasa*, G.R. No. 140835, 14 August 2000.

³⁷ *See Gonzales v. Raquiza*, G.R. No. 29627, 19 December 1989.

³⁸ FY 2024 Budget of Expenditures and Sources of Financing, Glossary of Terms, available at <https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2024/GLOSSARY.pdf> (Last accessed: 06 January 2023).

³⁹ *Belgica v. Executive Secretary*, G.R. No. 210503, 08 October 2019.

⁴⁰ *Id.*

law or other legislative enactment, directing payment out of government funds under specified conditions or for specified purposes."⁴¹ Since a Contingent Fund is placed by Congress in an appropriation law to address unanticipated expenditures, it complies with the definition of an appropriation that a specified amount is paid out for a specified purpose authorized by law.

49. The Honorable Court, again in *Belgica (2019)*, explained that a "singular correspondence" must still be present for a lump-sum fund, like a Contingent Fund, to be considered a "line-item," hence, constitutional. There is a "singular correspondence" when there is "an allocation of a **specific singular amount** for a **specified singular purpose**."⁴²

50. Both parameters were met in Special Provision No. 1 appropriating the Contingent Fund.

51. *First*, Congress appropriated the specific amount of PhP7 billion for the Contingent Fund.

52. *Second*, the specific purpose for which the Contingent Fund is intended was identified. The appropriation was programmed to answer for contingencies defined and limited under its Special Provision No. 1, namely, the funding requirements of new or urgent activities or projects of national government agencies as well as GOCCs and LGUs, which include but are not limited to:

(i) legal obligations of the government arising from final and executory decisions of competent authorities, such as compromise agreements, arbitral awards, mediation settlement agreement, and professional services in connection thereto; (ii) requirements of newly created offices; or (iii) deficiencies in the appropriations for local and external travels of the President of the Philippines.

⁴¹ Section 2, Chapter 1, Book VI, National Government Budgeting, Executive Order No. 292.

⁴² G.R. No. 210503, 08 October 2019.

53. It also provides that, while the fund is a source for contingencies as defined, in no case shall it be used to fund the "purchase of vehicles, including any improvement thereon."

54. Such an identifiable purpose was deemed sufficient by the Honorable Court in ***Belgica*** (2019).

55. As held in ***Belgica*** (2019), providing a broad yet clear purpose — such as catering to new or urgent activities — is constitutionally permissible. The Honorable Court's ruling instructs that a degree of flexibility is allowed and even necessary in such an appropriation, provided the overarching intent, *i.e.*, that it is for "new or urgent activities," is clear.

56. Having settled that the Contingent Fund is considered a valid item of appropriation, the discussion now moves to savings. "Savings" under Section 75 of the 2022 GAA⁴³ refer to:

portions or balances of any released appropriations which have not been obligated as a result of any of the following: (a) completion, final discontinuance, or abandonment of a program, activity or project for which the appropriation is authorized; or (b) implementation of measures resulting in improved systems and efficiencies and thus enabled an agency to meet and deliver the required or planned targets, programs and services at a lesser cost.

57. In ***Araullo***, the Honorable Court explained that savings are properly realized only when "the purpose for

⁴³ Sec. 75. Meaning of Savings. Savings refer to portions or balances of any released appropriations in this Act which have not been obligated as a result of any of the following:

- (a) completion, final discontinuance, or abandonment of a program, activity or project for which the appropriation is authorized; or
- (b) implementation of measures resulting in improved systems and efficiencies and thus enabled an agency to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

In case final discontinuance or abandonment is used as basis in the declaration of savings, such discontinued or abandoned program, activity or project shall no longer be proposed for funding in the next two (2) fiscal years.

Allotments that were not obligated due to the fault of the agency concerned shall not be considered savings.

which the funds had been allocated were already satisfied, or the need for such funds had ceased to exist."⁴⁴ It is clear then that releases from the Contingent Fund and savings susceptible to transfer are two conceptually distinct matters. On the one hand, savings arise from the completion or termination of a legislated project or purpose. On the other hand, funds resulting from the release from the Contingent Fund are, in fact, performing the specific purpose legislatively assigned to said Fund.

B. THE RELEASE OF FUNDS FROM THE CONTINGENT FUND IS DIFFERENT FROM TRANSFER OF SAVINGS UNDER SECTION 25 (5), ARTICLE VI OF THE CONSTITUTION.

58. Contrary to petitioners' assertions, the release of funds from the Contingent Fund is different from the transfer thereof, as contemplated under Section 25 (5), Article VI of the Constitution.

59. In stark contrast with the power to transfer savings or augmentation under Section 25 (5), Article VI of the Constitution, which can only be exercised by the heads of government agencies specifically enumerated therein and which savings can be transferred within their respective offices only, the use of Contingent Fund is not limited to any particular agency or office and is subject to the prior approval of the President.

60. The power to transfer funds under Section 25 (5), Article VI of the Constitution requires that there be savings as a result of the acts mentioned in Section 75 of the 2022 GAA.⁴⁵ This presupposes that the "project" or "obligation" from where savings can be had is already identified.

⁴⁴ *Araullo v. Aquino*, G.R. No. 209287, 01 July 2014.

⁴⁵ *Id.*

61. On the other hand, the Contingent Fund refers to funds the specific project for which could not have been identified nor anticipated during the budget preparation and legislation but are reserved for new or urgent projects that need to be implemented during the year.

62. In the instant case, the funds released to OVP is chargeable against the Contingent Fund under Special Provision No. 1 of 2022 GAA, which was made to cover NEW or URGENT Programs/Activities/Projects (P/A/P) within the budget of the OVP, *i.e.*, the safe implementation of the various projects and activities under the Good Governance Program and the conduct of official engagements and functional representation in international and domestic events, the implementation of various projects and activities relevant to national security and peace and order.

63. Further emphasizing that the assailed release of funds was not a transfer, the Contingent Fund is not aligned with a specific department of the government. As a floating standby fund source, it begins not as the budget of any specific department. Rather, it is an independent appropriation that can be withdrawn upon, subject to compliance with certain conditions and requirements.

64. A "transfer" contemplates that the money moved from an identified allocation for a different project, purpose, or activity by Congress. As explained, the Contingent Fund is not strictly identified for a specific project or activity. It is a fund to answer for future and unanticipated new or urgent projects, activities, and programs. Therefore, the movement of funds is properly described as a release. Stated differently, the movement of money is a belated release of the fund to the yet to be identified projects, activities, and programs earmarked by Congress. It is for this reason that releases under the Contingent Fund are made under a SARO as a withheld portion of the budget.⁴⁶ A SARO "covers the budgetary items For Later Release (FLR)...in the entity

⁴⁶ Section 3.9.2 of Guidelines on the Release of Funds for FY 2022, National Budget Circular No. 587 dated 03 January 2022; See also Section 3(1)(2), Government Accounting Manual for National Agencies, Volume I, p. 16.

submitted Budget Execution Documents (BEDs), subject to compliance of requirement documents/clearances.”

65. Neither should the Contingent Fund be classified as part of the budget of the OP, subject to transfer therefrom. Rather, prior approval for its release is vested with the President given the dictates of Special Provision No. 1, as well as what is settled in law and jurisprudence that the Contingent Fund is subject to the President’s administration as Chief Executive to implement new and/or urgent projects. To reiterate, the validity of the Contingent Fund had been held valid in *Belgica* (2019).

66. Finally, the OP’s budget is specifically indicated in Volume I-A of the 2022 GAA while the Contingent Fund is laid down in Special Provision No. 1, Clause XXXVIII, Volume I-B of the 2022 GAA. This bolsters the fact that the Contingent Fund is a separate fund, an item of appropriation, and not simply a project from which savings can be had and which savings can be later augmented to deficient line-item appropriation within the same office.

67. In sum, releases from the Contingent Fund are not savings as contemplated in Section 25 (5), Article VI of the Constitution. Thus, the validity of a release, such as that done in favor of the OVP in the instant case, should not and cannot be judged against the standards found in said Section for the transfer of savings for purposes of augmentation. The same is inapplicable.

**V. IN APPROVING THE
RELEASE FROM THE
CONTINGENT FUNDS, THE
OFFICE OF THE PRESIDENT
DID NOT USURP
LEGISLATIVE POWER.
RATHER, IT WAS A VALID
EXERCISE OF THE
EXECUTIVE’S POWER TO
IMPLEMENT AND ENFORCE
PROVISIONS OF LAW.**

x-----x

A. THE OFFICE OF THE PRESIDENT, BY APPROVING RELEASE FROM THE CONTINGENT FUND, DID NOT EXERCISE LEGISLATIVE POWERS BY CREATING A NEW ITEM OF APPROPRIATION.

74. A core argument of the Petition is that the OP, by approving the release of funds to the OVP from the Contingent Fund, somehow usurped legislative power, "creating" as it were, an appropriation non-existent in the 2022 GAA. This, however, stems from a fundamental misunderstanding of the legislative process and the OP's role in implementing and executing laws, which includes the contents of the 2022 GAA.

75. As initially discussed in the preceding sections, by approving the release of funds to a national government agency from the Contingent Fund, the OP was not transferring from its own budget, but implementing Special Provision No. 1 and the appropriation contained in the 2022 GAA. The OP's actions in executing the law through powers validly delegated to it should not be confused with the act of legislating, which the Congress already concluded upon its passing of the 2022 GAA.

76. At the outset, it is appropriate to examine what exactly legislating entails, especially in the context of a law such as the 2022 GAA. The Constitution states that "[t]he legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum."⁴⁷ This power is plenary, and it is the province of Congress to determine the contents of the bills it passes for the President's approval.

⁴⁷ PHIL. CONST. art. VI, § 1.

