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Republic of the Philippines  
Supreme Court  
Manila

EN BANC

IN THE MATTER OF THE G.R. No. 215585  
PETITION FOR WRIT OF  
HABEAS CORPUS/DATA AND  
AMPARO IN FAVOR OF AMIN  
IMAM BORATONG, MEMIE  
SULTAN BORATONG,  
Petitioner,

-versus-

HON. LEILA M. DE LIMA in her  
capacity as Secretary of Justice,  
HON. VIRGILIO MENDEZ in his  
capacity as Director of the National  
Bureau of Investigation, and HON.  
FRANKLIN JESUS B. BUCAYU in  
his capacity as Director of the  
Bureau of Corrections,  
Respondents.

X-----X  
ANTHONY R. BOMBEO, on  
behalf of HERBERT R.  
COLANGGO,  
Petitioner,

X-----X  
G.R. No. 215768  
Present:

PERALTA, J., *Chief Justice*,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
GESMUNDO,  
REYES, J., JR.,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,

-versus-

HON. LEILA M. DE LIMA,  
DIRECTOR FRANKLIN B. BUCAYU, DIRECTOR VIRGILIO L. MENDEZ, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTIONS, and NATIONAL BUREAU OF INVESTIGATION,  
Respondents.

INTING,  
ZALAMEDA,  
LOPEZ,  
DE LOS SANTOS,  
GAERLAN, and  
BALTAZAR-PADILLA\*, JJ.

Promulgated:  
September 8, 2020

X-----X

## DECISION

**LEONEN, J.:**

A case has become moot and academic when, by virtue of subsequent events, any of the reliefs sought can no longer be granted.

This is a Petition for Writ of Amparo and Petition for Writ of Habeas Corpus/Data (With Prayers for Production and Inspection of Place)<sup>1</sup> and a Petition for the Issuance of a Writ of Amparo<sup>2</sup> assailing the sudden transfer of national inmates from the National Bilibid Prisons in Muntinlupa City to the National Bureau of Corrections in Manila City for the purpose of conducting an inspection on their living quarters.

In a December 12, 2014 Memorandum, captioned “SECRET,”<sup>3</sup> then Secretary Leila M. De Lima (Secretary De Lima) directed then Bureau of Corrections Director Franklin Jesus B. Bucayu and then National Bureau of Investigation Director Virgilio L. Mendez (Director Mendez):

1. To transfer the following inmates from the New Bilibid Prison to a temporary NBP extension facility at the NBI, Taft Avenue, Manila:
  - a. German Agojo y Luna
  - b. Jojo Baligad y Rondal
  - c. Amin Boratong y Imam
  - d. Joel Capones y Duro
  - e. Rommel Capones y Duro
  - f. Chua Chi y Li
  - g. Eugene Chua y Ho
  - h. Tom Chua y Ruiz
  - i. Willy Chua y Rosal
  - j. Herbert Colangco y Romarante (@Ampang/@Bert)

\* On leave.

<sup>1</sup> Rollo (G.R. No. 215585), pp. 3–12.

<sup>2</sup> Rollo (G.R. No. 215768), pp. 3–17.

<sup>3</sup> Rollo (G.R. No. 215585), p. 240, Annex 8 of the Consolidated Comment.

- k. Clarence Dongail y Domingo
  - l. Shi Jian y Hui (@Jacky Sy King)
  - m. Benjamin Marcelo y Tubay
  - n. Noel Martinez y Goloso
  - o. Michael Ong y Chan
  - p. George Sy y Riñoza
  - q. Vicente Sy y Madlangbayan
  - r. Willy Sy y Yu
  - s. Wu Tuan y Yuan (@Peter Co)
  - t. Xu You y Kwang (@Jhonny Co/@Tony Co)
2. To conduct search on the abovementioned inmates' quarters, which are suspected to contain illegal drug precursors and paraphernalia, illegal drugs (metamphetamine hydrochloride), firearms and other weapons, cash, mobile phones, laptops, other communication gadgets, and other miscellaneous contrabands, and to forthwith seize and confiscate any illegal and/or prohibited items.
  3. To undertake intensive investigation and case build-up towards the end of filing appropriate cases, as may be warranted by the results of the foregoing operations, against inmates and BuCor officials or employees who may be found involved or liable.

Coordination with the Philippine National Police (PNP), Philippine Drug Enforcement Agency (PDEA) and the Presidential Anti-Organized Crime Commission (PAOCC) shall be made in the final staging of the above major operations.<sup>4</sup>

This activity was conducted as a result of several months of intelligence reports investigating the alleged conduct of illegal activities by some inmates inside the New Bilibid Prison. The alleged illegal activities “included the operation of a narcotics trade through mobile phones, laptops, and internet equipment illegally brought inside the [New Bilibid Prison], enabling incarcerated [New Bilibid Prison] inmates to communicate with their contacts (i.e., couriers and buyers).”<sup>5</sup>

On December 15, 2014, members of the Department of Justice, National Bureau of Investigation, Bureau of Corrections, Presidential Anti-Organized Crime Commission, Philippine Drug Enforcement Agency, National Capital Region Police Office, Special Action Force, and Muntinlupa Police conducted a surprise raid on the living quarters (*kubol*) of 20 inmates of the New Bilibid Prison classified as High-Risk/High Profile.<sup>6</sup>

As a result of the surprise raid, several illegal and contraband items were recovered from the inmates, listed in a Memorandum<sup>7</sup> dated December

<sup>4</sup> Id. at 240–241.

<sup>5</sup> *Rollo* (G.R. No. 215768), p. 359, OSG Memorandum.

<sup>6</sup> Id. at 359–360. The December 12, 2014 Memorandum actually mentions 20 inmates but only 19 inmates were transferred.

<sup>7</sup> *Rollo* (G.R. No. 215585), pp. 290–296.

16, 2014 from the Deputy Director for Intelligence Service of the National Bureau of Investigation:

**PETER CO -**

*Items recovered during the body search:*

1. Cash – P169,000  
2,600 US dollars

*Items recovered from his kubol:*

1. Cash – P1,400,000
2. Five (5) sachets of suspected SHABU substance
3. Two (2) canisters of suspected SHABU substance
4. One (1) sachet of brown substance of suspected ILLEGAL DRUGS
5. Nine (9) improvised tooters
6. Two (2) used aluminum foils
7. One (1) Walther PPK FIREARM
8. One (1) Browning 9mm FIREARM
9. One (1) Taurus PT111 9mm FIREARM
10. One (1) Jerico 441B FIREARM
11. One (1) Versa caliber 380 FIREARM
12. One (1) Bushmaster 5.56 caliber ASSAULT RIFLE
13. Two (2) M16 fully loaded magazines
14. Four (4) PT111 fully loaded magazines
15. Three (3) fully loaded magazines for caliber .22
16. Two (2) fully loaded magazines for caliber 380
17. Two (2) fully loaded Jerico magazines
18. Forty-One (41) caliber .38 ammunitions
19. Money counter

**HERBERT ROMARANTE COLANGCO [sic]-**

*Items recovered during body search:*

1. Cash – P21,650

*Items recovered from his kubol:*

1. Cash – P221,000
2. Five (5) ROLEX watches
3. One (1) CATIER [sic] watch
4. One (1) PATEK PHILIPPE watch
5. One (1) PANERAI watch
6. One (1) gold NECKLACE
7. One (1) jade NECKLACE
8. One (1) HERMES belt
9. One (1) HERMES wallet
10. One (1) PRADA wallet
11. Two (2) LOUIS VUITTON wallet

