

LEILA M. DE LIMA, PETITIONER, VS. PRESIDENT RODRIGO R. DUTERTE, RESPONDENT.

G.R. No. 227635. October 15, 2019

Ponente: BERSAMIN, C.J.

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BERSAMIN, C.J.:

By petition for the issuance of a writ of habeas data petitioner Senator Leila M. de Lima (Sen. De Lima) seeks to enjoin respondent Rodrigo Roa Duterte, the incumbent Chief Executive of the Philippines, from committing acts allegedly violative of her right to life, liberty and security.

At the core of the controversy is the inquiry on the application, scope and extent of the principle of presidential immunity from suit. The question concerns the immunity of the President from suit while he remains in office.

Yet, prior to the consideration and resolution of the controversy, a preliminary matter of substance must be considered and resolved. May the petition prosper because the incumbent President of the Philippines has been named herein as the sole respondent?

Antecedents

On May 9, 2016, Davao City Mayor Rodrigo Roa Duterte was elected as the 16th President of the Philippines. A key agenda of the Duterte Administration was the relentless national crackdown on illegal drugs. This prompted several human rights advocates to heavily criticize the strategies and devices forthwith adopted by law enforcement agencies in pursuing the crackdown. Among the vocal critics of the crackdown was Sen. De Lima.

On August 2, 2016, Sen. de Lima delivered a privilege speech on the floor of the Senate calling a stop to the alleged extrajudicial killings committed in the course of the crackdown, and urging her colleagues in the Senate to conduct investigations of the alleged victims.[1]

In response, President Duterte issued a number of public statements against Sen. De Lima, including denunciations of her corruption and immorality. The statements prompted her to initiate this petition for the issuance of a writ of habeas data against President Duterte.

In her petition, Sen. De Lima adverted to several public statements that allegedly threatened her right to life, liberty and security, namely:

- The August 11, 2016 public statement of President Duterte threatening to destroy Sen. De Lima. The statement reads: "I know I'm the favorite whipping boy of the NGOs and the human rights stalwarts. But I have a special *ano kaya* no. She is a government official. One day soon I will – *bitiwan ko yan* in public and I will have to destroy her in public." [2] Incidentally, in the same event, President Duterte insinuated that with the help of another country, he was keeping surveillance of her. "Akala nila na hindi rin ako nakikinig sa kanila. So while all the time they were also listening to what I've done, I've also been busy, and with the help of another country, listening to them;" [3]
- The statement uttered in a briefing at the NAIA Terminal 3, Pasay City in August 17, 2016 wherein President

Duterte named Sen. De Lima as the government official he referred to earlier and at the same time accused her of living an immoral life by having a romantic affair with her driver, a married man, and of being involved in illegal drugs. "There's one crusading lady, whose even herself led a very immoral life, taking his (sic) driver as her lover... Paramour niya ang driver nya naging hooked rin sa drugs because of the close association. You know, when you are an immoral, dirty woman, the driver was married. So you live with the driver, its concubinage." [4]

- The statements that described her as an immoral woman; [5] that publicized her intimate and personal life; [6] starting from her new boyfriend to her sexual escapades; [7] that told of her being involved in illegal drugs as well as in activities that included her construction of a house for her driver/lover with financing from drug-money; [8] and

- The statements that threatened her ("De Lima, you are finished") [9] and demeaned her womanhood and humanity. [10] "If I were De Lima, ladies and gentlemen, I'll hang myself. Your life has been, hindi lang life, the innermost of your core as a female is being serialized everyday. Dapat kang mag-resign. You resign. [11] and "De Lima better hang yourself ... Hindi ka na nahiya sa sarili mo. Any other woman would have slashed her throat. You? Baka akala mo artista ka. Mga artistang x-rated paglabas sa, pagkatapos ng shooting, nakangiti ...". [12]

Sen. De Lima traces this personal presidential animosity towards her to the time when she first encountered President Duterte while he was still the City Mayor of Davao and she the Chairperson of the Commission on Human Rights investigating the existence of the so-called "Davao Death Squad". [13]

Sen. De Lima concludes that taking all the public statements of the President into consideration the issuance of the writ of habeas data is warranted because there was a violation of her rights to privacy, life, liberty, and security, and there is a continuous threat to violate her said rights in view of President Duterte's declaration that he had been "listening to them, with the help of another country." [14]

Also, the petition argues that President Duterte is not entitled to immunity from suit, especially from the petition for the issuance of the writ of habeas data because his actions and statements were unlawful or made outside of his official conduct; that based on the pronouncements in *Rodriguez v. Macapagal-Arroyo* [15] and *Clinton v. Jones*, [16] the immunity of the President from suit covers only the official acts of the Chief Executive; that his statements constituted violations of various laws, particularly Republic Act No. 6713, [17] and Republic Act No. 9710, [18] and, as such, were not to be considered the official acts of the President worthy of protection by presidential immunity from suit; and that because the habeas data proceeding does not involve the determination of civil or criminal liability, his acts and statements should not be considered as warranting the protective shield of presidential immunity from suit.

Sen. De Lima seeks the following reliefs:

WHEREFORE, the petitioner respectfully prays the Honorable Court that judgment be rendered:

[1] Granting a Writ of Habeas Data –

- Enjoining respondent and any of his representatives, agents, assigns, officers, or employees from collecting information about petitioner's private life outside the realm of legitimate public concern;
- Disclosing to the petitioner the name of the foreign country who, according to respondent, "helped him" listen in on petitioner, the manner and means by which he listened in on petitioner, and the sources of his information or where the data about petitioner's private life and alleged private affairs came from;
- Ordering the deletion, destruction or rectification of such data or information; and

- Enjoining the respondent from making public statements that (i) malign her as a woman and degrade her dignity as a human being; (ii) sexually discriminate against her; (iii) describe or publicize her alleged sexual conduct; (iv) constitute psychological violence against her; and (v) otherwise violate her rights or are contrary to law, good morals, good customs, public policy, and/or public interest; and

[2] Conceding unto petitioner such further and other reliefs this Honorable Court may deem just and equitable in the premises.[19]

An important constitutional hurdle must first be surmounted before the Court considers taking full cognizance of the petition for the issuance of a writ of habeas data. Is the President entitled to immunity from suit warranting the immediate dismissal of the petition considering that he is the sole respondent in this action?

In the resolution promulgated on November 8, 2016, the Court has directed Sen. De Lima and the Office of the Solicitor General (OSG) to present their respective sides on the issue of whether or not President Duterte is immune from this particular suit.[20]

In compliance, Sen. De Lima insists in her memorandum that the President is not immune from this particular suit because his actions and statements were clearly made outside of his office as Chief Executive as to constitute unofficial conduct not covered by presidential immunity; that to consider and determine the issue of whether or not the President is immune from suit is premature considering that President Duterte has yet to invoke the same in his verified return; that until and unless President Duterte invokes the immunity himself, the issue may not even be considered; that the immunity of the President does not automatically attach every time he is sued; that in the United States of America (USA), proper balancing of interest – on the one hand, the private interest to be served, and, on the other, the danger of intrusion unto the authority and function of the Executive Branch – must first be made; that allowing the petition will not violate the principle of separation of powers; that on the basis of the pronouncement in Clinton, the doctrine of separation of powers does not require the courts to stay all private actions against the President until he leaves office; that the reason behind the immunity is not present in this case; that suing the President herein will not degrade the office of the President nor cause harassment or distraction; and that she is an aggrieved party by virtue of the President's actions, and thus deserves a judicial remedy.

On its part, the OSG seeks the immediate dismissal of the suit. It submits that the immunity of the sitting President is absolute, and it extends to all suits including petitions for the writ of amparo and writ of habeas data; that despite the non-inclusion of presidential immunity in Section 17, Article VII of the 1973 Constitution from the 1987 Constitution, the framers intended such immunity to attach to the incumbent President; that the present suit is the distraction that the immunity seeks to prevent because it will surely distract the President from discharging his duties as the Chief Executive; that based on the ruling in *David v. Macapagal-Arroyo*,^[21] the President is immune from any civil or criminal case during his tenure and the only way to make him accountable to the people is through impeachment; that such absolute immunity established by jurisprudence is based on public policy considerations, and Sen. De Lima has not provided compelling reasons to warrant the reversal or modification of the doctrine; and that, accordingly, the doctrine of stare decisis must be respected.

The OSG argues that even assuming that the immunity only covers official acts of the President, the statements made were still covered because they were made pursuant to the exercise of his power to faithfully execute the laws under Section 17, Article VII of the Constitution; that the President's statements revolved around the involvement of Sen. De Lima in the illegal drugs trade; that any mention of her relationship with Ronnie Dayan was incidental because their romantic relationship was intertwined with the relationship as principal and accomplice in her involvement in the illegal drugs trade; that the statements of the President were made while the House of Representatives was conducting an investigation regarding the illegal drug trade in the National Penitentiary wherein Sen. De Lima was implicated; and that the petition should be dismissed because it was

erroneously filed with this Court following Section 3 of the Rule on the Writ of Habeas Data (A.M. No. 08-1-16-SC) due to the petition not involving public data files of government offices.

On November 29, 2016,[22] the Court required Sen. De Lima and the OSG to traverse each other's submissions in their respective memoranda.

In her compliance, Sen. De Lima points out that the doctrine of presidential immunity from suit is not absolute, but entertains exceptions; that under Clinton, the immunity only covers the official acts of the President; that the judicial pronouncements on the absoluteness of the doctrine were doubtful because the only rulings cited in support of absoluteness (*Forbes v. Chuoco Tiaco*[23] and *Nixon v. Fitzgerald*[24]), being issued prior to the promulgation of the 1987 Constitution, were inconclusive as to whether or not the immunity of the incumbent President was absolute.

Sen. De Lima downplays the effects of the petition, and states that her suit will not distract President Duterte from the discharge of his duties as the Chief Executive considering that he has the OSG to handle the suit in his behalf; that the statements in question were not made in the performance of his duties, but were personal attacks rooted in their past encounters as the Chairperson of the Commission on Human Rights and as Mayor of the City of Davao; and that her immediate resort to the Court was proper because the President has been collecting data on her, and the data thus collected are being stored in his office.

The OSG counters that the doctrine of presidential immunity absolutely applied; that Sen. De Lima improperly invokes the jurisprudence of the USA to support her stance despite such jurisprudence being non-binding in this jurisdiction; and that although *Estrada v. Desierto*[25] cited Clinton and Fitzgerald, the Court did so only for the limited purpose of determining the suability of the non-sitting President, which was the issue presented and considered in *Estrada*, not the suability of the incumbent President as presented herein.

According to the OSG, the Court has been clear in *Lozada v. Macapagal Arroyo*[26] about the immunity automatically attaching to the office, and about not needing the President to invoke the immunity in order to enjoy the same. The OSG assures that any suit, including this one, necessarily distracts the President from discharging his duties considering that he is the sole embodiment of the Executive Branch, unlike the Judiciary and the Congress that are either collegial bodies or comprised by several individuals.

Anent the need for proper balancing before the immunity attaches, the OSG posits that national interest – the fight against illegal drugs – prevails over the supposed incessant intrusions on the rights of Sen. De Lima; that the statements of the President were made in furtherance of his constitutional duty to faithfully execute the laws; and that the Court must respect established precedents to the effect that absolute immunity pertains to the Chief Executive if no compelling arguments are submitted to the contrary

Issue

May the incumbent Chief Executive be haled to court even for the limited purpose under the Rules on the Writ of Habeas Data?

Sen. De Lima reiterates, citing Clinton, that the President's immunity from suit should not shield him from being haled to court because his statements and actions, being clearly unofficial acts, are outside the ambit of the immunity. In turn, the OSG counters, also citing Clinton as well as Fitzgerald, that the immunity must be extended to the President.