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77. In passing budget-related bills in particular, Congress is tasked with determining the items of appropriation to be contained therein. As discussed by this Court in ***Greco Belgica et al. v. Hon. Ochoa (2013)***:⁴⁸

[A]n item of appropriation must be an item characterized by singular correspondence – meaning an allocation of a specified singular amount for a specified singular purpose, otherwise known as a ‘line-item.’ This treatment not only allows the item to be consistent with its definition as a ‘specific appropriation of money’ but also ensures that the President may discernibly veto the same.

78. Aside from items of appropriations, Congress may also insert provisions in budget-related bills, following conditions set out by the Constitution. Specifically, Article VI, Section 25 (2) states that “[n]o provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein.”⁴⁹ An example of such a provision was contained in the 2014 GAA, cited in ***Belgica (2019)***.⁵⁰ To wit —

Special Provision(s)

1. Administration and Use of Fund. The amount of One Billion Pesos (P1,000,000,000) appropriated herein for the Contingent Fund shall be administered by the Office of the President and shall be used exclusively to fund the requirements of new and/or urgent projects and activities that need to be implemented during the year. It may likewise be used to augment the existing appropriations for local and foreign travels of the President: PROVIDED, That in no case shall said Fund be used for the purchase of motor vehicles.

No amount under the Contingent Fund shall be released and disbursed without the prior approval of the President of the Philippines.⁵¹

79. Incidentally, the portions of the 2022 GAA relevant to the case at bar are similar to the above provision.

⁴⁸ G.R. No. 208566, 19 November 2013.

⁴⁹ PHIL. CONST. art. VI, § (25) 2.

⁵⁰ G.R. No. 210503, 08 October 2019.

⁵¹ *Id.* (Citing General Appropriations Act of 2014).

80. To reiterate, Congress is responsible for placing these items of appropriation and related provisions in the law itself. These related provisions may contain rules or mechanisms about how a certain appropriation is to be released or spent. These provisions are for the Executive to implement. Implementing these provisions does not come within the province of legislation.

81. In *Belgica* (2019), part of what was at issue was the Contingent Fund in the GAA of 2014. This Court accurately delineated between the Legislative and Executive duties in relation to the Contingent Fund when it described the same as "the Legislature's authority to amply provide for contingencies and [] the Executive's power to address them."⁵² This Honorable Court, therefore, acknowledged that when the OP saw the need to use the Contingent Fund and perform its duty to administer the same by releasing funds for new projects, it was not performing a legislative function. Rather, it was exercising its rightful duty to address unforeseen contingencies as they arose in the course of governance. The legislative function was already completed when Congress provided for a Contingent Fund in the GAA of 2014.

82. Similarly, in the instant case, the OP's act of approving the release of funds from the Contingent Fund was merely an act implementing the legislated Special Provision in the 2022 GAA. It was the Executive acting to address contingencies that had actually arisen. It is patently erroneous to categorize such approval as anything other than that executive function.

**B. THE FUNDS AT ISSUE
WERE VALIDLY
RELEASED TO
EXISTING ITEMS
UNDER THE BUDGET
OF THE OVP, IN THE
URGENCY OF THE SAFE
IMPLEMENTATION OF
ITS NUMEROUS**

⁵² *Id.*

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**ACTIVITIES UNDER
THE GOOD
GOVERNANCE
PROJECTS.**

83. On 22 August 2022, the OVP requested⁵³ additional funding requirements amounting to PhP403.46 million for the following:

Particulars	Amount
Special duty allowance of the additional 355 security personnel on top of the 95 security personnel of the OVP	PhP 8.74 million
Financial assistance/subsidy for the establishment of seven (7) satellite offices in Bacolod, Cebu, Dagupan, Davao, Surigao, Tacloban and Zamboanga to extend services to marginalized communities across the country, such as Medical and Burial Assistance Program	PhP 144,72 million
Confidential fund in consideration of the safe implementation of various projects and activities under the Good Governance Program of the OVP, and the conduct of its various official engagements and functional representation in international and domestic events	PhP 250 million

84. Thereafter, the DBM proceeded with the evaluation of the OVP's request.⁵⁴ After a judicious calibration of the documents submitted by the OVP, the DBM recommended⁵⁵ to the OP the release of PhP 96.424 million for the financial assistance/subsidy which will cater to 19,854 target beneficiaries by the end of FY 2022, and PhP 125 million for Confidential Fund to cover the last quarter of FY 2022, or a total of PhP 221.424 million.

85. As reflected in the resulting SARO-BMB-C-22-0012004, the PhP 125 million released from the Contingent Fund being assailed herein was released to the Good Governance Program, with MFO/PAP Code 310100100001000. To be sure, this was an existing item within the budget of the OVP. By approving the release

⁵³ Office of the Vice President Letter dated 22 August 2022, ANNEX "1."

⁵⁴ Memorandum for Department of Budget and Management Secretary dated 07 October 2022, ANNEX "8."

⁵⁵ Department of Budget and Management Memorandum for the President, ANNEX "4."

thereof for the purpose reflected in said item, the OP merely implemented Special Provision 1 and the Contingent Fund item. It did not create any new item within either the 2022 GAA or the budget of the OVP.

86. To reiterate, the participation of the OP in the release of the Contingent Funds was limited to reviewing and approving the recommendation of the DBM relative to the OVP's request for additional funds pursuant to Special Provision No. 1 of the Contingent Fund of the FY 2022 GAA. In other words, there was neither the creation of a new item nor a transfer or augmentation of funds to a non-existing item.

87. Notably, this release was made in consideration of the **urgency** of the safe implementation of various projects and activities of the OVP across its satellite offices for the last quarter of FY 2022, the conduct of its official engagements and functional representation in international and local events, the implementation of various projects and activities relevant to national security and peace and order, and the implementation of the same with proper security and safety protocols for the benefit of the institution – being the second highest office of the land, its partner stakeholders, and the general public. The succeeding section will show that this falls squarely within the scope defined by Special Provision No. 1 for the Contingent Fund.

VI. SPECIAL PROVISION NO. 1 DID NOT LIMIT THE PURPOSES OF THE "CONTINGENT FUNDS" TO THREE, AS IT USES THE PHRASE "SUCH AS, BUT NOT LIMITED TO [...]." THE OVP'S REQUEST FOR FUNDING FALLS WITHIN THE OVERALL PURPOSE OF THE CONTINGENT FUND, AS IT COVERS NOT ONLY "NEW" BUT ALSO "URGENT PROJECTS AND ACTIVITIES

**THAT NEED TO BE
IMPLEMENTED DURING
THE YEAR.”**

88. Petitioners argue that the Contingent Fund in the 2022 GAA cannot be a source of funding for the OVP's requested Confidential Fund. One of their principal arguments is that the activity for which the Confidential Fund was requested was not new or urgent.⁵⁶ As will be discussed, however, the approval of the release of funds falls within the statutorily defined bounds of the Contingent Fund as an item.

89. Special Provision No. 1 did not limit the purposes of the Contingent Fund to the three purposes expressly mentioned in the law, as the Provision uses the phrase "such as, but not limited to [...]." This was a deliberate choice.

90. The projects, activities, and programs that can be funded by the Contingent Fund were intentionally left by Congress to be sufficiently broad to include unanticipated expenditures or deficiencies in the budget of current projects. The broad definition is a prerogative allowed by Congress to the Executive department on how to execute the budget in tune with the current and unexpected needs of the government. The broad power of Congress to determine how public funds should be spent allows for such discretion.

91. As explained in *Belgica (2019)*, considering that "the Constitution 'does not provide or prescribe any particular form of words or religious recitals in which an authorization or appropriation by Congress shall be made, except that it be 'made by law,' an appropriation law may – according to Philconsa – be 'detailed and as broad as Congress wants it to be' for as long as the intent to appropriate may be gleaned from the same."

92. And yet, while the definition is broad, it is still unified by the common purpose that the to be funded project, activity, or program is new or urgent and needs to be implemented during the fiscal year, limited only by the

⁵⁶ Petition for *Certiorari* dated 06 November 2023, pp. 22-31.

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proviso that it cannot be used to purchase vehicles and its improvement.

93. Historically, the multifarious projects that had been funded by the Contingent fund include: "initial operational requirements of newly-created offices, initial funding requirements to carry out provisions of newly-enacted laws, additional funding requirements of the use of automated election system in national and local elections, for plebiscites in the creation, merger or division of local government units, as appropriation for Y2K readiness compliance, for the expenses of the National Organizing Council for the Philippine hosting of the 2015 APEC Meetings, and additional funding requirement for election related activities."⁵⁷

94. The foregoing enumeration shows that the project, activities, and programs contemplated under the Contingent Fund cover those new or urgent to be implemented within the year. This covers the spectrum of newly created departments or addresses the shortfall in the operating budget of urgent projects. To reiterate, what these included projects, activities, and programs are cannot be enumerated and cannot be too limited because obviously what the funding needs are during budget preparation are not clear or can all be possibly predicted.

95. Thus, the OVP's request for funding, as recommended by the DBM and approved by the OP, falls within the overall purpose of the Contingent Fund, as it covers not only "new" but also "urgent projects and activities that need to be implemented during the year." The DBM explained this in its Letter dated 11 September 2023 to House Committee on Appropriations Chairperson Cong. Elizaldy S. Co,⁵⁸ to wit:

Considering the representations of the OVP and as approved by the OP, the P221.424 Million released to the OVP was chargeable against the Contingent Fund under FY 2022. This includes the amount of P125 Million released to the OVP for confidential expenses for FY 2022 under its

⁵⁷ Belgica v. The Hon. Executive Secretary, G.R. No. 210503, 08 October 2019.

⁵⁸ ANNEX "7."

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existing Programs/Activities/Projects (P/A/P) "Good Governance Program", particularly the "Good Governance Engagements and Social Service Projects", in consideration of the urgency of the safe implementation of various projects and activities of the OVP across its satellite offices for the last quarter of FY 2022, the conduct of its official engagements and functional representation in international and local events, the implementation of various projects and activities relevant to national security and peace and order, and the implementation of the same with proper security and safety protocols for the benefit of the institution- being the second highest office of the land, its partner stakeholders, and the general public.