**JOJO RONDAL BALIGAD –**

*Items recovered during body search:*

1. Cash – P84,000

*Items recovered from his kubol:*

1. Cash – P497,500
2. Two (2) plastic packs of suspected SHABU substance

3. Two (2) Check booklets
4. Four (4) sim cards
5. Two (2) cellphones
6. Suspected drug paraphernalia
7. One (1) RCBC Passbook
8. One (1) RING
9. One (1) BRACELET

**CLARENCE DOMINGO DONGAIL -**

*Items recovered during body search:*  
NONE

*Items recovered from his kubol:*

1. Cash – P333,150
2. Eight (8) sachets of suspected SHABU substance
3. Seven (7) Syringes
4. One (1) Record Book
5. Two (2) knives
6. One (1) Switchblade

**NOEL GOLLOSO MARTINEZ -**

*Items recovered during body search:*  
NONE

*Items recovered from his kubol:*

1. Cash – P22,287
2. One (1) Saw Magic
3. Two (2) Nokia cellphones
4. Two (2) .45 caliber FIREARMS

**EUGENE CHUA -**

*Items recovered during body search:*  
1. Cash – P39,700


*Items recovered from his kubol:*

1. Cash – P534,850
2. Two (2) notebooks
3. One (1) Vault/Safe (Sentry)

**VICENTE SY -**

*Items recovered during body search:*  
1. Cash – P98,500

*Items recovered from his kubol:*

1. One (1) Flat Screen TV
  2. One (1) Clock with hidden Camera
  3. One (1) Digital Video Recorder
  4. One (1) Remote Control
  5. One (1) AC/DC adapter
  6. One (1) Vibrator (Silicon Jack Rabbit)
  7. One (1) Massager (Biological Electromagnetic Wave)
  8. One (1) set doorbell and switch
- 

**JACKY KING -***Items recovered during body search:*

1. Cash – P126,150  
1 US dollar  
100 yen
2. One (1) NECKLACE

*Items recovered from his kubol:*

1. Cash – P412,250
2. Three (3) blank Security Bank Checks
3. One (1) USB

**MICHAEL ONG -***Items recovered during body search:*

1. Cash – P9,400

*Items recovered from his kubol:*

1. Cash – P1,700
2. One (1) sim card
3. Seven (7) knives
4. Four (4) screwdrivers
5. Five (5) scissors
6. Three (3) empty plastic sachets
7. One (1) dozen forks

**WILLY CHUA -***Items recovered during body search:*

1. Cash – P9,400

*Items recovered from his kubol:*

1. Cash – P11,450

**TOM CHUA-***Items recovered during body search:*

1. Cash – P30,200

*Items recovered from his kubol:*

1. One (1) Nokia 6120 cellphone with SIM
2. Two (2) micro sim card (Smart)
3. One (1) micro sim (Globe)

**SAM LI CHUA -***Items recovered during body search:*

1. Cash – P87,000

*Items recovered from his kubol:*

1. Cash – P681,578
2. One (1) flat screen TV
3. One (1) bag assorted chargers and cords
4. One (1) bag pornographic DVD's
5. Three (3) logbooks

**WILLY SY -**

*Items recovered during body search:*  
NONE

*Items recovered from his kubol:*  
1. Cash – P50,520

**ROMMEL DORO CAPONES –**

*Items recovered during body search:*  
1. Cash – P69,000

*Items recovered from his kubol:*  
NONE

**JOEL DORO CAPONES -**


*Items recovered during body search:*  
1. Cash – P33,250  
1 US dollar  
5 Malaysian Ringgits  
1 Qatar Riyal  
P20 (old demonetized bill)

*Items recovered from his kubol:*  
1. Cash – P30,000

**GERMAN LUNA AGOJO -**

*Items recovered during body search:*  
1. Cash – P83,000  
2. One (1) ROLEX watch

*Items recovered from his kubol:*  
1. One (1) SONY Bravia flat screen TV  
2. One (1) Condura air conditioner  
3. One (1) SONY DVD player  
4. One (1) Play Station 3  
5. One (1) Arrow video recorder  
6. One (1) BOSS speaker system  
7. Five (5) satellite amplifiers  
8. Two (2) tennis rackets  
9. One (1) TECHNOMARINE watch  
10. One (1) G SHOCK watch  
11. One (1) BERING watch  
12. One (1) EMPORIO ARMANI watch  
13. One (1) gold ring with diamonds  
14. One (1) RADIO RECEIVER  
15. One (1) RADIO HANDSET  
16. One (1) safe/vault  
17. Three (3) pairs assorted signature shoes  
18. Five (5) pairs assorted signature slippers  
19. One (1) stainless necklace  
20. One (1) BULGARI handbag  
21. Two (2) Rayban eyeglasses  
22. Two (2) Sony 3D eyeglasses



23. Twelve (12) imported perfumes
24. One (1) power bank
25. One (1) vibrator
26. One (1) pack assorted ladies' accessories

**AMIN IMAM BURATONG -**

*Items recovered during body search:*

1. Cash – P20,100

*Items recovered from his kubol:*

NONE

**TONY CO -**

*Items recovered during body search:*

1. Cash – P42,000

*Items recovered from his kubol:*

NONE

**GEORGE SY**

*Items recovered during body search:*

1. Cash – P17,820

*Items recovered from his kubol:*

(Not subjected to a search since his dormitory was reported to have been moved to another location)<sup>8</sup>

The 19 inmates were subsequently transferred to the New Bilibid Prison Extension Facility in the National Bureau of Investigation compound in Taft Avenue, Manila while their living quarters were dismantled.<sup>9</sup>

On December 19, 2014, Memie Sultan Boratong (Boratong), the wife of inmate Amin Imam Boratong, filed a Petition for Writ of Amparo and Petition for Writ of Habeas Corpus/Data (With Prayers for Production and Inspection of Place)<sup>10</sup> with this Court, docketed as G.R. No. 215585.

Amin Imam Boratong was convicted by the Pasig Regional Trial Court, Branch 154 in 2006 for violation of Republic Act No. 9165 for allegedly operating a “*shabu tiangge*” in Pasig City.<sup>11</sup> Before the surprise raid, he was serving his sentence, pending appeal with the Court of Appeals, in New Bilibid Prison.<sup>12</sup>

<sup>8</sup> Id. at 291–296.

<sup>9</sup> *Rollo* (G.R. No. 215768), p. 361, OSG Memorandum.

<sup>10</sup> *Rollo* (G.R. No. 215585), pp. 3–12.

<sup>11</sup> Tarra Quismundo, ‘*Shabu tiangge*’ king loses appeal, PHILIPPINE DAILY INQUIRER, January 30, 2015, <<http://newsinfo.inquirer.net/669010/shabu-tiangge-king-loses-appeal>> (last accessed on September 8, 2020).

<sup>12</sup> Id.



