

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

EN BANC

**DATU SAJID S. SINSUAT,
EBRAHIM P. DIOCOLANO and
FEBY A. ACOSTA,**

Petitioners,

-versus-

G.R. No. 271741

**HON. AHOD BALAWAG
EBRAHIM, in his capacity as
Interim Chief Minister of the
Bangsamoro Government, and
Bangsamoro Transition
Authority,**

Respondents.

X-----X

COMMENT

Respondent **COMMISSION ON ELECTIONS (COMELEC)**, through the **OFFICE OF THE SOLICITOR GENERAL (OSG)**, in compliance with this Honorable Court's February 27, 2024 Resolution,¹ respectfully states:

STATEMENT OF THE CASE

1. This is a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court which beseeches this Honorable Court to review, prohibit and declare as void and unconstitutional Bangsamoro Autonomy Act (BAA) Nos. 54³

¹ Resolution impleading the COMELEC as respondent in this case and requiring it to file its Comment on the Petition and a Prayer for TRO within a non-extendible period of 10 days from notice; Received by the OSG on March 11, 2024.

³ An Act Creating the Municipality of Datu Sinsuat Balabaran in the Province of Maguindanao del Norte, Providing Funds Therefor and For Other Purposes.

and 55⁴ for allegedly being contrary to the provisions of the Constitution, the Bangsamoro Organic Law and other national laws. Said BAA Nos. 54 and 55 will create the proposed Municipalities of Datu Sinsuat Balabaran and Sheik Abas Hamza out of the Municipality of Datu Odin Sinsuat in the Province of Maguindanao del Norte.

2. In this regard, petitioners allege that public respondent Bangsamoro Transition Authority (BTA) has no authority or power to create municipalities or subdivide an existing municipality as the same is solely vested in the Bangsamoro Parliament, which would only be constituted after the first regular election for parliamentary members.

3. Accordingly, petitioners aver that BAA Nos. 54 and 55 are complete governmental acts which allegedly cause direct, concrete and adverse effects on the rights of petitioners, as well as public rights that affect the residents of the Municipality of Datu Odin Sinsuat.

STATEMENT OF THE RELEVANT FACTS AND OF THE PROCEEDINGS HAD

4. On July 27, 2018, then President Rodrigo R. Duterte signed into law Republic Act (R.A.) No. 11054, or the *Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao*.

5. By virtue of R.A. No. 11054, the Bangsamoro Transition Authority (BTA) was created to serve as the interim government in the Bangsamoro Autonomous Region in its transition period from the former Autonomous Region in Muslim Mindanao.⁵ As such, the legislative and executive powers in the Bangsamoro Autonomous Region were vested in the BTA. In particular, the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao provides that the executive authority shall be exercised by the interim Chief Minister, while legislative authority shall be exercised by the

⁴ An Act Creating the Municipality of Datu Sheik Abas Hamza in the Province of Maguindanao del Norte, Providing Funds Therefor and For Other Purposes.

⁵ R.A. No. 11054, Article XVI, Section 2.

BTA.⁶

6. Meanwhile, on May 27, 2021, R.A. No. 11550⁷ was enacted into law. Said law provided for the division of the then Maguindanao Province into two distinct provinces, namely, Maguindanao del Norte, and Maguindanao del Sur. Under Article I, Section 5 of said law, the Municipality of Odin Sinsuat was designated as the capital and the seat of government of the Province of Maguindanao del Norte.

7. On December 20, 2023, pursuant to its mandate as the Bangsamoro Autonomous Region's legislative authority, the BTA enacted the assailed BAA Nos. 54 and 55, which proposed the creation of the Municipalities of Datu Sinsuat Balabaran and Sheik Abas Hamza, to be carved out from the existing Municipality of Datu Odin Sinsuat, all in the Province of Maguindanao del Norte.

8. On December 26, 2023, public respondent Interim Chief Minister Ebrahim signed into law BAA Nos. 54 and 55, before they were published on December 28, 2023 in the *Mindanao Expose*. Thus, the assailed BAAs took effect on January 12, 2024.

9. Despite their passage into law, however, public respondent COMELEC has not issued any resolution nor scheduled the conduct of a plebiscite in furtherance of the mandate of the assailed BAA Nos. 54 and 55.

10. In the meantime, petitioners filed the instant Petition for *Certiorari* and Prohibition under date of February 6, 2024 as they alleged that BAA Nos. 54 and 55 are unconstitutional and void.

11. While originally not impleaded as respondent, the COMELEC, through the OSG, received on March 11, 2024, a copy of this Honorable Court's February 27, 2024 Resolution impleading it as one of the respondents in the instant case.

