

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

EN BANC

**REPRESENTATIVES EDCEL C.
LAGMAN, TOMASITO S. VILLARIN,
GARY C. ALEJANO, EMMANUEL A.
BILLONES, and TEDDY BRAWNER
BAGUILAT, JR.,**

Petitioners,

-versus-

G.R. No. 231658

**HON. SALVADOR C. MEDIALDEA,
EXECUTIVE SECRETARY; HON.
DELFIN N. LORENZANA,
SECRETARY OF THE DEPARTMENT
OF NATIONAL DEFENSE AND
MARTIAL LAW ADMINISTRATOR;
and GEN. EDUARDO AÑO, CHIEF OF
STAFF OF THE ARMED FORCES OF
THE PHILIPPINES AND MARTIAL
LAW IMPLEMENTOR,**

Respondents.

X-----X

**EUFEMIA CAMPOS CULLAMAT,
VIRGILIO T. LINCUNA, ATELIANA
U. HIJOS, ROLAND A. COBRADO,
CARL ANTHONY D. OLALO, ROY JIM
BALANGHIG, RENATO REYES, JR.,
CRISTINA E. PALABAY, AMARYLLIS
H. ENRIQUEZ, ACT TEACHERS'
REPRESENTATIVE ANTONIO L.
TINIO, GABRIELA WOMEN'S PARTY
REPRESENTATIVE ARLENE D.
BROSAS, KABATAAN PARTY-LIST
REPRESENTATIVE SARAH JANE I.
ELAGO, MAE PANER, GABRIELA
KRISTA DALENA, ANNA ISABELLE
ESTEIN, MARK VINCENT D. LIM,**

**VENCER MARI CRISOSTOMO, and
JOVITA MONTES,**

Petitioners,

-versus-

G.R. No. 231771

**PRESIDENT RODRIGO DUTERTE,
EXECUTIVE SECRETARY SALVADOR
MEDIALDEA, DEFENSE SECRETARY
DELFIN LORENZANA, ARMED
FORCES OF THE PHILIPPINES
CHIEF-OF-STAFF LT. GENERAL
EDUARDO AÑO, and PHILIPPINE
NATIONAL POLICE DIRECTOR-
GENERAL RONALD DELA ROSA,**

Respondents.

X-----X
**NORKAYA S. MOHAMAD, SITTIE
NUR DYHANNA S. MOHAMAD,
NORAISAH S. SANI, and ZAHRIA P.
MUTI-MAPANDI,**

Petitioners,

G.R. No. 231774

-versus-

**EXECUTIVE SECRETARY SALVADOR
C. MEDIALDEA, DEPARTMENT OF
NATIONAL DEFENSE (DND)
SECRETARY DELFIN N.
LORENZANA, DEPARTMENT OF THE
INTERIOR AND LOCAL
GOVERNMENT (DILG) SECRETARY
(OFFICER-IN-CHARGE) CATALINO
S. CUY, ARMED FORCES OF THE
PHILIPPINES (AFP) CHIEF OF
STAFF GEN. EDUARDO M. AÑO,
PHILIPPINE NATIONAL POLICE
(PNP) DIRECTOR GENERAL
RONALD M. DELA ROSA, and
NATIONAL SECURITY ADVISER
HERMOGENES C. ESPERON, JR.,**

Respondents.

X-----X

CONSOLIDATED COMMENT
(re: Petitions dated 3 June,¹ 6 June,² and 8 June³ 2017)

Respondents⁴ Executive Secretary Salvador C. Medialdea, Defense Secretary Delfin N. Lorenzana, Chief of Staff of the Armed Forces of the Philippines General Eduardo Año, Philippine National Police Director General Ronald M. Dela Rosa, National Security Adviser Hermogenes C. Esperon, Jr., and Secretary of Interior and Local Government (Officer-in-Charge) Catalino S. Cuy, through the Office of the Solicitor General, in compliance with this Honorable Court's *Order* dated 10 June 2017, respectfully state:

COUNTER-STATEMENT OF FACTS
AND RELEVANT PROCEEDINGS

1. Rebellions are not fought overnight. Being a crime of masses or multitudes who adhere to a singular political motive,⁵ successfully overthrowing an existing government requires accumulation of resources, and ideological conditioning—both of which demand a huge amount of time and meticulous planning. Put in its proper context, the siege of Marawi City on 23 May 2017 is a pivotal event in a grander scheme to dismember Mindanao from the rest of the Philippine territory and pledge its allegiance to the Islamic State of Iraq and Syria (“ISIS”).

2. For a full appreciation of the magnitude and scope of the rebellion in Mindanao, it is necessary to trace the origin of and the cause behind the Islamic State movement.

A brief history of the Islamic State or caliphate

3. ISIS was formed sometime in 2014 by the members of the Al Qaeda terrorist group in Iraq.⁶ In the

¹ G.R. No. 231658.

² G.R. No. 231771.

³ G.R. No. 231774.

⁴ While impleaded as respondent in G.R. No. 231771, the OSG omitted President Rodrigo Roa Duterte as named respondent in its Comment in view of his presidential immunity (*cf. Hon. Aguinaldo, et al. v. President Aquino, et al.*, G.R. No. 224302, November 29, 2016). This matter is further explained below.

⁵ *People of the Philippines v. Elias Lovedioro*, G.R. No. 112235, November 29, 1995.

⁶ Thomas Samuel, *Radicalisation in Southeast Asia: A Selected Case Study of Daesh in Indonesia, Malaysia, and the Philippines*, available at https://www.unodc.org/documents/southeastasiaandpacific/Publications/2016/Radicalisation_SEA_2016.pdf (last accessed 11 June 2017).

ongoing Syrian conflict, Al Qaeda in Iraq moved to Syria and broke away from Al Qaeda to form ISIS, also known as *DAESH*.⁷

4. Leading the ISIS is Abu Bakr al-Baghdadi, who now claims to be the caliph, or head of ISIS. He has successfully and rapidly established the Islamic State or *Khalifa* in Syria and Iraq. To be part of the *Khalifa* or caliphate, *mujahideen* or Muslims who proclaim themselves as warriors for the faith, pledge their *bay'ah* or allegiance to the caliph al-Baghdadi.⁸ Through their *bay'ah* to the caliph, they oblige themselves to unify under the banner of one caliphate.⁹

5. ISIS has propagated its plan to impose its will and influence worldwide. To do so, it captures and administers territories. These conquered territories are collectively referred to as a caliphate.¹⁰ The caliphate is divided into different *wilayah* or provinces led by a *wali*. Each *wali* has a complete bureaucracy in place to exercise control over areas they occupy. A *wali* is provided a specific amount of financial support from the ISIS core to enable the *wilayah* to operate.

6. The success of ISIS in conquering territories means, too, that it has the capacity to acquire fighters and modern weaponry. The United Nations ("UN") has labeled ISIS as the "world's wealthiest organization".¹¹ ISIS derives its income from operating seized oil fields, obtaining protection money from businesses, and profits from black market transactions. The UN estimated that ISIS received an income of four hundred million (\$400M) to five hundred million US Dollars (\$500M) in 2015 alone.¹²

7. The wealth and power of ISIS not only enabled the rapid expansion of its caliphate, but also inspired other radical

⁷ *Ibid.*

⁸ *Dabiq: Remaining and Expanding* (Muharram 1436 or November 2014), a copy of which is attached hereto as **Annex "1"** and made an integral part hereof.

⁹ *Ibid.*

¹⁰ Joseph Franco, et al., Maute Group: What You Need to Know, *available at* <http://www.securityreforminitiative.org/2017/06/02/maute-group-need-know-2/> (last accessed 11 June 2017).

¹¹ U.N. Secretary-General, Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat, U.N. Security Council, U.N. Doc. S/2016/92 (29 January 2016) (last accessed on 11 June 2017).

¹² *Ibid.*

Islamic groups worldwide. These groups commit atrocities in the name of the Islamic State in order to seek recognition and support—financial or otherwise—from ISIS.

The Philippines as the extension of the ISIS caliphate

8. The notoriety of the ISIS in Middle East has attracted the attention of extremist groups in the Philippines. The AFP has obtained ISIS' propaganda material, *Dabiq*, which reports that as early as November 2014, a number of groups in the Philippines had already pledged their allegiance to the caliphate.¹³

9. There are four ISIS-inspired groups that operate in different parts of Mindanao.¹⁴ These groups have formed alliances for the purpose of establishing a *wilayah* in Mindanao. The four (4) groups, which find their roots in different parts of Mindanao, are as follows:

- a. The Abu-Sayyaf Group ("ASG") from Basilan, led by Isnilon Hapilon ("Hapilon");
- b. Ansarul Khilafah Philippines ("AKP") from Sarangani and Sultan Kudarat. The group is led by Mohammad Jaafar Maguid;
- c. The Maute Group from Lanao del Sur led by Omar Maute; and,
- d. Bangsamoro Islamic Freedom Fighters ("BIFF"), based in the Liguasan Marsh, Maguindanao.

