



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

LML-O-26J11 MD

In re: Request for Issuance of Allow
Departure Order (ADO) of Congresswoman
**MA. GLORIA M. MACAPAGAL-
ARROYO.**

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O R D E R

For consideration is the written request, embodied in three (3) letters dated 20, 21 and 24 October 2011, for the Issuance of an Allow Departure Order (ADO) of **Congresswoman MA. GLORIA M. MACAPAGAL-ARROYO** (hereinafter Applicant), who has been ordered to be included in the Bureau of Immigration's (BI) Watchlist Order pursuant to the separate Orders of this Department, dated August 9, 2011, September 6, 2011, and October 27, 2011, in connection with the following criminal complaints, to wit:

Docket No.	Title of the Case	Offenses Charged
XVI-INV-10H-00251	Danilo A. Lihaylihay versus Gloria Macapagal-Arroyo, et al.	Plunder
XVI-INV-11D-00170	Francisco I. Chavez vs. Gloria Macapagal-Arroyo, et al.	Plunder, Malversation and/or Illegal Use of OWWA funds, Graft and Corruption, Violation of the Omnibus Election Code, Violation of the Code of Conduct and Ethical Standards for Public

		Officials, Qualified Theft
XVI-INV-11F-00238	Francisco I. Chaves vs. Gloria Macapagal-Arroyo, et al.	Plunder, Malversation and/or Illegal Use of Public Funds, Graft and Corruption, Violation of the Omnibus Election Code, Violation of the Code of Conduct and Ethical Standards for Public Officials, Qualified Theft
DOJ-COMELEC Case No. 001-2011	DOJ-COMELEC Fact Finding Team versus Gloria Macapagal-Arroyo, et al. (for the Province of Maguindanao)	Electoral Sabotage/Violation of the Omnibus Election Code and COMELEC Rules and Regulations
DOJ-COMELEC Case No. 002-2011	Aquilino Pimentel III versus Gloria Macapagal-Arroyo, et al.	Electoral Sabotage

The above cases were filed against the Applicant before the National Prosecution Service (NPS), this Department, and the Joint DOJ-COMELEC Preliminary Investigation Committee.

Applicant seeks the issuance of an ADO to allow her to leave the country purportedly to seek the "best possible medical treatment" and/or "consultations with medical specialists abroad". No countries were indicated in Applicant's letters. Supporting documents, however, mention the following countries, namely, the United States of America, Germany, Singapore, Italy, Spain and Austria.

In her request for the issuance of an ADO for said medical purpose, Applicant submitted the following documents:

1. Second Endorsement dated September 1, 2011 of Speaker Feliciano Belmonte, Jr. to the Secretary of Foreign Affairs, of the Travel Authority granted to the Applicant to participate in the "Clinton Global Initiative Meeting", aside from medical consultation in New York, USA, and for medical consultation in Munich, Germany, both from September 28 to October 6, 2011, and to participate in the Regional Consultation meetings of the International Commission Against Death Penalty in Geneva, Switzerland on October 10-11, 2011;
2. First Endorsement dated October 19, 2011 of Artemio A. Adasa, Jr., OIC Secretary General of the House of Representatives, to the Secretary of Foreign Affairs, amending the Travel Authority granted to the Applicant, to include travel to Singapore, Spain, and Italy to seek medical consultation with specialists from October 22 to December 5, 2011;
3. Affidavit of Applicant dated October 21, 2011 stating her purpose and justification to travel to Singapore, Germany and Austria for medical reasons;
4. Medical Abstract dated October 22, 2011, signed by Roberto C. Mirasol, M.D. of the St. Luke's Medical Center;
5. Medical Abstract dated October 24, 2011, signed by Dr. Mario R. Ver, M.D. of the St. Luke's Medical Center;
6. Itinerary submitted by the Law Firm of Diaz Del Rosario and Associates on November 2, 2011 detailing Applicant's expected schedule of consultation with specified doctors in Singapore, Germany and Spain.

In her 20 and 24 October 2011 letters, Applicant expressed her intention or undertaking to return to the Philippines upon completion of the medical "treatment".

Applicant's request for an ADO is based on Section 7 of Department Circular 41-2010 on the issuance of HDOs, WLOs, and ADOs. Said provision states that an ADO may be issued to a person subject of an HDO or WLO for exceptional reasons. In the instant case, the exceptional reason cited by the Applicant is the need for expert medical consultations abroad with specialists on hypoparathyroidism

and metabolic bone disease/disorder since, according to Applicant, the longer said condition lasts, the more it is likely to remain.