96. The Honorable Court in *Belgica (2019)*⁵⁹ affirmed the validity of lump-sum appropriations like the "Contingent Fund," as it serves to be a "funding source for multiple programs, projects, or activities that may all be clearly classified as falling under *one singular appropriation purpose.*" The Supreme Court, echoing the *ponente* of the *Belgica (2013)*⁶⁰ case that declared the *Pork Barrel System* unconstitutional, explained the necessity of certain lump-sum appropriations:

As explained in the Concurring Opinion of Associate Justice Estela M. Perlas-Bernabe, the *ponente* in the 2013 *Belgica* case, for as long as the lump-sum amount is meant as a funding source for multiple programs, projects, or activities that may all be clearly classified as falling under *one singular appropriation purpose*, the lump-sum appropriation is valid:

Again, it should be reiterated that the Court's disquisition regarding "line-item" and "lump-sum" appropriations all hearken to compliance with the constitutional postulates on separation of powers and Presidential item veto. Relatedly, the rule on singular correspondence, as discussed in the 2013 *Belgica* case, was therefore meant to subserve these principles. That being said, not all "lump-sum" amounts defy this rule should observance of these principles be preserve. **It is hence, my opinion that a lump-sum amount may still be considered as a valid item subject to the President's item veto power for as long as the lump-sum amount**

⁵⁹ G.R. No. 210503, 08 October 2019.

⁶⁰ G.R. No. 208566, 19 November 2013.

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is meant as a funding source for multiple programs, projects, or activities that may all be clearly classified as falling under one singular appropriation purpose. In this sense, the "lump-sum" effectively functions as a "line-item" that is compliant with the doctrine of singular correspondence as amply discussed in the 2013 *Belgica* Decision.

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At the risk of belaboring the point, a valid item is one characterized by singular correspondence - meaning, an allocation of a specified singular amount for a specified singular purpose. A lump-sum, albeit meant as a funding source for multiple programs, projects and activities, may effectively function as a proper "line-item" for as long as these multiple programs, projects or activities are clearly classified as falling under one singular appropriation purpose. ***This singular purpose may be as general or specific as the legislative department deems it to be, provided that such generality or specificity does not negate the President's proper exercise of his item veto power.*** This danger was what was clearly contemplated and showcased by the 2013 PDAF Article because the lump-sum amount of P24.79 Billion was treated as a funding source for multiple ***unrelated*** purposes such as, as noted in the case, "scholarships, medical missions, assistance to indigents, preservation of historical materials, construction of roads, flood control, etc." Worse, these multiple unrelated purposes were all made to fall under the ***vague and amorphous*** term "Priority Development Assistance Fund," which ultimately allowed those who were disbursed the funds (*i.e.*, individual legislators) to decide whatever public purpose they deemed as a "priority." As such, this created a budgeting setup wherein there is no more discernible item left for the exercise of the President's veto power and hence, constitutionally infirm.⁶¹

⁶¹ Emphasis and underscoring in the original text.

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97. With the DBM's finding that the funding request of the OVP was for the urgent implementation of its P/A/P, the Good Governance Program, it was well within the purpose contemplated by the "Contingent Fund" of the 2022 GAA. It was rightly funded from it, albeit for the reduced amount of PhP125 million.

98. Equally important, since the OVP intended to use the approved amount of PhP125 million for the safe implementation of the Good Governance Program, the DBP and OP correctly categorized the amount released from the Contingent Fund as Confidential Fund. This coincides with the definition of Confidential Expenses in Joint Circular No. 2015-01. In its Letter to DBM dated 22 August 2022,⁶² the OVP further stated in support of its request for Confidential Funds that:

The Office of the Vice President is committed to formulate programs, projects, and activities (PPAs) relevant to national security and peace and order, and is devoted to implement said PPAs with proper security and safety protocols for the benefit of the Institution through the OVP satellite offices, its partner stakeholders, and the general public.

VII. THERE IS NO CIRCUMVENTION OF ACCOUNTABILITY. THE RELEASE FROM THE CONTINGENT FUND TO THE OVP WAS PURSUANT TO SPECIAL PROVISION NO. 1 OF THE 2022 GAA AND FOLLOWED PROPER PROCEDURE.

99. Petitioners argue that the release of the funds from the Contingent Fund to the OVP's Confidential Fund circumvents accountability and auditing rules.⁶³

⁶² ANNEX "1."

⁶³ Petition for *Certiorari* dated 06 November 2023, pp. 36-38.

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100. Petitioners are mistaken.

101. At the onset, it must be emphasized that “[e]very public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.”⁶⁴

102. In this case, respondents did not violate any provision in the 2022 GAA. The release of PhP221.424 million from the 2022 Contingent Fund to the OVP was pursuant to Special Provision No. 1 in the 2022 GAA, which authorizes the OP to approve the release of Contingent Funds to cover the funding requirements of new or urgent activities or projects that need to be implemented or paid during the year by national government agencies, such as the OVP.

103. *First*, the constitutionality of the Contingent Fund is jurisprudentially settled and not even questioned by petitioners. As affirmed by the Honorable Court in ***Belgica (2019)***, the Contingent Fund’s “purpose is to cover the funding requirements of new or urgent projects that need to be implemented during the year, and the foreign travel expenses of the Office of the President which were not and could not have been anticipated during budget preparation and authorization. Hence, the same cannot be itemized.”

104. Moreover, the Honorable Court has already previously held in ***Belgica (2013)*** that the Contingent Fund is a valid line-item appropriation. This is a recognition of the Executive’s spending flexibility. After all, “[t]he realities and complexities of public policy require executive discretion for the sound management of public funds.”⁶⁵ Thus, the President has the authority to approve requests for release of Contingent Funds under the 2022 GAA.

⁶⁴ *Blaquera v. Alcala*, G.R. Nos. 109406, 110642, 111494, 112056 & 119597, 11 September 1998.

⁶⁵ LOUIS FISHER, *Presidential Spending Power*, Princeton University Press, 1975, p. 262 cited in *Araullo v. Aquino*, G.R. No. 209287, 01 July 2014.

105. *Second*, the allocation and release of funds went through the proper procedure. The funds were necessary to support the OVP's initiative for her programs in the remaining period of 2022,⁶⁶ in line with the OVP's current direction to focus and formulate programs, projects, and activities relevant to the national security and peace and order of the country.⁶⁷ It must be noted that for 2022, Vice President Duterte was using the transition budget of former Vice President Robredo. The 2022 OVP budget is comprised of two halves – former Vice President Robredo's last six months, and Vice President Duterte's first six months in office.

106. The OP, upon the recommendation of the DBM, released PhP221.424 million out of the requested budget of PhP403.460 million to cover the following Maintenance and Other Operating Expenses items: (1) PhP96.424 million Financial Assistance/Subsidy; and (2) PhP125 million Confidential Fund.

107. The PhP96.424 million is to cover the deficiency in the financial assistance/subsidy program of the OVP and will be used to cater the 19,854 target beneficiaries of the newly established satellite offices.⁶⁸

108. On the other hand, the PhP125 million Confidential Fund is allocated to support the mandate of its Office including support for its various projects and activities under its Good Governance Program and the conduct of its official engagements and functional representation in international and domestic events.

109. In accordance with Item 4.2 of Joint Circular No. 2015-01, the OVP submitted its Physical and Financial Plan, among other documents, for the proposed Confidential Fund, specifying that the requested fund will be used to secure the implementation of OVP initiatives and confidence-building activities under its Good Governance Program across its satellite offices for the remaining fiscal year period.

⁶⁶https://pco.gov.ph/news_releases/oes-cites-legal-basis-in-releasing-PhP221-424-million-confidential-fund-for-vp-dutertes-office/ (Last accessed: 06 January 2024).

⁶⁷ Office of the Vice President Letter dated 22 August 2022, ANNEX "1."

⁶⁸ Department of Budget and Management Memorandum for the President, ANNEX "4.", pp. 2-3.

110. In approving the release of the fund, the OP considered the OVP's representation and pursuant to the recommendation of the DBM, as well as the urgency of the safe implementation of the OVP's various projects and offices across its satellite offices for the last quarter of 2022, the conduct of its official engagements and functional representation in international and local events, the implementation of its projects and activities relating to national security and peace and order, and the implementation of the same with proper security and safety protocols. Hence, it cannot be said that there was a circumvention of accountability because Special Provision No. 1 in the 2022 GAA explicitly allows the OP to release Contingent Funds to the OVP for specified purposes.

111. Petitioners further assert that the Joint Circular is insufficient as there is no requirement for a national government agency granted a Confidential or Intelligence Fund to specify and itemize its expenses nor to submit detailed receipts.⁶⁹ Thus, the COA is left to trust the documents submitted by the national government agency.⁷⁰ While there is no such explicit requirement under the Joint Circular, it is respectfully submitted that the provisions therein on disbursements and liquidation should be considered sufficient. Sections 4.12⁷¹ and 4.13⁷² state that disbursements from Confidential and Intelligence Funds shall be supported with documentary evidence of payment. These disbursements shall be supported by a Certification of the Accountable Officer of the Confidential Fund or Intelligence Fund signed under oath.⁷³ For liquidation of cash advances for Confidential or Intelligence Funds, a Liquidation Report must be submitted with documentary evidence of payments made, among others.⁷⁴ Moreover, the head of a national government agency that released Confidential or Intelligence Funds is required to submit a Quarterly Accomplishment Report on the

⁶⁹Petition for *Certiorari* dated 06 November 2023, pp. 37-38.

⁷⁰ *Id.*

⁷¹ 4.12 Disbursements from CF shall be supported with documentary evidence of payment, among others, which shall be submitted to the ICFAU in a sealed envelope signed by the SDO.