10. These groups are notorious for committing numerous bombings, assassinations, and extortion activities in the country, especially in Mindanao. In the past, these groups had been operating separately and independently. Due to their uniform pledge of allegiance to ISIS and their support for the establishment of a caliphate, an alliance has been formed between and among these groups (for brevity,

¹³ *Dabiq: Remaining and Expanding* (Muharram 1436 or November 2014), Annex "1."

¹⁴ Institute for Policy Analysis of Conflict, Pro-ISIS Groups in Mindanao and Their Links to Indonesia and Malaysia, available at http://file.understandingconflict.org/file/2016/10/IPAC_Report_33.pdf (last accessed 11 June 2017).

these groups are collectively referred to herein as “ISIS-inspired local rebel groups”).

11. On April 2016, the ISIS’ weekly newsletter, *Al Naba*, announced the appointment of Abu Sayyaf leader Hapilon as the *emir* or leader of all ISIS forces in the Philippines. The appointment of Hapilon as its Philippine *emir* was confirmed in a 21 June 2016 video by ISIS entitled “The Solid Structure.”¹⁵ The video hailed Hapilon as “the *mujahid*”¹⁶ authorized to lead the soldiers of the Islamic State in the Philippines.”

12. On 31 December 2016, Hapilon and about thirty (30) of his followers, including eight (8) foreign terrorists, were surveilled in Lanao del Sur. According to military intelligence,¹⁷ Hapilon performed a symbolic *hijra*¹⁸ or pilgrimage to unite with the ISIS-inspired groups in mainland Mindanao. This was geared towards realizing the five (5)-step process of establishing a *wilayah*, which are: *first*, the pledging of allegiance to the Islamic State; *second*, the unification of all terrorist groups who have given *bay’ah* or their pledge of allegiance; *third*, the holding of consultations to nominate a *wali* or a governor of a province; *fourth*, the achievement of consolidation for the caliphate through the conduct of widespread atrocities and uprisings all across Mindanao; and *finally*, the presentation of all of these to the ISIS leadership for approval or recognition.

13. The appointment by ISIS of an *emir* in the Philippines is already the third step in the establishment of a *wilayah* in Mindanao. Moreover, these groups now have the unified mission of wresting control of Mindanaoan territory from the government for the purpose of establishing a *wilayah*.

The Davao bombing and other violent activities of

¹⁵ Attached as **Annex “2”** is a CD containing two video clips: (1) a video recording entitled, “*The Solid Structure*,” as **Annex “2-A”**, and (2) a video recording entitled, “*Marawi Siege Planning*,” as **Annex “2-B”**.

¹⁶ Singular form of *mujahideen*.

¹⁷ See AFP Intelligence Report entitled “*Marawi City as a Staging Ground for Attacks*”, a copy of which is attached hereto as **Annex “3”** and made an integral part hereof.

¹⁸ “Hijra marks the beginning of Islam as a religion, when Muhammad and his followers migrated from Mecca to Medina in 622 in order to preserve their community.” See <http://www.themontrealreview.com/2009/Hijra-before-ISIS.php>, last accessed on 11 June 2017.

pro-ISIS groups leading up to the siege of Marawi on 23 May 2017

14. After the ISIS appointment of Hapilon as *emir*, he and the ISIS-inspired local rebel groups committed multiple atrocities resulting in the wounding and killing of military and civilian personalities. These atrocities came in the wake of the consolidation of forces of around one hundred five (105) rebel members of the combined groups of the Abu Sayyaf, the Maute Group, the BIFF, and foreign terrorists.

15. The government has noted the increased occurrences of military encounters with these ISIS-inspired local rebel groups. One of these battles occurred on 29 August 2016 when members of the ASG ambushed and killed fifteen (15) army soldiers in Patikul, Sulu. Moreover, there was a notable increase in terror attacks against the civilian population.¹⁹

16. On the night of 2 September 2016, Davao City was rocked with a fatal bombing incident in a populous night market. Fifteen (15) civilians were killed and sixty-seven (67) others were injured.²⁰ According to military intelligence reports, the ASG perpetrated the Davao bombing.

17. Due to the then-increasing concerted attacks against the military and the populace, President Rodrigo Roa Duterte ("President Duterte") issued Proclamation No. 55 entitled, "*Declaring a State of National Emergency on Account of Lawless Violence in Mindanao*" on 4 September 2016. He acted pursuant to Section 18, Article VII of the Constitution which authorized him to call out the armed forces to prevent or suppress lawless violence.

18. Notwithstanding the issuance of Proclamation No. 55, the ISIS-inspired local rebel groups continued to wreak

¹⁹ See Proclamation No. 55, a copy of which is attached hereto as **Annex "4"** and made an integral part hereof.

²⁰ *Ibid.*

havoc in Mindanao. The following incidents are confirmed by the military to have been perpetrated by these rebel groups:²¹

- a. On 5 November 2016, the ASG abducted a German national, Juergen Kantner, and killed his wife, Sabine Merz;
- b. On 28 December 2016, the Maute Group bombed the town plaza of Hilongos, Leyte injuring 34 people;
- c. On 28 December 2016, the members of BIFF lobbed two (2) grenades at the provincial office of Shariff Maguindanao;
- d. On 13 January 2017, an improvised explosive device (IED) exploded in Barangay Campo Uno, Basilan thereby killing one (1) civilian and injuring another;
- e. On 19 January 2017, the ASG kidnapped three (3) Indonesian crew members near Bakungan Island, Tawi-Tawi;
- f. On 29 January 2017, the ASG detonated an IED in Barangay Danapah, Basilan resulting in the death of two (2) children and the wounding of three (3) others;
- g. On 16 February 2017, the Maute Group ambushed and killed two (2) military officers;
- h. From February to May 2017, there were eleven (11) separate instances of IED explosions by the BIFF in Mindanao. This resulted in the death and wounding of several personalities;
- i. On 26 February 2017, the ASG beheaded its German kidnap victim, Juergen Kantner in Sulu;
- j. On 11 April 2017, the ASG infiltrated Inabanga, Bohol leading to firefights between the rebels and government troops;
- k. On 13 April 2017, the ASG beheaded Filipino kidnap victim, Noel Besconde; and
- l. On 20 April 2017, the ASG kidnapped SSg. Anni Siraji and beheaded him three (3) days later.

19. AFP intelligence reports disclose that as early as 18 April 2017, Abdullah Maute had dispatched his followers to the

²¹ See AFP Intelligence Report entitled “*Significant Atrocities in Mindanao Prior to the Marawi City Incident*”, a copy of which is attached hereto as **Annex “5”** and made an integral part hereof.

cities of Marawi, Iligan, and Cagayan de Oro to conduct bombing operations, carnapping, and “liquidation” of AFP and PNP personnel in the said areas.²²

The siege of Marawi City on 23 May 2017

20. On 22 to 25 April 2017, the rebel group, led by Hapilon, engaged in armed offensives against the military in Piagapo, Lanao del Sur.²³ The government offensives, which involved a combination of ground assaults and airstrikes, forced the rebel group to flee to Marawi City.²⁴

21. Military forces spotted Hapilon in Marawi City sometime in early May 2017.²⁵ Specifically, on 18 May 2017, intelligence reports revealed that the ISIS-inspired local rebel groups were planning to occupy Marawi City, and to raise the ISIS flag at the provincial capitol. This intelligence report was confirmed through a video²⁶ recovered by government forces in the lairs of the Maute Group during the course of their military operation on 23 May 2017. The video shows the ASG and Maute Group leaders planning their attack of Marawi City.

22. On 23 May 2017, Hapilon was seen at the safe house of the ISIS-inspired local rebel groups in Barangay Basak Malutlut, Marawi City.²⁷ A joint military and police operation to serve a warrant of arrest and to capture Hapilon and the Maute Group operational leaders for kidnapping for ransom was initiated. The focused military operation started with an encounter at about 1:30 in the afternoon between government forces and ISIS-inspired local rebel group members. This was followed by a series of encounters throughout the day in different parts of Marawi City.

23. The ISIS-inspired local rebel groups had intended to burn down the entire city of Marawi on the day of Ramadan,

²² See AFP Intelligence Report entitled, “*Timeline of ASG and Maute Collaboration*”, a copy of which is attached hereto as **Annex “6”** and made an integral part hereof.

²³ See AFP Intelligence Report entitled, “*Marawi City as a Staging Ground for Attacks*”, **Annex “3”**.

²⁴ *Ibid.*

²⁵ See Slide 9 of AFP Powerpoint Presentation dated 7 June 2017, a copy of which is attached hereto as **Annex “7”** and made an integral part hereof.

²⁶ See “*Marawi Siege Planning*” video, Annex “2-B”.