Applicant's Medical Abstract as prepared by Dr. Mirasol was referred to Secretary of Health Enrique Ona for his expert opinion as the chief government physician. Secretary Ona was asked to determine if Applicant's condition as stated in the Medical Abstract is life threatening, and that if expert medical treatment abroad is not sought, the same would result in a deterioration of Applicant's medical condition. Otherwise, Applicant's request for allowance to travel abroad based on a medical emergency cannot be considered as one of those exceptional reasons contemplated as a justification for the issuance of an ADO under Section 7 of Department Circular 41-2010.

On October 28, 2011, Secretary Ona visited Applicant at her residence in La Vista Subdivision, Quezon City, accompanied by former Secretary of Health (now Chairperson, Civil Service Commission) Francisco Duque. In attendance during said visit were the doctors of the Applicant. According to the report of Secretary Ona on said visit, "Mrs. Arroyo is recuperating reasonably well after having undergone a series of three major operations." Furthermore, Secretary Ona reports that one of the major concerns facing Applicant's physicians is the nature or cause of Applicant's hypoparathyroidism.

The granting of an ADO is discretionary upon the Secretary of Justice, based as it is upon her power to ensure the proper administration of the criminal justice system and the prosecution of offenders, including the issuance of compulsory processes to assure the compliance by respondents and defendants at whatever stage of the criminal proceedings, including preliminary investigations, and for this purpose, to keep those under investigation within the territorial jurisdiction of the Philippine State, unless otherwise determined for exceptional reasons.

As such, the primary issue in any application for an ADO is whether or not Applicant has substantiated a sufficient exceptional reason for the Secretary of Justice to allow her to leave the compulsory jurisdiction of the Philippine criminal justice system, and whether such exceptional reason is concomitantly met in relation to the gravity of the charges leveled against her, and for which she must answer before the public prosecutor and the courts as a matter of legal obligation.

Based on the documents submitted by the Applicant and the medical evaluation of Secretary Ona, no exceptional reason was substantiated by the Applicant in her present application for an ADO.

The findings of this Office are the following:

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

In her October 21, 2011 affidavit, Applicant categorically states that Dr. Juliet Gopez-Cervantes has certified that she has metabolic bone disease. However, in her October 22, 2011 medical abstract prepared by Dr. Roberto C. Mirasol, it was stated that "an underlying rare metabolic bone disease could not be totally ruled out and she may require a bone biopsy." On the other hand, in the October 24, 2011 medical abstract of Dr. Mario Ver, no mention at all was made of metabolic bone disease in relation to his diagnosis and treatment of the Applicant. Finally, in their October 28, 2011 meeting with Secretary Ona, Applicant's physicians have stated as a concern the nature or cause of Applicant's hypoparathyroidism, without mentioning anything about metabolic bone disease whatsoever.

In short, the medical abstract and statements of Applicant's physicians belies her claim that she has rare metabolic bone disease. While she claims that this was certified to by Dr. Juliet Gopez-Cervantes, without any proof of said certification, her medical abstracts and physicians' direct statements to Secretary Ona reveal that 1) an underlying metabolic bone disease cannot be totally ruled out, and hence, is yet to be determined through a bone biopsy, and 2) Applicant's physicians are still at a loss as to whether the underlying nature or cause of her hypoparathyroidism is the occurrence of metabolic bone disease.

As such, before any conclusive finding is made on Applicant's medical condition as one of metabolic bone disease, she first has to undergo a bone biopsy, a medical process undertaken regularly in the Philippines and which therefore need not necessarily be availed of abroad.

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

Secretary Ona, what was life threatening was the series of three major operations which Applicant has undergone in the Philippines. As stated also by Secretary Ona, Applicant is recuperating reasonably well from said operations, with medical treatment having been availed of from local doctors with the use of local facilities. Nothing in the report of Secretary Ona indicates if any life threatening condition continues to endanger Applicant's health, as the only reference to any life threatening condition was Applicant undergoing three major operations which, on the other hand, have already been declared a success by Applicant's own doctors.

For the part of Dr. Ver, his medical abstract indicated the following improved condition for Applicant after undergoing three operations:

1. Significant improvement and recovery of the weakness of the left triceps;
2. Good alignment of the cervical spine with implant in place without loosening;
3. Full recovery of motor function of left upper extremity; and
4. Better evidence on X Ray of bone growth taking place in the anterior column such that head band part of Lehrman Minerva brace was removed.