⁷² 4.13 Disbursements from IF shall be supported with documentary evidence of payment in a sealed envelope signed by the SDO, kept at all time in the vault in his office. The same may be inspected by the ICFAU or officers/personnel duly authorized in writing by the COA Chairperson if the circumstances so demand.

⁷³ Joint Circular No. 2015-01, Section 4.15.

⁷⁴ *Id.* at Section 6.2.3.

x-----x

use of the funds which shall include evidence of payments made as attachments (for confidential expenses).⁷⁵ There are clear safeguards in place. Hence, petitioners' assertion holds no merit.

112. Besides, the subject Joint Circular is an exercise of COA's authority to define the scope of its audit and examination and promulgate accounting and auditing rules and regulations.

113. The Honorable Court has recognized that "[t]he Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties by granting it exclusive authority, subject to the limitations in this Article, to 'define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.'"⁷⁶ Hence, the COA is in the best position to determine and set the type of report or the supporting documentation it would require to be submitted to fulfill its mandate of safeguarding the proper use of government funds.

**VIII. ASSUMING EX GRATIA
ARGUMENTI THAT THE
RELEASE OF FUNDS WAS
ERRONEOUS, THE
OPERATIVE FACT
DOCTRINE APPLIES TO
THIS CASE**

114. Assuming *ex gratia argumenti* that the release of the subject funds was erroneous, the subsequent use of said funds by the OVP for its Good Governance Program should be

⁷⁵ See Annex D of Joint Circular No. 2015-01. For intelligence expenses, the documents are on file with the Special Disbursing Officer.

⁷⁶ Miralles v. Commission on Audit, G.R. No. 210571, 19 September 2017 citing Section 2(2), Article IX-D of the 1987 Constitution.

X-----X

deemed as a valid governmental expense pursuant to the operative fact doctrine.

115. The general rule is that an unconstitutional law is void, produces no rights, imposes no duties, and affords no protection.⁷⁷ Exceptionally, however, for reasons of practicality and fairness, a judicial declaration of invalidity does not always necessarily obliterate all the results of a void act prior to such declaration.⁷⁸ Thus, lest there be inequity or injustice, the doctrine of operative fact dictates that the existence and validity of a legal provision prior to its being declared as unconstitutional must be recognized, and those otherwise invalid acts done pursuant thereto should be legitimized.⁷⁹

116. In ***Commissioner of Internal Revenue v. San Roque Power Corporation***,⁸⁰ citing ***Serrano de Agbayani v. Philippine National Bank***,⁸¹ the Honorable Court explained that the operative act doctrine is a “fair play” approach to the realistic consequences of an otherwise invalid law prior to its declaration as such:

The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: “When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution.” It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

⁷⁷ Article 7, New Civil Code of the Philippines.

⁷⁸ *Film Development Council of the Philippines v. Colon Heritage Realty Corp.*, G.R. Nos. 203754 & 204418 (Resolution), 15 October 2019; *See also* *Commission of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 08 October 2013, citing *Serrano de Agbayani v. Philippine National Bank*, G.R. No. L-23127, 29 April 1971, and *League of Cities of the Philippines v. Commission on Elections*, G.R. Nos. 176951, 177499 & 178056 (Resolution), 24 August 2010.

⁷⁹ *Id.*

⁸⁰ G.R. No. 187485, 08 October 2013.

⁸¹ G.R. No. L-23127, 29 April 1971.

X-----X

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. **Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.**

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. **The past cannot always be erased by a new judicial declaration.** The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." x x x.

117. More relevantly, in *Araullo*,⁸² the Honorable Court highlighted the practicality of the operative fact rule, as follows.:

⁸² G.R. No. 209287, 01 July 2014.

X-----X

Nonetheless, as Justice Brion has pointed out during the deliberations, the doctrine of operative fact does not always apply, and is not always the consequence of every declaration of constitutional invalidity. It can be invoked only in situations where the nullification of the effects of what used to be a valid law would result in inequity and injustice; but where no such result would ensue, the general rule that an unconstitutional law is totally ineffective should apply.

In that context, as Justice Brion has clarified, the doctrine of operative fact can apply only to the PAPs that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the DAP, but cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities.

As a general rule, the nullification of an unconstitutional law or act carries with it the illegality of its effects. However, in cases where nullification of the effects will result in inequity and injustice, the operative fact doctrine may apply. In so ruling, the Court has essentially recognized the impact on the beneficiaries and the country as a whole if its ruling would pave the way for the nullification of the P144.378 Billions worth of infrastructure projects, social and economic services funded through the DAP. Bearing in mind the disastrous impact of nullifying these projects by virtue alone of the invalidation of certain acts and practices under the DAP, the Court has upheld the efficacy of such DAP-funded projects by applying the operative fact doctrine. For this reason, we cannot sustain the Motion for Partial Reconsideration of the petitioners in G.R. No. 209442.

118. Corollarily, the operative fact doctrine applies when the declaration of unconstitutionality of any legislative or executive measure will be burdensome on those who believed in good faith that said measure was valid and legal.⁸³

⁸³ See also *Municipality of Tupi v. Faustino*, G.R. No. 231896, 20 August 2019.

X-----X

119. Here, both OP and the DBM acted in good faith when they processed the partial release of the 2022 Confidential Fund to the OVP's Good Governance Program. OVP, for its part, acted in good faith, and relying on the regularity of the release of the SARO and the Fund itself, expended the amount under the aegis of jurisprudence which establishes the constitutionality of the Contingent Fund for projects listed in the transition budget.

120. Moreover, releasing confidential funds from the contingent fund is neither new nor peculiar to this administration.

121. For instance, in **2012**, during the late President Benigno Aquino III's administration, the OVP under then Vice-President Jejomar Binay requested for confidential funds to be charged against the FY 2012 Contingent Fund. Pertinently, the funding source – which was Special Provision No. 1 of the Contingent Fund of FY 2012 GAA – provides as follows:

1. Administration and Use of Funds. The amount appropriated herein shall be administered by the office of the President and used exclusively to fund the requirements of new and/or urgent projects and activities that need to be implemented during the year. This fund may be used to augment the existing appropriations for local and foreign travels of the President, but in no case shall it be used for the purchase of motor vehicle.

No amount under the Contingent Fund shall be released and disbursed without the prior approval of the President of the Philippines.⁸⁴

122. As presented in the *Report on Contingent Fund releases for the period 01 January to 31 December 2012*, it can be readily seen that an amount of **PHP 6 million** was released to the OVP for confidential/intelligence purposes.⁸⁵

123. Again, in **2014**, the OVP under then Vice-President

⁸⁴ Emphasis supplied.

⁸⁵ Report on Contingent Fund Releases for the Period 01 January – 31 December 2012 (In Pesos)

x-----x

Binay requested for confidential funds to be charged against the FY 2014 Contingent Fund.

124. Pertinently, DBM records yield that the amount of **PhP 6 million** was charged against the 2014 Contingent Fund to cover the confidential activities of the OVP for FY 2014 under the P/A/P "Ceremonial Functions and Technical Services", as evidenced by *Special Allotment Release Order No. SARO-BMB-C-14-0025558 dated 22 December 2014*.⁸⁶ This release was approved by the OP in a *Letter dated 21 November 2014*,⁸⁷ which was signed by the Executive Secretary by authority of the President.

125. The General Provision on Confidential Funds of the 2014 GAA states:

SECTION 75. Confidential Funds. – Confidential funds authorized in this Act shall only be released or disbursed upon approval of the Department Secretary concerned.

Confidential expenses refer to those related to surveillance activities in civilian government agencies that are intended to support the mandate or operations of the agency.

Agencies utilizing confidential funds shall submit to the President of the Philippines and to both Houses of Congress a quarterly report on the accomplishments in the use of said funds.

Implementation of this section shall be subject to the guidelines to be issued by the DBM.

126. Verily, as seen in the 2012 and 2014 GAAs, the OVP's request for confidential funds, to be charged from the Contingent Fund of the respective GAAs, has been done in the past, without contest, pursuant to its mandate and safe implementation of projects.

⁸⁶ Special Allotment Release Order No. SARO-BMB-C-14-0025558 dated 22 December 2014, ANNEX "9."

⁸⁷ *Id.*

127. It is also worth noting that for the 2024 GAA, the Congress inserted the following as a condition to the spending of the Contingent Fund:

In no case shall this Fund be used for: (i) **the provision of confidential and intelligence funds** to civilian departments and agencies with no mandate to perform security and intelligence-related functions unless the President certifies as to the extreme necessity thereof, or (ii) the purchase of motor vehicles, including any improvements thereon.⁸⁸

128. That the Congress decided to place this restriction in the 2024 GAA highlights two things. *First*, no prior restriction existed in the 2022 GAA. Therefore, the use of the previous Contingent Fund for the release assailed herein was not barred by any statutory limitation, further supporting the preceding arguments that the release fell squarely within the scope defined by the 2022 GAA.

129. *Second*, the lack of a previous prohibition also underscores that the release was done in accordance with procedure. Even should this Honorable Court find it erroneous or invalid for various reasons, the operative fact doctrine should apply, as the provisions under the law were complied with.

130. Therefore, even if the release of the Contingent Funds to OVP is to be declared unconstitutional, the effects and consequences thereof had already been legitimized under the operative fact doctrine. Consequentially, the OVP is not required to reimburse the government for the amounts that had been disbursed for its Good Governance Program.

⁸⁸ General Appropriations Act of 2024, § XXXVIII. Contingent Funds, Special Provision No. 1 (Emphasis supplied).

PRAYER

WHEREFORE, respondents respectfully pray that after due deliberations, the Petition for *Certiorari* be **DISMISSED** in the absence of the requisites of judicial review and for being procedurally improper, and be **DENIED** for utter lack of merit.

Respondents likewise pray for other just and equitable relief.

Makati City for the City of Manila, 05 February 2024.