Ruling of the Court

The petition must be dismissed even without the President invoking the privilege of immunity from suit.

A careful study of the development of the doctrine of Presidential immunity from suit shows that the presidential immunity from suit as recognized and applied in the USA differs from the doctrine recognized in this jurisdiction.

I

Origins and Development of Presidential Immunity from suit

The concept of executive immunity from suit for the Chief Executive can be traced as far back as the days of Imperial Rome. Justinian I noted in his *Corpus Juris Civilis* that Roman law recognized two principles connected with the development of what we now know as executive immunity from suits – *princeps legibus solutus est* (the emperor is not bound by statute); and *quod principii placuit legis habet* (what pleases the prince is law). These two principles remained dormant until their revival in feudal Europe, particularly in England.[27]

In *The Origins of Accountability: Everything I know about Sovereigns' Immunity*, I learned from King Henry III,[28] Professor Guy Seidman observes that the concepts under Roman Law, Church law, traditional-customary-tribal laws, and laws of the feudal system fused together to form the principle that has been traditionally recognized[29] as the origin of the present day's concept on executive immunity from suit – the principle that is expressed in the maxim "the king can do no wrong." He explains the development of the maxim "the king can do no wrong" in England in this manner:

The maxim has actually stood for four different propositions at various points in English legal history. The first is that the King is literally above the law and cannot do wrong by definition; this understanding of the maxim reached its zenith in the 7[th] century under the banner of the "divine right of Kings". A second meaning is that even if the King's actions are not lawful by definition, there is no remedy for royal wrong doing through ordinary legal channels; one might term this a "procedural" or "remedial" understanding of the maxim. A third meaning, which actually represents the true historical origin of the maxim, is that the King has no power or capacity to do wrong; this was literally the case with Henry III, who assumed the Kingship while in his minority. A fourth meaning is precisely the opposite of the first: it means that the King is eminently capable of doing wrong but cannot do so lawfully. One can meaningfully combine this understanding with the second "procedural" understanding to yield a legal regime in which royal acts can meaningfully be described as unlawful but are not subject to remedies by the ordinary law courts. In such a scheme, however, subordinates who follow the King's orders may act at their peril.[30]

Although the maxim clothed the King with immunity, equitable remedies remained available,[31] such as the development of the doctrine of ministerial accountability[32] and impeachment. Due to increasing demands for the accountability of government officials and to the eventual removal of the King's participation from political and state affairs, the immunity once enjoyed by the monarchs started to wane.

II

American Development of the Concept of Presidential Immunity

The American Founding Fathers were well aware of the doctrine of "the king can do no wrong." Citing Blackstone's *Commentaries on the Laws of England* (Blackstone's *Commentaries*), Prof. Seidman has summarized the pre-American Revolution understanding of the maxim, and points to how Blackstone's *Commentaries* influenced American legal thought, thus:

All of this background information was available to the Founding Fathers. Blackstone's *Commentaries* summarized and explained the legal doctrines concerning government accountability. The *Commentaries* make several substantive references to the doctrine 'that the king can do no wrong'. Blackstone begins his comprehensive discussion of the King's Prerogative explaining that 'one of the principal bulwarks of civil

liberty' was the limitation of the king's prerogative.

What is an English subject to do "in case the crown should invade their rights, either by private injuries or public oppressions?" The English common law, suggests Blackstone, provides remedies in both cases. As for private injuries his answer is double: first, there [sic] is a remedy is the petition of right, and while it is only as 'a matter of grace' that the king provides the compensation requested, he is mostly to permit this charity; second, Blackstone cites Locke to the effect that the King is unlikely to inflict much damage personally, and immunizing him is a fair price to pay for the benefits of the regime.

As for 'public oppression': in most cases the answer is clear – "a king cannot misuse his power, without advice of evil counsellors, and the assistance of wicked ministers, these men may be examined and punished." Such persons could be indicted or impeached by Parliament 'that no man shall dare to assist the crown in contradiction to the laws of the land. But it is at the same time a maxim in those laws, that the king himself can do no wrong' because simply stated, there is no redress against the king. The results are less clear in the most severe cases 'as tend to dissolve the constitution, and subvert the fundamentals of government,' where the branches of government are in clear dispute.

Speaking specifically of the king[']s political capacity Blackstone famously stated that the law ascribes to the king 'absolute perfection' –

The king can do no wrong. Which ancient and fundamental maxim is not to be understood, as if everything transacted by the government was of course just and lawful, but means only two things.

First, that whatever is exceptionable in the conduct of public affairs is not be imputed to the king, nor is her answerable for it personally to his people: for this doctrine would totally destroy the constitutional independence of the crown which is necessary for the balance of power ... in our compounded constitution. And secondly, it means that the prerogative of the crown extends not to do any injury it is created for the benefit of the people, and therefore cannot be exerted to their prejudice.

The king, moreover, is not only incapable of doing wrong, but ever of thinking wrong: he can never mean to do an improper thing: in him is no folly or weakness." [Citations Omitted]

The language may seem archaic, the terms technical, and the fictions it described mystical. Yet the Commentaries represented the better part of the Founding Generations' legal education and they were quite fluent in Blackstonian.[33]

Thus, American law followed this concept of 'the king can do no wrong' as well as other common law doctrines of England until the former began to develop independently after the revolution of 1776.[34] Common law concepts, including the principle that 'the king can do no wrong,' carved out a legal path and conception different from their English roots considering that the USA had an elected President instead of a hereditary King to control the reigns of governmental power. As such, the immunity given – be it to the President or to the lowest government official – rested no longer on established English political theory based on the Common Law but rather on public policy considerations.[35] Some of the public policy considerations in upholding official immunity of public officials are: (a) the absolute immunity of judges being necessary to ensure judicial independence (Bradley v. Fisher);[36] and (b) policy considerations enunciated in Bradley for judges being equally applicable to executive officials because the civil liability would cripple the proper administration of public affairs (Spalding v. Vilas).[37]

The interesting and yet sporadic concern is how to hale the President of the USA to court either as a witness or as a party litigant; or, is it even possible at all to hale him to court? In either instance, American jurisprudence has provided answers based on established policy considerations.

Insofar as the susceptibility of the American President to be served with judicial processes is concerned,

American jurisprudence has been clear that the President can be served with processes. As early as 1807, in *United States v. Burr*,^[38] the US Supreme Court, through Chief Justice John Marshall, issued a subpoena duces tecum against then President Thomas Jefferson in order to obtain documents and letters necessary for the treason trial of respondent Aaron Burr. In issuing the subpoena, the US Supreme Court acknowledged that:

[i]f upon any principle, the president could be construed to stand exempt from the general provisions of the constitution, it would be because his duties as chief magistrate demand whole time for national objects. But it is apparent that this demand is not unremitting; and if it should exist at the time when his attendance on a court is required, it would be shown on the return of the subpoena, and would rather constitute a reason for not obeying the process of the court than a reason against its being issued ... It cannot be denied that to issue a subpoena to a person filling the exalted position of the chief magistrate is a duty which would be dispensed with more cheerfully than it would be performed; but a duty, the court can have no choice in the case ... The guard furnished to this high officer, to protect him from being harassed by vexatious and unnecessary subpoena, is to be looked for in the conduct of a court after those subpoenas have issued; not in any circumstance which is to precede their being issued.^[39]

Aside from President Jefferson, other Presidents (President James Monroe, President Gerald Ford and President Ronald Reagan) were at the receiving end of judicial process. Of particular significance is *United States v. Nixon*^[40] wherein the U.S. Supreme Court ordered President Richard Nixon to surrender certain recordings of White House conversations relevant to the criminal prosecution in relation to what is now known as the Watergate Scandal. The U.S. Supreme Court ruled that the President's general interest in confidentiality could not defeat the request for the subpoena.

While sufficient judicial precedents as regards Presidential susceptibility to receive judicial processes existed, there is a dearth of jurisprudential precedents on the possibility of suing the incumbent U.S. President.

Relevant to this discussion are the different types of immunity granted to officials like the President. Immunity can be classified either by (a) extent, i.e., absolute or qualified; or (b) duration, i.e., permanent or temporary.

Absolute immunity is granted to a government official who has proven that his actions fell within the scope of his duties, and that his actions are discretionary rather than ministerial, that is to say, that the conduct or the action performed must not involve insignificant or routinely office work but rather the challenged action must involve personal judgment.^[41] Further, in *Butz v. Economou*,^[42] the US Supreme Court held that absolute immunity can only be invoked if it is demonstrated that absolute immunity is essential for the conduct of the public business. In other words, absolute immunity attaches to the function instead of the office.

Qualified immunity was initially given to a government official who was able to prove that at the time of the commission of the act complained of, he possessed a good faith belief that his actions were lawful. This was known to be the subjective element.^[43] The US Supreme Court enhanced the criteria on when to invoke qualified immunity. In *Wood v. Strickland*,^[44] the US Supreme Court ruled that aside from the aforementioned subjective test, it is also important to show if the public official should have known that his act constituted a violation of the rights of the claimant. If the government official should have known that his acts violated the claimant's rights, then immunity is not granted to the government official; otherwise, the government official is entitled to qualified immunity.^[45] This is referred to as the objective test. This two-tiered test to determine the need to grant qualified immunity was modified in *Harlow v. Fitzgerald*,^[46] where the US Supreme Court removed the subjective test reasoning that inquiring into the subjective motivation of government officials would be "disruptive of effective government." *Harlow* now requires a two-step analysis in the determination of whether or not a government official is entitled to qualified immunity; first, as a threshold matter, the court must determine if the statutory or constitutional right asserted by the plaintiff was clear at the time of the alleged wrongful action; and, second, the

court must determine whether the official should reasonably have known the action was contrary to law.[47]

The second classification of immunity is based on duration, which may be permanent or temporary. This classification was brought about by footnote 31 in *Nixon v. Fitzgerald*,[48] where the U.S. Supreme Court recognized that executive immunity could be derived from Article 1, Section 6 of the US Constitution.[49] Temporary immunity or congressional immunity from arrest provides temporary immunity to legislators from litigating even private suits while "at Session" of Congress as public officers, while permanent immunity or the immunity for speech or debate provides immunity from liability in law suits that arise out of the performance of public duties of democratic deliberation.[50]

Under these concepts, the U.S. Supreme Court has ruled on two cases wherein presidential immunity was invoked as a defense to defeat a claim. In *Nixon v. Fitzgerald*, supra, the respondent filed a complaint for damages against former President Nixon due to the fact that he had been removed from office by the President as a retaliation for giving damning testimony in Congress. Nixon invoked presidential immunity, but his invocation was ignored by the District Court and the Court of Appeals which held that Nixon was not entitled to absolute immunity. The US Supreme Court ruled, however, that Nixon was entitled to absolute immunity from liability for damages predicated on his official acts. Justifying its ruling, the US Supreme Court ruled that the determination of the immunity of particular officials was guided by the Constitution, federal statutes, history and public policy; and that the absolute immunity of the President was a "functionally mandated incident of his unique office, rooted in constitutional tradition of separation of powers and supported by the National's history;" it extended the scope of the President's immunity to the "outer perimeter" of his duties of office. Lastly, it noted that there were sufficient safeguards to ensure that misconduct would be checked, and the President remained accountable to the people through impeachment, Congressional oversight and the Press.