The only negative indication in Applicant's last diagnosis was that the parathyroid hormone remained deficient, without any indication whatsoever that this offset in any way the general observation that Applicant was indeed on her way to recovery and that there was nothing life threatening about her present condition after the successful treatment she received from the St. Luke's Medical Center doctors.

With regard to the irreparable or irreversible nature of her condition in the absence of medical treatment abroad, there is likewise no indication in the medical abstracts of the existence or possibility of any such condition. In fact, the only indication of any further medical procedure recommended for the Applicant by her own physicians, as stated in the medical abstract of Dr. Mirasol, is a bone biopsy for the determination of any underlying rare metabolic bone disease.

From the preceding observations made by Applicant's own physicians and Secretary Ona, both questions as to the presence of any life threatening or irreversible and irreparable condition of Applicant

have been answered in the negative. Thus, based on this determination of Applicant's medical condition from an evaluation of her medical abstracts, there appears to be no urgent and compelling purpose for her medical treatment abroad so as to constitute an exceptional reason for the granting of an ADO.

As such, Applicant's medical condition at present does not therefore offer any exceptional reason that would override the paramount consideration for the issuance of a Watchlist Order against her, i.e., to keep her within the jurisdiction of the Philippine criminal justice system, especially in light of the fact that Applicant has selected for her destination countries with which the Philippines has no existing extradition treaties.

Third, Applicant lists several countries as her destination, some of which were not for purposes of medical consultation, but for attending conferences. These are the Clinton Global Initiative Meeting in New York, USA, and the Regional Consultation meetings of the International Commission Against Death Penalty in Geneva, Switzerland. While Applicant also lists Italy, Austria, and New York, USA as destinations for her medical consultation in her travel authority, her detailed itinerary submitted on November 2, 2011 shows that she actually intends to seek medical consultation only in Singapore, Germany and Spain prior to November 2, Applicant's indicated itinerary in her October 21 affidavit covers Singapore, Germany and Austria. Applicant's ambivalence in her country of choice for medical consultation and treatment puts under suspicion her candidness in a matter that purportedly involves a "life and death" decision.

In any case, the list of countries where Applicant seeks to be allowed to go is a travel tour of sorts, and which is patently incongruent with her purpose of seeking emergency medical treatment for a rare medical condition. She seeks to travel, initially, to seven countries, six of them purportedly for medical consultations, and originally, two of them for conferences, in New York and Geneva. This original itinerary of seven countries, before this Office required a definitive itinerary from Applicant, belies the so-called medical purpose or the emergency nature of Applicant's travel abroad.

It is almost inconceivable how someone seeking emergency medical treatment would still have the strength and energy to travel or to choose to travel to several countries, with the concomitant stress and exhaustion that such extensive international travel entails, unless, of course, the medical treatment Applicant seeks is not entirely necessary

and urgent, and can therefore be subjected to being coincided with international travel for other purposes. This implies that Applicant's purpose for travel is not exclusive for medical treatment, or that medical treatment is even merely incidental to said travel.

This apparent mixture of travel purposes to several tour destinations definitely belies the exclusive medical purpose of Applicant's application for an ADO. Respondents with lesser charge sheets are not accorded such luxury of travelling to several countries while their preliminary investigations are awaiting disposition by the public prosecutor. More so, respondents with lesser charge sheets are not afforded the luxury to indefinitely postpone preliminary investigation proceedings pending their "medical treatment" abroad, which is short of postponing said preliminary investigation and eventual criminal prosecution indefinitely, making the same entirely discretionary upon the Applicant depending on when she decides that her "medical treatment" is finally over.

Fourth, while 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 own presentation of her condition, could last indefinitely. This would only mean that the Philippine State might actually never have the opportunity to satisfy itself of Applicant's legal obligation to answer to the complaints and charges brought against her before the public prosecutor, thus entailing the frustration of justice with Applicant practically absconding from the Philippine criminal justice system under the pretense of undergoing medical treatment abroad.

It goes without saying that once abroad, the Philippine State loses all power of determination and access to Applicant's medical status, and as such is entirely powerless to demand her return to the Philippines, as she can always claim that her medical treatment is yet to be completed, and might actually take forever.

At any rate, the *prima facie* worth of Applicant's undertaking to return to the Philippines is an entirely different issue altogether. In the scheme of our criminal justice system, where all complaints filed against the Applicant are non-bailable in nature, a voluntary undertaking to return to the jurisdiction of the Philippine criminal justice system without any form of guarantee whatsoever is practically worthless. It goes without saying therefore that an ADO cannot be based on Applicant's mere say-so that she will return when, in all probability,

given the gravity of the charges leveled against her, the temptation to simply escape criminal liability is definitely more real than apparent.