²⁷ See AFP Briefing Manuscript, a copy of which is attached hereto as **Annex “8”** and made an integral part hereof.

or on 26 May 2017. The said attack would have served as the precursor for other rebel groups to stage their own uprisings across Mindanao in a bid to simultaneously establish a *wilayah* in the region. However, the planned attack by the rebels was foiled when government troops attempted to serve the warrant on 23 May 2017. This forced the ISIS-inspired local rebel groups to prematurely execute their planned siege of Marawi.²⁸

24. The rebel groups launched an overwhelming and unexpected offensive against government troops. Multitudes numbering about five hundred (500) armed men marched along the main streets of Marawi and swiftly occupied strategic positions throughout the city. Snipers positioned themselves atop buildings and began shooting at government troops. The ISIS-inspired local rebel groups were also equipped with rocket-propelled grenades (“RPG”) and ammunition for high-powered assault rifles.²⁹

25. The ISIS-inspired local rebel groups occupied the Philhealth Office and Salam Hospital in Barangay Lilod. They burned three (3) buildings: the Marawi City Jail, Landbank Moncado Branch, and Senator Ninoy Aquino Foundation College. They also kidnapped and killed innocent civilians. In their rampage, the rebel groups brandished the black ISIS flag and hoisted it in the locations that they occupied.³⁰

26. Even this Honorable Court has ordered judges and court personnel in Marawi City to conduct court matters in nearby Iligan City and other safe areas. The aforesaid attacks by the rebel group resulted in the shutdown of stations of local courts.³¹

27. From 23 May 2017 to 1 June 2017, one hundred twenty (120) rebels were neutralized, while thirty-eight (38) government troops were killed in action.³² Government troops had rescued 1,453 civilians as of 1 June 2017.³³ As of 11 June

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Office of the Court Administrator Memorandum dated 31 May 2017, a copy of which is attached hereto as **Annex “9”** and made an integral part hereof.

³² See Powerpoint presentation, Annex “7”.

³³ *Ibid.*

2017, there have been one hundred ninety-one (191) casualties.³⁴

28. The incident also caused displacement of persons and families from their homes in Marawi City as they were forced to evacuate and escape the firefight between the government and the rebels. As pointed out by the Petitioners Cullamat, et al.,³⁵ over 20 thousand families or over 100 thousand people were affected by the armed conflict. There are at least 3 thousand families or 14 thousand persons occupying evacuation centers. The rest of the affected persons are staying outside evacuation centers with relatives in nearby areas.

**President Duterte's
Proclamation No. 216
declaring a state of martial
law and suspending the
privilege of the writ of
*habeas corpus***

29. Upon being informed of the crisis in Marawi, President Duterte, on the night of 23 May 2017, Philippine time, issued Proclamation No. 216,³⁶ entitled "*Declaring a State of Martial Law and Suspending the Privilege of Writ of Habeas Corpus in the Whole of Mindanao*", pursuant to Section 18, Article VII of the 1987 Constitution.

30. In compliance with the reportorial requirement under the Constitution, President Duterte submitted his written report on the declaration of martial law in Mindanao³⁷ on 25 May 2017. The report outlined the factual basis for the President's issuance of Proclamation No. 216.

31. Two weeks after Proclamation No. 216 was issued, government troops have yet to fully secure Marawi City. Up

³⁴ Philippine News Agency, *Maute death toll now at 191 – AFP*, <http://www.pna.gov.ph/articles/994771> last accessed on 11 June 2017.

³⁵ Cullamat Petition, p. 10, paragraph 40, citing DSWD DROMIC Report #19 Armed Conflict in Marawi City as of 2 June 2017, 6AM.

³⁶ A copy of Proclamation No. 216 dated 23 May 2017 is attached hereto as **Annex "10"** and made an integral part hereof.

³⁷ A copy of the Report dated 25 May 2017 is attached hereto as **Annex "11"** and made an integral part hereof.

to now, the government has not yet taken full control over the entire city, and the attacks of the ISIS-inspired local rebel groups still impede the delivery of basic services.

32. On 5 June 2017, Representatives Edcel C. Lagman, Tomasito S. Villarín, Gary C. Alejano, Emmanuel A. Billones, Teddy Brawner Baguilat, Jr., Raul Daza, and Edgar R. Erice filed a *Petition* dated 3 June 2017 (hereinafter “Lagman Petition”) asking this Honorable Court to review the sufficiency of the factual basis of Proclamation No. 216, and to nullify the proclamation.

33. In its *Resolution* dated 6 June 2017, the Honorable Court required Respondents to file their Comment on the Lagman Petition not later than 12 June 2017 at 12:00 noon. The Petition was likewise set for Oral Arguments on June 13 to 15, 2017. Representatives Daza and Erice were dropped as Respondents.

34. On 9 June 2017, Eufemia Campos Cullamat, Virgilio T. Lincuna, Ateliana U. Hijos, Roland A. Cobrado, Carl Anthony D. Olalo, Roy Jim Balanghig, Renato Reyes, Jr., Cristina E. Palabay, Amaryllis H. Enriquez, ACT Teachers’ Representative Antonio L. Tinio, Gabriela Women’s Representative Arlene D. Brosas, Kabataan Party-List Representative Sarah Jane I. Elago, Mae Paner, Gabriela Krista Dalena, Anna Isabelle Estein, Mark Vincent D. Lim, Vencer Mari Crisostomo, Jovita Montes filed a *Petition* of even date (hereinafter “Cullamat Petition”) asking this Honorable Court, to declare as void, in whole or in part, Proclamation No. 216, and to enjoin its continued implementation.

35. On even date, Norkaya S. Mohamad, Sittie Nur Dyhanna S. Mohamad, Noraisah S. Sani, and Zahria P. Muti-Mapandi filed a *Petition* dated 8 June 2017 (hereinafter “Mohamad Petition”) asking this Honorable Court to compel respondents to present proof on the factual basis for Proclamation No. 216, and to declare it null and void for being unconstitutional.

35. In view of the filing of the two other Petitions, this Honorable Court issued two *Orders* dated 10 June 2017 requiring Respondents to file a Consolidated Comment on the

Lagman, Cullamat and Mohamad Petitions. Hence, this Consolidated Comment opposing the three Petitions.

PROCEDURAL ARGUMENTS

I.

PRESIDENT DUTERTE ENJOYS IMMUNITY FROM SUIT, AND SHOULD ACCORDINGLY BE DROPPED AS A RESPONDENT IN THE CULLAMAT PETITION.

II.

THE CONSOLIDATED PETITIONS SUFFER FROM FATAL PROCEDURAL DEFECTS THAT WARRANT THEIR OUTRIGHT DISMISSAL.

III.

PETITIONERS FAILED TO ALLEGE AND ESTABLISH GRAVE ABUSE OF DISCRETION ON THE PART OF PRESIDENT DUTERTE IN DECLARING MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.

A. PETITIONERS FAILED TO PROPERLY INVOKE THIS HONORABLE COURT'S JURISDICTION TO REVIEW THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.

B. THE STANDARD FOR EXAMINING SUFFICIENCY OF FACTUAL BASIS IS ARBITRARINESS, NOT CORRECTNESS.

C. PETITIONERS HAVE THE BURDEN OF PROVING THAT PRESIDENT DUTERTE'S PROCLAMATION NO. 216 IS TOTALLY BEREFT OF FACTUAL BASIS.

1. The sufficiency of factual basis should be determined at the time the

President made the decision to declare martial law and suspend the privilege of the writ of habeas corpus.

- 2. There is nothing arbitrary in the President's reliance on intelligence reports from the AFP, which, as official acts of government, carry with them the presumption of regularity.**
- 3. The contents of news reports are inadmissible. Even assuming that they are admissible in evidence, they have no probative value.**
- 4. The maxim *falsus in uno, falsus in omnibus* does not apply to the information found in Proclamation No. 216.**
- 5. The lack of recommendation from the Defense Secretary does not affect the validity of the Proclamation; neither does it automatically negate the sufficiency of the factual basis for its proclamation.**

SUBSTANTIVE ARGUMENTS

THE PRESIDENT HAD SUFFICIENT FACTUAL BASIS FOR THE ISSUANCE OF PROCLAMATION NO. 216.

- A. THE FACTS RELIED ON BY PRESIDENT DUTERTE FOR THE ISSUANCE OF PROCLAMATION NO. 216 SUFFICIENTLY ESTABLISH THE EXISTENCE OF A REBELLION IN MINDANAO. ISIS-INSPIRED LOCAL REBEL GROUPS HAVE TAKEN ARMS AGAINST THE PHILIPPINE GOVERNMENT FOR THE PURPOSES OF REMOVING MINDANAO FROM ITS ALLEGIANCE, AND OF DEPRIVING THE**

CHIEF EXECUTIVE OF HIS POWERS AND PREROGATIVES THEREIN.

- 1. The Maute Group has banded with three other radical terrorist organizations that notoriously undertake rebellious activities in various parts of Mindanao.**
- 2. The unified pledge of local rebel groups to ISIS is a consolidation of their efforts to establish a wilayah in Mindanao — with Marawi Seige setting the stage for this purpose.**
- 3. The armed public uprising in Marawi City is depriving President Duterte of his powers and prerogatives.**

B. THE MAGNITUDE AND SCOPE OF THE ATTACKS PERPETRATED BY THE ISIS-INSPIRED LOCAL REBEL GROUPS NECESSITATE THE PROCLAMATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* TO ENSURE PUBLIC SAFETY.