⁶ R.A. No. 11054, Article XVI, Section 3.

⁷ An Act Dividing the Province of Maguindanao into Two (2) provinces, namely: Maguindanao del Norte and Maguindanao del Sur.

As such, this Honorable Court required the COMELEC to file its Comment on the Petition within a non-extendible period of ten (10) days from notice.

12. Thus, this Comment on the Petition.

ISSUES

I

WHETHER THE INSTANT PETITION FOR *CERTIORARI* AND PROHIBITION PRESENTS AN ACTUAL CASE OR CONTROVERSY TO WARRANT THIS HONORABLE COURT'S EXERCISE OF ITS JUDICIAL POWER AND DECLARE THE ASSAILED BAA NOS. 54 AND 55 UNCONSTITUTIONAL.

II

WHETHER THE INSTANT PETITION FOR *CERTIORARI* AND PROHIBITION PRESENTS ISSUES THAT JUSTIFY DIRECT RESORT TO THIS HONORABLE COURT AND DISREGARD OF THE DOCTRINE OF HIERERACHY OF COURTS.

ARGUMENTS

I

THE INSTANT PETITION DOES NOT PRESENT A JUSTICIABLE CONTROVERSY TO WARRANT THE EXERCISE OF THIS HONORABLE COURT'S JUDICIAL POWER.

II

THE INSTANT PETITION FOR *CERTIORARI* AND PROHIBITION PRESENTS FACTUAL ISSUES THAT

DEMAND THE STRICT OBSERVANCE OF
THE DOCTRINE OF HIERARCHY OF
COURTS.

DISCUSSION

I. THE INSTANT PETITION DOES NOT PRESENT A JUSTICIABLE CONTROVERSY TO WARRANT THE EXERCISE OF THE HONORABLE COURT'S JUDICIAL POWER.

13. At the outset, it bears pointing out that no act or resolution directly attributable to respondent COMELEC is being assailed in the instant petition. Instead, most of the issues raised by petitioners pertain to the provisions of the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao as well as the exercise of powers of the BTA. Consequently, the OSG will respectfully defer to the Comment on the Petition to be made by the Bangsamoro Autonomous Region's Attorney General, being the chief legal counsel of the Bangsamoro Government, on substantial matters relating to the Organic Law for the Bangsamoro Autonomous Region.

14. In any case, being the sole constitutional body charged with the responsibility of effecting the conduct of elections, plebiscites, and referendum, respondent COMELEC respectfully maintains that the filing of the instant petition is premature.

15. As it is, even if the Honorable Court were vested with judicial power, it does not follow that it should resolve every question that it may have the authority to answer. The Constitution grants the Judiciary the power to mediate the boundaries of the government's powers, but this mediation is circumscribed by the will of the people, in whom sovereignty resides, as expressed by their representatives in the executive and legislative branches. This Honorable Court's place in the constitutional order requires that it "decide on

legal principle only in concrete controversies.”⁸

16. When the issue of unconstitutionality of a legislative act is raised, the Honorable Court may exercise its power of judicial review only if the following requisites are present: (1) an actual and appropriate case and controversy exists; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question raised is the very *lis mota* of the case. Only when these requisites are satisfied may the Court assume jurisdiction over a question of unconstitutionality or invalidity of an act of Congress.⁹

17. In the present petition, it is respectfully submitted that no actual case or controversy exists despite the passage of BAA Nos. 54 and 55 into law, without the required plebiscite being conducted by respondent COMELEC.

18. The existence of an actual case or controversy is a necessary condition precedent for the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In the negative, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests.¹⁰

19. This requirement goes into the nature of the judiciary as a co-equal branch of government. It is bound by the doctrine of separation of powers, and will not rule on any matter or cause the invalidation of any act, law, or regulation, if there is no actual or sufficiently imminent breach of or injury to a right. The courts interpret laws, but the ambiguities may only be clarified in the existence of an actual situation.¹¹

⁸ COURAGE vs. Florencio Abad, G.R. No. 200418, November 10, 2020.

⁹ Arceta vs. Hon. Mangrobang, G.R. No. 152895, June 15, 2004.

¹⁰ Lim Bio Hian vs. Lim Eng Tian, G.R. No. 195472, January 8, 2018.

¹¹ Kilusang Mayo Uno vs. Benigno S. Aquino, G.R. No. 210500, April 2, 2019.

20. In *Belgica vs. Ochoa*,¹² this Honorable Court had the occasion to further explain that the actual-case requirement is closely related to the ripeness requirement, meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. **A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it.** It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions.