Another Petition for the Issuance of a Writ of Amparo<sup>13</sup> docketed as G.R. No. 215768 was filed by Anthony R. Bombeo (Bombeo), first degree cousin of inmate Herbert R. Colanggo (Colanggo). The Petition alleged that Colanggo was kept incommunicado from his counsel and relatives during his transfer.<sup>14</sup>

Colanggo is said to be the leader of the Ozamis Holdup Gang, believed to have been responsible for a 2009 bank robbery that left 10 people dead.<sup>15</sup> On October 18, 2010, Colanggo was convicted by the Regional Trial Court of Las Piñas, Branch 201 and sentenced to imprisonment of 12 years *prison mayor* maximum as minimum to 15 years and 6 months of *reclusion temporal* medium as maximum and was ordered to be detained at the New Bilibid Prison. His appeal is pending before the Court of Appeals. He also has cases pending before the trial courts of Pampanga and Quezon City.<sup>16</sup>

Colanggo is also known as the Filipino music artist “Herbert C.” He has his own YouTube channel, which shows a music video allegedly shot and produced in his music studio within his *kubol*.<sup>17</sup> On September 14, 2014, he was awarded by the Philippine Movie Press Club as its Star Awards Best New Male Recording Artist for 2014.<sup>18</sup> His platinum award-winning album “Kinabukasan” is available for download in Apple iTunes, for US \$3.99.<sup>19</sup>

On January 13, 2015, this Court consolidated G.R. No. 215585 with G.R. No. 215768 and dismissed Boratong’s petition for writs of amparo and habeas data. Respondents were also directed to comment on Boratong’s petition for habeas corpus and Bombeo’s petition for amparo.<sup>20</sup>

In a January 14, 2015 Memorandum,<sup>21</sup> then Director Mendez of the National Bureau of Investigation issued guidelines for the visitation of the

<sup>13</sup> *Rollo* (G.R. No. 215768), pp. 3–17.

<sup>14</sup> *Id.* at 5.

<sup>15</sup> Gerry Lirio, *Inside Bilibid*, ABS-CBN NEWS ONLINE, November 17, 2014, <<http://news.abs-cbn.com/focus/11/17/14/inside-bilibid>> and Lindsay Murdoch, *Life of luxury in Manila prison: sauna, stripper bar, air-conditioning*, THE SYDNEY MORNING HERALD, December 30, 2014, <<http://www.smh.com.au/world/life-of-luxury-in-manila-prison-sauna-stripper-bar-airconditioning-20141229-12fdor.html>> (last accessed on September 8, 2020).

<sup>16</sup> *Rollo* (G.R. No. 215768), p. 4.

<sup>17</sup> Joel Locsin, *Convict produces music video right inside Bilibid studios*, GMA NEWS ONLINE, December 16, 2014, <<https://www.gmanetwork.com/news/news/metro/392847/watch-convict-produces-music-video-right-inside-bilibid-studios/story/>> (last accessed on September 8, 2020)).

<sup>18</sup> Rose-An Jessica Dioquino, *Convict who turned Bilibid unit into ‘studio’ won awards for his music*, GMA NEWS ONLINE, December 19, 2014, <<https://www.gmanetwork.com/news/news/metro/392956/convict-who-turned-bilibid-unit-into-studio-won-awards-for-his-music/story/>> (last accessed on September 8, 2020).

<sup>19</sup> Lindsay Murdoch, *Life of luxury in Manila prison: sauna, stripper bar, air-conditioning*, THE SYDNEY MORNING HERALD, December 30, 2014, <<http://www.smh.com.au/world/life-of-luxury-in-manila-prison-sauna-stripper-bar-airconditioning-20141229-12fdor.html>> (last accessed on September 8, 2020).

<sup>20</sup> *Rollo* (G.R. No. 215585), pp. 19–20 and *rollo* (G.R. No. 215768), pp. 19-A-20.

<sup>21</sup> *Rollo* (G.R. No. 215585), p 243.

19 inmates. These guidelines were approved by then Secretary De Lima on January 23, 2015.<sup>22</sup>

The Office of the Solicitor General submitted its Consolidated Comment<sup>23</sup> on March 9, 2015 reporting that several petitions for amparo have been filed in the Court of Appeals by the relatives of the remaining 17 inmates.<sup>24</sup> After the filing of petitioners' respective Replies,<sup>25</sup> the parties were directed to submit their Memoranda.<sup>26</sup>

Petitioner Boratong alleged that when the Petition was filed, Amin Imam Boratong was denied access to his counsel and visitation from his relatives.<sup>27</sup> She also insists that there was no reason to transfer her husband from the National Bilibid Prison to the National Bureau of Investigation since his conviction was still pending appeal.<sup>28</sup> His summary transfer to "a place where armed authorities are ubiquitous" and incommunicado status, she argues, were equivalent to an enforced disappearance, which should have justified the issuance of a writ of amparo.<sup>29</sup>

Petitioner Boratong further insists that when her husband "was unceremoniously handcuffed and transferred to the NBI without any reason afforded to him and without authority of the courts," he was "in effect abducted from the facility where he should be incarcerated."<sup>30</sup> Petitioner Boratong claims that the threat to her husband's life and security was still pervasive despite the subsequent grant of visitation rights since the grant was only to be given upon approval of request, implying that consent to visitation could be withheld at any time.<sup>31</sup> She also pointed out that visitation hours only provided for eight hours a day for two days to be divided among the visitors of 19 inmates.<sup>32</sup>

Petitioner Boratong claims that a writ of habeas data should have been issued, arguing that no documents were given identifying her husband as "high risk" that would justify his transfer to the National Bureau of Investigation and subsequently to Building 14, the National Bilibid Prison facility for holding high risk inmates.<sup>33</sup> She further claims that there was no information given as to her husband's involvement in the alleged illegal

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<sup>22</sup> Id.

<sup>23</sup> Id. at 125-171.

<sup>24</sup> Id. at 127-128.

<sup>25</sup> Id. at 328-349 and 350-362.

<sup>26</sup> Id. at 326-G-326-H. Only petitioner Boratong and respondents submitted their Memoranda. Petitioner Bombeo submitted a Manifestation stating that he was adopting his Petition as his Memorandum. The Office of the Solicitor General submitted its Memorandum on October 6, 2015 (*rollo* (G.R. No. 215768), pp. 355-400).

<sup>27</sup> *Rollo* (G.R. No. 215768), p. 326.

<sup>28</sup> Id. at 327.

<sup>29</sup> Id.

<sup>30</sup> Id. at 332.

<sup>31</sup> Id. at 333-334.

<sup>32</sup> Id. at 334.

<sup>33</sup> Id. at 335.

activities inside New Bilibid Prison since no luxury items were found in his *kubol* during the surprise raid.<sup>34</sup> She points out that it was also doubtful that the Secretary of Justice can transfer any inmate without a valid court order.<sup>35</sup> Petitioner Boratong concludes that a petition for a writ of habeas corpus is a challenge on the legal basis of detention. Thus, she questions the legality of Amin Imam Boratong's continued confinement in Building 14 as he was "allowed unhampered access to counsel and a more indulgent visitation rights" in his previous *kubol*.<sup>36</sup>

Petitioner Bombeo, on the other hand, argues that Colanggo's "incommunicado detention" is identical to an enforced disappearance or at least a threat of enforced disappearance.<sup>37</sup> He posits that "a person under detention, totally cut off from society, cut off from any communication from his counsel and people concerned for his safety, whereabouts, status and health, is a victim of an enforced or voluntary disappearance."<sup>38</sup> He insists that Colanggo's constitutional right to counsel "cannot be denied by the public officer or the government agency having custody of the detainee."<sup>39</sup> He asserts that respondents' reasoning that "there was a need for Mr. Colanggo to be restrained from his 'criminal network'" was an insult to his counsel since respondent assumed that his counsel had ties to this alleged criminal network.<sup>40</sup>

The Office of the Solicitor General, meanwhile, argues that the Petitions should be dismissed for being moot.<sup>41</sup> It points out that the inmates had already been returned to the National Bilibid Prison facility in Building 14.<sup>42</sup> It also notes that the reliefs sought by petitioners, that is, the grant of visitation rights and the return of the inmates to the National Bilibid Prison, has already been granted by subsequent events.<sup>43</sup>

Nonetheless, the Office of the Solicitor General argues that the writ of amparo is only available to threats of extralegal killings and enforced disappearances, none of which petitioners suffer from. It asserts that the Rule on Amparo requires respondents to state the steps or actions taken to determine the fate and whereabouts of the aggrieved party in the return, which respondent in this case cannot comply with since the location of the inmates is known to all individuals, including their counsels.<sup>44</sup> It likewise points out that visitation rights is not a relief available in a writ of amparo.<sup>45</sup>

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<sup>34</sup> Id. at 336.