DISCUSSION

PROCEDURAL ARGUMENTS

I.

PRESIDENT DUTERTE ENJOYS IMMUNITY FROM SUIT, AND SHOULD ACCORDINGLY BE DROPPED AS A RESPONDENT IN THE CULLAMAT PETITION.

36. Presidential immunity is one of the basic tenets of our legal system. While an explicit guaranty of immunity for the President is not found in the text of the 1987 Constitution, presidential immunity during tenure remains as part of the law. The reason for this is simple. Immunity from suit assures “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."³⁸

37. Conformably with the principle of presidential immunity, Petitioners Cullamat, et al., committed a patent error when they impleaded President Duterte as respondent in this case. As Chief Executive of the Republic and Commander-in-Chief of the Armed Forces of the Philippines, President Duterte "enjoys immunity from suit during his ... tenure of office or actual incumbency."³⁹

38. This Honorable Court has affirmed time and again the existence and enforcement of Presidential immunity. In *Randolf David v. Gloria Macapagal-Arroyo*,⁴⁰ this Honorable Court made no distinction as to the nature of the action for which the President is being sued. This Court stressed that the President "may not be sued in *any* civil or criminal case, and there is no need to provide for it in the Constitution or law."⁴¹ Thus, this Court, in *David*, held that it was improper to implead former President Gloria Macapagal-Arroyo in a petition for *certiorari* which sought to question her acts done in the exercise of her ordinance power under the Administrative Code of 1987. This Honorable Court warned that "[it would] 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."⁴²

39. Based on *David*, President Duterte should not be impleaded as a respondent in the present case. Petitioners cannot be permitted to disregard the doctrine of presidential immunity. Without any waiver of his immunity from suit, President Duterte should be dropped as a party-respondent.

II. THE CONSOLIDATED PETITIONS SUFFER FROM FATAL PROCEDURAL DEFECTS THAT WARRANT THEIR OUTRIGHT DISMISSAL.

³⁸ *Soliven v. Makasiar*, G.R. No. 82585, November 14, 1988.

³⁹ *Lozada v. Arroyo*, G.R. Nos. 184379-80, April 24, 2012.

⁴⁰ G.R. No. 171396, May 3, 2006.

⁴¹ *Ibid.*

⁴² *Ibid.*

40. The Lagman Petition suffers from a number of defects in its pleading and its Verification and Certification of Non-Forum Shopping (“CNFS”) page. The defects and irregularities in the Lagman Petition warrant its outright dismissal pursuant to the Rules of Court.

41. First, Petitioners Raul Daza and Edgar Erice failed to sign the verification and CNFS in violation of Section 4 and 5 of Rule 7 of the Rules of Court. There was no indication that petitioner Erice authorized his co-petitioners to sign on his behalf. Neither was there any special power of attorney attached to the Lagman Petition authorizing this act. In *Athena Computers, Inc. v. Reyes*,⁴³ this Honorable Court emphasized the vital requirement of the signatures of all principal parties in the verification and CNFS of a petition or complaint, to wit:

[T]he certificate of non-forum shopping should be signed by **all the petitioners or plaintiffs in a case**, and that the signing by only one of them is insufficient. The attestation on non-forum shopping requires *personal knowledge* by the party executing the same, and the lone signing petitioner cannot be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim the same as similar to the current petition.

“The certification against forum shopping in CA-G.R. SP No. 72284 is **fatally defective**, not having been duly signed by both petitioners and thus **warrants the dismissal of the petition for certiorari**. We have consistently held that the certification against forum shopping must be signed by the principal parties. With respect to a corporation, the certification against forum shopping may be signed for and on its behalf, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document.⁴⁴

42. While Representatives Daza and Erice have been dropped as petitioners by this Honorable Court in its *Resolution* dated 6 June 2017, their failure to sign the Verification and CNFS makes their Petition still defective in form.

⁴³ G.R. No. 156905, September 5, 2007.

⁴⁴ *Emphasis and underscoring supplied.*

43. Moreover, the Professional Tax Receipt ("PTR") Number of petitioner's counsel is already outdated as it was obtained on 16 August 2016. This is in clear violation of B.M. No. 1132 issued by this Honorable Court on 12 November 2002, which states:

The Court Resolved, upon recommendation of the Office of the Bar Confidant, to GRANT the request of the Board of Governors of the Integrated Bar of the Philippines and the Sangguniang Panlalawigan of Ilocos Norte to require all lawyers to indicate their Roll of Attorneys Number in all papers or pleadings submitted to the various judicial or quasi-judicial bodies in addition to **the requirement of indicating the current Professional Tax Receipt (PTR)** and the IBP Official Receipt or Life Member Number.

Strict compliance herewith is hereby enjoined effective immediately.⁴⁵

44. Other defects include the date of the Verification and CNFS that indicate that Lagman, et al. signed the same on 3 June 2016, despite the petition being dated 3 June 2017.

45. The notarial certification of the Verification and CNFS also suffers from irregularities, in violation of A.M. No. 02-8-13-SC or the 2004 Rules of Notarial Practice. On the signature page, it is indicated that the recording of the petition was done on the 2016 notarial book, instead of the current 2017 notarial book. Moreover, like petitioner's counsel, the notary public also failed to indicate her current PTR number in violation of Section 2, Rule VIII of the aforesaid rules.

46. The rules cannot just be ignored, the Honorable Court held in the *Athena* case:

While the Rules of Court may be relaxed for persuasive and weighty reasons to relieve a litigant from an injustice commensurate with his failure to comply with the prescribed procedures, nevertheless they must be faithfully followed. In the instant case, petitioners have not shown any reason which justifies relaxation of the Rules. **We have held that procedural rules are not to**

⁴⁵ *Emphasis and underscoring supplied.*

be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except for the most persuasive of reasons when they may be relaxed. Not one of these persuasive reasons is present here.⁴⁶

47. The Mohamad Petition likewise contains defects in their respective jurat portions. In said petition, counsel for Petitioner, Atty. Christian S. Monsod, did not indicate his MCLE Compliance Number, in violation of OCA Circular No. 79-2014, entitled: "Bar Matter No. 1922 (Re: Recommendation of the Mandatory Continuing Legal Education [MCLE] Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance or Certificate of Exemption" dated 26 May 2014.⁴⁷ In the said Circular, this Honorable Court held:

In the Resolution of the Court En Banc dated January 14, 2014 in the above-cited administrative matter, the Court RESOLVED, upon the recommendation of the MCLE Governing Board, to:

(a) AMEND the June 3, 2008 resolution by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "**Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action**"; and

(b) PRESCRIBE the following rules for non-disclosure of current MCLE compliance/exemption number in the pleadings:

- (i) The lawyer shall be imposed a fine of P2,000.00 for the first offense, P3,000.00 for the second offense and P4,000.00 for the third offense;
- (ii) In addition to the fine, counsel may be **listed as a delinquent member** of the Bar pursuant to Section 2, Rule 13 of Bar Matter No. 850 and its implementing rules and regulations; and
- (iii) **The non-compliant lawyer shall be discharged from the case** and the client/s shall be allowed to secure the services of a new counsel with the concomitant right to demand

⁴⁶ *Emphasis and underscoring supplied.*

⁴⁷ *Emphasis and underscoring supplied.*

the return of fees already paid to the non-compliant lawyer.

48. In the prayer and signatory page of the Mohamad Petition, Atty. Monsod failed to indicate this MCLE Compliance Number. Instead he indicated therein that "MCLE Exemption under process". Since Atty. Monsod failed to disclose his MCLE Compliance Number or MCLE Exemption Number, he violated the requirement under the circular and should hence be penalized by being discharged from this case.

49. The other irregularity in the Mohamad Petition can be gleaned from the Prayer page and the Verification and CNFS pages. The prayer page indicates that the petition was signed by Petitioners' counsels on 8 June 2017 in Quezon City. Incredibly, the verification page reveals that the Petitioners signed it on the same day in Iligan City. The suspicious circumstances behind the signing of the pleading hints at the existence of fraud that demands further clarification and investigation by this Honorable Court.

III.

PETITIONERS FAILED TO ALLEGE AND ESTABLISH GRAVE ABUSE OF DISCRETION ON THE PART OF PRESIDENT DUTERTE IN DECLARING MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.

A. PETITIONERS FAILED TO PROPERLY INVOKE THIS HONORABLE COURT'S JURISDICTION TO REVIEW THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.

50. Petitioners, in asking that the Honorable Court review and nullify Proclamation No. 216, filed Petitions invoking Section 18, Article VII of the 1987 Constitution without indicating **any** remedy through which they seek judicial relief.

51. Section 18, Article VII of the 1987 Constitution allows the judicial review of the proclamation of martial law or suspension of the privilege of writ of *habeas corpus*, but limits the review to the sufficiency of the factual basis behind it:

“The Supreme Court **may review**, in an appropriate proceeding filed by any citizen, **the sufficiency of the factual basis of the proclamation of martial law** or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.”