21. As such, a case is said to be ripe for adjudication when the challenged governmental act is a **completed action** such that there is a direct, concrete, and adverse effect on the petitioner. It is, thus, required that something had been performed by the government branch or instrumentality before the court may step in, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.¹³

22. In the context of controversies relating to the creation and establishment of new local government units, this Honorable Court had the occasion to clarify that the mere passage of a statute creating them will not ripen the issues posed therein for adjudication. This Honorable Court further explained that the law being questioned must first be implemented and the party filing the case must have been affected by its implementation.

23. In *Del Rosario vs. COMELEC*,¹⁴ this Honorable Court expounded that since the statute creating the new provinces in Palawan has yet to be submitted in a plebiscite, it is still premature on its part to rule on the constitutionality of said

¹² G.R. No. 208566, November 19, 2013; As cited in *Universal Robina Corporation vs. DTI*, G.R. No. 203353, February 14, 2023.

¹³ *Id.*

¹⁴ G.R. No. 247610, March 10, 2020.

law creating these new provinces. Accordingly, this Honorable Court held as follows:

As regards the alleged prematurity of the petition, in *Council of Teachers and Staff of Colleges and Universities of the Philippines vs. Secretary of Education*, which also involved a Rule 65 challenge against a statute and its implementation, it was held that:

This Court has consistently ruled that an actual case or controversy is necessary even in cases where the constitutionality of a law is being questioned. It is not enough that the statute has been passed. There must still be a real act. The law must have been implemented, and the party filing the case must have been affected by the act of implementation.

On this point, it must be stressed that most of the provisions of RA No. 11259 will take effect only after the approval thereof by the electorate of Palawan. Sections 51 and 52 of the law provide:

SEC. 51. *Plebiscite.* - The provinces of Palawan del Norte, Palawan Oriental, and Palawan del Sur shall be created upon approval by the majority of the votes cast by the voters of the affected areas in a plebiscite to be conducted and supervised by the Commission on Elections (COMELEC) on the second Monday of May 2020 following the effectivity of this Charter.

X X X X

SEC. 52. *Commencement of Corporate Existence.* - The provinces of Palawan del Norte, Palawan Oriental, and Palawan del Sur shall commence its corporate existence upon the election and qualification of its provincial governor, provincial vice governor and majority of the members of the sangguniang panlalawigan. The election of the provincial officials of the newly created provinces shall be held on the second Monday of May in the year 2022.

At the risk of being repetitive, it is clear from the foregoing that the creation and existence of the three

provinces of Palawan del Norte, Palawan Oriental, and Palawan del Sur is contingent upon the approval thereof by the voters of the affected areas in a plebiscite conducted for the purpose. **Until such plebiscite has been conducted and it is ascertained that the majority of the electorate in said plebiscite approved the proposed division, the provisions of RA No. 11259 relating to the organization and governance of the three provinces of Palawan del Norte, Palawan Oriental, and Palawan del Sur will remain inoperative, as the provinces to which they pertain have not been created yet.** Pending the conduct of the plebiscite, only Sections 51, 54, 58, 59, and 60 of the law can be considered to be in full force and effect, as these provisions pertain to matters preparatory to the conduct of the plebiscite for the creation of the three proposed provinces. These are the very provisions sought to be implemented by respondents as they prepare for the conduct of the plebiscite this coming May. **It is therefore premature for this Court to make any declaration on the unconstitutionality of the law in toto, when most of the provisions of the law have yet to take effect.**¹⁵

24. Thus, in the aforementioned *Del Rosario* case, this Honorable Court clarified that even if a statute has been passed, the latter must first be implemented and the party filing the case should have been at least affected as a result of its implementation before an actual case or controversy could arise in a particular suit.

25. Applying said pronouncement in the present case, respondent COMELEC respectfully submits that without the conduct of a plebiscite in relation to the newly created local government units brought about by the passage of BAA Nos. 54 and 55, no actual case or controversy is present to trigger the exercise of this Honorable Court's judicial power.

26. In the same manner, it is also premature on the part of petitioners to raise any issue as to the manner of the conduct of the plebiscite as provided under BAA Nos. 54 and 55.

¹⁵ Emphasis supplied; Citations omitted.

27. Any form of restraint on respondent COMELEC at this early stage would be purely speculative and anticipatory as it has not even issued any advisory or resolution regarding the conduct of a plebiscite that will supposedly be conducted in accordance with the provisions of BAA Nos. 54 and 55.