While Nixon provided absolute immunity to the President, the US Supreme Court, in *Clinton v. Jones*, supra, ruled that presidential immunity only covered official acts of the President. In *Clinton*, the respondent filed a complaint for damages against the incumbent President based on the sexual advances committed prior to his becoming President and while he was the governor of Arkansas. The President moved to dismiss the case on the basis of presidential immunity. The District Court denied the motion to dismiss but deferred the trial of the case until after the President's term. The Eighth Circuit Court affirmed the denial of the dismissal but modified the District Court's ruling to temporarily bar trial until the end of the President's term. The US Supreme Court sustained the lower courts and allowed the suit to proceed noting that the concept of presidential immunity covered only official acts, not unofficial conduct.

III

Philippine Concept of Presidential Immunity

The concept of executive immunity was first tackled in 1910 by the Philippine Supreme Court in *Forbes v. Chuoco Tiaco*.^[51] The country was then still under American occupation. Chuoco Tiaco was a Chinese national deported from the Philippines in 1909 on orders of then Governor-General W. Cameron Forbes. In 1910, he returned to the Philippines and filed a suit in the Court of First Instance of Manila against Governor-General Forbes and other government agents, seeking thereby a preliminary injunction to prevent them from deporting him again, and demanding damages. Among the issues resolved was the question of whether or not the trial court could assume jurisdiction of cases relating to the exercise of powers by the Chief Executive of the land.

Posing the question as whether or not the courts would ever intervene or assume jurisdiction in any case brought against the Chief Executive as the head of government, the Court observed that although the subject had often been discussed before courts of other jurisdictions and by various commentators, there had been no consensus

reached thereon. It considered to be settled that the courts would not interfere where the Chief Executive exercised inherent, political, or discretionary duties, such as the power to deport or expel undesirable aliens; and declared that the courts would not intervene for the purpose of controlling such power, nor for the purpose of inquiring whether or not the Chief Executive was liable for damages in the exercise thereof.

But while the case law cited in *Forbes* depended on principles of executive immunity prevailing in foreign jurisdictions, the Philippine concept of presidential immunity diverged in 1981, and the variation became concrete through the 1973 Constitution, under whose Article VII the following provision was written, viz.:

Section 15. The President shall be immune from suit during his tenure. Thereafter, no suit whatsoever shall lie for official acts done by him or by others pursuant to his specific orders during his tenure.

In 1986, during the interval between the 1973 Constitution and the 1987 Constitution, the Court maintained the concept of presidential immunity. In *In Re: Saturnino V. Bermudez*,^[52] an original action for declaratory relief, the Court was asked to interpret the 1986 Draft Constitution. The petition therein claimed that it was unclear if the transitory provisions on the terms of the incumbent President and Vice-President referred to the tandem of Corazon C. Aquino and Salvador Laurel, or to Ferdinand E. Marcos and Arturo Tolentino. The Court reaffirmed the legitimacy of the government of President Aquino, and ruled that the petition amounted to a suit brought against her. In a sweeping but nonetheless unequivocal manner, the Court declared that "incumbent presidents are immune from suit or from being brought to court during the period of their incumbency and tenure."^[53]

The period of 2000-2001 was tumultuous for the Office of the President. Public disapproval of President Joseph Estrada reached fever pitch, leading to his forced departure from the Presidency. Following his departure, he faced multiple criminal complaints before the Office of the Ombudsman, including charges of bribery, graft and corruption, and plunder. The former President filed a petition for prohibition with the Court (*Estrada v. Desierto*^[54]) seeking to enjoin the Ombudsman from proceeding with the criminal complaints against him. Among the former President's defenses against the multiple cases was his claim of presidential immunity from criminal prosecution. The Court came to the conclusion that President Estrada had resigned from his post as the Chief Executive. The narrow issue coming before the Court related to the scope of immunity that he could claim as a non-sitting President, the Court concluded that President Estrada, being already a former President, no longer enjoyed immunity from suit.

In 2006, President Macapagal-Arroyo issued Presidential Proclamation No. 1017 and General Order No. 5 declaring a state of national emergency, and called out the Armed Forces of the Philippines in her capacity as Commander-in-Chief to maintain law and order throughout the country and to suppress acts of lawless violence, insurrection or rebellion. Several petitions were filed, and were consolidated (*David v. Macapagal-Arroyo*^[55]) disputing the factual bases for the orders, and challenging their constitutionality. Three of the petitions impleaded President Arroyo herself as a respondent.

In threshing out the procedural issues, the Court ruled on the legal standing of the petitioners in each case, and later on pronounced that it was not proper to implead the President as a respondent, to wit:

x x x Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the constitution necessarily impairs the operation of the Government. However, this does not mean that the

President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.[56]

In *Rubrico v. Macapagal-Arroyo*,^[57] petitioner Lourdes Rubrico alleged that she had been abducted, detained, and interrogated by armed men belonging to the Armed Forces of the Philippines. Even after her release, Lourdes and her family continued to be harassed and threatened. She brought a petition for the issuance of the writ of amparo seeking to proceed against named military and police personnel and the Office of the Ombudsman. The petition impleaded President Gloria Macapagal-Arroyo as respondent.

In the proceedings before the Court of Appeals (CA), to which the hearing was meanwhile assigned, the CA dropped President Arroyo as a respondent. Among the issues later elevated to this Court was the propriety of dropping the President as a party respondent. The petitioners specifically claimed that the immunity enjoyed by the Chief Executive under the 1935 Constitution and 1973 Constitution had been removed by its non-inclusion in the 1987 Constitution.

The Court upheld the exclusion of President Arroyo as a respondent, maintaining that presidential immunity from suit remained under our system of government, despite not being expressly reserved in the 1987 Constitution, and declared that the President could not be sued during her tenure. In addition, the decision pointed out that the petition did not allege specific presidential acts or omissions that had violated or threatened to violate petitioners' protected rights.

Presidential immunity in amparo proceedings was again taken up in *Balao v. Macapagal-Arroyo*.^[58] James Balao had been allegedly taken by unidentified armed men, believed to be members of the military. The petitioners filed a petition for the issuance of the writ of amparo in the Regional Trial Court (RTC) in Benguet. The respondents argued in the RTC for the dropping of President Arroyo from the case on the basis of her presidential immunity. The RTC rejected the arguments explaining that presidential immunity was not applicable in amparo proceedings which were not nagging, vexing or annoying to the respondent. In fact, the petition would aid the President in discharging her constitutional duty to make sure that the laws on human rights were being observed.

Although the pleadings did not tackle the issue of presidential immunity, the Court ruled that the RTC had erred in holding that such immunity could not be invoked in amparo proceedings. It pointed out that President Arroyo, as the Chief Executive, was enjoying immunity from suit when the petition for a writ of amparo was filed; that the petition was bereft of any allegation of specific acts or omissions that had violated or threatened to violate protected rights; and that President Arroyo should be dropped as a party-respondent from the petition for writ of amparo.

IV

Current State of the Concept of Presidential Immunity

The concept of presidential immunity is not explicitly spelled out in the 1987 Constitution. However, the Court has affirmed that there is no need to expressly provide for it either in the Constitution or in law.^[59] Furthermore, the reason for the omission from the actual text of the 1987 Constitution has been clarified by this exchange on the floor of the 1986 Constitutional Commission:

MR. SUAREZ: Thank you.

The last question is with reference to the Committee's omitting in the draft proposal the immunity suit provision for the President. I agree with Commissioner Nollado that the Committee did very well in striking out this second sentence, at the very least, of the original provision on immunity from suit under the 1973 Constitution. But would the Committee members not agree to a restoration of at least the first sentence that the President shall be immune from suit during his tenure, considering that if we do not provide him that kind of

immunity he might be spending all of his time facing litigations, as the President-in-exile in Hawaii is now facing litigations almost daily?

FR. BERNAS: The reason for the omission is that we consider it understood in present jurisprudence that during his tenure he is immune from suit.

MR. SUAREZ: So, there is no need to express it here.

FR. BERNAS: There is no need. It was that way before. The only innovation made by the 1973 Constitution was to make that explicit and do add other things.

MR. SUAREZ: On that understanding, I will not press for any more query, Madam President.[60]

The existence of the immunity under the 1987 Constitution was directly challenged in *Rubrico v. Macapagal-Arroyo*,[61] but the Court steadfastly held that Presidential immunity from suit remained preserved in our current system.

While the concept of immunity from suit originated elsewhere, the ratification of the 1981 constitutional amendments and the 1987 Constitution made our version of presidential immunity unique. Section 15, Article VII of the 1973 Constitution, as amended, provided for immunity at two distinct points in time: the first sentence of the provision related to immunity during the tenure of the President, and the second provided for immunity thereafter. At this juncture, we need only concern ourselves with immunity during the President's tenure, as this case involves the incumbent President. As the framers of our Constitution understood it, which view has been upheld by relevant jurisprudence, the President is immune from suit during his tenure.

Unlike its American counterpart, the concept of presidential immunity under our governmental and constitutional system does not distinguish whether or not the suit pertains to an official act of the President. Neither does immunity hinge on the nature of the suit. The lack of distinctions prevents us from making any distinctions. We should still be guided by our precedents.

Accordingly, the concept is clear and allows no qualifications or restrictions that the President cannot be sued while holding such office.

V

Applicability of Presidential Immunity to a
Proceeding for the issuance of the Writ of Habeas Data

Sen. De Lima maintains that presidential immunity does not lie because President Duterte's attacks against her are not part of his official duties and functions; that before presidential immunity applies, there must first be a balancing of interest; and that the balancing favors her because her right to be protected from harassment far outweighs the dangers of intrusion on the Office of Chief Executive.

Sen. De Lima wants us to apply principles established by the US Supreme Court in the celebrated cases of *Nixon* and *Clinton*, *supra*. Such decisions, though persuasive, are not binding as case law for us. As earlier asserted, the Philippine concept of Presidential immunity from suit diverged from its foreign roots, from the time of the amendment of the 1973 Constitution. Presidential immunity in this jurisdiction attaches during the entire tenure of the President. The immunity makes no distinction with regard to the subject matter of the suit; it applies whether or not the acts subject matter of the suit are part of his duties and functions as President. Furthermore, no balancing of interest has ever been applied to Presidential immunity under our jurisprudence. We are not prepared or willing to recognize such a test without constitutional, statutory, or jurisprudential basis.

Both Sen. De Lima and the OSG disagree on whether or not the statements of the President regarding her have

been part of the discharge of the President's official duties, but our declaration herein that immunity applies regardless of the personal or official nature of the acts complained of have rendered their disagreement moot and academic.

Sen. De Lima argues that the rationale for Presidential immunity does not apply in her case because the proceedings for the writ of habeas data do not involve the determination of administrative, civil, or criminal liabilities. Again, we remind that immunity does not hinge on the nature of the suit. In short, presidential immunity is not intended to immunize the President from liability or accountability.

The rationale for the grant of immunity is stated in *Soliven v. Makasiar*,^[62] thus:

The rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention.^[63]

The rationale has been expanded in *David v. Macapagal-Arroyo*:

x x x It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.^[64]

With regard to the submission that the President must first invoke the privilege of immunity before the same may be applied by the courts, Sen. De Lima quotes from *Soliven* where the Court said that "this privilege of immunity from suit, pertains to the President by virtue of the office and may be invoked only by the holder of the office; not by any other person in the President's behalf."^[65] But that passage in *Soliven* was made only to point out that it was the President who had gone to court as the complainant, and the Court still stressed that the accused therein could not raise the presidential privilege as a defense against the President's complaint. At any rate, if this Court were to first require the President to respond to each and every complaint brought against him, and then to avail himself of presidential immunity on a case to case basis, then the rationale for the privilege – protecting the President from harassment, hindrance or distraction in the discharge of his duties – would very well be defeated. It takes little imagination to foresee the possibility of the President being deluged with lawsuits, baseless or otherwise, should the President still need to invoke his immunity personally before a court may dismiss the case against him.