MENARDO I. GUEVARRA

Solicitor General

Roll No. 33957

IBP No. 417383 / 11 January 2024

MCLE Exemption No. VIII-OSG003064 / 27 July 2023



BERNARD G. HERNANDEZ

Assistant Solicitor General

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MCLE Exemption No. VII-OSG000218 / 05 Nov. 2019



MA. ANTONIA EDITA C. DIZON

Assistant Solicitor General

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IBP Lifetime No. 010284/ 12 December 2011

MCLE Exemption No. VIII-OSG000006/ 18 April 2022

COMMENT

Monsod, et al. v. Hon. Vice President Duterte, et al.

G.R. No. 269964

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Roll No. 47392

IBP Lifetime No. 03598

MCLE Exemption No. VIII- OSG000042 / 21 April 2022

COMMENT

Monsod, et al. v. Hon. Vice President Duterte, et al.

G.R. No. 269964

x-----x



LESTER O. FIEL

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MCLE Compliance No. VII-0021559 / 17 June 2022



JENNIFER F. FANDIALAN-LEGASPI

Senior State Solicitor

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IBP No. 364888 / 25 October 2023

MCLE Compliance No. VII-022144 / 23 June 2022



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MCLE Compliance No. VII-0017351/ 06 May 2022



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MCLE Compliance No. VII-0016060 / 21 April 2022

COMMENT

Monsod, et al. v. Hon. Vice President Duterte, et al.

G.R. No. 269964

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IBP Lifetime No. 015540

MCLE Compliance No. VIII-0004397 / 08 October 2023


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IBP Lifetime No. 08992 / 29 March 2010

MCLE Compliance No. VII-0002751 / 01 Sept. 2020


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State Solicitor I

Roll No. 65454

IBP Lifetime No. 014797 / 16 May 2016

MCLE Compliance No. VII-0014886 / 06 April 2022

COMMENT

Monsod, et al. v. Hon. Vice President Duterte, et al.

G.R. No. 269964

x-----x



SANG MEE A. LEE

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MCLE Compliance No. VII-0027922 / 13 April 2023



LEANDRO MARI B. MANABAT

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INGRID MARGARET M. SERRANO

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IBP No. 375538 / 27 December 2023

MCLE Compliance No. VII-0016621 / 28 April 2022



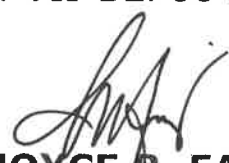
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MCLE Exemption No. VII-BEP004344 / 20 May 2022



MYLEEN JOYCE R. FAVOREAL

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IBP No. 389882 / 02 January 2024

MCLE Compliance No. VII-0022063 / 22 June 2022

COMMENT

Monsod, et al. v. Hon. Vice President Duterte, et al.

G.R. No. 269964

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HON. VICE PRESIDENT SARA Z. DUTERTE

OFFICE OF THE VICE PRESIDENT

11/F, Robinsons Cybergate Plaza

EDSA cor. Pioneer St., Mandaluyong City

HON. EXECUTIVE SECRETARY LUCAS P. BERSAMIN

OFFICE OF THE PRESIDENT

Malacañang Palace Compound

J.P. Laurel St., San Miguel, Manila

HON. SECRETARY AMENAH F. PANGANDAMAN

DEPARTMENT OF BUDGET AND MANAGEMENT

Boncodin Hall, General Solano St.

San Miguel, Manila

VERIFIED DECLARATION

I, **PATRICIA ANNE D. STA. MARIA**, hereby declare that the document (and annexes thereof) hereto submitted electronically in accordance with the Efficient Use of Paper Rule is complete and true copy of the document (and annexes) filed with the Supreme Court.



PATRICIA ANNE D. STA. MARIA

State Solicitor

Date: FEB 05 2024

SUBSCRIBED AND SWORN TO before me on FEB 05 2024, in Makati City, Philippines, affiant exhibiting her competent evidence of identity, to wit Office ID No. 2016-01001.



JOHN DALE A. BALLINAN

Senior State Solicitor

REPUBLIC OF THE PHILIPPINES

AFFIDAVIT OF SERVICE

(Revised as of April 1992)

JOCAS M. NAIDAS, AO I
GSIS UMIN #011-1049-0735-4

I, _____ OFFICE OF THE SOLICITOR GENERAL,
with Office address at 134 Amoroso Village Makati City, after being sworn to depose and say:

FEB 05 2024

That on 02/05/2024, I caused to be served a copy of the following pleading/paper:

NATURE OF THE PLEADING

Comment

In case No. G.R. No. 269964, entitled CHRISTIAN S. MONSOD, IBARRA M. GUTIERREZ III,
VS. THE OFFICE OF THE VICE PRESIDENT, AS REPRESENTED BY THE HONORABLE VICE PRESIDENT

pursuant to Section 3,4,5 and 10, Rule 13 of the Rules of Court, as follows:

By Personal Service To:

() By depositing a copy to the party or his/her attorney on _____ as shown on p _____.

() By leaving a copy in his/her clerk or with a person having authority to receive same as shown on p _____
JOCAS M. NAIDAS, AO I
GSIS UMIN #011-1049-0735-4

() By delivering a copy to the Court/Tribunal Office on _____ as shown on p _____
FEB 05 2024

By Registered Mail To:

() By depositing copy on _____ in the Post Office at _____ as evidenced by Registry Receipt(s) No.(s) _____ hereto attached and indicated after the name (s) of the addressee(s), and with instruction to the postmaster to return the mail to the sender after (10) days if undelivered.

HON. SECRETARY AMENAH F.
DEPARTMENT OF BUDGET AND
MANAGEMENT, Boncodin Hall, General Solano
St., San Miguel, Manila, , Philippines

ATTY. RYA PAOLO J. SANTIAGO
Ateneo Human Right Center, G/F Ateneo
Professional Schools Building,
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HON. EXECUTIVE SECRETARY LUCAS P.
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HON. VICE PRESIDENT SARA Z. DUTERTE
OFFICE OF THE VICE PRESIDENT,
11/F, Robinsons Cybergate Plaza, EDSA cor.
Pioneer St., Mandaluyong City, , Philippines

Makati, Metro Manila, Philippines

IOCAS M. NAIDAS, Jr.
019-0735

(Affiant)

FEB 05 2024

SUBSCRIBED AND SWORN to before me this _____ of _____ at Makati City, Philippines. Affiant exhibiting to me his _____ issued at Pasay City.



23-026871-0006

JOHN DALE A. BALLINAN

Solicitor, Officer Administering the Oath
Office of the Solicitor General

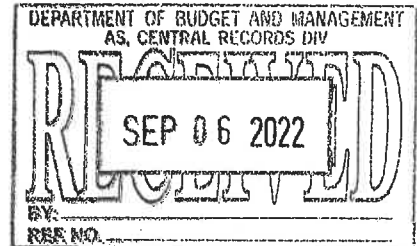


ANNEX" 1"

Republic of the Philippines
Office of the Vice President

22 August 2022

HON. AMENAH F. PANGANDAMAN
Secretary
Department of Budget and Management
General Solano Street
San Miguel, Manila



THROUGH: MS. MARY GRACE M. DELOS SANTOS
Director, Budget Management Bureau – C

Dear Secretary Pangandaman:

The Office of the Vice President expresses its gratitude for the recommendation on the recalibrated budget level under the FY 2023 National Expenditure Program. To ensure continuous operations of the OVP under the current year, may we request a total of **P403.46 Million** for various purposes, as follows:

1) Augmentation of Financial Assistance/ Subsidy

Since July 1, 2022, a total of seven (7) OVP Satellite Offices in Bacolod, Cebu, Dagupan, Davao, Surigao, Tacloban, and Zamboanga were established, catering to an average of 100-150 clients per day per satellite office.

A total of P294.72 Million is projected based on the actual turn-out of approved applications for Medical Assistance. This amount exceeds the remaining allocated amount of P150 Million for said programs. Thus, the amount of **P144.72 Million** which corresponds as the projected deficit is hereby requested. See attached Annex A as reference.

2) Augmentation of the Special Duty Allowance (SDA) for the Vice-Presidential Security and Protection Group (VPSPG)

The OVP has been providing SDA to the Vice-Presidential Security Detachment, patterned per Presidential Security Group arrangements. For FY 2022, the amount of P5.58 million is appropriated to cover a maximum of 95 security personnel only.

With the creation of the Vice-Presidential Security and Protection Group (VPSPG) with 450 personnel complement, an additional amount of **P8.74 Million** is hereby requested. See attached Annex "B" as reference.

3) Additional 192 Coterminous and Contractual Positions

The OVP intends to rollout several projects this year to include 1) the establishment of three (3) additional satellite offices, 2) augmentation for the Libreng Sakay program, 3) rollout of three (3) OVP Food Trucks to serve as mobile kitchen for nutritional programs and disaster response activities, and 4) implementation of Peace 911, peace-building initiative in Marawi.

To fully implement said projects, a total of 192 positions with an annual PS budget requirement of **P107.46 Million** following the applicable tranche for FY 2022 is hereby requested.

4) Confidential Funds

For and in consideration of the safe implementation of the various projects and activities under the Good Governance program and the conduct of official engagements and functional representation in international and domestic events as instructed by the President, the CF amount of **P250 Million** is hereby requested.

The Office of the Vice President is committed to formulate programs, projects, and activities (PPAs) relevant to national security and peace and order, and is devoted to implement said PPAs with proper security and safety protocols for the benefit of the institution through the OVP satellite offices, its partner stakeholders, and the general public.

MR. KELVIN GEROME L. TENIDO, Chief Administrative Officer – Budget Division, will closely coordinate with you on this matter. He can also be reached through contact number **(0927) 854 1464** or email at **kelvin.tenido@ovp.gov.ph**.

Thank you for your usual support to the Office of the Vice President.