<sup>35</sup> Id.

<sup>36</sup> Id. at 337.

<sup>37</sup> *Rollo* (G.R. No. 215768), p. 8.

<sup>38</sup> Id.

<sup>39</sup> Id. at 10.

<sup>40</sup> Id. at 9.

<sup>41</sup> Id. at 364.

<sup>42</sup> Id. at 365. It reported, however, that inmate George Sy died on July 1, 2015 at the Jose Memorial Center while inmate German Agojo was admitted at the Philippine General Hospital.

<sup>43</sup> Id. at 365-366.

<sup>44</sup> Id. at 369-371.

<sup>45</sup> Id. at 371-372.

It argues that no threat to the right to security was present since the transfers were made to address the alleged illegal activities inside the Maximum Security Compound, and none of the inmates were maltreated during their detention in the National Bureau of Investigation.<sup>46</sup>

The Office of the Solicitor General likewise contends that the writ of habeas corpus was an improper remedy since it was shown that the restraint of liberty is by virtue of a valid legal process.<sup>47</sup> It asserts that under Republic Act No. 10575, the Secretary of Justice had administrative supervision over the Bureau of Corrections, and thus, had the authority to transfer inmates.<sup>48</sup> It also pointed out that the same law gives the Bureau of Corrections Director General authority over the safekeeping of the inmates.<sup>49</sup> It argues that it was necessary to restrict the inmates' visitation privileges in order to prevent the continuation of illegal activities inside the prison compound.<sup>50</sup> It maintains that petitioners were not held incommunicado since the restriction was only temporary, and they were not prohibited from speaking with other inmates, prison guards, or any person permitted by respondents.<sup>51</sup> Finally, it submits that petitioners were not deprived of the right to counsel since the right is only available in custodial investigations and criminal proceedings, not in the transfer of national inmates who have already been convicted.<sup>52</sup>

While the Petitions present several compelling substantial issues; whether these could be passed upon or not depends on the primary procedural issue of whether the Petitions have already been mooted by the subsequent events.

## I

At first glance, the Petitions appear to have already been rendered moot. Petitioners' relatives had already been returned to the National Bilibid Prison facility in Building 14<sup>53</sup> and the grant of visitation rights had also been restored.<sup>54</sup> In *David v. Macapagal-Arroyo*:<sup>55</sup>

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally,

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<sup>46</sup> Id. at 375-377.

<sup>47</sup> Id. at 378-379.

<sup>48</sup> Id. at 384-385.

<sup>49</sup> Id. at 385.

<sup>50</sup> Id. at 387.

<sup>51</sup> Id. at 389-391.

<sup>52</sup> Id. at 392-396.

<sup>53</sup> It reported, however, that inmate George Sy died on July 1, 2015 at the Jose Memorial Center while inmate German Agojo was admitted at the Philippine General Hospital (OSG Memorandum, p. 11).

<sup>54</sup> *Rollo* (G.R. No. 215768), pp. 365-366.

<sup>55</sup> 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

courts decline jurisdiction over such case or dismiss it on ground of mootness.<sup>56</sup>

This Court, however, is not precluded from deciding cases otherwise moot if “*first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.”<sup>57</sup> In this case, this Court takes the occasion to discuss a few points raised by the parties.

In *Toyoto v. Ramos*,<sup>58</sup> Gerry Toyoto, Eddie Gonzales and Dominador Gabiana were arrested and charged for conducting a rally along Navotas on October 23, 1983 in violation of the Anti-Subversion Act. They moved to dismiss the case, which the trial court granted, for lack of evidence. Despite the order of dismissal, they were not released from detention on the ground that a Preventive Detention Action had been issued against them. Thus, they filed an application for the issuance of a writ of habeas corpus. When the writ was returned, respondents alleged that the petition was already moot since petitioners had been released from detention. This Court, however, in granting the petition, held that the action can only be moot if petitioners can no longer be re-arrested:

Ordinarily, a petition for habeas corpus becomes moot and academic when the restraint on the liberty of the petitioners is lifted either temporarily or permanently. We have so held in a number of cases. But the instant case presents a different situation. The question to be resolved is whether the State can reserve the power to re-arrest a person for an offense after a court of competent jurisdiction has absolved him of the offense. An affirmative answer is the one suggested by the respondents because the release of the petitioners being merely “temporary” it follows that they can be re-arrested at any time despite their acquittal by a court of competent jurisdiction. We hold that such a reservation is repugnant to the government of laws and not of men principle. Under this principle the moment a person is acquitted on a criminal charge he can no longer be detained or re-arrested for the same offense. This concept is so basic and elementary that it needs no elaboration.<sup>59</sup>

In *Moncupa v. Enrile*,<sup>60</sup> Efren C. Moncupa was arrested and detained on April 22, 1982 on the allegation that he was a member of the National Democratic Front. After two separate investigations, it was found that he

<sup>56</sup> Id. at 753–754 citing *Province of Batangas v. Romulo*, 473 Phil. 806 (2004) [Per J. Callejo, Sr., En Banc]; *Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.*, 469 Phil. 79 (2004) [Per J. Austria-Martinez, Second Division]; *Vda. De Dabao v. Court of Appeals*, 469 Phil. 938 (2004) [Per J. Austria-Martinez, Second Division]; and *Paloma v. Court of Appeals*, 461 Phil. 270 (2003) [Per J. Quisumbing, Second]; *Royal Cargo Corporation v. Civil Aeronautics Board*, 465 Phil. 719 (2004) [Per J. Callejo, Sr., Second Division]; and *Lacson v. Perez*, 410 Phil. 78 (2001) [Per J. Melo, En Banc].

<sup>57</sup> *Belgica v. Ochoa*, 721 Phil. 416, 522 (2013) [Per J. Perlas-Bernabe, En Banc].

<sup>58</sup> 223 Phil. 528 (1985) [Per J. Abad Santos, En Banc].

<sup>59</sup> Id. at 532.

<sup>60</sup> 225 Phil. 191 (1986) [Per J. Gutierrez, Jr., En Banc].

was not a member of any subversive group. The investigating fiscal, however, recommended that Moncupa be charged with illegal possession of firearms and illegal possession of subversive documents. While information for these charges were filed, he had not been arraigned and no further proceedings ensued. His motions for bail were likewise denied. Thus, he filed a petition for application of a writ of habeas corpus. Respondents in that case, however, countered that his petition had already become moot as he had already been temporarily released from detention upon order of the Minister of National Defense with the approval of the President. This Court, in granting the Petition, reiterated the ratio in *Toyoto* and explained that the action, while moot, was one capable of repetition:

A release that renders a petition for a writ of habeas corpus moot and academic must be one which is free from involuntary restraints. Where a person continues to be unlawfully denied one or more of his constitutional freedoms, where there is present a denial of due process, where the restraints are not merely involuntary but appear to be unnecessary, and where a deprivation of freedom originally valid has, in the light of subsequent developments, become arbitrary, the person concerned or those applying in his behalf may still avail themselves of the privilege of the writ.<sup>61</sup>

Thus, this Court may still pass upon actions for habeas corpus even when the alleged illegal detention has ceased if the action is one that is capable of repetition yet evading review.