Sen. De Lima posits that her petition for habeas data will not distract the President inasmuch as the case can be handled by the OSG. But this is inconsistent with her argument that the attacks of the President are purely personal. It is further relevant to remind that the OSG is mandated to appear as counsel for the Government as well as its various agencies and instrumentalities whenever the services of a lawyer is necessary; thus, a public official may be represented by the OSG when the proceedings arise from acts done in his or her official capacity.^[66] The OSG is not allowed to serve as the personal counsel for government officials. If Sen. De Lima's position that the acts complained of are not related to the official functions of the President, then it also necessarily follows that the OSG can no longer continue to represent him.

Besides, any litigation, whether big or small, naturally serves as a distraction to a party-litigant. Even while

represented by counsel, a litigant is still responsible for certain facets of the case, like presenting evidence and disputing claims, and cannot simply leave the course and conduct of the proceedings entirely to the discretion of his or her chosen counsel.

Sen. De Lima hinges her allegations of violations of her rights on the Magna Carta of Women, as well as on Republic Act No. 6713. Although she claims that her present recourse does not seek to hold the President administratively, civilly, or criminally liable, it will be impossible for the Court to enable her cause of action to be established without first determining whether or not said laws, which carry penal sanctions, had been violated. Any ruling on her petition will necessarily entail a judgment on whether or not the President violated said laws.

Finally, Sen. De Lima asserts that for every right violated, there must be a remedy. No one can dispute the validity of her assertion. We agree with her, but at the same time we must remind her that this ruling will not deny her any available remedy. Indeed, the Constitution provides remedies for violations committed by the Chief Executive except an ordinary suit before the courts. The Chief Executive must first be allowed to end his tenure (not his term) either through resignation or removal by impeachment. Being a Member of Congress, the petitioner is well aware of this, and she cannot sincerely claim that she is bereft of any remedy.

WHEREFORE, the Court DISMISSES the petition for the writ of habeas data on the ground that respondent Rodrigo Roa Duterte as the incumbent President of the Philippines is immune from suit during his incumbency.

SO ORDERED.

Carpio, Peralta, Perlas-Bernabe, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, and Zalameda, JJ., concur.

Leonen, J., see separate opinion.

Caguioa, J., joins the opinion of J. Leonen.

A. Reyes, Jr., J., please see separate and concurring opinion.

J. Reyes, Jr., J., on leave.

[1] Rollo, pp. 6; 47-49.

[2] Id. at 6.

[3] Id.

[4] Id. at 7, Media Briefing at the Ninoy Aquino International Airport (NAIA) Terminal 3 in Pasay City last August 17, 2016.

[5] Id. at 7-10

[6] Id. at 6-7.

[7] Id. at 11. In his September 22, 2016 speech, President Duterte was quoted to have said: "Ngayon hanggang ngayon kita mo. De Lima, she was seven years chairman of the Human Rights. Binibira niya aka, hindi pina-file ang kaso. As Secretary of Justice, she was building a name at my expense para ma-popular. So what now? Tignan mo, she was not only screwing her driver, she was screwing the nation... Yan yung pinaka sinasabi ko kay De Lima "you better hang yourself" kasi nandito nasa mga kamay ko yung – sinabit na nila, tiningnan ko na. So all the while, because of her propensity for sex – ayon... Ngayon lang aka nakakita ng babae na lumabas sa buong social media nakangiti parang huang. ... kung nanay ko 'yan barilin ko.

[8] Id. at 8.

[9] Id. at 9.

[10] Id. at 11-12.

[11] Id. at 10.

[12] Id. at 11-12.

[13] Id. at 8.

[14] Id. at 6.

[15] G.R. No. 191805, November 15, 2011, 660 SCRA 84.

[16] 520 U.S. 681 (1997).

[17] Code of Conduct and Ethical Standards for Public Officials and Employees.

[18] Magna Carta of Women.

[19] Id. at 21.

[20] Id. at 105.

[21] G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[22] Rollo, p. 178.

[23] 16 Phil. 534 (1910).

[24] 457 U.S. 731 (1982).

[25] G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452.

[26] G.R. Nos. 184379-80, April 24, 2012, 670 SCRA 545.

[27] Seidman, Guy I., The Origins of Accountability: Everything I Know about the Sovereigns' Immunity, I Learned from King Henry III Saint Louis University Law Journal, Vol. 49, No. 2, Winter 2004/2005.

[28] Id.

[29] See also Estrada v. Desierto, G.R. Nos. 146710-15, March 2, 2001 353 SCRA 452; and Agabin, P., Presidential Immunity And All The Kings Men: The Law Of Privilege As A Defense To Actions For Damages, 62 Phil. L.J. 113 (1987).

[30] Seidman, op. cit., supra note 27, at 5.

[31] Id. at at 44; 54.

[32] Id. at 54. As Seidman puts it. "if the King is in error, the guilt lies only with the Minister who ought to have enlightened him, and this minister even if approved by the King, deserves the impeachment formerly reserved for traitors."

[33] Id. at 96-98..

[34] Biegon, B. Presidential Immunity in Civil Actions: An Analysis Based upon Text, History and Blackstone's Commentaries. Virginia Law Review, Vol. 82, No. 4 (May 1996), p. 679.

[35] Stein, T. Nixon v. Fitzgerald: Presidential Immunity as a Constitutional Imperative. Catholic University of Law Review, Vol. 32, Issue 3, Spring 1983. 32 Cath U.L. Rev. 759 (1983).

[36] 80 U.S. (13 Wall.) 335 (1871).

[37] 161 U.S. 483 (1896).

[38] 25 F. Cas. 30 (C.C.D. Va. 1807) (No. 14,692d) cited in Biegon, B. Presidential Immunity in Civil Actions: An Analysis Based upon Text, History and Blackstone's Commentaries. Virginia Law Review, Vol. 82, No. 4 (May 1996).

[39] Biegon, B. *supra* note 34, at 708-709.

[40] 418 U.S. 683 (1974).

[41] Orenstein, A., Presidential Immunity from Civil Liability, Nixon v. Fitzgerald. Cornell Law Review, Vol. 68, Issue 2, Article 7, January 1983 68 Cornell L. Rev. 236 (1983), pp. 23-238; citing Spalding v. Vilas, 161 U.S. 483 (1896) and Barr v. Matteo, 360 U.S. 564 (1959).

[42] 438 U.S. 478 (1978).

[43] Orenstein, *supra* at 240.

[44] 420 U.S. 308. (1975).

[45] Orenstein, *supra* at 241.

[46] 102 S. Ct. 2727 (1982).

[47] Stein, *supra* at 766.

[48] 457 U.S. 731, 750 (1982).

[49] "The Senators and Representatives... shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place."

[50] Amar, A. R., & Katyal, N.K., Executive Privileges and Immunities: The Nixon and Clinton Cases. Harvard Law Review, Vol. 108, No. 3 (January 1995, p. 708.

[51] 16 Phil. 534 (1910).

[52] G.R. No.L-76180, October 24, 1986, 145 SCRA 160.

[53] *Id.* at 162.

[54] G.R. No. 146710-15, March 2, 2001, 353 SCRA 452.

[55] G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[56] *Id.* at 224-225.

[57] G.R. No. 183871, February 18, 2010, 613 SCRA 233.

[58] G.R. No. 186050, December 13, 2011, 662 SCRA 312.

[59] David v. Macapagal-Arroyo, *supra*, at 224.

[60] Records of the Constitutional Commission of 1986, Vol. II, Records, p. 423, July 29, 1986 (R.C.C. No. 42).

[61] *Supra* note 57.

[62] Soliven v. Makasiar, G.R. No. 82585, 82827, 83979, November 14, 1988, 167 SCRA 393.

[63] *Id.* at 399.

[64] David v. Macapagal-Arroyo, *supra* note 59, at 224-225.

[65] Soliven v. Makasiar, *supra* note 62, at 399.

[66] Pascual v. Beltran, G.R. No. 129318, October 27, 2006, 505 SCRA 545, 558-559.

SEPARATE CONCURRING OPINION

LEONEN, J.:

Presidential immunity from suit only extends to civil, criminal, and administrative liability. A proceeding for the issuance of a writ of habeas data, as in this case, does not determine any such liability. The Rule on the Writ of Habeas Data^[1] only requires courts to ascertain the accountability and responsibility of the public official or employee. Thus, the President cannot invoke immunity from suit in a petition for such writ.

However, the proper respondent in a habeas data case for pronouncements made by the President in his official capacity is the Executive Secretary, following the ruling in *Aguinaldo v. Aquino III*.^[2] This is in accord with the doctrine that the president should not be impleaded in any suit during his or her incumbency, as recently reiterated in *Kilusang Mayo Uno v. Aquino III*.^[3]

In *Aguinaldo*, this Court held:

[T]he Court finds it proper to drop President Aquino as respondent taking into account that when this Petition was filed on May 17, 2016, he was still then the incumbent President who enjoyed immunity from suit. The presidential immunity from suit remains preserved in the system of government of this country, even though not expressly reserved in the 1987 Constitution. The President is granted the privilege of immunity from suit "to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention." It is sufficient that former Executive Secretary Ochoa is named as respondent herein as he was then the head of the [Office of the President] and was in-charge of releasing presidential appointments, including those to the Judiciary.^[4]

Senator Leila M. De Lima (Senator De Lima) filed the Petition for the issuance of a writ of habeas data against President Rodrigo R. Duterte (President Duterte), seeking to enjoin him from committing acts that have allegedly violated her right to life, liberty, and security.^[5]

Senator De Lima alleged that President Duterte issued a number of public statements against her after she had criticized him in a Senate privilege speech denouncing the alleged extrajudicial killings under the administration's policy against drugs.^[6] She listed the following statements:

- a. The August 11, 2016 public statement of President Duterte threatening to destroy Senator De Lima. The

statement reads: "I know I'm the favorite whipping boy of the NGOs and the human rights stalwarts. But I have a special ano kaya no. She is a government official. One day soon I will: – bitiwang ko yan in public and I will have to destroy her in public." Incidentally, in the same event, President Duterte insinuated that with the help of another country, he was keeping surveillance of her. "Akala nila na hindi rin ako nakikinig sa kanila. So while all the time they were also listening to what I've done, I've also been busy, and with the help of another country, listening to them;"

b. The statement uttered in a briefing at the NAIA Terminal 3, Pasay City in August 17, 2016 wherein President Duterte named Sen. De Lima as the government official he referred to earlier and at the same time accused her of living an immoral life by having a romantic affair with her driver, a married man, and of being involved in illegal drugs. "There's one crusading lady, whose even herself led a very immoral life, taking his (sic) driver as her lover... Paramour niya ang driver nya naging hooked rin sa drugs because of the close association. You know, when you are an immoral, dirty woman, the driver was married. So you live with the driver, it[']s concubinage."

c. The statements that described her as an immoral woman; that publicized her intimate and personal life, starting from her new boyfriend to her sexual escapades; that told of her being involved in illegal drugs as well as in activities that included her construction of a house for her driver/lover with financing from drug-money; and

d. The statements that threatened her ("De Lima, you are finished") and demeaned her womanhood and humanity. "If I were De Lima, ladies and gentlemen, I'll hang myself. Your life has been, hindi lang life, the innermost of your core as a female is being serialized everyday. Dapat kang mag-resign. You resign. and "De Lima better hang yourself... Hindi ka na nahiya sa sarili mo. Any other woman would have slashed her throat. You? Baka akala mo artista ka. Mga artistang x-rated paglabas sa, pagkatapos ng shooting, nakangiti..."[7]

Senator De Lima alleged that these public statements violate her right to privacy, life, liberty, and security, and were, thus, reasonable grounds to warrant the issuance of a writ of habeas data.[8] Accordingly, she sought the following reliefs:

WHEREFORE, the petitioner respectfully prays the Honorable Court that judgment be rendered:

[1] Granting a Writ of Habeas Data –

- Enjoining respondent and any of his representatives, agents, assigns, officers, or employees from collecting information about petitioner's private life outside the realm of legitimate public concern;
- Disclosing to the petitioner the name of the foreign country who, according to respondent, "helped him" listen in on petitioner, the manner and means by which he listened in on petitioner, and the sources of his information or where the data about petitioner's private life and alleged private affairs came from;
- Ordering the deletion, destruction or rectification of such data or information; and
- Enjoining the respondent from making public statements that (i) malign her as a woman and degrade her dignity as a human being; (ii) sexually discriminate against her; (iii) describe or publicize her alleged sexual conduct; (iv) constitute psychological violence against her; and (v) otherwise violate her rights or are contrary to law, good morals, good customs, public policy, and/or public interest; and

[2] Conceding unto petitioner such further and other reliefs this Honorable Court may deem just and equitable in the premises.[9]

In a November 8, 2016 Resolution, this Court directed Senator De Lima and the Office of the Solicitor General to present their arguments on whether the President is immune from suit.[10] The parties were subsequently directed to traverse each other's submissions in their respective memoranda.[11]

Now, this Court, in its Resolution promulgated on October 15, 2019, resolves to dismiss^[12] the Petition without giving due course or passing on the merits on the basis that President Duterte is absolutely immune from any suit during his incumbency.