52. Consistent with the principle of separation of powers, where each branch of government is supreme in its own sphere, as with the judiciary in its exercise of judicial power,⁴⁸ Article VII, Section 18 puts the question of the sufficiency of the factual basis of the proclamation of martial law within the ambit of judicial review, and provides the only constitutional standard by which the use of martial law powers may be examined. It likewise recognizes that any citizen possesses the legal standing to initiate the appropriate proceeding for its review.

53. Contrary to the assertions in the Mohamad and Cullamat Petitions, Section 18, Article VII does not make the review of the sufficiency of factual basis mandatory on the Supreme Court. The provision is clear in its terms: “The Supreme Court **may** review ... **the sufficiency of the factual basis of the proclamation of martial law...**” The word *may* imposes no obligation, but merely gives the Supreme Court the discretion whether to give due course to the petition.

54. This Honorable Court is not without experience in denying due course to petitions seeking the judicial review of a martial law proclamation. In *Fortun v. Arroyo*,⁴⁹ for instance, it dismissed a petition for *certiorari* and prohibition assailing former President Gloria Macapagal-Arroyo’s proclamation of martial law over Maguindanao. This Honorable Court held that the petitions in *Fortun* “[did] not present sufficient basis for the exercise of the power of judicial review.”

⁴⁸ *Angara v. Electoral Commission*, G.R. No. L-45081, July 15, 1936.

⁴⁹ G.R. No. 190293, March 20, 2012.

55. While Section 18, Article VII does not specify the remedy through which the “appropriate proceeding” found therein may be resorted to, the Constitution’s provisions on judicial power under Article VIII, Section 1, as well as the Supreme Court’s original jurisdiction under Section 5 of the same article, all point to *certiorari* as the logical, natural and only recourse.

56. Petitions that are filed before the Supreme Court under its original jurisdiction under Article VIII, Section 5 of the Constitution is limited to petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. Of these proceedings, it makes the most sense that a petition for *certiorari* is the “appropriate proceeding” referred to in Article VII, Section 18 in order to ask the Supreme Court to nullify the implementation of any proclamation of martial law or suspension of the privilege of *habeas corpus*. The nullification of an act, after all, is the office of a writ of *certiorari*.

57. Too, past governmental actions have been reviewed by the Supreme Court through a *certiorari* proceeding, under the auspices of the second paragraph of Section 1, Article VIII, which empowers the Court to determine whether there was a grave abuse of discretion amounting to an excess or lack of jurisdiction on the part of the government. This expanded jurisdiction, more often than not, has been invoked through a *certiorari* and/or prohibition proceeding.

58. None of the present Petitions, however, have alleged grave abuse of discretion on the part of President Duterte for which the writ of *certiorari* may issue. This Honorable Court, therefore, should deny due course to the Petitions because they do not present sufficient basis for the exercise of the Court’s power of judicial review.

B. THE STANDARD FOR EXAMINING SUFFICIENCY OF FACTUAL BASIS IS ARBITRARINESS, NOT CORRECTNESS.

59. A *certiorari* proceeding examines the assailed governmental act under the lens of grave abuse of discretion,

or that "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction."⁵⁰

60. Thus, examining the sufficiency of factual basis requirement under Article VII, Section 18 in a *certiorari* proceeding ineluctably boils down to whether there was arbitrariness in the President's determination of sufficiency of factual basis.

61. Existing jurisprudence under the 1935, 1973 and 1987 Constitutions all point to the examination of commander-in-chief powers, including martial law powers, under the lens of grave abuse of discretion.

62. In *Lansang v. Garcia*,⁵¹ a case decided under the 1935 Constitution, the standard applied for determining the propriety of the suspension of the writ of *habeas corpus* is whether the act had not been arbitrary, and not whether it had been correct. For the first time and in categorical terms, the Supreme Court unanimously held in *Lansang* that it had "the authority to inquire into the **existence of said factual bases** in order to determine the **constitutional sufficiency** thereof."⁵²

63. This Honorable Court cited and affirmed *Lansang* in *Aquino, Jr. v. Enrile*,⁵³ a 1974 case decided under the 1973 Constitution. There, this Court reasserted its power to inquire into the "**existence of the factual bases** [for the suspension of the privilege of the writ of *habeas corpus*] in order **to determine the sufficiency** thereof."⁵⁴

64. The test of arbitrariness and its application to the limited judicial query over the sufficiency of factual basis was affirmed in *Aquino* where the Honorable Court held:

The recognition of justiciability accorded to the question in *Lansang*, it should be emphasized, is there expressly distinguished from the power of judicial review in ordinary civil or criminal cases, and is limited to ascertaining "merely

⁵⁰ *Alafriz v. Nable*, G.R. No. L-47780, June 10, 1941.

⁵¹ G.R. No. L-33964, December 11, 1971.

⁵² *Emphases supplied*.

⁵³ G.R. No. L-35546, September 17, 1974.

⁵⁴ *Emphases supplied*.

whether he (the President) has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act." **The test is not whether the President's decision is correct but whether, in suspending the writ, he did or did not act arbitrarily.**

65. All told, arbitrariness as a standard in reviewing the sufficiency of factual basis finds firmer ground when examined in the historical development of the term "sufficiency of factual basis." At the time that the 1986 Constitutional Commission was discussing the provision now referred to as Article VII, Section 18, *Lansang* and *Aquino* already allowed, albeit restricted, the judicial review of a commander-in-chief power.

66. Through the rule of contemporaneous construction, members of the Constitutional Commission are presumed to know the state of laws at the time they were drafting the Constitution. Thus, when they pertained to "sufficiency of factual basis" in the present constitution, the term carries with it the context by which it was used in *Lansang* and *Aquino*, and the means by which this legal conclusion was arrived at. It is no coincidence that the present Constitution, in framing the judicial review of the proclamation of martial law under the terms of "sufficiency of factual basis" mirrors the language of the Honorable Court in *Lansang* and *Aquino*. The intent is clear that the standard of arbitrariness in *Lansang* and *Aquino* must be applied even under the 1987 Constitution.

67. Further, in interpreting its power to review the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* under the 1987 Constitution, the Supreme Court has already recognized the standard of arbitrariness.

68. The manner of review used by the Court in the 2000 case of *IBP v. Zamora*⁵⁵ with regard to the President's calling out power is couched in a language similar to *Lansang* and *Aquino*, when the Court held that "it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis."

⁵⁵ G.R. No. 141284, August 15, 2000.

69. All of these cases show the Honorable Court's deference to the President's determination of the need to wield his Commander-in-Chief powers, conscious that individual rights may be circumscribed when public safety requires it. Thus, the narrow standard of arbitrariness has been consistently applied. This Honorable Court verbalized this approach in *Lansang*:

Manifestly, however, the liberty guaranteed and protected by our Basic Law is one enjoyed and exercised, not in derogation thereof, but consistently therewith, and, hence, within the framework of the social order established by the Constitution and the context of the Rule of Law. Accordingly, when individual freedom is used to destroy that social order, *by means of force and violence*, in defiance of the Rule of Law — such as by rising publicly and taking arms against the government to overthrow the same, thereby committing the crime of rebellion — there emerges a circumstance that may warrant a limited withdrawal of the aforementioned guarantee or protection, by suspending the privilege of the writ of *habeas corpus*, when public safety requires it. Although we must be forewarned against mistaking mere dissent — no matter how emphatic or intemperate it may be — for dissidence amounting to rebellion or insurrection, the Court cannot hesitate, much less refuse — when the existence of such rebellion or insurrection has been fairly established or cannot reasonably be denied — to uphold the finding of the Executive thereon, without, in effect, encroaching upon a power vested in him by the Supreme Law of the land and depriving him, to this extent, of such power, and, therefore, without violating the Constitution and jeopardizing the very Rule of Law the Court is called upon to epitomize.

70. All told, the President, as Commander-in-Chief of the Philippines' armed forces, continues to possess full discretion in declaring martial law. This is further bolstered by the fact that the 1986 Constitutional Commission rejected the need for concurrence or prior affirmation from Congress when the President decides to exercise his martial law and suspension powers.⁵⁶

⁵⁶ See Records of the Constitutional Commission: Proceedings and Debates Vol. II, 29 July 1986, p. 426. While earlier deliberations of the Commission required the concurrence of at least a majority of all the Members of the Congress for the proclamation of martial law, Commissioner Padilla championed the removal of such concurrence, thus:

The way it now appears, the President as the Commander-in-Chief of all the Armed Forces cannot immediately suspend the writ or proclaim martial law. I agree with the period

71. When Congress, however, expresses its support for martial law and the suspension of the privilege of the writ of *habeas corpus*, with more reason that due deference should be given to the resulting action for it bears the weight and approval of a co-equal branch of government, the members of which, like the President, were elected by the Filipino people.

72. In the case of President Duterte's Proclamation No. 216, the two houses of Congress expressed their support for the necessity of the issuance. The declaration of martial law, therefore, carries with it the imprimatur of the Filipino people.