Here, the national inmates had been returned to their actual detention facilities. There is, however, a lingering question of whether the Department of Justice is authorized to transfer them to another facility without a court order, which could happen at any time. Its capability of being repeated had already been demonstrated when on June 10, 2019, President Duterte, through Secretary of Justice Menardo Guevarra, ordered the transfer of 10 “high profile” inmates from the New Bilibid Prisons in Muntinlupa City to the Marines Barracks Rudiardo Brown in Taguig City.<sup>62</sup> While this transfer has not been questioned before this Court, there is still no definitive ruling on whether the Department of Justice has the authority to transfer national inmates. Thus, this Court takes the opportunity in this case despite the mootness of the reliefs sought.

## II

Petitioner Boratong filed a Petition for Writ of Amparo and Petition for Writ of Habeas Corpus/Data (With Prayers for Production and Inspection

<sup>61</sup> Id. at 197.

<sup>62</sup> Mike Navallo, *DOJ chief: President has power to order prisoner transfers*, ABS-CBN NEWS ONLINE, September 7, 2019 <<https://news.abs-cbn.com/news/09/07/19/doj-chief-president-has-power-to-order-prisoner-transfers>> (last accessed on September 8, 2020).

of Place)<sup>63</sup> while petitioner Bombeo filed a Petition for the Issuance of a Writ of Amparo.<sup>64</sup>

“The writ of habeas corpus was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom.”<sup>65</sup> Its primary purpose “is to determine the legality of the restraint under which a person is held.”<sup>66</sup> The writ may be applied to any manner of restraint as “[a]ny restraint which will preclude freedom of action is sufficient.”<sup>67</sup>

Rule 102, Section 1 of the Rules of Court states that “the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.” Thus, the general rule is that a petition for a writ of habeas corpus can only be filed by a person illegally deprived of liberty. Rule 102, Section 4 provides:

SECTION 4. *When writ not allowed or discharge authorized.* — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Not shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

*In Re: The Writ of Habeas Corpus for Reynaldo De Villa (Detained at the New Bilibid Prisons, Muntinlupa City):*<sup>68</sup>

The extraordinary writ of habeas corpus has long been a haven of relief for those seeking liberty from any unwarranted denial of freedom of movement. Very broadly, the writ applies “to all cases of illegal confinement or detention by which a person has been deprived of his liberty, or by which the rightful custody of any person has been withheld from the person entitled thereto”. Issuance of the writ necessitates that a person be illegally deprived of his liberty. In the celebrated case of *Villavicencio v. Lukban*, we stated that “[a]ny restraint which will preclude freedom of action is sufficient.”

The most basic criterion for the issuance of the writ, therefore, is that the individual seeking such relief be illegally deprived of his freedom

<sup>63</sup> *Rollo* (G.R. No. 215585), pp. 3–12.

<sup>64</sup> *Rollo* (G.R. No. 215768), pp. 3–17.

<sup>65</sup> *Villavicencio v. Lukban*, 39 Phil. 778, 788 (1919) [Per J. Malcolm, En Banc].

<sup>66</sup> *Mangila v. Pangilinan*, 714 Phil. 204, 210 (2013) [Per J. Bersamin, First Division].

<sup>67</sup> *Villavicencio v. Lukban*, 39 Phil. 778, 790 (1919) [Per J. Malcolm, En Banc].

<sup>68</sup> 485 Phil. 368 (2004) [Per J. Ynares-Santiago, En Banc].

of movement or placed under some form of illegal restraint. If an individual's liberty is restrained via some legal process, the writ of habeas corpus is unavailing. Concomitant to this principle, the writ of habeas corpus cannot be used to directly assail a judgment rendered by a competent court or tribunal which, having duly acquired jurisdiction, was not deprived or ousted of this jurisdiction through some anomaly in the conduct of the proceedings.<sup>69</sup>

This general rule, however, has certain exceptions. Considering that the remedy is available for any form of illegal restraint, the nature of the restraint need not be related to any offense. The writ may still be availed of as a post-conviction remedy<sup>70</sup> or where there has been a violation of the liberty of abode.<sup>71</sup>

In *Rubi v. Provincial Board of Mindoro*,<sup>72</sup> the Provincial Board of Mindoro issued Resolution No. 25, ordering Mangyans to reside in the reservation established in Tigbao, Najuan Lake, deeming it necessary to advance the education and advancement of the "non-Christian tribes." Those in violation of the order would be imprisoned for not more than 60 days. Petitioners, who were Mangyans, applied for a writ of habeas corpus, alleging that they were being held against their will in the Tigbao reservation. This Court held that the writ may be applied for, since the act complained of involved a restriction on the freedom of movement.

In *Villavicencio v. Lukban*,<sup>73</sup> the Mayor of Manila, with the assistance of the Chief of Police, "hustled" some 170 "women of ill repute" from their homes on the midnight of October 25, 1918, and placed them on steamers bound for Davao, to be employed as laborers. The relatives and friends of these women filed an application for a writ of habeas corpus, alleging that these women were illegally deprived of their liberty. In granting the writ, this Court held that the remedy of the writ of habeas corpus may be available where there has been a violation of the right to liberty of abode or the freedom of locomotion:

A prime specification of an application for a writ of habeas corpus is restraint of liberty. The essential object and purpose of the writ of habeas corpus is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient. The forcible taking of these women from Manila by officials of that city, who handed them over to other parties, who deposited them in a distant region, deprived these women of freedom of locomotion just as

<sup>69</sup> *Re: The Writ of Habeas Corpus for Reynaldo De Villa (Detained at the New Bilibid Prisons, Muntinlupa City)*, 485 Phil. 368, 381 (2004) [Per J. Ynares-Santiago, En Banc] citing RULES OF COURT, Rule 102, sec. 1 and *Villavicencio v. Lukban*, 39 Phil. 778, 790 (1919) [Per J. Malcolm, En Banc].

<sup>70</sup> *See Gumabon v. Director of Prisons*, 147 Phil. 362 (1971) [Per J. Fernando, En Banc].

<sup>71</sup> *See Villavicencio v. Lukban*, 39 Phil. 778, 790 (1919) [Per J. Malcolm, En Banc].

<sup>72</sup> 39 Phil. 660 (1919) [Per J. Malcolm, En Banc].

<sup>73</sup> 39 Phil. 778 (1919) [Per J. Malcolm, En Banc].



effectively as if they had been imprisoned. Placed in Davao without either money or personal belongings, they were prevented from exercising the liberty of going when and where they pleased. The restraint of liberty which began in Manila continued until the aggrieved parties were returned to Manila and released or until they freely and truly waived his right.

Consider for a moment what an agreement with such a defense would mean. The chief executive of any municipality in the Philippines could forcibly and illegally take a private citizen and place him beyond the boundaries of the municipality, and then, when called upon to defend his official action, could calmly fold his hands and claim that the person was under no restraint and that he, the official, had no jurisdiction over this other municipality. We believe the true principle should be that, if the respondent is within the jurisdiction of the court and has it in his power to obey the order of the court and thus to undo the wrong that he has inflicted, he should be compelled to do so. Even if the party to whom the writ is addressed has illegally parted with the custody of a person before the application for the writ is no reason why the writ should not issue. If the mayor and the chief of police, acting under no authority of law, could deport these women from the city of Manila to Davao, the same officials must necessarily have the same means to return them from Davao to Manila. The respondents, within the reach of process, may not be permitted to restrain a fellow citizen of her liberty by forcing her to change her domicile and to avow the act with impunity in the courts, while the person who has lost her birthright of liberty has no effective recourse. The great writ of liberty may not thus be easily evaded.<sup>74</sup>

The remedy may also be availed of even when the deprivation of liberty has already been "judicially ordained."<sup>75</sup> In *Gumabon v. Director of Prisons*,<sup>76</sup> petitioners were charged and convicted of the complex crime of rebellion with murder, robbery, arson, and kidnapping. After serving for more than 13 years, this Court promulgated the *Hernandez* doctrine, which held that rebellion was a single offense and cannot be made into a complex crime. Invoking the *Hernandez*<sup>77</sup> doctrine, petitioners applied for a writ of habeas corpus despite the finality of their conviction, arguing that they were deprived of their constitutional right to equal protection.