I agree that a president enjoys immunity from suit during his or her incumbency. However, pronouncements made in his or her official capacity may still be the subject of suit, as long as the respondent in the case is the executive secretary, not the president. After his or her incumbency, however, the president should no longer be able to plead immunity for any case that may be filed against him or her.

I

The concept of presidential immunity from suit was originally founded on the idea that the "King can do no wrong."^[13] This idea was espoused at a time of absolute monarchies in medieval England as a recognition of the King's full sovereignty over his subjects.^[14]

The legal concept eventually found its way to the United States, where the rationale for its continued usage, despite the abolition of absolute monarchies, was formulated in *United States v. Burr*.^[15] In *Burr*, the United States Supreme Court, headed by Chief Justice John Marshall, was confronted with the issue of whether President Thomas Jefferson could be subpoenaed to produce certain documents to aid in the treason case against Vice President Aaron Burr. In issuing the subpoena, the Supreme Court cautioned that while the President can be compelled to produce documents, these documents must first be determined as relevant. This was to avoid the President from being "harassed by vexatious and unnecessary subpoenas":

[T]he guard, furnished to [the President] to protect him from being harassed by vexatious and unnecessary subpoenas, is to be looked for in the conduct of a [district] court after those subpoenas have issued; not in any circumstance which is to precede their being issued.^[16]

In this jurisdiction, the concept of presidential immunity was introduced in *Forbes v. Chuoco Tiaco*.^[17] Chuoco Tiaco, a Chinese national, filed a case against the Governor-General of the Philippine Islands protesting his deportation to China. This Court, through Justice Elias Finley Johnson, noted:

In this court there was no pretension by the attorney for the defendant (plaintiff below) that the action was not against the Governor-General as Governor-General, and the others as well, in their official capacity. In fact, when an inquiry was made of the attorney for the defense concerning his theory, his reply was simply that the acts of the Governor-General, being illegal, were not performed in his official capacity.^[18] (Emphasis in the original)

In resolving the issue of whether the courts could intervene in an action for damages against an official considered the "chief executive authority" of the Philippine Islands, this Court held:

It may be argued, however, that the present action is one to recover damages against the Governor and the others mentioned in the cause, for the illegal acts performed by them, and not an action for the purpose of in any way controlling or restraining or interfering with their political or discretionary duties. No one can be held legally responsible in damages or otherwise for doing in a legal manner what he had authority, under the law, to do. Therefore, if the Governor-General had authority, under the law, to deport or expel the defendants, and the circumstances justifying the deportation and the method of carrying it out are left to him, then he can not be held liable in damages for the exercise of this power. Moreover, if the courts are without authority to interfere in any manner, for the purpose of controlling or interfering with the exercise of the political powers vested in the chief executive authority of the Government, then it must follow that the courts can not intervene for the purpose of declaring that he is liable in damages for the exercise of this authority....

....

If it be true that the Government of the Philippine Islands is a government invested with "all the military, civil, and judicial powers necessary to govern the Philippine Islands until otherwise provided by Congress" and that the Governor-General is invested with certain important political duties and powers, in the exercise of which he may use his own discretion, and is accountable only to his superiors in his political character and to his own conscience, and the judicial department of the Government is without authority to interfere in the control of such powers, for any purpose, then it must follow that the courts can not take jurisdiction in any case against him which has for its purpose the declaration that such acts are illegal and that he is, in consequence, liable for damages. To allow such an action would, in the most effective way possible, subject the executive and political departments of the Government to the absolute control of the judiciary. Of course, it will be observed that we are here treating only with the political and purely executive duties in dealing with the political rights of aliens. The conclusions herein reached should not be extended to cases where vested rights are involved. That question must be left for future consideration.[19] (Emphasis in the original)

Even after Forbes, there was no statute enacted that granted presidents immunity from suit. Presidential immunity in this jurisdiction has always been a creation of jurisprudential pronouncements. Not even the 1935 Constitution provided such privilege. The immunity, however, was understood to be absolute:

In the Philippines, though, we sought to do the Americans one better by enlarging and fortifying the absolute immunity concept. First, we extended it to shield the President not only from civil claims but also from criminal cases and other claims. Second, we enlarged its scope so that it would cover even acts of the President outside the scope of official duties. And third, we broadened its coverage so as to include not only the President but also other persons, be they government officials or private individuals, who acted upon orders of the President. It can be said that at that point most of us were suffering from AIDS (or absolute immunity defense syndrome).[20]

It was not until the 1973 Constitution that the privilege became part of the fundamental law:

SECTION 15. The President shall be immune from suit during his tenure. Thereafter, no suit whatsoever shall lie for official acts done by him or by others pursuant to his specific orders during his tenure.

The immunities herein provided shall apply to the incumbent President referred to in Article XVII of this Constitution.[21]

It is easy, in hindsight, to surmise why such a provision exists in the 1973 Constitution. Then President Ferdinand E. Marcos, foreseeing the problems that may arise from his dictatorial regime, introduced a constitutional provision that explicitly granted him impunity for all the illegal acts he had committed or was about to commit.

Thus, the framers of the 1987 Constitution were careful not to retain the same provision, deeming it prudent to revert to how the privilege was understood in jurisprudence:

"Mr. Suarez. Thank you.

The last question is with reference to the committee's omitting in the draft proposal the immunity provision for the President. I agree with Commissioner Nollado that the Committee did very well in striking out this second sentence, at the very least, of the original provision on immunity from suit under the 1973 Constitution. But would the Committee members not agree to a restoration of at least the first sentence that the President shall be immune from suit during his tenure, considering that if we do not provide him that kind of an immunity, he might be spending all his time facing litigations, as the President-in-exile in Hawaii is now facing litigations almost daily?

Fr. Bernas. The reason for the omission is that we consider it understood in present jurisprudence that during his tenure he is immune from suit.

Mr. Suarez. So there is no need to express it here.

Fr. Bernas. There is no need. It was that way before. The only innovation made by the 1973 Constitution was to make that explicit and to add other things.

Mr. Suarez. On that understanding, I will not press for any more query, Madam President.

I thank the Commissioner for the clarification."^[22]

Despite the absence of an express provision in the present Constitution, this Court continued to recognize that the privilege exists. Thus, in *Saturnino v. Bermudez*,^[23] promulgated after the People Power Revolution, this Court held that "incumbent Presidents are immune from suit or from being brought to court during the period of their incumbency and tenure."^[24] In *Soliven v. Judge Makasiar*,^[25] this Court further stated:

The rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention.^[26]

The deletion of the provision from the current Constitution, however, had a broader effect: presidential immunity from suit would no longer be as absolute as it was previously understood. In *Estrada v. Desierto*,^[27] this Court had the opportunity to discuss the exact scope of the privilege. After then President Joseph Estrada (President Estrada) was ousted from office in 2001, then Ombudsman Aniano Desierto filed several cases for bribery, graft, and corruption against him. President Estrada sought before this Court the dismissal of those cases since he enjoyed immunity from all kinds of suits.

This Court, however, held that the presidential immunity from criminal and civil liability is only applicable during incumbency:

We now come to the scope of immunity that can be claimed by petitioner as a non-sitting President. The cases filed against petitioner Estrada are criminal in character. They involve plunder, bribery and graft and corruption. By no stretch of the imagination can these crimes, especially plunder which carries the death penalty, be covered by the allege (sic) mantle of immunity of a non-sitting president. Petitioner cannot cite any decision of this Court licensing the President to commit criminal acts and wrapping him with post-tenure immunity from liability. It will be anomalous to hold that immunity is an inoculation from liability for unlawful acts and omissions. The rule is that unlawful acts of public officials are not acts of the State and the officer who acts illegally is not acting as such but stands in the same footing as any other trespasser.

Indeed, a critical reading of current literature on executive immunity will reveal a judicial disinclination to expand the privilege especially when it impedes the search for truth or impairs the vindication of a right. In the 1974 case of *US v. Nixon*, US President Richard Nixon, a sitting President, was subpoenaed to produce certain recordings and documents relating to his conversations with aids and advisers. Seven advisers of President Nixon's associates were facing charges of conspiracy to obstruct justice and other offenses which were committed in a burglary of the Democratic National Headquarters in Washington's Watergate Hotel during the 1972 presidential campaign. President Nixon himself was named an unindicted co-conspirator. President Nixon moved to quash the subpoena on the ground, among others, that the President was not subject to judicial process and that he should first be impeached and removed from office before he could be made amenable to judicial proceedings. The claim was rejected by the US Supreme Court. It concluded that "when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice." In the 1982 case of *Nixon v. Fitzgerald*, the US Supreme Court further held that the immunity of the President from civil damages covers only "official acts." Recently, the US Supreme Court had the occasion to reiterate this doctrine in the case of *Clinton v. Jones* where it held that the US President's immunity from suits for money damages arising out of their official acts is inapplicable to

unofficial conduct.

There are more reasons not to be sympathetic to appeals to stretch the scope of executive immunity in our jurisdiction. One of the great themes of the 1987 Constitution is that a public office is a public trust. It declared as a state policy that "(t)he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." It ordained that "(p)ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." It set the rule that "(t)he right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel." It maintained the Sandiganbayan as an anti-graft court. It created the office of the Ombudsman and endowed it with enormous powers, among which is to "(i)nvestigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient." The Office of the Ombudsman was also given fiscal autonomy. These constitutional policies will be devalued if we sustain petitioner's claim that a non-sitting president enjoys immunity from suit for criminal acts committed during his incumbency.[28] (Emphasis in the original)

Estrada, thus, clarifies that presidential immunity is not absolute immunity from all types of suit. It simply cloths the president with immunity from civil, criminal, and administrative liability during his or her incumbency or tenure in office. Liability, therefore, is not absolved. It is merely held in abeyance until the president's end of incumbency.

David v. Macapagal-Arroyo,[29] meanwhile, provides the rationale for granting such immunity during the president's tenure:

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.[30] (Citations omitted)

From these cases, the following principles are established:

First, any person may file a civil, criminal, or administrative suit against the president after his or her tenure for any offense committed during his or her incumbency;

Second, the president's immunity from suit only covers official acts during his or her tenure; and

Third, presidential immunity from suit is granted during incumbency for two (2) reasons only: (1) to prevent the degradation of dignity of the office; and (2) to prevent the impairment of government operations. It is never granted to shield the president from any wrongdoing.