28. In line with this, this Honorable Court, in the recent case of *Sula, et al. vs. COMELEC*, has held that as the constitutional body charged with the responsibility of effecting the conduct of elections, plebiscites, and referendum, the Commission on Elections has the authority to modify or alter the dates of the plebiscite. **It must be highlighted that the Commission on Elections cannot be paralyzed by the literal interpretations of a guiding law.** If strict compliance with the period provided in the law is given priority over the assurance that a safe, honest, and successful plebiscite is conducted, it would defeat the purpose of holding a plebiscite in the first place. **The Commission on Elections, as a specialized constitutional body, has the unique position to determine whether a plebiscite or elections is capable of successfully taking place.**¹⁶

29. For the foregoing reasons, it is respectfully submitted that the present petition does not present an actual case or controversy to warrant the exercise of this Honorable Court's judicial power.

II. THE INSTANT PETITION FOR CERTIORARI AND PROHIBITION PRESENTS FACTUAL ISSUES THAT DEMAND THE STRICT OBSERVANCE OF THE DOCTRINE OF HIERARCHY OF COURTS.

30. In the present petition, petitioners alleged that the matters raised therein are of transcendental importance so as to justify their direct recourse to this Honorable Court.

31. With due respect, however, the mere invocation of transcendental importance does not automatically justify

¹⁶ Amil P. Sula, et al. vs. COMELEC, G.R. No. 244587. January 10, 2023.

direct recourse to this Honorable Court as the same is only allowed when the latter is called to resolve pure questions of law.

32. The doctrine of hierarchy of courts requires that recourse must first be obtained from lower courts sharing concurrent jurisdiction with a higher court. This is to ensure that this Honorable Court remains a court of last resort so as to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition.¹⁷

33. In *GIOS-SAMAR, Inc. vs. Department of Transportation and Communication*,¹⁸ this Honorable Court, citing the case of *Alonso vs. Cebu Country Club*,¹⁹ declared that the principle of hierarchy of courts is not to be taken lightly and direct recourse to this Honorable Court will not be allowed especially if there are questions of facts raised in a petition. Thus:

In *Alonso vs. Cebu Country Club, Inc. (Alonso)*, this Court had occasion to articulate the role of the CA in the judicial hierarchy, viz.:

The hierarchy of courts is not to be lightly regarded by litigants. The CA stands between the RTC and the Court, and its establishment has been precisely to take over much of the work that used to be done by the Court. Historically, the CA has been of the greatest help to the Court in synthesizing the facts, issues, and rulings in an orderly and intelligible manner and in identifying errors that ordinarily might escape detection. The Court has thus been freed to better discharge its constitutional duties and perform its most important work, which, in the words of Dean Vicente G. Sinco, "is less concerned with the decision of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction of national policies, momentous economic and social problems, the delimitation of governmental

¹⁷ *The Provincial Bus Operators Association of the Philippines vs. DOLE*, G.R. No. 202275, July 17, 2018.

¹⁸ G.R. No. 217158, March 12, 2019.

¹⁹ G.R. No. 188471, April 20, 2010.

authority and its impact upon fundamental rights.”

Accordingly, when litigants seek relief directly from the Court, they bypass the judicial structure and open themselves to the risk of presenting incomplete or disputed facts. This consequently hampers the resolution of controversies before the Court. Without the necessary facts, the Court cannot authoritatively determine the rights and obligations of the parties. The case would then become another addition to the Court's already congested dockets. Thus, as we explained in *Alonso*:

x x x Their non-observance of the hierarchy of courts has forthwith enlarged the docket of the Court by one more case, which, though it may not seem burdensome to the layman, is one case too much to the Court, which has to devote time and effort in poring over the papers submitted herein, only to discover in the end that a review should have first been made by the CA. The time and effort could have been dedicated to other cases of importance and impact on the lives and rights of others.

34. Ultimately, the principle of hierarchy of courts operate as a filtering mechanism as it prevents inordinate demands upon this Honorable Court's time and attention, which are better devoted to those matters within its exclusive jurisdiction and prevent further overcrowding of the Honorable Court's docket. The principle also operates to prevent the inevitable and resultant delay in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.²⁰

35. Relatedly, this Honorable Court is not a trier of facts, and it is beyond its function to make its own findings of certain vital facts different from those of the trial court, especially on the basis of the conflicting claims of the parties and without the evidence being properly before it.²¹ Indeed, in a *certiorari* and prohibition case, like this one, the only legal

²⁰ GIOS-SAMAR, Inc. vs. Department of Transportation and Communication, *supra*.