In granting the writ, this Court held that the retroactive application of the *Hernandez* doctrine would effectively render the penalty excessive, since petitioners had already served the maximum sentence of 12 years. It took note that petitioners, who were mere followers, were sentenced prior to the leaders of the rebellion, who had already been released as they were able to benefit from the doctrine. It held that the writ must be issued in order to avoid inequity, stating that:

There is the fundamental exception though, that must ever be kept in mind. Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction and

<sup>74</sup> *Villavicencio v. Lukban*, 39 Phil. 778, 790-791 (1919) [Per J. Malcolm, En Banc].

<sup>75</sup> *Gumabon v. Director of Prisons*, 147 Phil. 362 (1971) [Per J. Fernando, En Banc].

<sup>76</sup> 147 Phil. 362 (1971) [Per J. Fernando, En Banc].

<sup>77</sup> *People v. Hernandez*, 99 Phil. 515 (1956) [Per J. Concepcion, En Banc]

habeas corpus is the appropriate remedy to assail the legality of the detention.<sup>78</sup>

In *Re: Salibo v. Warden of the Quezon City Jail Annex*,<sup>79</sup> petitioner Datukan Malang Salibo applied for a writ of habeas corpus before the trial court after he was arrested on suspicion that he was Butukan S. Malang, one of the 197 accused in the 2009 Maguindanao Massacre.<sup>80</sup> The trial court granted his petition, after finding that petitioner was not Butukan S. Malang, and that he was in Saudi Arabia when the crime was committed. On appeal, the Court of Appeals reversed the decision, stating that despite there being a case of mistaken identity, petitioner was arrested by virtue of a valid information and warrant of arrest. It held that the proper remedy was not an application for a writ of habeas corpus, but rather, a motion to quash the information or the warrant of arrest.<sup>81</sup>

This Court, however, held that a writ of habeas corpus is the proper remedy for a person deprived of liberty through mistaken identity since the information and warrant of arrest against Butukan S. Malang, while valid, were not applicable to petitioner, who was not Butukan S. Malang. As there was no valid information or warrant of arrest against petitioner Datukan Malang Salibo, the restraint on his liberty was, thus, illegal.<sup>82</sup>

*Feria v. Court of Appeals*<sup>83</sup> summarizes that the writ may still be availed of even after a valid legal process if “(a) there has been a deprivation of a constitutional right resulting in the restraint of a person, (b) the court had no jurisdiction to impose the sentence, or (c) an excessive penalty has been imposed.”<sup>84</sup>

Here, Amin Imam Boratong has already been deprived of his liberty through a valid legal process by a court of competent jurisdiction, that is, his conviction by the Pasig City Regional Trial Court in 2006. When he was transferred to the New Bilibid Prisons Extension Facility, however, Boratong’s counsels alleged that he was kept incommunicado by respondents and that they had no information as to his present condition or his exact whereabouts during his transfer. In the letter dated December 16, 2014 addressed to Secretary De Lima, they wrote:

Efforts have been exerted by us the whole day trying to get through our client and to speak with him but we were not allowed to do so by the personnel at the NBI on their excuse that it was your order that no one is allowed to talk with and visit the inmates, including our client. We were

<sup>78</sup> *Gumabon v. Director of Prisons*, 147 Phil. 362, 369 (1971) [Per J. Fernando, En Banc].

<sup>79</sup> 757 Phil. 630 (2015) [Per J. Leonen, Second Division].

<sup>80</sup> Id. at 634–636.

<sup>81</sup> Id. at 636–639.

<sup>82</sup> Id. at 654–659.

<sup>83</sup> 382 Phil. 412 (2000) [Per J. Quisumbing, Second Division].

<sup>84</sup> *Feria v. Court of Appeals*, 382 Phil. 412, 420–421 (2000) [Per J. Quisumbing, Second Division].

further informed that we need to write to your office and seek clearance so we can see and talk with our client.<sup>85</sup>

Petitioner Bombeo, on the other hand, similarly alleged:

[T]he undersigned counsel, after several attempts to visit or communicate with Mr. Colanggo, made a request in writing to respondent De Lima. There was a need by the undersigned counsel to visit him not only to check on his physical and mental well-being but also to discuss important and pressing matters involving his pending cases in court. Unfortunately, respondent De Lima unjustifiably denied their request on the ground that an investigation was being conducted and that there was a need for Mr. Colanggo to be restrained from his "criminal network."<sup>86</sup>

Detention incommunicado, regardless of whether the detention was by virtue of a valid legal process, is specifically prohibited by Article III, Section 12 of the Constitution, which states:

SECTION 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. *Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.*

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families. (Emphasis supplied)

Petitioners' allegations, if proven, are sufficient to clothe the party with standing to file an application for a writ of habeas corpus, provided that they invoke a violation of a fundamental right granted to all citizens, regardless of whether they are incarcerated or not.

The evidence, however, completely upends petitioners' allegations. The National Bureau of Investigation Memorandum<sup>87</sup> dated January 14, 2015 shows that the inmates' counsels and immediate family were allowed access to the inmates within reasonable guidelines. In a confidential

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<sup>85</sup> *Rollo*, (G.R. No. 215585), p. 16.

<sup>86</sup> *Rollo*, (G.R. No. 215678), p. 9.

<sup>87</sup> *Rollo* (G.R. No. 215585), p 243.

memorandum<sup>88</sup> dated January 3, 2015 by Special Investigator Ramon Alba addressed to Director Mendez, it was reported that a follow-up inspection was conducted on the temporary detention cell of Boratong and Colanggo on December 29, 2014. The follow-up inspection yielded two (2) mobile phones as well as Canadian \$475.00 and ₱659,550.00 in cash.<sup>89</sup> The raid was conducted during the period alleged by petitioners that Boratong and Colanggo were incommunicado. *Re: Abellana v. Paredes*<sup>90</sup> cautions that “[m]ere allegation of a violation of one’s constitutional right is not enough. The violation of constitutional right must be sufficient to void the entire proceedings.”<sup>91</sup> Hence, there is no compelling reason for this Court to grant the writ of habeas corpus.

### III

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.”<sup>92</sup> In particular:

The writ of habeas data was conceptualized as a judicial remedy enforcing the right to privacy, most especially the right to informational privacy of individuals. The writ operates to protect a person’s right to control information regarding himself, particularly in the instances where such information is being collected through unlawful means in order to achieve unlawful ends.<sup>93</sup>

Section 6 of the Rule on the Writ of Habeas Data requires that the petition for the writ must contain the following allegations:

- (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;

<sup>88</sup> Id. at 320.

<sup>89</sup> Id. at 322.

<sup>90</sup> G.R. No. 232006, July 10, 2019 [Per J. Caguioa, Second Division].

<sup>91</sup> *In re: Abellana v. Paredes*, G.R. No. 232006, July 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65524>> [Per J. Caguioa, Second Division].