73. In any event, the safeguards that the 1987 Constitution introduced in the exercise of martial law powers were meant to prevent the abusive use of military force to prolong and centralize political power in the country. The inclusion of these safeguards are not meant to shackle the President in his bid to protect our nation's sovereignty,⁵⁷ especially in the face of real dangers to the country's sovereignty and territorial integrity.

74. Given these considerations, the Honorable Court should approach the issues presented before this proceeding from the point of view of grave abuse of discretion, and whether Petitioners have sufficiently alleged and established this ground to nullify Proclamation No. 216.

C. PETITIONERS HAVE THE BURDEN OF PROVING THAT PRESIDENT DUTERTE'S PROCLAMATION NO. 216 IS TOTALLY BEREFT OF FACTUAL BASIS.

mentioned of 60 days, but it requires the concurrence of at least a majority of all the Members of the Congress.

Should we not allow the President to suspend the privilege of the writ of habeas corpus or even proclaim martial law without requiring a priori, or beforehand, the concurrent of the majority of the Members of Congress? If we wait for the congressional concurrence, the suspension of the writ or the proclamation of martial law may be unduly delayed. **Will the Committee consider an amendment to the effect that the President may suspend the privilege of the writ of habeas corpus or even proclaim martial law, but the period shall be limited unless there be subsequent concurrence of the Congress since the Committee itself provides that the Congress may revoke, reduce or even extend the period of 60 days? The point is for the insipience of the suspension or the proclamation, it must not be preaccompanied by the concurrence of a majority of the Members of the Congress.**

⁵⁷ Deliberations of the 1986 Constitutional Commission, August 26, 1986.

75. Mohamad, et al. ask this Honorable Court to “compel respondents to present proof on the factual basis for declaration of martial law and the suspension of the writ of the privilege of *habeas corpus* in Mindanao, and after inquiring into the factual basis of such declaration and suspension, declare Proclamation No. 216 null and void for being UNCONSTITUTIONAL, for lack of sufficient factual basis.”⁵⁸

76. Petitioners in effect attempt to shift the burden of proof to Respondents. This cannot be done.

77. It is axiomatic that he who alleges must prove.⁵⁹ The requirement of *onus probandi* finds even stricter application in constitutional litigation, where acts of the government are presumed constitutional. Petitioners asserting that the government had not been compliant with the constitution possess the burden of proving it.⁶⁰

78. Thus, consistent with *Lansang*, *Aquino* and *IBP*, it is the Petitioners who should bear the heavy burden of establishing that the President acted with grave abuse of discretion in issuing Proclamation No. 216, *i.e.*, that it is totally bereft of factual basis.

1. The sufficiency of factual basis should be determined at the time the President made the decision to declare martial law and suspend the privilege of the writ of habeas corpus.

79. To assail the constitutionality of Proclamation No. 216, petitioners attempt to downplay the requirements for the use of martial law powers by citing events that transpired after the declaration. This is wrong.

⁵⁸ Mohamad Petition, p. 22.

⁵⁹ *Spouses Ramos v. Obispo*, G.R. No. 193804, February 27, 2013.

⁶⁰ See, for instance, *Spouses Dacudao v. Gonzales*, G.R. No. 188056, January 8, 2013; *Ermita Malate Hotel v. City of Manila*, G.R. No. L-24693, October 23, 1967.

80. The sufficiency of the factual basis for the martial law proclamation should be examined from the point of view of its sole decision-maker, the President, and at the time he exercised this discretion.

81. This full discretion granted to him by the Constitution necessarily includes the authority to make conclusions of fact and conclusions of law in determining the need for the proclamation of martial law. Necessarily, these conclusions are made prior to the decision itself; hence, the sufficiency of the factual basis of martial law should be determined from the information available to him at the time he made his decision.

82. Section 18 of Article VII, in limiting the scope of judicial review to "the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof," necessarily restricts the application of the arbitrariness standard to the information available to the President at the time he made his decision, and not thereafter.

83. By the terms of Section 18 of Article VII itself, "sufficiency of factual basis" necessarily implies a prior determination by the President of the necessity of martial law powers. Thus, the word "basis" in "sufficiency of factual basis" means information available to the President at the time he made this determination, and not the results of his decision after.

84. Extending the "basis" to facts established or discovered **after** the proclamation unnecessarily subjects the President's discretion to an impossible standard, as he can be reasonably expected to make decisions based only on information available to him at any given time.

85. Considering the facts and information established after the martial law proclamation go into the propriety of revoking or extending martial law, a prospective analysis by the Supreme Court unduly usurps the sole prerogative of

Congress to determine whether the martial law proclamation should be revoked or extended.

2. There is nothing arbitrary in the President's reliance on intelligence reports from the AFP, which, as official acts of government, carry with them the presumption of regularity.

86. Reports from the AFP and the vast intelligence network available to the President carry with them the presumption of regularity.⁶¹ And because the reports are written in public documents, what they state are *prima facie* evidence of the facts.⁶² The President, in exercising his discretion to declare martial law, may thus rely on the information found in these reports.

87. There is nothing arbitrary in this reliance, as the President—given his vast responsibilities as head of state, chief representative in foreign affairs, and commander-in-chief of the Philippine armed forces—could not be reasonably expected to personally determine the veracity of all these reports.

3. The contents of news reports are inadmissible. Even assuming that they are admissible in evidence, they have no probative value.

88. The present Petitions question the sufficiency of the factual basis for the proclamation of martial law by disputing the veracity and credibility of the facts found in Proclamation

⁶¹ When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly. But not all acts of public officers are official acts, i.e., acts specified by law as an official duty or as a function attached to a public position, and the presumption does not apply when an officials acts are not within the duties specified by law. *Republic v. Principalia*, G.R. No. 167639, 19 April 2006.

⁶² Rule 132, Section 23, Rules of Court.

No. 216, together with its legal conclusions. Petitioners attempt to do this by citing news reports that allegedly contradict the facts found in Proclamation No. 216, as well as inviting a piecemeal evaluation of the violent incidents that happened in Marawi.

89. News articles, however, amount to “hearsay evidence, twice removed”, and are therefore not only inadmissible, but are without any probative value at all whether objected to or not. They are only admissible as evidence of the existence of their publication, and the tenor of the news therein stated.⁶³ They can never be used to prove the veracity of its contents, much less dispute a legal presumption bestowed on governmental acts.

90. Even if these newspaper articles are admitted, they cannot be given probative value, as the credibility of secondhand sources is insufficient to overturn the presumption that public officers—such as the country’s armed forces—have performed their tasks in a regular manner.

4. *The maxim falsus in uno, falsus in omnibus does not apply to the information found in Proclamation No. 216.*

91. Petitioners Lagman, et al., claim that *falsus in uno, falsus in omnibus* applies to “the President’s Report to Congress on his declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao as it contained false, inaccurate, contrived and hyperbolic accounts.”⁶⁴

92. The legal maxim, however, applies only to testimonial evidence when found to be false in a material point, which the witness must have a conscious and deliberate intention to falsify. It finds no application to official proclamations made by the President in the exercise of his power and duty as Commander-in-Chief.⁶⁵

⁶³ *Feria v. Court of Appeals*, G.R. No. 122954, February 15, 2000.

⁶⁴ Lagman Petition, p. 21 – 22.

⁶⁵ *People v. Mirandilla*, G.R. No. 186417, July 27, 2011.

93. Too, the *falsus in uno, falsus in omnibus* maxim deals only with the weight of evidence and is not a positive rule of law. The rule is not an inflexible one of universal application. It is neither absolute nor mandatory and binding upon the court, which may accept or reject portions of the witness' testimony based on its inherent credibility or on the corroborative evidence in the case.⁶⁶ In other words, the principle is not controlling in our jurisdiction.

5. The lack of recommendation from the Defense Secretary does not affect the validity of the Proclamation; neither does it automatically negate the sufficiency of the factual basis for its proclamation.

94. The lack of prior recommendation by Respondent Defense Secretary Lorenzana does not militate against the President's decision to proclaim martial law in Mindanao. The Constitution bestows the full authority to proclaim martial law upon the President and no one else, and without need for the prior approval of any other public official, much less his alter ego. Section 18, Article VII provides:

The President shall be the **Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion.** In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the

⁶⁶ *People v. Lucena*, G.R. No. 137281, April 3, 2001.

President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.⁶⁷

95. The recommendation of the Secretary of National Defense, or any member of the Executive Department for that matter, is not a condition precedent to the President's exercise of his power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*. Consequently, the absence of such positive recommendation does not affect the validity of Proclamation No. 216; neither does it impact on the sufficiency of the factual basis for its proclamation.

96. Under our presidential system of government, the Constitution vests the totality of executive power in one person: The President of the Republic of the Philippines. Thus, Section 1, Article VII of the Constitution provides that, "[t]he executive power shall be vested in the President of the Philippines."

97. Justice Laurel, in *Villena v. Secretary of Interior*,⁶⁸ interpreted Section 1, Article VII of the 1935 Constitution⁶⁹ in this wise:

With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is, the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principles that 'The executive power shall be vested in a President of the Philippines.' **This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity,** and, in the language of Thomas Jefferson, 'should be of the President's bosom confidence' (7 Writings, Ford ed., 498), and, in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), 'are subject to the direction of the President.'⁷⁰

⁶⁷ Section 18, Article VII.