II

Section 1 of the Rule on the Writ of Habeas Data provides:

SECTION 1. Habeas Data. — The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or

employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

In *Manila Electric Company v. Lim*,^[31] this Court further explains:

The habeas data rule, in general, is designed to protect by means of judicial complaint the image, privacy, honor, information, and freedom of information of an individual. It is meant to provide a forum to enforce one's right to the truth and to informational privacy, thus safeguarding the constitutional guarantees of a person's right to life, liberty and security against abuse in this age of information technology.

It bears reiteration that like the writ of amparo, habeas data was conceived as a response, given the lack of effective and available remedies, to address the extraordinary rise in the number of killings and enforced disappearances. Its intent is to address violations of or threats to the rights to life, liberty or security as a remedy independently from those provided under prevailing Rules.^[32]

The writ of habeas data "seeks to protect a person's right to control information regarding oneself, particularly in instances in which such information is being collected through unlawful means in order to achieve unlawful ends."^[33] However, it is not issued merely because one has unauthorized access to another person's information; rather, it requires a violation or a threatened violation of that person's right to life, liberty, and security:

In developing the writ of habeas data, the Court aimed to protect an individual's right to informational privacy, among others. A comparative law scholar has, in fact, defined habeas data as "a procedure designed to safeguard individual freedom from abuse in the information age." The writ, however, will not issue on the basis merely of an alleged unauthorized access to information about a person. Availment of the writ requires the existence of a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Thus, the existence of a person's right to informational privacy and a showing, at least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim are indispensable before the privilege of the writ may be extended.^[34]

This Court has stated that "the proceedings for the issuance of the writ of habeas data does not entail any finding of criminal, civil[,] or administrative culpability."^[35] In *In Re: Rodriguez v. Macapagal-Arroyo*:^[36]

It bears stressing that since there is no determination of administrative, civil or criminal liability in amparo and habeas data proceedings, courts can only go as far as ascertaining responsibility or accountability for the enforced disappearance or extrajudicial killing. As we held in *Razon v. Tagitis*:

It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines responsibility, or at least accountability, for the enforced disappearance for purposes of imposing the appropriate remedies to address the disappearance. Responsibility refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. Accountability, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. In all these cases, the issuance of the Writ of Amparo is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.^[37] (Emphasis in the original)

Aggrieved parties in a petition for a writ of habeas data are not precluded from filing civil, criminal, or administrative cases, or from filing a separate criminal action.^[38] For this petition, the only reliefs that may be granted are the following: (1) to enjoin the act complained of; (2) to grant access to the database or information;

or (3) to order the deletion, destruction, or rectification of the erroneous data or information.[39]

In a proceeding for a writ of habeas data, courts only determine the respondent's accountability in the gathering, collecting, or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party. Any civil, criminal, or administrative liability may only be imposed in a separate action.

Presidential immunity from suit only applies in cases where civil, criminal, or administrative liability is imposed. This Court explains in *David*:

It will degrade the dignity of the high office of the President, the Head of State, if he [or she] can be dragged into court litigations while serving as such. Furthermore, it is important that he [or she] be freed from any form of harassment, hindrance or distraction to enable him [or her] to fully attend to the performance of his [or her] official duties and functions.[40]

Indeed, if it were otherwise, there would be no stopping citizens from filing cases of unjust vexation every time they disagree with the president's policies.

Petitions for writs of amparo and habeas data are not to be treated within the same sphere as civil, criminal, and administrative cases. In *Secretary of National Defense v. Manalo*:[41]

The remedy provides rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate reliefs available to the petitioner; it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings.[42]

While any aggrieved party may file a petition for a writ of habeas data, the respondent need not even be ordered to file a verified return if the judge determines that, "on its face,"[43] the petition fails to substantiate the following:

SECTION 6. Petition. — A verified written petition for a writ of habeas data should contain:

- (a) The personal circumstances of the petitioner and the respondent;
- (b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party;
- (c) The actions and recourses taken by the petitioner to secure the data or information;
- (d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known;
- (e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent.

In case of threats, the relief may include a prayer for an order enjoining the act complained of; and

- (f) Such other relevant reliefs as are just and equitable.[44]

The filing of the petition is meant to provide aggrieved parties "rapid judicial relief[.]"[45] Hence, the proceedings are summary in nature and must be resolved by the parties within a span of days:

SECTION 15. Summary Hearing. —The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.

SECTION 16. Judgment. — The court shall render judgment within ten (10) days from the time the petition is

submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall enjoin the act complained of, or order the deletion, destruction, or rectification of the erroneous data or information and grant other relevant reliefs as may be just and equitable; otherwise, the privilege of the writ shall be denied.

Upon its finality, the judgment shall be enforced by the sheriff or any lawful officer as may be designated by the court, justice or judge within five (5) work days.

SECTION 17. Return of Service. — The officer who executed the final judgment shall, within three (3) days from its enforcement, make a verified return to the court. The return shall contain a full statement of the proceedings under the writ and a complete inventory of the database or information, or documents and articles inspected, updated, rectified, or deleted, with copies served on the petitioner and the respondent.

The officer shall state in the return how the judgment was enforced and complied with by the respondent, as well as all objections of the parties regarding the manner and regularity of the service of the writ.

SECTION 18. Hearing on Officers Return. — The court shall set the return for hearing with due notice to the parties and act accordingly.

SECTION 19. Appeal. — Any party may appeal from the judgment or final order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.

The period of appeal shall be five (5) work days from the date of notice of the judgment or final order.

The appeal shall be given the same priority as habeas corpus and amparo cases.[46]

Estrada teaches that presidential immunity from suit does not absolve civil, criminal, and administrative liability. It merely holds it in abeyance until the president's end of incumbency. Petitions for a writ of habeas data, and petitions for a writ of amparo for that matter, are time-sensitive. Courts must act on them immediately to prevent further violations or threatened violation to the aggrieved party's life, liberty, or security. Aggrieved parties should not have to wait until the president ends his or her tenure before filing the petition.

However, in two (2) separate cases cited by the ponencia,[47] this Court appears to have inaccurately stated that presidential immunity may be invoked in petitions for a writ of amparo if the petition was filed during the president's incumbency.

In *Rubrico v. Macapagal-Arroyo*,[48] a petition for a writ of amparo was filed before this Court against then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) in 2007, or during her incumbency. The petitioners argued that the President did not enjoy immunity from suit since the privilege under the 1973 Constitution had since been removed from the current Constitution.

This Court, however, stated that the privilege remained despite not being explicitly stated in the Constitution:

Petitioners first take issue on the President's purported lack of immunity from suit during her term of office. The 1987 Constitution, so they claim, has removed such immunity heretofore enjoyed by the chief executive under the 1935 and 1973 Constitutions.

Petitioners are mistaken. The presidential immunity from suit remains preserved under our system of government, albeit not expressly reserved in the present constitution. Addressing a concern of his co--members in the 1986 Constitutional Commission on the absence of an express provision on the matter, Fr. Joaquin Bernas, S.J. observed that it was already understood in jurisprudence that the President may not be sued during his or her tenure. The Court subsequently made it abundantly clear in *David v. Macapagal-Arroyo*, a case likewise resolved under the umbrella of the 1987 Constitution, that indeed the President enjoys immunity during her incumbency, and why this must be so:

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government....

And lest it be overlooked, the petition is simply bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.[49]

While this Court cites the doctrine in *Rubrico*, it never actually stated that the President may invoke immunity in a petition for a writ of amparo. It only held that the privilege of presidential immunity exists despite the absence of a constitutional provision. Moreover, the case was dismissed simply because the Petition did not allege any specific presidential act or omission that violated or threatened to violate the petitioners' rights.

The issue was further muddled in *Balao v. Macapagal-Arroyo*.^[50] Like *Rubrico*, a petition for a writ of amparo was filed against then President Macapagal-Arroyo in 2009, during her incumbency. The trial court, where the petition was first filed, denied the prayer to drop President Macapagal-Arroyo as party respondent:

In denying respondents' prayer that President Arroyo be dropped as party-respondent, the RTC held that a petition for a writ of amparo is not "by any stretch of imagination a niggling[,] vexing or annoying court case" from which she should be shielded. The RTC ruled that said petition is nothing more than a tool to aid the president to guarantee that laws on human rights are devotedly and staunchly carried out. It added that those who complain against naming the president as party-respondent are only those who "either do not understand what the Writ of Amparo is all about or who do not want to aid Her Excellency in her duty to supervise and control the machinery of government."^[51] (Citations omitted)

The case was eventually appealed to this Court and resolved after President Macapagal-Arroyo's tenure. On the issue of immunity, this Court stated:

As to the matter of dropping President Arroyo as party-respondent, though not raised in the petitions, we hold that the trial court clearly erred in holding that presidential immunity cannot be properly invoked in an amparo proceeding. As president, then President Arroyo was enjoying immunity from suit when the petition for a writ of amparo was filed. Moreover, the petition is bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.^[52] (Citation omitted)

The dissenting opinion in *Balao*, however, pointed out that the petition should not be dismissed simply because it was filed during the President's incumbency:

In the present case, the filing of the Petitions during the incumbency of former President Arroyo should not be a reason for according her presidential immunity. Thus, it would be legally imprecise to dismiss the present case as against former President Arroyo on account of presidential immunity from suit. Rather, the dismissal should be on a finding that petitioners in G.R. No. 186050 failed to make allegations or adduce evidence to show her responsibility or accountability for violation of or threat to Balao's right to life, liberty and security.^[53]

It is not impossible that the president, as the head of State, has unimpeded access to data and information on all citizens. But the entity that holds access to this data or information is not the president, in his or her personal capacity, but the Office of the President. Thus, respondents in the petition for the writ of habeas data may plead the defenses of national security, state secrets, or privileged communication.^[54] While the president is the titular

head of the Office, there are several employees that must assist him or her in its operations. Thus, it is the executive secretary, as the head of the Office of the President, that is named the party respondent in petitions assailing the president's official acts.[55]

It would, thus, be erroneous to assume that a petition for a writ of habeas data against the president would hamper the operations of the Office. The president is not asked to personally appear before the courts to defend his or her case. The president is not required to produce his or her personal computers for the courts to access the database or information. Instead, the Office of the Solicitor General appears on the president's behalf, as it does on behalf of any of the president's alter egos, including the executive secretary. Any of the other tasks required in the verified return may be gathered by the Office of the President on the president's behalf.

The ultimate purpose of providing the president with immunity from suit is to prevent him or her from being distracted from accomplishing his or her presidential duties, which "demand undivided attention." [56] But the filing of a meritorious petition for a writ of habeas data will not vex, distract, or harass the president. On the contrary, it is solid proof that our democratic institutions remain strong and the people remain sovereign.

III

The invocation of presidential immunity from suit must be balanced with legitimate State interests. In Estrada, this Court observed that "a critical reading of current literature on executive immunity will reveal a judicial disinclination to expand the privilege especially when it impedes the search for truth or impairs the vindication of a right." [57] Indeed, the Constitution declares as its principles and State policies:

ARTICLE II

Declaration of Principles and State Policies

SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

....

SECTION 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.[58]

Ours is a Constitution that demands accountability from its public officers. It declares that public office is a public trust:

ARTICLE XI

Accountability of Public Officers

SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

Public officers, from the president to the everyday utility worker, are accountable to the people at all times. Expanding the privilege of presidential immunity to include those petitions requiring immediate relief and involving serious violations of fundamental rights runs counter to these constitutional mandates.

Presidents are not infallible. Our history has taught us this. By promulgating the Rule on the Writ of Amparo and the Rule on the Writ of Habeas Data, this Court has taken it upon itself to provide the citizens with the shield against possible abuses by State agents, including the president.