This observation is more than just mere speculation, but is based on the reality of the limited number of hard choices that Applicant faces and that are available to her. Considering the possible scenario of her detention all throughout the period of her trial for various non-bailable offenses, it is only logical that one of the real choices available to Applicant is flight from justice, and escape from the jurisdiction of the Philippine criminal justice system. This real danger of Applicant's flight cannot simply be dismissed by her self-serving undertaking that she will return to face justice once her medical treatment is completed. The attainment of justice cannot depend on such flimsy guarantees.

Fifth, this brings us to our final point. 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. Simply put, this makes Applicant's return to the Philippines for preliminary investigation and possible detention pending trial based on faith and her word alone. Criminal investigation and prosecution, if any, is the last to be based on faith and the undertaking of the one being investigated and to be prosecuted. The criminal justice system is based on and largely depends upon the compulsory and mandatory nature of its procedural mechanisms. To have this system depend on faith and on the goodwill of the defendant/respondent is to make our criminal justice system the laughing stock of the entire world.

If any, Applicant's selection of countries with which the Philippines has no existing extradition treaty should ring alarm bells to this Office. It would be the height of negligence for the responsible government official to allow the travel abroad of a respondent being investigated for non-bailable offenses, for a non-medical emergency treatment, to countries where extradition cannot be effected. This Office is duty bound to see to it that the Applicant faces justice in the Philippines in the most speedy manner, in the same way that Applicant is duty bound to answer the charges against her immediately in accordance with our legal processes, and not in accordance with her schedule of travel which has no definite emergency, but only incidental, medical purpose.

Travelling abroad puts respondent beyond the jurisdiction of the DOJ to properly conduct a preliminary investigation, and as such cannot be unconditionally invoked as long as the obligation to answer to criminal charges and to produce evidence before said inquiry plainly subsists. No one can demand the State's recognition and immediate

enforcement of one's right to travel abroad, only to put her effectively beyond the jurisdiction of the State in the exercise of its equally important mandate to investigate and prosecute criminal acts.

The Watchlist Orders issued against the Applicant are a mere extension of the investigative powers of the DOJ to issue compulsory subpoena orders for the production of testimony and other evidence in preliminary investigation proceedings. It is a mere incidental measure in support of the prosecutorial power of the DOJ. It would be to render this power useless if the DOJ is held powerless to prevent the flight from Philippine jurisdiction of a defendant/respondent in a criminal investigation on the ground that the right to travel abroad is unconditional and not subject to limitations and restraint by the exercise of the police power of the State.

The moment one is served notice of DOJ's summons to appear as a respondent in a preliminary investigation, due process is served, and the prevention of the defendant's evasion of the performance of her obligation to the State becomes paramount. The obligation to answer to criminal charges is thus imposed on the respondent. From thereon, said respondent cannot claim rights otherwise available to other citizens who are not the subject of a criminal investigation, or continue to render violable the compulsory nature of a DOJ subpoena. Once a person is put under an obligation to answer to criminal charges, she loses the unconditional exercise of the right which, otherwise, will frustrate or render the enforcement of said obligation moot.

To grant Applicant an ADO based on her spokespersons' claim of her unconditional right to travel is to violate the State's power to demand the satisfaction of her obligation to answer to criminal charges, to the detriment of public order. It is to declare that personal rights can rise above the power of the public to regulate in the interest of the common welfare for the protection of the lives, health, and property of the citizens, to the preservation of good order and the public morals, **and to the restraint and punishment of crime.**

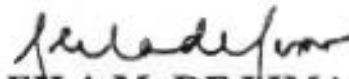
This false premise on the unconditional character of the right to international travel cannot hold without putting into jeopardy the power of the State to ensure that criminals are prosecuted and crimes are punished by compelling and assuring the presence of respondents, like herein Applicant, within the territorial jurisdiction of the Philippine State during the pendency of the prosecutorial process, including at the stage of the criminal and preliminary investigations, and absent any exceptional condition for the granting of an ADO. This is all that is

intended to be accomplished in the issuance of Watchlist Orders against the Applicant. In the end, the State cannot be rendered powerless by the false invocation of a right the protection and guarantee of which, in a modern society and republican government, relies on the very same efficient exercise of said power by the State.

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.

City of Manila, 08 November 2011.


LEILA M. DE LIMA
Secretary

Copy furnished:

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