⁶⁸ G.R. No. L-46570, 21 April 1939.

⁶⁹ Section 1, Article VII of the 1935 Constitution provides that, "[t]he executive power shall be vested in a President of the Philippines."

⁷⁰ *Emphases supplied.*

98. Since members of the Cabinet are merely alter egos of the President, they draw the force of their authority from his office. In the language of Justice Laurel, the personalities of the members of the Cabinet are mere “projections” of the President.

99. Logically, members of the Cabinet cannot impose their will on the President. On the contrary, as mere alter egos, they are under the President’s control.⁷¹

100. This power of control is so expansive that the President can, in the exercise of the executive power, ignore the recommendations of the members of the Cabinet. In *Bermudez v. Torres*,⁷² the Honorable Supreme Court ruled that the President, as the Head of the Executive Department, possesses the ultimate discretion in the exercise of executive powers, even when the law itself requires a prior recommendation from cabinet secretaries:

It is the considered view of the Court, given the above disquisition, that the phrase *upon recommendation of the Secretary*, found in Section 9, Chapter II, Title III, Book IV, of the Revised Administrative Code, should be interpreted, as it is normally so understood, to be a mere advise, exhortation or indorsement, which is essentially persuasive in character and not binding or obligatory upon the party to whom it is made. The recommendation is here nothing really more than advisory in nature. The President, being the head of the Executive Department, could very well disregard or do away with the action of the departments, bureaus or offices even in the exercise of discretionary authority, and in so opting, he cannot be said as having acted beyond the scope of his authority.

101. Given the non-binding nature of cabinet recommendations—even when the law itself requires it—the lack of recommendation from Secretary Lorenzana does nothing to the validity of Proclamation No. 216. President Duterte may even ignore a recommendation if one is given.

102. Understandably, any recommendation given by officers of the military, at most, would merely be advisory and can be disregarded by the President, their Commander-in-

⁷¹ Section 17, Article VII of the Constitution which provides that, “[t]he President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.”

⁷² G.R. No. 131429, 4 August 1999.

Chief. After all, civilian authority, embodied through the President's position as Commander-in-Chief, is at all times supreme over the military.⁷³

103. Stated otherwise, whether the factual basis for the issuance of Proclamation No. 216 is sufficient cannot be made to depend on the recommendations, or lack of it, of President Duterte's subordinates. The only question is whether the proclamation is founded on facts. And, as earlier declared by this Honorable Court in *IBP v. Zamora*, the President as Commander-in-Chief "has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state."⁷⁴ As head of state and chief architect of foreign affairs, he is even expected to keep abreast of international developments, especially those affecting the country's national security. He cannot close his eyes to the spread of ISIS worldwide,⁷⁵ and the spate of attacks launched by its wide network of allied terrorist groups, such as the November 2015 attacks in Paris.

104. All told, it is within the power of the President to declare martial law or suspend the privilege of the writ of *habeas corpus* even in the absence of a recommendation from the Secretary of National Defense, high-ranking members of the Armed Forces of the Philippines, or any other person for that matter.

SUBSTANTIVE ARGUMENTS

THE PRESIDENT HAD SUFFICIENT FACTUAL BASIS FOR THE ISSUANCE OF PROCLAMATION NO. 216.

105. Respondents maintain that unless the presumption of constitutionality has been breached, the President has no duty to move forward with the evidence to prove that his proclamation is amply supported by facts. Yet, if only to remove any doubt as to the constitutionality of Proclamation No. 216, Respondents see it fit to lay out the factual basis that President Duterte relied upon for proclaiming martial law

⁷³ 1987 Constitution, Article II, Sec. 8.

⁷⁴ G.R. No. 141284, August 15, 2000.

⁷⁵ See Dabiq, Annex "1".

and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao.

106. The proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* under Section 18, Article VII of the 1987 Constitution requires the concurrence of two conditions: (1) there must be an invasion or rebellion, and (2) public safety must require the proclamation or suspension.

107. The AFP intelligence reports then available to the President and relied upon by him for the issuance of Proclamation No. 216 sufficiently establish the existence of these two conditions for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* on 23 May 2017.

A. THE FACTS RELIED ON BY PRESIDENT DUTERTE FOR THE ISSUANCE OF PROCLAMATION NO. 216 SUFFICIENTLY ESTABLISH THE EXISTENCE OF A REBELLION IN MINDANAO. ISIS-INSPIRED LOCAL REBEL GROUPS HAVE TAKEN ARMS AGAINST THE PHILIPPINE GOVERNMENT FOR THE PURPOSES OF REMOVING MINDANAO FROM ITS ALLEGIANCE, AND OF DEPRIVING THE CHIEF EXECUTIVE OF HIS POWERS AND PREROGATIVES THEREIN.

108. Rebellion as understood under Article 134 of the Revised Penal Code, as amended by Republic Act No. 6968, provides that:

Article 134. Rebellion or insurrection — How committed. —
The crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

109. Lagman, et al. judicially admit the existence of armed public uprisings in Marawi City directed against the Philippine Government.⁷⁶ They, however, question the motive behind these attacks, and assert that the attackers have no intent to remove the allegiance of Marawi City or any portion of Mindanao from the Philippine Government.

110. In addition, Lagman, et al. claim that the unfurling and hoisting of the flag of the ISIS in several areas in Marawi City is but "cheap propaganda,"⁷⁷ and does not reflect the intent to dismember the Philippine territory. They likewise cite a news article claiming that the "Maute group is a private militia latching [onto] the IS brand theatrically to inflate perceived capability."⁷⁸ They claim that the armed resistance by the Maute Group in Marawi City is for the purpose of shielding Hapilon from capture, and not an act of removing Marawi City from the allegiance of the Philippine Government.⁷⁹

111. Lagman and his co-petitioners' efforts to downplay the involvement of the Maute Group in the Marawi siege reveal their myopic understanding of the ongoing armed conflict in Marawi and the whole of Mindanao. It also underscores the fact that their doubtful sources offer mere fragments of information that fail to show the whole picture of the struggle in Mindanao that the President saw and accordingly acted upon.

1. The Maute Group has banded with three other radical terrorist organizations that notoriously undertake rebellious activities in various parts of Mindanao.

112. The Maute Group from Lanao del Sur has banded with three other radical terrorist organizations, namely the ASG from Basilan headed by Hapilon, the AKP (formerly

⁷⁶ Lagman Petition, pp. 14 – 18.

⁷⁷ *Ibid.* at p. 15.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.* at p. 17.

known as the Maguid Group) from Saranggani and Sultan Kudarat, and the BIFF from Maguindanao. Independently of one another, these groups are notorious in their commission of numerous bombings, assassinations, and extortion activities in the country, especially in Mindanao.

113. As early as November 2014, the ISIS has reported that a number of Islamic extremist groups in the Philippines had already pledged their allegiance to the caliphate and the Khalifa al-Baghdadi.⁸⁰

114. The pledge of a *mujahid* to the caliphate is “to hear and obey [him], in times of hardship and ease, and in time of delight and dislike.” The same pledge declares support for the Khalifa, and “obedience to Allah and actualization of the unheeded obligation of the era.”⁸¹

115. The pledge of the ASG, Maute Group, AKP and BIFF to the caliphate and the Khalifa al-Baghdadi was further confirmed in another ISIS report in April 2016 which announced the appointment of ASG leader Hapilon as the *emir* of all Islamic State forces in the Philippines.

116. His appointment was later made known to the public in a 21 June 2016 video by ISIS entitled “The Solid Structure.” The video hailed Hapilon as “the *mujahid* authorized to lead the soldiers of the Islamic State in the Philippines,” thereby unifying the four terrorist groups under the ISIS flag of the Islamic State as ISIS-inspired local rebel groups.⁸²

2. The unified pledge of local rebel groups to ISIS is a consolidation of their efforts to establish a wilayah in Mindanao — with Marawi Seige setting

⁸⁰ No author, *Remaining and Expanding*, DABIQ, Muharram 1436 or November 2014: Issue No. 5, Annex “1”.

⁸¹ *Ibid.*

⁸² See “*The Solid Structure*” video, Annex “2-A”.

the stage for this purpose.

117. On 31 December 2016, Hapilon and about thirty (30) of his followers from Basilan, including eight (8) foreign terrorists, were spotted in Lanao del Sur. Hapilon and his cohorts performed a symbolic *hijra*,⁸³ the purpose of which is to unite with the ISIS-inspired rebel groups in mainland Mindanao.

118. The ISIS-inspired rebel groups have the common mission of wresting control of Mindanaoan territory from the government for the purpose of establishing the region as a *wilayah*. The appointment by ISIS of an *emir* in the Philippines is already the third step in the establishment of a *wilayah* in Mindanao. It bears noting that the four rebel groups find their roots and have solidified their membership base in different provinces and cities in Mindanao, and the success of establishing a *wilayah* in Mindanao demands a consolidation of their efforts; hence, the need to appoint one “head” *mujahid* in the person of Hapilon as *emir*.