While the president remains immune from suit during incumbency, petitions for a writ of amparo or habeas data

may still be filed against his or her official acts, as long as the executive secretary, or the relevant officers, are named as party respondents. The Petition's automatic dismissal on the ground of immunity, without any other means of redress, demeans the values enshrined in our Constitution. It sets a dangerous precedent that the president is untouchable and cannot be held accountable for extrajudicial killings and enforced disappearances committed during his or her incumbency.

ACCORDINGLY, I concur with the dismissal of the Petition, without prejudice to the filing of the proper case against the proper officials.

[1] A.M. No. 08-1-16-SC (2008).

[2] 801 Phil. 492 (2016) [Per J. Leonardo-De Castro, En Banc].

[3] G.R. No. 210500, April 2, 2019, < <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> > [Per J. Leonen, En Banc].

[4] Id. at 521 citing Lozada, Jr. v. Macapagal-Arroyo, 686 Phil. 536, 552 (2012) [Per J. Sereno, En Banc]; Soliven v. Makasiar, 249 Phil. 394, 400 (1988) [Per Curiam, En Banc]; and Kilosbayan Foundation v. Ermita, 553 Phil. 331 (2007) [Per J. Azcuna, En Banc].

[5] Ponencia, p. 1.

[6] Id. at 2.

[7] Id. at 2-3.

[8] Id. at 3-4.

[9] Id. at 4-5.

[10] Id. at 5.

[11] Id. at 6.

[12] Id. at 22.

[13] See Footnote 105 of Estrada v. Desierto, 406 Phil. 1, 71-72 (2001) [Per J. Puno, En Banc] citing R.J. Gray, Private Wrongs of Public Servants, 47 CAL. L. REV. 303 (1959).

[14] Id.

[15] 25 Fed. Cas. 55 (1807).

[16] United States v. Nixon, 418 U.S. 683 (1974) citing United States v. Burr, 25 Fed. Cas. 55 (1807).

[17] 16 Phil. 534 (1910) [Per J. Johnson, En Banc].

[18] Id. at 557-558.

[19] Id. at 578-580.

[20] Estrada v. Desierto, 406 Phil. 1, 73 (2001) [Per J. Puno, En Banc] citing Pacifico A. Agabin, Presidential Immunity And All the King's Men: The Law Of Privilege As A Defense To Actions For Damages, 62 PHIL. L.J. 113 (1987).

[21] CONST. (1973), art. VII, sec. 15.

[22] Estrada v. Desierto, 406 Phil. 1, 73-74 (2001) [Per J. Puno, En Banc] citing Records of the Constitutional Commission of 1986, Vol. II, Records, p. 423, July 29, 1986.

[23] 229 Phil. 185 (1986) [Per Curiam, En Banc].

[24] Id. at 187.

[25] 249 Phil. 394 (1988) [Per Curiam, En Banc].

[26] Id. at 400.

[27] 406 Phil. 1 (2001) [Per J. Puno, En Banc].

[28] Id. at 75-78 citing Wallace v. Board of Education, 280 Ala. 635, 197 So 2d 428 (1967); U.S. v. Nixon, 418 U.S. 683, 94 S. Ct. 3090, 41 L ed 1039 (1974); Nixon v. Fitzgerald, 457 U.S. 731, 73 L ed. 349, 102 S Ct. 2690 (1982); Clinton v. Jones, 520 U.S. 681 (1997); CONST., art. XI, sec. 1; CONST., art. II, sec. 27; CONST., art. XI, sec. 15; CONST., art. XI, sec. 4; CONST., art. XI, sec. 13(1); and CONST., art. XI, sec. 14.

[29] 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[30] Id. at 763-764.

[31] 646 Phil. 497 (2010) [Per J. Carpio Morales, En Banc].

[32] Id. at 503-504 citing Tapuz v. Del Rosario, 577 Phil. 636 (2008) [Per J. Brion, En Banc].

[33] Gamboa v. Chan, 691 Phil. 602, 616 (2012) [Per J. Sereno, En Banc] citing Roxas v. Macapagal-Arroyo, 644 Phil. 480 (2010) [Per J. Perez, En Banc].

[34] Vivares v. St. Theresa's College, 744 Phil. 451, 463 (2014) [Per J. Velasco, Jr., Third Division] citing Andres Guadamuz, Habeas Data and the European Data Protection Directive, THE JOURNAL OF INFORMATION, LAW AND TECHNOLOGY (2001), as cited in former Chief Justice Reynato S. Puno's speech, The Common Right to Privacy (2008); Gamboa v. Chan, 691 Phil. 602 (2012) [Per J. Sereno, En Banc]; and Roxas v. Macapagal-Arroyo, 644 Phil. 480 (2010) [Per J. Perez, En Banc].

[35] In Re: Rodriguez v. Macapagal-Arroyo, 676 Phil. 84, 103 (2011) [Per J. Sereno, En Banc].

[36] 676 Phil. 84 (2011) [Per J. Sereno, En Banc].

[37] Id. at 105-106 citing Razon v. Tagitis, 621 Phil. 536 (2009) [Per J. Brion, En Banc].

[38] RULE ON THE WRIT OF HABEAS DATA, sees. 20-22 provide:

SECTION 20. Institution of Separate Actions. — The filing of a petition for the writ of habeas data shall not preclude the filing of separate criminal, civil or administrative actions.

SECTION 21. Consolidation. — When a criminal action is filed subsequent to the filing of a petition for the writ, the latter shall be consolidated with the criminal action.

When a criminal action and a separate civil action are filed subsequent to a petition for a writ of habeas data, the petition shall be consolidated with the criminal action. After consolidation, the procedure under this Rule shall continue to govern the disposition of the reliefs in the petition.

SECTION 22. Effect of Filing of a Criminal Action. — When a criminal action has been commenced, no separate petition for the writ shall be filed. The reliefs under the writ shall be available to an aggrieved party by motion in the criminal case.

The procedure under this Rule shall govern the disposition of the reliefs available under the writ of habeas data.

- [39] See *In Re: Rodriguez v. Macapagal-Arroyo*, 676 Phil. 84 (2011) [Per J. Sereno, En Banc].
- [40] *David v. Macapagal-Arroyo*, 522 Phil. 705, 764 (2006) [Per J. Sandoval-Gutierrez, En Banc].
- [41] 589 Phil. 1 (2008) [Per C.J. Puno, En Banc].
- [42] *Id.* at 41 citing Deliberations of the Committee on the Revision of the Rules of Court, August 10, 2007; August 24, 2007; August 31, 2007; and September 20, 2008.
- [43] RULE ON THE WRIT OF HABEAS DATA, sec. 7.
- [44] RULE ON THE WRIT OF HABEAS DATA, sec. 6.
- [45] *Secretary of Defense v. Manalo*, 589 Phil. 1, 41 (2008) [Per C.J. Puno, En Banc].
- [46] RULE ON THE WRIT OF AMPARO, secs. 15-19.
- [47] Ponencia, pp. 16-17.
- [48] 627 Phil. 37 (2010) [Per J. Velasco, Jr., En Banc].
- [49] *Id.* at 62-63 citing *David v. Macapagal-Arroyo*, 522 Phil. 705, 763-764 (2006) [Per J. Sandoval- Gutierrez, En Banc].
- [50] 678 Phil. 532 (2011) [Per J. Villarama, Jr. En Banc].
- [51] *Id.* at 557.
- [52] *Id.* at 570.
- [53] J. Sereno, Dissenting Opinion in *Balao v. Macapagal-Arroyo*, 678 Phil. 532, 587 (2011) [Per J. Villarama, Jr. En Banc].
- [54] RULE ON THE WRIT OF HABEAS DATA, sec. 10.
- [55] See *Aguinaldo v. Aquino III*, 801 Phil. 492 (2016) [Per J. Leonardo-De Castro, En Banc].
- [56] *Soliven v. Makasiar*, 249 Phil. 394, 400 (1988) [Per Curiam, En Banc].
- [57] *Estrada v. Desierto*, 406 Phil. 1, 76 (2001) [Per J. Puno, En Banc].
- [58] CONST., art. II, sees. 1 and 27.

SEPARATE CONCURRING OPINION

REYES, A., JR., J.:

In the main, the Court is tasked to resolve the issue of whether the respondent, an incumbent President of the Philippines, may be the subject of a Petition for the issuance of a writ of habeas data.

Petitioner submits that the instant case is beyond the ambit of presidential immunity on two points: first, as it involves the actions and statements made by the respondent not in pursuance of his functions as Chief Executive; and second, because a petition for the issuance of a writ of habeas data does not involve the determination of administrative, civil, or criminal liability but only seeks to enjoin respondent from committing the act or acts complained of.

I disagree on both points.

On the first, I join the opinion of Chief Justice Lucas P. Bersamin, that the concept of presidential immunity is absolute and all-encompassing during the period of incumbency of the President. Simply, presidential immunity extends even to petitions for the issuance of the special prerogative writs of amparo and habeas data, brought before the court during the President's tenure.

Then, even assuming that the instant petition for the issuance of habeas data may be entertained by the Court, the same should still be dismissed on account of substantial and procedural deficiencies.

An incumbent President is absolutely immune from any suit, legal proceeding or judicial process during his tenure.

No less than the Constitution guarantees the President, as head of the executive department, immunity from suit during his period of incumbency. Jurisprudence on the subject matter later clarified that presidential immunity covers any suit, legal proceeding or judicial process.

The nature and scope of the immunity of the President during his tenure is absolute. After his tenure, such immunity will only extend to official acts done by him during his tenure. The rationale for this is simple, as elucidated by the Court in *Prof David v. Pres. Macapagal-Arroyo*:^[1]

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.^[2]

It is my submission that Presidential immunity extends even to the issuance of the prerogative writ of habeas data. While the Court has yet to rule on this particular issue, analogous cases supports the foregoing conclusion.

In the case of *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Rodriguez*,^[3] which involved the filing of a petition for the issuance of a writ of amparo and habeas data in favor of Noriel H. Rodriguez (Rodriguez), former President Gloria Macapagal-Arroyo (President Arroyo) was named as one of therein respondents. The Court of Appeals (CA), in its Decision^[4] dated April 12, 2010, found. therein respondents – with the exception of Calog, Palacpac or Harry – to be accountable for the violations of Rodriguez's right to life, liberty and security. The CA, however, dismissed the petition with respect to former President Arroyo on account of her presidential immunity from suit; explaining that, at the time of the filing of the petition and promulgation of the CA decision, she was the incumbent president of the Philippines.

When the case was elevated to this Court through a Petition for Partial Review on Certiorari, the case, docketed as G.R. No. 1918055 was brought before the Court En Bane, which ruled in this wise:

It bears stressing that since there is no determination of administrative, civil or criminal liability in amparo and habeas data proceedings, courts can only go as far as ascertaining responsibility or accountability for the enforced disappearance or extrajudicial killing. As we held in *Razon v. Tagitis*:

It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines

responsibility, or at least accountability, for the enforced disappearance for purposes of imposing the appropriate remedies to address the disappearance. Responsibility refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. Accountability, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. In all these cases, the issuance of the Writ of Amparo is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.