Very truly yours,

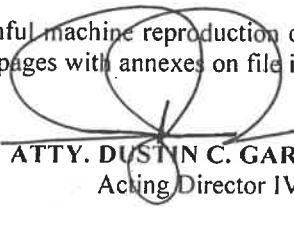

SARA Z. DUTERTE

Office of the President
MALACAÑANG RECORDS OFFICE

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that this is a faithful machine reproduction of the original copy of the document consisting of two (2) pages with annexes on file in this Office.


ATTY. DUSTIN C. GARVIDA
Acting Director IV

Manila, 13 December 2023

11F, Robinsons Cybergate Plaza, EDSA cor. Pioneer St., Mandaluyong, 1550, Metro Manila
Tel. No. 8532-5942/ 8370-1719 ● vp@ovp.gov.ph

CENTRAL RECORDS DIVISION
FILE COPY



Jolo
Jocelyn

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
GENERAL SOLANO STREET, SAN MIGUEL, MANILA

Reference No.: 2022-BC-0112304-E

September 15, 2022

UNDERSECRETARY ZULEIKA T. LOPEZ
Chief of Staff
Office of the Vice President (OVP)
10th Street, Brgy. Mariana
New Manila, Quezon City

ORIGINAL RECEIVED
Fidel B. Sibalancis
Chief: *LFC*
Date: *9-16-22*

Attention : **Mr. Kelvin Gerome L. Tenido**
Chief Administrative Officer – Budget Division

Dear **Undersecretary Lopez**:

This pertains to the letter¹ of Vice President Sarah Z. Duterte requesting additional funds to ensure continuous operations of the OVP for FY 2022, as follows:

- a. Release of funds in the total amount of P403.460 Million for the following:

Particulars	Amount ('000)
Personnel Services (PS)	
Special Duty Allowance (SDA) for the Vice-Presidential Security and Protection Group (VPSPG)	8,740
Sub-total, PS	8,740
Maintenance and Other Operating Expenses (MOOE)	
Financial Assistance/Subsidy	144,720
Confidential Fund	250,000
Sub-total, MOOE	394,720
Grand Total (PS+MOOE)	403,460

- b. Creation of additional 192 coterminous (CT) and contractual positions with annual requirement of P107.460 Million.

Please note that the request of the OVP for PS related items, i.e., augmentation of its VPSPG from 95 existing security personnel to 450 personnel complement or an additional 355 security personnel that will entail an additional requirement for SDA of

¹ Dated August 22, 2022, received by this Bureau on September 7, 2022

P8.740 Million, and the creation of additional 192 coterminous/contractual positions with annual requirement of P107.460 Million were referred to the Organization, Position Classification and Compensation Bureau (OPCCB) of the DBM for comments/recommendation and appropriate action.

Accordingly, the OPCCB, in its letter to the OVP on September 12, 2022, request for the submission of supporting documents in order to facilitate the evaluation of the proposed creation of additional coterminous/contractual items and the same will be acted upon separately by the DBM.

Likewise, upon initial evaluation of your request for augmentation of financial assistance/subsidy and provision for Confidential Funds for FY 2022, we have noted that the following documents were not submitted to support the same:

1. Interim/latest financial accountability report. Based on the submitted Statement of Appropriations, Allotments, Obligations, Disbursements and Balances (FAR No. 1) as of June 30, 2022, out of the OVP's FY 2022 allotment of P343.970 Million for financial assistance/subsidy, P198.297 Million remains unobligated;
2. Assumptions and computations used in the proposed augmentation of financial assistance/subsidy amounting to P144.720 Million; and
3. Physical and financial plan for the proposed Confidential Funds pursuant to item 4.2 of the COA-DBM-DILG-GCG-DND Joint Circular No. 2015-01 dated January 8, 2015.

In this regard, may we request the OVP for the submission of the aforementioned documents. Please note that the same was already coordinated in advance to your Budget Division thru emails and phone calls.

Thank you and God Bless.

Very truly yours,


MARIA GRACE M. DELOS SANTOS
Director IV, BMB-C



Republic of the Philippines

Office of the Vice President

September 19, 2022

MS. MARY GRACE M. DELOS SANTOS

Director, Budget and Management Bureau – C
Department of Budget and Management
General Solano Street
San Miguel, Manila

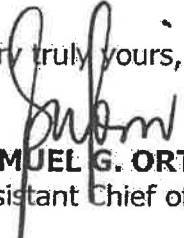
Dear **Director Delos Santos**:

In response to your letter dated September 15, 2022, pertaining to our request for additional funding for FY 2022, we respectfully submit the following documents to support the said request:

- a. Financial Accountability Report as of August 31, 2022;
- b. Copy of the submitted computation in forecasting the requirement for medical assistance; and
- c. Physical and Financial Plan, as prescribed under COA-DBM-DILG-GCG-DND Joint Circular No. 2015-01.

We hope that you will find the submitted documents in order. Thank you.

Very truly yours,


LEMUEL G. ORTONIO
Assistant Chief of Staff

CENTRAL RECORDS DIVISION
FILE COPY



10/19
10/19

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
GENERAL SOLANO STREET, SAN MIGUEL MANILA

Office of the President
REPUBLIC OF THE PHILIPPINES

Sender's Copy



10-19
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101922-MRO-21787

OCT 19 2022

MEMORANDUM FOR THE PRESIDENT

Thru : **The Executive Secretary**

From : The Secretary, Department of Budget and Management

Subject : **OFFICE OF THE VICE-PRESIDENT (OVP) — RELEASE OF FUNDS FOR ADDITIONAL REQUIREMENTS FOR FY 2022**

1.0 NATURE OF REQUEST

1.1 This refers to the letter of the Vice President of the Philippines, Sarah Z. Duterte, seeking DBM's evaluation and recommendation on the release of additional requirements for FY 2022 in the amount of P403.460 Million to cover the following:

Particulars	Amount ('000)
PS	
Special Duty Allowance (SDA) for the Vice-Presidential Security and Protection Group (VPSPG)	8,740
Sub-total, PS	8,740
MOOE	
Financial Assistance/Subsidy	144,720
Confidential Fund (CF)	250,000
Sub-total, MOOE	394,720
Grand Total (PS+MOOE)	403,460

2.0 COMMENTS/FINDINGS

2.1 The proposed additional **P8.740 Million** for SDA of the additional of 355 security personnel to complement the OVP's VPSPG during the year is subject to the determination of the Armed Forces of the Philippines (AFP) and Philippine National Police (PNP) of the required number of personnel to be detailed to the OVP pursuant to AFP Staff Memorandum No. 01 dated February 17, 2014 and Republic Act No.6975¹.

2.1.1 The corresponding SDA, which is a Personnel Services (PS) item shall be accommodated within any available PS allotment of the OVP.

2.2 The augmentation of financial assistance/subsidy in the amount of **P144.72 Million** is due to the establishment of seven (7) satellite offices in Bacolod, Cebu, Dagupan, Davao, Surigao, Tacloban and Zamboanga. The creation of the said offices enables the OVP to extend its services such as the Medical and Burial Assistance Program, to marginalized communities across the country.

2.2.1 The OVP's FY 2022 total budget amounts to P702.035 Million. Out of the total budget, P343.970 Million is allocated for the financial assistance/subsidy activity of the Office.

2.2.2 Per Financial Accountability Report (FAR) No. 1 as of June 30, 2022, only P198.296 Million is the balance for financial assistance/subsidy of the OVP and will be insufficient to cover the requirements of the newly established satellite offices. The deficiency in the financial assistance/subsidy of the OVP amounts only to P96.424 Million, computed as follows:

Subsidy Balance as of June 30, 2022 <i>(based on FAR No. 1)</i>	P 198,296
Less: Jul-Dec Reqts <i>(based on submitted projection attached as Annex A)</i>	(294,720)
Surplus/(Deficit)	<u><u>P (96,424)</u></u>

¹ An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and For Other Purposes dated December 13, 1990

2.2.3 The additional requirement will cater to 19,854 target beneficiaries by the end of year as per submitted Annex A.

2.3 The CF in the amount of P250 Million for FY 2022 is in consideration of the safe implementation of the various projects and activities under the Good Governance Program of the OVP and the conduct of its official engagements and functional representation in International and domestic events.

2.3.1 The OVP has no provision for CF under the FY 2022 General Appropriations Act (GAA), Republic Act No. 11639.

2.3.2 In accordance with Item 4.2 of the COA-DBM-DILG-GCG-DND JC No. 2015-01², the OVP submitted its Physical and Financial Plan for the proposed FY 2022 CF which states that the said fund will be used in the safe implementation of OVP initiatives and confidence-building under its Good Governance Program across its Satellite Offices for FY 2022.

2.3.3 The proposed CF covers the safe implementation of OVP's programs and projects for the 2nd semester of FY 2022. However, considering that the first half of the semester is already over, we are only recommending P125 Million to cover the requirement for the last quarter of the year.

Fund Source:

2.4 Special Provision (SP) No. 1 under the FY 2022 Contingent Fund provides that an amount of P7 Billion is appropriated therein to cover funding requirements of new or urgent activities of national government agencies, GOCCs, and LGUs that need to be implemented or paid during the year i.e. in the case of OVP's request, requirement of newly created offices, **subject to the approval by the President of the Philippines.**

² Guidelines on the Entitlement, Release, Use, Reporting and Audit of Confidential and/or Intelligence Funds.

3.0 RECOMMENDATION

3.1 In view of the foregoing, we respectfully recommend the approval of the amount of P221.424 Million, chargeable against the Contingent Fund under the FY 2022 GAA, RA No. 11639, to cover the following MOOE items:

Particulars	Amount ('000)
Financial Assistance/Subsidy	96,424
Confidential Fund	125,000
Total	221,424

4.0 For the President's consideration/approval. Thank you.


AMENAH F. PANGANDAMAN

APPROVED

DISAPPROVED



H.E. FERDINAND ROMUALDEZ MARCOS JR.

