

EN BANC

[G.R. No. 197930, April 17, 2018]

EFRAIM C. GENUINO, ERWIN F. GENUINO AND SHERYL G. SEE, PETITIONERS, VS. HON. LEILA M. DE LIMA, IN HER CAPACITY AS SECRETARY OF JUSTICE, AND RICARDO V. PARAS III, IN HIS CAPACITY AS CHIEF STATE COUNSEL, CRISTINO L. NAGUIAT, JR. AND THE BUREAU OF IMMIGRATION, RESPONDENTS.

[G.R. No. 199034]

MA. GLORIA MACAPAGAL-ARROYO, PETITIONER, VS. HON. LEILA M. DE LIMA, AS SECRETARY OF THE DEPARTMENT OF JUSTICE AND RICARDO A. DAVID, JR., AS COMMISSIONER OF THE BUREAU OF IMMIGRATION, RESPONDENTS.

[G.R. No. 199046]

JOSE MIGUEL T. ARROYO, PETITIONER, VS. HON. LEILA M. DE LIMA, AS SECRETARY OF THE DEPARTMENT OF JUSTICE AND RICARDO V. PARAS III, AS CHIEF STATE COUNSEL, DEPARTMENT OF JUSTICE AND RICARDO A. DAVID, JR., IN HIS CAPACITY AS COMMISSIONER, BUREAU OF IMMIGRATION, RESPONDENTS.

D E C I S I O N

REYES, JR., J:

These consolidated Petitions for *Certiorari* and Prohibition with Prayer for the Issuance of Temporary Restraining Orders (TRO) and/or Writs of Preliminary Injunction Under Rule 65 of the Rules of Court assail the constitutionality of Department of Justice (DOJ) Circular No. 41, series of 2010, otherwise known as the "*Consolidated Rules and Regulations Governing Issuance and Implementation of Hold Departure Orders, Watchlist Orders and Allow Departure Orders*" on the ground that it infringes on the constitutional right to travel.

Also, in G.R. Nos. 199034 and 199046, the petitioners therein seek to annul and set aside the following orders issued by the former DOJ Secretary Leila De Lima (De Lima), pursuant to DOJ Circular No. 41, thus:

1. Watchlist Order No. ASM-11-237 dated August 9, 2011;^[1]
2. Amended Watchlist Order No. 2011-422 dated September 6, 2011;
^[2] and
3. Watchlist Order No. 2011-573 dated October 27, 2011.^[3]

In a Supplemental Petition, petitioner Gloria Macapagal-Arroyo (GMA) further seeks the invalidation of the Order^[4] dated November 8, 2011, denying her application for an Allow-Departure Order (ADO).

Similarly, in G.R. No. 197930, petitioners Efraim C. Genuino (Efraim), Erwin F. Genuino (Erwin) and Sheryl Genuino-See (Genuinos) pray for the nullification of the Hold-Departure Order^[5] (HDO) No. 2011-64 dated July 22, 2011 issued against them.

Antecedent Facts

On March 19, 1998, then DOJ Secretary Silvestre H. Bello III issued DOJ Circular No. 17, prescribing rules and regulations governing the issuance of HDOs. The said issuance was intended to restrain the indiscriminate issuance of HDOs which impinge on the people's right to travel.

On April 23, 2007, former DOJ Secretary Raul M. Gonzalez issued DOJ Circular No. 18, prescribing rules and regulations governing the issuance and implementation of watchlist orders. In particular, it provides for the power of the DOJ Secretary to issue a Watchlist Order (WLO) against persons with criminal cases pending preliminary investigation or petition for review before the DOJ. Further, it states that the DOJ Secretary may issue an ADO to a person subject of a WLO who intends to leave the country for some exceptional reasons.^[6] Even with the promulgation of DOJ Circular No. 18, however, DOJ Circular No. 17 remained the governing rule on the issuance of HDOs by the DOJ.

On May 25, 2010, then Acting DOJ Secretary Alberto C. Agra issued the assailed DOJ Circular No. 41, consolidating DOJ Circular Nos. 17 and 18, which will govern the issuance and implementation of HDOs, WLOs, and ADOs. Section 10 of DOJ Circular No. 41 expressly repealed all rules and regulations contained in DOJ Circular Nos. 17 and 18, as well as all instructions, issuances or orders or parts thereof which are inconsistent with its provisions.