<sup>92</sup> HABEAS DATA WRIT RULE, sec. 1.

<sup>93</sup> *Roxas v. Arroyo*, 644 Phil. 480, 509 (2010) [Per J. Perez, En Banc], *citing* Annotation to HABEAS DATA WRIT RULE (pamphlet released by the Supreme Court), p. 23.

(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.

Here, the writ is being sought to compel the Department of Justice to produce documents to justify Boratong's transfer from the National Bilibid Prison in Muntinlupa City to the National Bilibid Prison Extension Facility in Manila City.<sup>94</sup> This allegation, however, bears no relation to his right to privacy, which has since been restricted by virtue of his conviction, or how it affects his life, liberty, or security. There is no allegation that government agents are gathering, collecting, or storing data or information regarding his person, family, home and correspondence. There were no other allegations in support of the prayer for the writ. In any case, *Alejano v. Cabuay*<sup>95</sup> has stated that:

That a law is required before an executive officer could intrude on a citizen's privacy rights is a guarantee that is available only to the public at large but not to persons who are detained or imprisoned. The right to privacy of those detained is subject to Section 4 of RA 7438, as well as to the limitations inherent in lawful detention or imprisonment. By the very fact of their detention, pre-trial detainees and convicted prisoners have a diminished expectation of privacy rights.<sup>96</sup>

The right of a convicted national inmate to his or her privacy runs counter to the state interest of preserving order and security inside our prison systems. There is no longer any reasonable expectation of privacy when one is being monitored and guarded at all hours of the day. Unless there is compelling evidence that a public employee engaged in the gathering, collecting or storing of data or information on the convicted national inmate has committed an unlawful act which threatens the life of the inmate, a petition for the writ of habeas data cannot prosper. Thus, there is no compelling reason for this Court to issue the writ.

#### IV

Section 1 of the Rule on the Writ of Amparo provides that the remedy of the writ of amparo is available to "any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or

<sup>94</sup> *Rollo* (G.R. No. 215585), p. 7.

<sup>95</sup> 505 Phil. 298 (2005) [Per J. Carpio, En Banc].

<sup>96</sup> *Id.* at 322.

entity,” including “enforced disappearances or threats thereof.”<sup>97</sup> The allegations in the Petition of incommunicado detention, if substantiated, present characteristics of an enforced disappearance. In *Secretary of Defense v. Manalo*:<sup>98</sup>

“[E]nforced disappearances” are “attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.”<sup>99</sup>

Considering that the definition of enforced disappearances does not make a distinction between abduction of private citizens or abduction of convicted national inmates, the remedy of the writ of amparo may be available even to convicted national inmates, as long as the alleged abduction was made for the purpose of placing the national inmate outside the protection of the law.

Under Republic Act No. 10575, or the Bureau of Corrections Act of 2013, “[i]t is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary.”<sup>100</sup> To this end, the Bureau of Corrections is charged with the safekeeping of national inmates. “Safekeeping” is defined under the law as:

[T]he act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs, completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. This act also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to prison guards.<sup>101</sup>

The definition is further expanded in the Revised Implementing Rules and Regulations of Republic Act No. 10575 as:

ee. Safekeeping – refers to the custodial mandate of the BuCor’s present corrections system, and shall refer to the act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs. The safekeeping of inmates shall moreover comprise decent provision for their basic needs, which include

<sup>97</sup> AMPARO WRIT RULE, sec. 1.

<sup>98</sup> 589 Phil. 1 (2008) [Per CJ. Puno, En Banc].

<sup>99</sup> Id. at 37–38 citing AMPARO WRIT RULE: Annotation, p. 48 and Declaration on the Protection of All Persons from Enforced Disappearances.

<sup>100</sup> Republic Act No. 10575 (2013), sec. 2.

<sup>101</sup> Republic Act No. 10575 (2013), sec. 3.

habitable quarters, food, water, clothing, and medical care, in compliance with the established [United Nations Standard Minimum Rules for Treatment of Prisoners], and consistent with restoring the dignity of every inmate and guaranteeing full respect for human rights. The complementary component of Safekeeping in custodial function is Security which ensures that inmates are completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. Security also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to corrections officers.<sup>102</sup>

The Revised Implementing Rules and Regulations make mention of the United Nations Standard Minimum Rules for Treatment of Prisoners or the Nelson Mandela Rules.<sup>103</sup> The Nelson Mandela Rules was not meant to specify a model penal system. Rather, it aimed to “set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.”<sup>104</sup> In particular, it provides:

#### Rule 1

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

....

#### Rule 3

Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

....

#### Rule 37

The following shall always be subject to authorization by law or by the regulation of the competent administrative authority:

....

<sup>102</sup> REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10575 (2016), sec. 3 (ee).

<sup>103</sup> The United Nations Standard Minimum Rules for Treatment of Prisoners, December 17, 2015 <[https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)>.

<sup>104</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175 (2015), Preliminary Observation 1.

(d) Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation.

....

Rule 50

The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.

....

Rule 58

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:
  - (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
  - (b) By receiving visits.

....

Rule 61

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.
2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.
3. Prisoners should have access to effective legal aid.

....

Rule 68

Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. The sharing of prisoners' personal information shall be subject to domestic

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legislation.<sup>105</sup>

The controversy in this case arose from the transfer of “high profile” national inmates from the National Bilibid Prison in Muntinlupa City to the National Bilibid Prison Extension Facility in the National Bureau of Investigation Compound in Manila City, for the purpose of conducting a raid or inspection of their *kubol*.

Republic Act No. 10575 and its Revised Implementing Rules and Regulations allows the Department of Justice, through its adjunct agency the Bureau of Corrections, to completely “[incapacitate national inmates] from further committing criminal acts and to be “totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary.”<sup>106</sup> This was the import of the Secretary of Justice’s letter to Boratong’s counsel:

As for the legal basis on the transfer of your client from the NBP to the NBI detention facilities, may we refer you to the provisions of RA 10575 (BuCor Act of 2013) on the BuCor’s mandate, specifically on the safekeeping of prisoners, to wit: “ensure the public (including the families of inmates and their victims) that national inmates are provided with their basic needs, completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts from free society) while serving sentence inside the premises of the national penitentiary.”<sup>107</sup> (Emphasis and underscoring in the original)

While the method by which “safekeeping” can be achieved is not specified, the procedures must be counterbalanced by other existing policies on the matter. The Nelson Mandela Rules provides for the isolation or segregation of inmates, whether as a disciplinary sanction or for the maintenance of order and security, subject to “authorization by law or by the regulation of the competent administrative authority.”<sup>108</sup> Rule 114, Section 3 of the Rules of Court provides:

SECTION 3. *No release or transfer except on court order or bail.* — No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail.

Supreme Court Administrative Circular No. 6 dated December 5, 1977 further provides:

<sup>105</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175 (2015), Rules 1, 3, 37, 50, 58, 61 and 67.

<sup>106</sup> See Republic Act No. 10575 (2013), sec. 3 and REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10575 (2016), sec. 3 (ee).

<sup>107</sup> *Rollo* (G.R. No. 215585), p. 313.

<sup>108</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175 (2015), Rule 37(d).