Date: _____

**Office of the President
of the Philippines
Malacañang**

MEMORANDUM FROM THE EXECUTIVE SECRETARY

FOR : VICE-PRESIDENT SARA Z. DUTERTE
Officer of the Vice-President (OVP)

SECRETARY AMENAH F. PANGANDAMAN
Department of Budget and Management (DBM)

SUBJECT : OVP - RELEASE OF FUNDS FOR ADDITIONAL
REQUIREMENTS FOR FY 2022

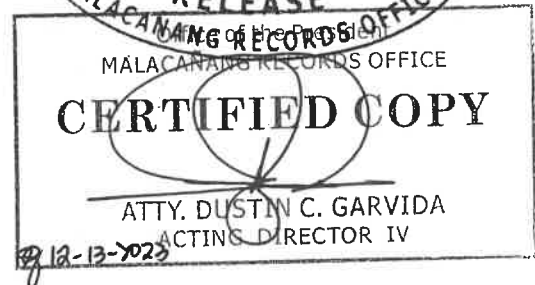
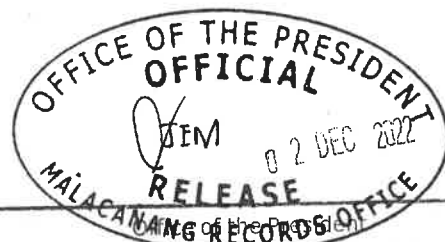
DATE : NOV 28 2022

Upon the representations of the OVP, and pursuant to the recommendation of the DBM in its Memorandum dated 18 October 2022, please be informed of the **APPROVAL** of the release of funds amounting to **TWO HUNDRED TWENTY-ONE MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND PESOS (P221,424,000.00)** to cover the following Maintenance and Other Operating Expenses items: a) Financial Assistance/Subsidy - P96,424,000.00, and b) Confidential Fund - P125,000,000.00, chargeable against the FY 2022 Contingent Fund under Republic Act (RA) No. 11639 (General Appropriations Act [GAA]), subject to the availability of funds, the provisions of Section 83 of the General Provisions of RA No. 11369 (FY 2022 GAA) and COA-DBM-DILG-GCG-DND Joint Circular No. 2015-01; and other pertinent budgetary, accounting and auditing laws, rules and regulations.

For your appropriate action.

By order of the President:

Lucas P. Bersamin
LUCAS P. BERSAMIN
Executive Secretary



101922-MRO-21787

fin 5-3 (PAP) ✓



ANNEX "6"

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
General Solano Street, San Miguel, Manila

SPECIAL ALLOTMENT RELEASE ORDER

For Fiscal Year 2022

Department : Office of the Vice-President (OVP)	ORG CODE
Agency : Office of the Vice-President (OVP)	03 000 0000000
Operating Unit :	(51 / B9586)
Locality :	
Funding Source : Regular Agency Fund, FY 2022 General Appropriations Act, RA 11639 Contingent Fund	01 1 01 402
Purpose : To cover Financial Assistance/Subsidy and Confidential Fund per Office of the President approval dated November 28, 2022.	

MFO/PAP Code	Particulars	Object Code	Amount
100000100001000	General Administration and Support General Management and Supervision Maintenance and Other Operating Expenses	50200000 00	P 96,424,000
	Operations		96,424,000
310100100001000	OO : Enhanced strategic partnership and advocacy on good governance GOOD GOVERNANCE PROGRAM Good Governance Engagements and Social Service Projects		P 125,000,000

Amount in words:
***** TWO HUNDRED TWENTY-ONE MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND PESOS ONLY *****

Notes:
 The allotment herein released shall be valid for obligation until December 31, 2023.

The allotment herein authorized shall be used solely for the purposes indicated and disbursements therefrom shall be made in accordance with existing budgeting, accounting, and auditing rules and regulations. It is the primary responsibility of the head of the Department, Bureau or Agency concerned to keep expenditures within the limits of the amount allotted.

(Signature on the last page)

AMENAH F. PANGANDAMAN
 Secretary

In following - up, pls. cite barcode #SARO-2022-C00319B





REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
General Solano Street, San Miguel, Manila

SPECIAL ALLOTMENT RELEASE ORDER

For Fiscal Year 2022

Department : Office of the Vice-President (OVP)	ORG CODE
Agency : Office of the Vice-President (OVP)	03 000 0000000
Operating Unit :	(51 / B9586)

Locality :	
------------	--

Funding Source : Regular Agency Fund, FY 2022 General Appropriations Act, RA 11639 Contingent Fund	01 101 402
-------------------------------------------------------------------------------------------------------	------------

Purpose :
To cover Financial Assistance/Subsidy and Confidential Fund per Office of the President approval dated November 28, 2022.

MFO/PAP Code	Particulars	Object Code	Amount
	Maintenance and Other Operating Expenses	50200000 00	125,000,000
	TOTAL:		P 221,424,000

Amount in words:
*** **TWO HUNDRED TWENTY-ONE MILLION FOUR HUNDRED TWENTY-FOUR THOUSAND PESOS ONLY** ***

Notes:
The allotment herein released shall be valid for obligation until December 31, 2023.

The allotment herein authorized shall be used solely for the purposes indicated and disbursements therefrom shall be made in accordance with existing budgeting, accounting, and auditing rules and regulations. It is the primary responsibility of the head of the Department, Bureau or Agency concerned to keep expenditures within the limits of the amount allotted.

In following - up, pls. cite barcode #SARO-2022-C00319B



AMENAH F. PANGANDAMAN
Secretary

SARO No.: SARO-BMB-C-22-0012004

Date of Issue: December 13, 2022



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
GENERAL SOLANO STREET, SAN MIGUEL, MANILA

September 11, 2023

CONGRESSMAN ELIZALDY S. CO

Chairperson
Committee on Appropriations
House of Representatives

Dear **Congressman Co:**

Assalamua'alaykum Warahmatullahi Wabarakatuh!

This is in reference to the release of funds, including Confidential Funds, to the Office of the Vice President (OVP) dated December 13, 2022 charged against the Contingent Fund under the Fiscal Year (FY) 2022 General Appropriations Act (GAA).¹

On August 22, 2022, the OVP requested additional funding requirements amounting to P403.46 Million for the following:

Particulars	Amount
Special duty allowance of the additional 355 security personnel on top of the 95 security personnel of the OVP	P8.74 Million
Financial assistance/subsidy for the establishment of seven (7) satellite offices in Bacolod, Cebu, Dagupan, Davao, Surigao, Tacloban and Zamboanga to extend services to marginalized communities across the country, such as Medical and Burial Assistance Program	P144.72 Million
Confidential fund in consideration of the safe implementation of various projects and activities under the Good Governance Program of the OVP , and the conduct of its various official engagements and functional representation in international and domestic events	P250 Million

¹ Republic Act No. 11639

Per evaluation, DBM recommended the release of P96.424 Million for the financial assistance/subsidy which will cater to 19,854 target beneficiaries by the end of FY 2022, and P125 Million for Confidential Fund to cover the last quarter of FY 2022, or a total of P221.424 Million.

For the funding source, Special Provision (SP) No. 1 of the Contingent Fund of the FY 2022 GAA provides as follows:

1. **Contingent Fund.** The amount of Seven Billion Pesos (P7,000,000,000) appropriated herein shall cover the funding requirements of **new or urgent activities or projects of national government agencies, GOCCs, and LGUs that need to be implemented or paid during the year**, such as, but not limited to the following: (i) legal obligation of the government arising from final and executory decisions of competent authorities, such as compromise agreements, arbitral awards, mediation settlement agreement, and professional services in connection thereto; (ii) requirements of newly created offices; or (iii) deficiencies in the appropriations for local and external travels of the President of the Philippines.

In no case shall this Fund be used for the purchase of motor vehicles, including any improvements thereon.

Release of funds shall be made directly to the agencies concerned, except for GOCCs and LGUs which shall be made through the BTr, **subject to the approval by the President of the Philippines**, other than payment resulting from final and executory decisions of competent authorities, which shall be subject to the approval of the DBM.

The DBM shall include information on the releases from the Contingent Fund in its quarterly and annual reports submitted to Congress. (Emphases supplied)

In this regard, we wish to clarify that the release of funds amounting to P221.424 Million to the OVP was not an augmentation or transfer of funds from the Office of the President (OP). Rather, it was a **release of funds** chargeable against the Contingent Fund upon a finding that the OVP's request qualified for funding thereunder.

While it is understandable that, at the outset, the release of funds to the OVP may be perceived as a transfer, the same was not technically so, for such release was funded from the Contingent Fund under the FY 2022 GAA and not from the budget of the OP. *Araullo v. Aquino*,² which dealt with the case of augmentation out of savings, thus, finds no application on this matter.

² 737 Phil. 457, 01 July 2014

To reiterate, SP No. 1 of the Contingent Fund of the FY 2022 GAA provides that the amount of P7 Billion is thereby appropriated to cover funding requirements of new or urgent activities of national government agencies, GOCCs, and LGUs that need to be implemented or paid during the year, subject to the approval of the President. Hence, it is to be noted that the use of the Contingent Fund is not limited to any particular agency or office, and that the same SP No. 1 prescribed only one prohibition -- the Contingent Fund cannot be used for the purchase of motor vehicles, including any improvements thereon.

In *Belgica v. Executive Secretary*,³ the Supreme Court sustained anew the validity of the Contingent Fund and its purpose, explaining that "[t]he purpose of the Contingent Fund is precisely to cover the funding requirements of new or urgent projects that need to be implemented during the year." The Contingent Fund is intended to fund multifarious projects that are necessary but were not anticipated during budget preparation and legislation. The Court further said that "[t]o even attempt to identify these 'contingencies' almost two years before they are expected to arise is a perversion of the purpose of the Contingent Fund amounting to the deprivation of the Legislature's authority to amply provide for contingencies and of the Executive's power to address them."