²¹ GIOS-SAMAR, Inc. vs. Department of Transportation and Communication, *supra*; Citing Chemplex, Inc. vs. Pamatian, G.R. No. L-37427, June 25, 1974.

issues affecting the jurisdiction of the tribunal, board or officer involved may be resolved on the basis of undisputed facts. Sections 1, 2 and 3, Rule 65 of the Rules of Court require that in the verified petition for *certiorari*, *mandamus* and prohibition, the petitioner should allege "facts with certainty."²²

36. Thus, when a question before this Honorable Court involves determination of a factual issue indispensable to the resolution of the legal issue, this Honorable Court must refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the Court of Appeals, both of which are specially equipped to try and resolve factual questions.²³

37. In a similar way, just as this present petition alleges factual issues and the resolution of the same is vital to petitioners' main proposition, it is respectfully submitted that the doctrine of hierarchy of courts should have been strictly observed by the latter. Factual issues such as those pertaining to the alleged non-compliance of respondents with the certifications required by different bureaus and agencies, as well as conformity with the indicators for the creation of a new local government unit as provided under the Local Government Code, are best threshed out before a trial court where evidence could be received in that regard.

38. From the foregoing discussion, the instant Petition for *Certiorari* and Prohibition should perforce be denied.

PRAYER

WHEREFORE, it is respectfully prayed of this Honorable Court that the instant Petition for *Certiorari* be **DENIED** for lack of merit.

²² GIOS-SAMAR, Inc. vs. Department of Transportation and Communication, supra; Citing Mafinco Trading Corporation vs. Ople, G.R. No. L-37790, March 25, 1976.

²³ Id.

Other forms of relief, just and equitable under the premises, are likewise prayed for.

Makati City for Manila, March 15, 2024.

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ROMEO O. CABOTEJA, JR.

State Solicitor

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REPUBLIC OF THE PHILIPPINES

AFFIDAVIT OF SERVICE

XYLAN UJE S. SYCAMBO (as of April 1992)
CRIS # CM 00000473028

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

MAR 21 2024

That on 03/21/2024, I caused to be served a copy of the following pleading/paper:

NATURE OF THE PLEADING

Comment

In case No. G.R. NO. 271741, entitled DATU SAJID S. SINSUAT, EBRAHIM P. DIOLANO, AND
VS. HON. AHOD BALAWAG EBRAHIM, IN HIS CAPACITY AS INTERIM CHIEF MINISTER OF THE

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 charge thereof on _____ as shown on p _____.
- () By delivering a copy to the Court/Tribunal Office on _____ as shown on p _____.

By Registered Mail To:

Atty. Romulo B. Macalintal
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ATTY. ANNA TARHATA S. BASMAN
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COMMISSION ON ELECTIONS
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- () By depositing copy on MAR 21 2024 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.

Makati, Metro Manila, Philippines

XYLAN UJE S. SYCAYCO
GSIS # CM 00000473028

MAR 21 2024
(Affiant)

XYLAN UJE S. SYCAYCO
GSIS # CM 00000473028

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

MAR 21 2024


SS IVAN M. BANDAL

Solicitor, Officer Administering the Oath
Office of the Solicitor General

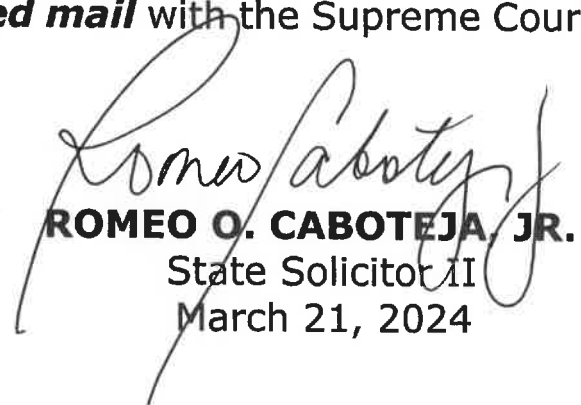


24-003797-0003

Republic of the Philippines)
Makati City)

VERIFIED DECLARATION

I, **ROMEO O. CABOTEJA, JR.**, hereby declare that the document/s (and annexes thereof) hereto submitted electronically in accordance with the Efficient use of Paper Rule is/are complete and true copy/ies of the documents (and annexes) filed thru **registered mail** with the Supreme Court.



ROMEO O. CABOTEJA, JR.
State Solicitor II
March 21, 2024

SUBSCRIBED AND SWORN TO before me on this 21st day of March 2024, affiant exhibiting her competent evidence of identity, to wit: **OSG ID No. 2008-11013.**



SSS BERNARDO C. VILLAR
Senior State Solicitor
Person Administering Oath