Thus, in the case at bar, the Court of Appeals, in its Decision found respondents in G.R. No. 191805 — with the exception of Calog, Palacpac or Harry – to be accountable for the violations of Rodriguez's right to life, liberty and security committed by the 17[th] Infantry Battalion, 5[th] Infantry Division of the Philippine Army. The Court of Appeals dismissed the petition with respect to former President Arroyo on account of her presidential immunity from suit. Rodriguez contends, though, that she should remain a respondent in this case to enable the courts to determine whether she is responsible or accountable therefor. In this regard, it must be clarified that the Court of Appeals' rationale for dropping her from the list of respondents no longer stands since her presidential immunity is limited only to her incumbency.[6] (Citations omitted, emphasis and underscoring ours)

Confronted with the issue of whether or not then respondent former President Arroyo should remain as one of the respondents in the case for writ of amparo, the Court in effect agreed with the CA when the latter dismissed the petition with respect to former President Arroyo on account of her presidential immunity from any and all suit during her incumbency. This was likewise bolstered by the Court's clarificatory statement that the CA's rationale for dropping President Arroyo from the list of respondents no longer stood since at that time, President Arroyo was no longer the President of the Philippines.

Having thus settled that herein respondent Rodrigo Roa Duterte, as the incumbent President of the Philippines, is immune from all suit during his tenure, and as such may not be haled before the Court even for the limited purpose of a writ of habeas data, in view of the attendant circumstances, I believe that it is equally important to revisit A.M. No. 08-1-16-SC, or the Rule on the Writ of Habeas Data, so as to prevent erroneous filing of the same in the future.

In this regard, I submit that the even setting the concept of presidential immunity aside, the petition must still be denied.

Petitioner filed the present petition before this Court alleging that the respondent has been gathering private and personal information about her, intruding into her private life, and publicizing her private affairs outside the realm of legitimate public concern in violation of her right to privacy in life, liberty and security. According to petitioner, the repeated crude and personal attacks on her by the respondent should be viewed as a continuing threat to her life, liberty and privacy that can be prevented and protected should the present petition for the issuance of a writ of habeas data be granted.

The petition for the issuance of a Writ of Habeas Data has been improperly lodged directly before this Court.

The 2[nd] paragraph of Section 3 of A.M. No. 08-1-16-SC expressly provides that the petition may only be filed

directly with the Supreme Court, the CA or the Sandiganbayan if the action concerns public data files of government offices. In all other cases, it must be filed with the Regional Trial Court (RTC), viz.:

SEC. 3. Where to File. - The petition may be filed with the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner.

The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices. (Emphasis ours)

Clearly, as worded, the option of filing directly with the Supreme Court cannot be exercised when the data or pieces of information gathered, collected, or stored deal with matters that are private in nature, as in the case at bar. In such event, the law requires that the petition be filed before the RTC where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner.

Moreover, although the Court has original and concurrent jurisdiction with the CA and the Sandiganbayan in the issuance of a Writ of Habeas Data, strict adherence to the doctrine of hierarchy of courts must still be observed. This doctrine was exhaustively discussed in the case of *GIOS-SAMAR, Inc. v. Department of Transportation and Communications and Civil Aviation Authority of the Philippines*,^[7] whereby it was defined as a "filtering mechanism" designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land, viz.:

In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus (extraordinary writs), direct recourse to this Court is proper only to seek resolution of questions of law. Save for the single specific instance provided by the Constitution under Section 18, Article VII, cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies. This is the *raison d'être* behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. It is a brightline rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised.^[8]

In the said case, the Court opined that the doctrine of hierarchy of courts serves as a guide to litigants as to the proper venue of appeals and/or the appropriate forum for the issuance of extraordinary writs and that failure to observe compliance may cause the dismissal of their petitions, viz.:

Thus, although this Court, the CA, and the RTC have concurrent original jurisdiction over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus, parties are directed, as a rule, to file their petitions before the lower-ranked court. Failure to comply is sufficient cause for the dismissal of the petition.^[9]

Here, petitioner herself submits, the allegations centered on private and personal information which the respondent has allegedly been gathering to humiliate and attack her. There is, thus, merit to the contention of the Office of the Solicitor General that the present petition was erroneously filed before this Court.

The allegations in the petition are not supported by substantial evidence.

Assuming for the sake of argument that the petition was properly lodged before the Court, the petition must still

be dismissed for failure to substantiate the petition through the required quantum of proof for the issuance of a writ of habeas data.

Section 1 of the Rule on the Writ of Habeas Data explicitly provides:

Section 1. Habeas Data. - The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

Therefore, in order for a petition for the issuance of the writ of habeas data to prosper, the following elements must be present: first, that a person has right to informational privacy;^[10] second, that there is a violation or a threat to violate such right which affects a person's right to life, liberty and security; third, that the act is done through unlawful means in order to achieve unlawful ends; fourth, that the act is committed by a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information; fifth, that the information gathered, collected or stored pertained to the person, family, home and correspondence of the aggrieved party; and sixth, that the petition was lodged before the proper court.^[11]

Jurisprudence clarified that a writ of habeas data will not issue "on the basis merely of an alleged unauthorized access to information about a person."^[12] The petitioner must show an actionable entitlement to information privacy by establishing a nexus between the right of privacy on the one hand, and the right to life, liberty, or security on the other. The privilege of the writ may be extended only upon proof, by substantial evidence, of the "manner" or "means" in which the right to privacy is violated or threatened.^[13]

In the case of *Dr. Lee v. P/Supt. Ilagan*,^[14] the Court made the following discussion as regards sufficiency of a petition for the issuance of the Writ of Habeas Data, to wit:

Thus, in order to support a petition for the issuance of such writ, Section 6 of the Habeas Data Rule essentially requires that the petition sufficiently alleges, among others, "[t]he manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party." In other words, the petition must adequately show that there exists a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Corollarily, the allegations in the petition must be supported by substantial evidence showing an actual or threatened violation of the right to privacy in life, liberty or security of the victim. In this relation, it bears pointing out that the writ of habeas data will not issue to protect purely property or commercial concerns nor when the grounds invoked in support of the petitions therefor are vague and doubtful.^[15] (Emphasis and underlining supplied)

As to what constitutes substantial evidence for the purpose of determining the sufficiency of the allegations in the petition, the Court, in *Miro v. Vda. de Edereros, et al.*,^[16] defined it as more than a mere scintilla or modicum of evidence, viz.:

Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.^[17]

A thorough review of the petition reveals nothing more but bare assertions that there has been a violation of her rights. There was no showing that she was in the first place, entitled to informational privacy as to matters subject of the petition, and of how the same poses an imminent and continuing threat to her life, liberty and security sufficient, identifying in this regard the particular unlawful means utilized by the respondent. The petition contains vague assertions and nothing more, this falls short of the required quantum of proof.

I find it apropos to highlight the Court's discussion In the Matter of the Petition for the Writ of Amparo and

Habeas Data in Favor of Rodriguez[18] where it was clarified that a petition for the issuance of the writ of habeas data need not only state that there was a violation or a continuing threat to violate a person's right to privacy in life, liberty or security but, more importantly, must allege and prove through substantial evidence that the information regarding the person, family, home and correspondence of the aggrieved party is being gathered or collected by the respondent through unlawful means in order to achieve unlawful ends, to wit:

At the outset, it must be emphasized that the writs of amparo and habeas data were promulgated to ensure the protection of the people's rights to life, liberty and security. The rules on these writs were issued in light of the alarming prevalence of extrajudicial killings and enforced disappearances. The Rule on the Writ of Amparo took effect on 24 October 2007, and the Rule on the Writ of Habeas Data on 2 February 2008.

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Meanwhile, the writ of habeas data provides a judicial remedy to protect a person's right to control information regarding oneself, particularly in instances where such information is being collected through unlawful means in order to achieve unlawful ends. As an independent and summary remedy to protect the right to privacy – especially the right to informational privacy – the proceedings for the issuance of the writ of habeas data does not entail any finding of criminal, civil or administrative culpability. If the allegations in the petition are proven through substantial evidence, then the Court may (a) grant access to the database or information; (b) enjoin the act complained of; or (c) in case the database or information contains erroneous data or information, order its deletion, destruction or rectification.[19] (Emphasis ours and citations omitted)

Here, the allegations made by petitioner fell short of the required quantum of proof necessary for the issuance of the writ of habeas data. As correctly pointed out by the Office of the Solicitor General in its Memorandum[20] dated November 21, 2016, the petitioner failed to identify any unlawful means through which private information about her life, liberty, and security were obtained. A general allegation or sweeping accusation, unsupported by substantial evidence, deserves scant or no consideration at all. The reliance of petitioner on statements uttered by the respondent in the course of the on-going probe on her perceived involvement in illegal drugs trade and her inappropriate conduct as a public official is insufficient to warrant the issuance of the writ.

The petitioner must be reminded that the burden of proof fell on her shoulders which obviously she could not bear to carry. Allegations are not evidence and without evidence, bare allegations do not prove facts.[21] The writ will not issue on the basis merely of an alleged unauthorized access to information about a person. Necessarily, the present petition must fail.

The President has the right to exercise Freedom of Expression.

Finally, it is well to remind petitioner that one of the cherished liberties enshrined and protected by the Constitution is the freedom of expression which covers the right to freedom of speech. In *Chavez v. Gonzales, et al.*, [22] the Court held that the scope of this freedom is so broad and covers myriad matters of public interest or concern and should not be confined solely to the expression of conventional ideas, viz.:

The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority.[23]

The President, being a citizen of this country, is also entitled to the free exercise of this right more so when the exercise of the same is in aid of or in furtherance of justice and directed against improper conduct of public officials who, at all times, must uphold public interest over personal interest.

A remark made in a fit of anger and as an expression of one's frustration over the conduct of another falls within the ambit of freedom of expression and does not automatically make one legally accountable lest we deprive the speaker of his right to speak.

In the case of *Davao City Water District v. Aranjuez, et al.*,^[24] the Court held that the constitutional right to freedom of expression is not relinquished by those who enter government service solely on account of their employment in the public sector, viz.:

It is correct to conclude that those who enter government service are subjected to a different degree of limitation on their freedom to speak their mind; however, it is not tantamount to the relinquishment of their constitutional right of expression otherwise enjoyed by citizens just by reason of their employment. Unarguably, a citizen who accepts public employment "must accept certain limitations on his or her freedom." But there are some rights and freedoms so fundamental to liberty that they cannot be bargained away in a contract for public employment. It is the Court's responsibility to ensure that citizens are not deprived of these fundamental rights by virtue of working for the government.^[25]

In the same vein, election to public office by the President is not tantamount to the relinquishment of his right to speak his mind or to express himself. As correctly pointed out by the Solicitor General, the statements made were in relation to petitioner's qualifications to hold public office and her perceived involvement in illegal drugs. Clearly, these are matters of public concern subject to public scrutiny- even scrutiny by the President himself.

Public office destines one to live a very public life and with that level of exposure, public scrutiny is inevitable.

Accordingly, I vote to DISMISS the petition.

[1] 522 Phil. 705 (2006).

[2] *Id.* at 795.

[3] 676 Phil. 84 (2011).

[4] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino; rollo (G.R. No. 191805), pp. 29-74;

[5] In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Rodriguez, *supra* note 3.

[6] *Id.* at 105-106.

[7] G.R. No. 217158, March 12, 2019.

[8] *Id.*

[9] *Id.*

[10] *Vivares, et al. v. St. Theresa's College, et al.*, 744 Phil. 451, 463 (2014).

[11] The Rule on the Writ of Habeas Data, A.M. No. 08-1-16-SC, January 22, 2008.

[12] *Vivares, et al. v. St. Theresa's College, et al.*, *supra* note 10.

[13] *Id.*

[14] 745 Phil. 196 (2014).

[15] Id. at 201.

[16] 721 Phil. 772 (2013).

[17] Id. at 787.

[18] Supra note 3.

[19] Id. at 102-103.

[20] Rollo, pp. 121-152.

[21] Sabellina v. Buray, et al., 768 Phil. 224, 238 (2015).

[22] 569 Phil. 155 (2008).

[23] Id. at 198.

[24] 760 Phil. 254 (2015).

[25] Id. at 279.

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