After the expiration of GMA's term as President of the Republic of the Philippines and her subsequent election as Pampanga representative, criminal complaints were filed against her before the DOJ, particularly:

(a) XVI-INV-10H-00251, entitled *Danilo A. Lihaylihay vs. Gloria Macapagal-Arroyo, et al.*, for plunder;^[7]

(b) XVI-INV-11D-00170, entitled *Francisco I. Chavez vs. Gloria Macapagal-Arroyo, et al.*, for plunder, malversation and/or illegal use of OWWA funds, graft and corruption, violation of the Omnibus Election Code (OEC), violation of the Code of Conduct and Ethical Standards for Public Officials, and qualified theft;^[8] and

(c) XVI-INV-11F-00238, entitled *Francisco I. Chavez vs. Gloria Macapagal-Arroyo, et al.*, for plunder, malversation, and/or illegal use of public funds, graft and corruption, violation of the OEC, violation of the Code of Conduct and Ethical Standards for Public Officials and qualified theft.^[9]

In view of the foregoing criminal complaints, De Lima issued DOJ WLO No. 2011-

422 dated August 9, 2011 against GMA pursuant to her authority under DOJ Circular No. 41. She also ordered for the inclusion of GMA's name in the Bureau of Immigration (BI) watchlist.^[10] Thereafter, the BI issued WLO No. ASM-11-237,^[11] implementing De Lima's order.

On September 6, 2011, De Lima issued DOJ Amended WLO No. 2011-422 against GMA to reflect her full name "Ma. Gloria M. Macapagal-Arroyo" in the BI Watchlist.^[12] WLO No. 2011-422, as amended, is valid for a period of 60 days, or until November 5, 2011, unless sooner terminated or otherwise extended. This was lifted in due course by De Lima, in an Order dated November 14, 2011, following the expiration of its validity.^[13]

Meanwhile, on October 20, 2011, two criminal complaints for Electoral Sabotage and Violation of the OEC were filed against GMA and her husband, Jose Miguel Arroyo (Miguel Arroyo), among others, with the DOJ-Commission on Elections (DOJ-COMELEC) Joint Investigation Committee on 2004 and 2007 Election Fraud,^[14] specifically:

(a) DOJ-COMELEC Case No. 001-2011, entitled *DOJ-COMELEC Fact Finding Team vs. Gloria Macapagal-Arroyo et al., (for the Province of Maguindanao)*, for electoral sabotage/violation of the OEC and COMELEC Rules and Regulations,^[15] and

(b) DOJ-COMELEC Case No. 002-2011, entitled *Aquilino Pimentel III vs. Gloria Macapagal-Arroyo, et al.*, for electoral sabotage.^[16]

Following the filing of criminal complaints, De Lima issued DOJ WLO No. 2011-573 against GMA and Miguel Arroyo on October 27, 2011, with a validity period of 60 days, or until December 26, 2011, unless sooner terminated or otherwise extended.^[17]

In three separate letters dated October 20, 2011, October 21, 2011, and October 24, 2011, GMA requested for the issuance of an ADO, pursuant to Section 7 of DOJ Circular No. 41, so that she may be able to seek medical attention from medical specialists abroad for her *hypoparathyroidism* and metabolic bone mineral disorder. She mentioned six different countries where she intends to undergo consultations and treatments: United States of America, Germany, Singapore, Italy, Spain and Austria.^[18] She likewise undertook to return to the Philippines, once her treatment abroad is completed, and participate in the proceedings before the DOJ.^[19] In support of her application for ADO, she submitted the following documents, viz.:

1. Second Endorsement dated September 16, 2011 of Speaker Feliciano Belmonte, Jr. to the Secretary of Foreign Affairs, of her Travel Authority;
2. First Endorsement dated October 19, 2011^[20] of Artemio A. Adasa, OIC Secretary General of the House of Representatives, to the Secretary of Foreign Affairs, amending her Travel Authority to include travel to Singapore, Spain and Italy;
3. Affidavit dated October 21, 2011,^[21] stating the purpose of travel to Singapore, Germany and Austria;

4. Medical Abstract dated October 22, 2011,^[22] signed by Dr. Roberto Mirasol (Dr. Mirasol);

5. Medical Abstract dated October 24, 2011,^[23] signed by Dr. Mario Ver;

6. Itinerary submitted by the Law Firm of Diaz, Del Rosario and Associates, detailing the schedule of consultations with doctors in Singapore.