Considering the representations of the OVP and as approved by the OP, the P221.424 Million released to the OVP was chargeable against the Contingent Fund under FY 2022. This includes the amount of P125 Million released to the OVP for confidential expenses for FY 2022 under its existing Programs/Activities/Projects (P/A/P) "Good Governance Program", particularly the "Good Governance Engagements and Social Service Projects", in consideration of the urgency of the safe implementation of various projects and activities of the OVP across its satellite offices for the last quarter of FY 2022, the conduct of its official engagements and functional representation in international and local events, the implementation of various projects and activities relevant to national security and peace and order, and the implementation of the same with proper security and safety protocols for the benefit of the institution -- being the second highest office of the land, its partner stakeholders, and the general public.

We hope this clarifies the matter at hand. Thank you and best regards.

Very truly yours,


AMNAH F. PANGAMBINAN
Secretary



³ 864 Phil. 461, 08 October 2019



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
 BONCODIN HALL, GENERAL SOLANO STREET, SAN MIGUEL, MANILA

Reference No.: 2022-BC-0121824-E

October 7, 2022

MEMORANDUM FOR THE SECRETARY

THRU : **Undersecretary Tina Rose Marie L. Canda** *Canda 10/10*
 Budget Preparation and Execution Group *Recommending Approval*

FROM : The Director
 Budget and Management Bureau-C

SUBJECT : **OFFICE OF THE VICE PRESIDENT – RELEASE OF FUNDS FOR ADDITIONAL REQUIREMENTS FOR FY 2022**

1.0 This pertains to the request of the OVP for the release of funds in the total amount of P403.460 Million to cover additional requirements for FY 2022 for the following:

Particulars	Amount ('000)
PS	
Special Duty Allowance (SDA) for the Vice-Presidential Security and Protection Group (VPSPG)	8,740
Sub-total, PS	8,740
MOOE	
Financial Assistance/Subsidy	144,720
Confidential Fund (CF)	250,000
Sub-total, MOOE	394,720
Grand Total (PS+MOOE)	403,460

1.1 Also included in this request is the creation of additional 192 coterminous (CT) and contractual positions with an annual requirement of P107.460 Million which is subject to the evaluation of the OPCCB¹ and shall be acted upon separately.

¹ Per OPCCB Memorandum dated September 12, 2022 (copy attached)

2.0 Submitted to support the request are the following documents which are found in order:

- a. Details/computation of SDA;
- b. Projection for Financial Assistance/Subsidy;
- c. Statement of Appropriations, Allotments, Obligations, Disbursements and Balances (FAR No 1) as of June 30, 2022; and
- d. Physical and Financial Plan for the proposed FY 2022 Confidential Funds.

3.0 On the proposed **additional P8.740 Million for SDA** for an additional 355 on top of the existing 95 security personnel of the OVP, this Bureau prepared a letter² to the former, based on the OPCCB Memorandum³ on the same (copies of the letter to OVP and Memorandum from the OPCCB as attached).

4.0 Hereunder are our comments and evaluation on the proposed augmentation of **financial assistance/subsidy in the amount of P144.72 Million:**

4.1 The establishment of seven (7) satellite offices in Bacolod, Cebu, Dagupan, Davao, Surigao, Tacloban and Zamboanga enables the OVP to extend its services such as the Medical and Burial Assistance Program, to marginalized communities across the country.

4.2 The OVP's status of FY 2022 budget as of June 30, 2022, is shown below:

P/A/Ps	<i>Amounts in thousand pesos</i>		
	Allotment	Obligations	Balance
GASS			
General Management and Supervision	80,428	41,934	38,494
Operations			
GOOD GOVERNANCE PROGRAM			
Good Governance Engagements and Social Service Projects	621,607	296,667	324,940
<i>of which:</i>			
Financial Assistance/Subsidy	343,970	145,674	198,296
Total	702,035	338,601	363,434

4.2.1 Out of the P621.607 Million provision for P/A/P Good Governance Engagements and Social Service Projects, P343.970 Million is allocated for financial assistance/subsidy.

4.2.2 As of June 30, 2022, only P198.296 Million is the balance for financial assistance/subsidy and will be insufficient to cover the

² Dated October 5, 2022

³ Dated October 3, 2022

requirements of the newly established satellite offices, hence this request.

- 4.3 Below is the evaluation of the submitted budget projection of the OVP's Public Assistance Division for the period July – December, 2022:

Subsidy Balance as of June 30, 2022 <i>(based on FAR No. 1)</i>	P 198,296
Less: Jul-Dec Reqts <i>(based on submitted projection attached as Annex A)</i>	(294,720)
Surplus/(Deficit)	<u>P (96,424)</u>

4.3.1 Only P96.424 Million deficiency out of the P144.720 Million requested for the said program has been computed based on the unobligated balance per FAR No. 1 as of June 30, 2022.

4.3.2 The additional requirement will cater to 19,854 target beneficiaries by the end of year as per submitted Annex A.

- 5.0 The OVP's request for **CF in the amount of P250 Million** for the year is in consideration of the safe implementation of the various projects and activities under the Good Governance Program of the OVP, and the conduct of its various official engagements and functional representation in International and domestic events.

5.1 It may be noted that the OVP has no provision for CF under the FY 2022 General Appropriations Act (GAA), Republic Act No. 11639.

5.2 Relevant policies, rules and regulations on the grant of CF are as follows:

5.2.1 Section 83 of the General Provisions under FY 2022 GAA, RA No. 11639 provides that:

"CF shall be released or disbursed only upon approval of the Department Secretary concerned.

Confidential Expenses refer to those related to surveillance activities in civilian government agencies that are intended to support the mandate or operations of the agency.

Agencies utilizing CF shall submit to the President of the Philippines and both House of Congress a quarterly report on the accomplishment in the use of said funds.

Implementation of this Section shall be subject to COA-DBM-DILG-GCG-DND JC No. 2015-01 dated January 8, 2015 and such other guidelines issued thereon."

5.2.2 COA-DBM-DILG-GCG-DND JC No. 2015-01:

1. Item 4.1.1 provides the entitlement of NGAs to CF and/or IF under the GAA or other law/s.
2. Item 4.2 provides that all allocations of CF shall be supported with a Physical and Financial Plan indicating the proposed amount allocated for each program, activity and project, where disbursements pertaining to CF shall be based.

5.3 In accordance with Item 4.2 of the COA-DBM-DILG-GCG-DND JC No. 2015-01⁴, the OVP submitted its Physical and Financial Plan for the proposed FY 2022 CF which states that the said fund will be used in the safe implementation of OVP initiatives and confidence-building under its Good Governance Program across its Satellite Offices for FY 2022.

5.4 The proposed CF of P250 Million will cover the safe implementation of OVP's programs and projects for the 2nd semester of FY 2022. However, considering that the first half of the semester is already over, we are only recommending P125 Million to cover the requirement for the last quarter of the year.

Fund Source:

6.0 Special Provision (SP) No. 1 under the FY 2022 Contingent Fund provides that an amount of P7 Billion is appropriated therein to cover funding requirements of new or urgent activities of national government agencies, GOCCs, and LGUs that need to be implemented or paid during the year i.e. in the case of this request, requirement of newly created offices, **subject to the approval by the President of the Philippines.**

7.0 Per coordination with the BTB, total available balance of the Contingent Fund under FY 2021 GAA, RA No. 11518 Continuing Appropriation and FY 2022 GAA, RA No. 11639 as of October 5, 2022, amounts to **P6.729 Billion**, details as follows:

Legal Basis	Balance of Fund ('000)		
	MOOE	CO	Total
FY 2022 GAA	4,138,334	2,427,529	6,565,863
FY 2022 Cont Appro	-	163,368	163,368
Total	4,138,334	2,590,897	6,729,231

⁴ Guidelines on the Entitlement, Release, Use, Reporting and Audit of Confidential and/or Intelligence Funds

8.0 Foregoing considered, we respectfully recommend the approval of the OVP's request for additional funding requirements for the following in the amount of **P221.424 Million**, chargeable against the Contingent Fund under the FY 2022 GAA, RA No. 11639:

Particulars	Amount ('000)
Financial Assistance/Subsidy	96,424
Confidential Fund	125,000
Total	221,424

9.0 Should our recommendation merit your approval, attached is a draft Memorandum for the President for the purpose.

10.0 For your consideration and signature, please. Thank you.


MARIA GRACE M. DELOS SANTOS

APPROVED

DISAPPROVED


AMENAH F. PANGANDAMAN
Secretary

OCT 18 2022



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
General Solano Street, San Miguel, Manila
SPECIAL ALLOTMENT RELEASE ORDER
For Fiscal Year 2014

Department : Office of the Vice-President (OVP)	ORG CODE
Agency :	03 000 0000000
Operating Unit :	(51 / B9586)
Locality : National Capital Region (NCR)	13
Funding Source : FY 2014 General Appropriations Act, RA 10633 Contingent Fund	1 01 402

Purpose :
To cover confidential activities for FY 2014.

MFO/PAP Code	Particulars	Object Code	Amount
301010000	Operations		
	MFO 1: CEREMONIAL AND TECHNICAL SUPPORT SERVICES		
	Ceremonial Functions and Technical Services		P 6,000,000
	Maintenance and Other Operating Expenses	50200000 00	6,000,000
	TOTAL:		P 6,000,000

Amount in words:
*** SIX MILLION PESOS ONLY ***

Notes:
The allotment herein released shall be valid for obligation until December 31, 2015.

This release was approved by the Office of the President in a letter dated November 21, 2014 signed by Executive Secretary Paquito N. Ochoa, Jr. by authority of the President.

The allotment herein authorized shall be used solely for the purposes indicated and disbursements therefrom shall be made in accordance with existing budgeting, accounting and auditing rules and regulations. It is the primary responsibility of the head of the Department, Bureau or Agency concerned to keep expenditures within the limits of the amount allotted.

By Authority of the Secretary:
Original Signed

Undersecretary

In following - up, pls. cite barcode #SARO-2014-C01064B