[P]ursuant to Administrative Circular No. 2 dated December 2, 1976, no prisoner sentenced to death or life imprisonment or detained upon legal process for the commission of any offense punishable by death or life imprisonment confined in the New Bilibid Prisons is allowed to be brought outside the said penal institution for appearance or attendance in any court except when the Supreme Court authorizes the Judge, upon proper application, to effect the transfer of the said prisoner. In addition, the said Circular directs every Judge in Metro Manila and the Provinces of Rizal, Bulacan, Cavite and Laguna who requires the appearance or attendance of any of the aforestated prisoners confined in the New Bilibid Prisons in any judicial proceeding to conduct such proceeding within the premises of the said penal institution.<sup>109</sup>

Under existing rules, national inmates of the New Bilibid Prisons can only be transferred “outside the said penal institution” through a court order. Conversely stated, however, this means that transfers *inside* the penal institution do not require any court authorization. The Revised Implementing Rules and Regulations of Republic Act No. 10575 defines “prison” as:

SECTION 3. *Definition of Terms.* — For purposes of this IRR, the following terms or words and phrases shall mean or be understood as follows:

....

x) Prison – refers to a government establishment where national inmates/prisoners serve their sentence. Philippine prisons are also known as penal colonies or Prison and Penal Farms. There are a total of seven (7) penal colonies presently under the control and supervision of the Bureau of Corrections.<sup>110</sup>

The Bureau of Corrections is likewise authorized under Republic Act No. 10575 to “propose additional penal farms as may be necessary as possible, aside from its existing seven (7) prison and penal farms to decongest existing penal institutions and accommodate the increasing number of inmates committed to the agency.”<sup>111</sup> This means that there may be other facilities that could be established where national inmates can serve their sentence, provided that these facilities are under the control and supervision of the Bureau of Corrections.

Hence, the Bureau of Corrections had authority under the law and existing rules and regulations to determine the movement of national inmates, provided that these are done *within* the penal institutions. Any movement outside the penal institution, such as court appearances, must have prior court authorization. Since the Department of Justice exercises administrative supervision over the Bureau of Corrections, with the power to

<sup>109</sup> *Re: Issuance of Subpoena to Prisoner Nicanor De Guzman*, 343 Phil. 530, 533–534 (1997) [Per J. Kapunan, En Banc].

<sup>110</sup> REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10575 (2016), sec. 3(x).

<sup>111</sup> Republic Act No. 10575 (2013), sec. 6(c).

“review, reverse, revise or modify the decisions of the [Bureau of Corrections],”<sup>112</sup> it stands to reason that the Secretary of Justice has the same authority to determine the movement of national inmates *within* the penal institutions.

According to respondents, the national inmates in this case were transferred from the New Bilibid Prison in Muntinlupa City to the New Bilibid Prison Extension Facility in the National Bureau of Investigation Compound in Manila City. Neither the law nor its Revised Implementing Rules and Regulations define what an “extension facility” is or how one is established. However, as an extension facility, the control and supervision of these national inmates remained with the Bureau of Corrections, through the Secretary of Justice. Thus, the movement of the national inmates from New Bilibid Prison to its extension facility was within the authority of the Secretary of Justice.

As the competent authority with supervisory administration over the Bureau of Corrections, the Secretary of Justice was authorized to order the inspection of the living quarters of the national inmates. As stated in the Department of Justice Memorandum<sup>113</sup> dated December 16, 2014, several illegal and contraband items were recovered from the *kubol* of these national inmates. The inspection and subsequent movement of the inmates from one penal facility to another also did not appear to have violated the national inmates’ basic rights under the Nelson Mandela Rules. On December 27, 2014, the Chair of the Commission on Human Rights was able to visit the national inmates and she reported that “they had no complaints about food, shelter and treatment of authorities.”<sup>114</sup> There was likewise no merit to the allegation that the national inmates were being held incommunicado.

Detained persons, whether deprived of liberty or convicted by final order, are still deserving of humane and ethical treatment under detention. However, this must be balanced with the public interest to not unduly hamper effective and efficient penal management. In *Hudson v. Palmer*,<sup>115</sup> as quoted in *Alejano v. Cabuay*:<sup>116</sup>

However, while persons imprisoned for crime enjoy many protections of the Constitution, it is also clear that imprisonment carries with it the circumscription or loss of many significant rights. These constraints on inmates, and in some cases the complete withdrawal of certain rights, are “justified by the considerations underlying our penal system.” The curtailment of certain rights is necessary, as a practical matter, to accommodate a myriad of “institutional needs and objectives” of prison

<sup>112</sup> Republic Act No. 10575 (2013), sec. 8.

<sup>113</sup> *Rollo* (G.R. No. 215585), pp. 290–296.

<sup>114</sup> Reynaldo Santos, Jr., *CHR: Uphold VIP inmates' right to counsel, family visits but...*, RAPPLER, December 30, 2014, <<http://www.rappler.com/nation/79352-chr-rights-vip-inmates-public-safety>> (last visited on September 8, 2020).

<sup>115</sup> 468 U.S. 517 (1984).

<sup>116</sup> 505 Phil. 298 (2005) [Per J. Carpio, En Banc].

facilities, chief among which is internal security. Of course, these restrictions or retractions also serve, incidentally, as reminders that, under our system of justice, deterrence and retribution are factors in addition to correction.<sup>117</sup>

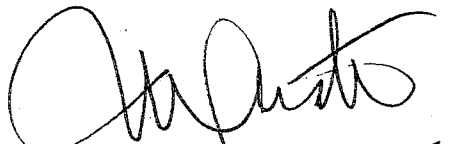
Here, there was an urgent need to remove the national inmates from their place of confinement and to transfer them to another detention facility. Considering that the Secretary of Justice has the authority to determine the movement of national inmates between penal facilities, there is no compelling reason for this Court to grant these Petitions.


**WHEREFORE, the Petitions are DENIED.**

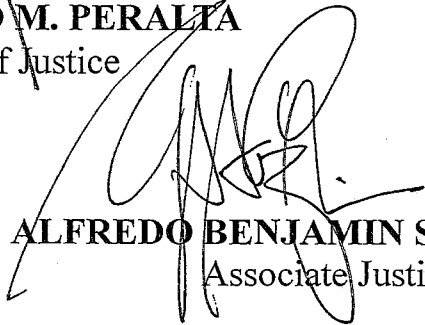
**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

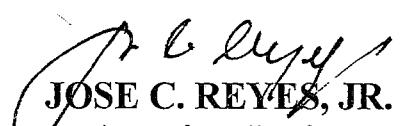
WE CONCUR:

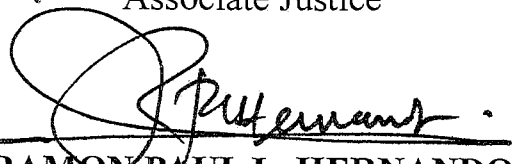
  
**DIOSDADO M. PERALTA**  
Chief Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice


  
**ALEXANDER G. GESMUNDO**  
Associate Justice


  
**JOSE C. REYES, JR.**  
Associate Justice


  
**RAMON PAUL L. HERNANDO**  
Associate Justice


  
**ROSMARI D. CARANDANG**  
Associate Justice


<sup>117</sup> Id. at 320 citing *Hudson v. Palmer*, 468 U.S. 517 (1984).

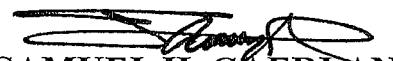
  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**RODIL N. ZALAMEDA**  
Associate Justice

  
**MARIO V. LOPEZ**  
Associate Justice

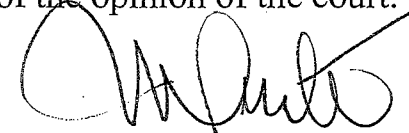
  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice


On leave  
**PRISCILLA J. BALTAZAR-PADILLA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

  
**DIOSDADO M. PERALTA**  
Chief Justice

**CERTIFIED TRUE COPY**

  
**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court