To determine whether GMA's condition necessitates medical attention abroad, the Medical Abstract prepared by Dr. Mirasol was referred to then Secretary of the Department of Health, Dr. Enrique Ona (Dr. Ona) for his expert opinion as the chief government physician. On October 28, 2011, Dr. Ona, accompanied by then Chairperson of the Civil Service Commission, Francisco Duque, visited GMA at her residence in La Vista Subdivision, Quezon City. Also present at the time of the visit were GMA's attending doctors who explained her medical condition and the surgical operations conducted on her. After the visit, Dr. Ona noted that "*Mrs. Arroyo is recuperating reasonably well after having undergone a series of three major operations.*"^[24]

On November 8, 2011, before the resolution of her application for ADO, GMA filed the present Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court with Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction, docketed as G.R. No. 199034, to annul and set aside DOJ Circular No. 41 and WLOs issued against her for allegedly being unconstitutional.^[25]

A few hours thereafter, Miguel Arroyo filed a separate Petition for *Certiorari*, and Prohibition under the same rule, with Prayer for the Issuance of a TRO and/or a Writ of Preliminary Injunction, likewise assailing the constitutionality of DOJ Circular No. 41 and WLO No. 2011-573. His petition was docketed as G.R. No. 199046.^[26]

Also, on November 8, 2011, De Lima issued an Order,^[27] denying GMA's application for an ADO, based on the following grounds:

First, there appears to be discrepancy on the medical condition of the applicant as stated in her affidavit, on the other hand, and the medical abstract of the physicians as well as her physician's statements to Secretary Ona during the latter's October 28, 2011 visit to the Applicant, on the other.

x x x x

Second, based on the medical condition of Secretary Ona, there appears to be no urgent and immediate medical emergency situation for Applicant to seek medical treatment abroad, x x x.

x x x x

Third, Applicant lists several countries as her destination, some of which were not for purposes of medical consultation, but for attending

conferences, x x x.

x x x x

Fourth, while the Applicant's undertaking is to return to the Philippines upon the completion of her medical treatment, this means that her return will always depend on said treatment, which, based on her presentation of her condition, could last indefinitely, x x x.

x x x x

Fifth, x x x x. Applicant has chosen for her destination five (5) countries, namely, Singapore, Germany, Austria, Spain and Italy, with which the Philippines has no existing extradition treaty, x x x.

x x x x

IN VIEW OF THE FOREGOING, the application for an Allow Departure Order (ADO) of **Congresswoman MA. GLORIA M. MACAPAGAL-ARROYO** is hereby **DENIED** for lack of merit.

SO ORDERED.^[28]

On November 9, 2011, De Lima, together with her co-respondents, Ricardo V. Paras, III, Chief State Counsel of the DOJ and Ricardo A. David, Jr., who was then BI Commissioner, (respondents) filed a Very Urgent Manifestation and Motion^[29] in G.R. Nos. 199034 and 199046, praying (1) that they be given a reasonable time to comment on the petitions and the applications for a TRO and/or writ of preliminary injunction before any action on the same is undertaken by the Court; (2) that the applications for TRO and/or writ of preliminary injunction be denied for lack of merit, and; (3) that the petitions be set for oral arguments after the filing of comments thereto.^[30]

On November 13, 2011, GMA filed a Supplemental Petition^[31] which included a prayer to annul and set aside the Order dated November 8, 2011, denying her application for ADO. On the following day, GMA filed her Comment/Opposition^[32] to the respondents' Very Urgent Manifestation and Motion dated November 9, 2011, in G.R. No. 199034.

On November 15, 2011, the Court issued a Resolution,^[33] ordering the consolidation of G.R. Nos. 199034 and 199046, and requiring the respondents to file their comment thereto not later than November 18, 2011. The Court likewise resolved to issue a TRO in the consolidated petitions, enjoining the respondents from enforcing or implementing DOJ Circular No. 41 and WLO Nos. ASM-11-237 dated August 9, 2011, 2011-422 dated September 6, 2011, and 2011-573 dated October 27, 2011, subject to the following conditions, to wit:

(i) The petitioners shall post a cash bond of Two Million Pesos (P2,000,000.00) payable to this Court within five (5) days from notice hereof. Failure to post the bond within the aforesaid period will result in the automatic lifting of the temporary restraining order;