119. In a video instructing ISIS members to take up arms, an ISIS member, speaking in Filipino, clearly and categorically exhorted his audience to join forces and unite under the appointed *emir* in the Philippines, Hapilon. Thus, in the 14:44 mark in the video:

*Ating adhikain, sumanib po kayo at makipagisa sa amir ng mujahideen ng sandatahang lakas ng khilafa sa rehiyon ng Pilipinas, si Abu Abdullah, o mas kilala sa pangalang **Isnilon Hapilon**. ... Ito po ay katungkulan sa atin, ang sumunod sa sino mang amir ang napili ng ating khalifa.⁸⁴*

120. The fourth step, which requires the conduct of widespread atrocities and uprisings all across Mindanao, is directed towards the last step—gaining approval or recognition from the ISIS.

121. To achieve this goal, the ISIS-inspired rebel groups selected Marawi City as the starting point of its efforts to

⁸³ See AFP Intelligence Report entitled “Marawi City as a Staging Ground for Attacks”, Annex “3”.

⁸⁴ “The Solid Structure” video, Annex “2-A”.

establish a *wilayah* in Mindanao. Marawi is an Islamic City located at the heart of Mindanao. Aside from its cultural and religious significance to Muslims, it is an urban area that is within reach of nearby provinces and cities through major thoroughfares. This Honorable Court can take judicial notice of these geographical divisions.⁸⁵

122. In a video recording retrieved by the AFP, Hapilon, the Maute brothers, and other unidentified members of ISIS-inspired local rebel groups in Mindanao were documented while planning the attack in Marawi, as a prelude for another attack outside of the said city.

123. Throughout the video, Abdullah Maute made it known that the Marawi siege is but a preliminary step to enable them to gain a foothold for their next plans. In the early parts of the video, Abdullah Maute was recorded saying, "*Kung halimbawa magsimula tayo... papasukin natin ang sa loob ng Madina, sa loob ng Madina. **Kukuha tayo ng halimbawa... hmm... mga paaralan diyan... para... mag-gain na tayo ng premise...***"⁸⁶

124. More telling is Abdullah Maute's statement at around 2:17 in the said video, where he said, "*O kaya, unahin natin dito... tapos suno-sunod na ito... O kaya unahin natin dito... **at separate natin dito isa (circled Marawi) para may daanan tayo.***"⁸⁷

125. Hoisting the ISIS flag in Marawi City, therefore, is not as innocuous as Lagman, et al. paint it to be. Contrary to their claim that it is "cheap propaganda," the act of planting the ISIS flag on Marawi soil is a manifestation of the rebel groups' firm resolve to dismember the Philippine territory and remove Marawi, and ultimately, Mindanao, from its allegiance to the Philippine government.

126. Too, Petitioners err in their claim that the sole purpose of the ISIS-inspired local rebel groups in laying siege in Marawi City on 23 May 2017 is to prevent the arrest and

⁸⁵ RULES OF COURT, Rule 129, Sec. 1.

⁸⁶ See "*Maute Siege Planning*", Annex "2-B".

⁸⁷ *Ibid.*

capture by the government of its leaders—Hapilon and the Maute brothers.

127. Evident from the discussion above, the siege of Marawi City cannot simply be characterized as the result of counter-measures against the government's pursuit of Hapilon, but is a strategic and well-coordinated attack to overthrow the present government and to establish a *wilayah* in Mindanao.

128. While it may be true that the joint AFP-PNP team in Marawi City ordered the conduct of a raid and the capture of Hapilon in his hideout on 23 May 2017, the joint PNP and AFP forces were prevented from realizing their objective by a strong and strategic offensive from the ISIS-inspired rebel groups.

129. Armed men marched along the streets and swiftly occupied strategic positions throughout the city. Snipers positioned themselves atop high rise buildings and began shooting on government troops. The rebels were equipped with large arsenal of military hardware, including RPGs that can destroy tanks and inexhaustible amount of ammunition for high-powered assault rifles.

130. Consistent with their planned rebellion, the rebels occupied establishments in the city, like the Amai Pakpak Medical Center. They also burned the Marawi city jail and released its prisoners. The rebels ransacked and burned down the Dansalan College, the Our Lady of Help Cathedral, and a Land Bank of the Philippines branch. They mercilessly kidnapped and killed teachers and other innocent civilians.

131. It was also confirmed by military intelligence sources that the grand plan of the rebels was to raze the entire city of Marawi on the day of Ramadan, or on 26 May 2017. The Marawi attack would have served as a precursor for other terrorist groups to stage their own uprising across Mindanao in a bid to simultaneously establish a *wilayah* in the region. The planned attack, however, was foiled when the government troops conducted a raid in pursuit of Hapilon in Barangay Basak Malutlut. This forced the rebels to prematurely execute the Marawi siege.

132. Meanwhile, in the other cities and provinces in Mindanao, the membership bases of the ISIS-inspired local rebel groups are still intact and battle-ready.

133. As previously discussed, the number of incidents perpetrated by these groups across Mindanao are hard to ignore. These increased attacks are precisely what urged President Duterte to issue Proclamation No. 55, which unfortunately, was not enough to quell the attacks.

134. The totality of these circumstances belies the claim in the Lagman Petition⁸⁸ that the Marawi siege was but a mere counter-offensive to the government's attempt to capture Hapilon. The Marawi siege on 23 May 2017 was intended to be the climax of a clear and actual takeover of Philippine territory by means of a violent uprising against the government.

3. The armed public uprising in Marawi City is depriving President Duterte of his powers and prerogatives.

135. Rebellion likewise exists when an armed public uprising aims to "depriv[e] the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives,"⁸⁹ as in this case.

136. The President is the commander-in-chief of all armed forces of the Philippines⁹⁰ tasked to secure the sovereignty of the State and the integrity of the national territory.⁹¹ The 1987 Constitution likewise vests executive power upon the President⁹² for the maintenance of peace and order, the protection of life, liberty, and property.⁹³ Local rebel groups have deprived President Duterte of these powers by

⁸⁸ Lagman Petition, p. 17 – 18.

⁸⁹ Revised Penal Code, as amended, Article 134.

⁹⁰ 1987 Constitution, Article VII, Sec. 18.

⁹¹ 1987 Constitution, Article II, Sec. 3.

⁹² 1987 Constitution, Article VII, Sec. 1.

⁹³ 1987 Constitution, Article II, Sec. 5.

taking over the territory, and occupying public and private institutions in Marawi City, and pledging allegiance to ISIS.

137. In the same breath, the release of at least 107 inmates from the Marawi City Jail resulted in a deprivation of President Duterte's power to keep these prisoners in custody. Under Republic Act No. 6975 empowers the Bureau of Jail Management and Penology ("BJMP") to exercise supervision and control over all city and municipal jails⁹⁴ which exist for the custody and safekeeping of city and municipal prisoners, among others.⁹⁵ The BJMP is an office under the Department of Interior and Local Government⁹⁶ over which the President exercises control.⁹⁷

138. Given the preceding factual milieu that was presented by the AFP in its intelligence reports to President Duterte, he had to act fast. There was no moment to waste. He issued Proclamation No. 216 to stop the rebellion meant to deprive him of his powers and prerogatives as Chief Executive.

B. THE MAGNITUDE AND SCOPE OF THE ATTACKS PERPETRATED BY THE ISIS-INSPIRED LOCAL REBEL GROUPS NECESSITATE THE PROCLAMATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* TO ENSURE PUBLIC SAFETY.

139. Section 18, Article VII of the Constitution provides that in the exercise of the power to suspend the privilege of the writ of *habeas corpus* or to impose martial law, public safety must require such suspension or proclamation.

140. The term "public safety" escapes exact definition but the Supreme Court in *Lansang v. Garcia*⁹⁸ stated that "[t]he magnitude of the rebellion has a bearing on the second condition essential to the validity of the suspension of the privilege."

⁹⁴ R.A. No. 6975, Section 61.

⁹⁵ *Ibid.* at Sec. 63.

⁹⁶ *Ibid.* at Sec. 4.

⁹⁷ 1987 Constitution, Article VII, Sec. 17.

⁹⁸ G.R. No. L-33964, December 11, 1971.

141. In the present case, the AFP intelligence reports, which inevitably served as basis for Proclamation No. 216, sufficiently laid out the magnitude and scope of the rebellion that necessitated the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* to ensure the safety of the public.

142. The sheer number of innocent civilians affected in the Marawi siege demanded the President's swift and decisive action. On 23 May 2017, ISIS-inspired local rebel groups murdered innocent civilians. At least 1,453 civilians were rescued by government troops acting under orders of the President pursuant to Proclamation No. 216.

143. The incident caused displacement of persons and families from their homes in Marawi City as they were forced to evacuate and escape from the firefight between the government and the rebels. As pointed out in the Cullamat Petition, thousands of families have been displaced and are occupying evacuation centers.

144. Aside from the effects of the attacks on the civilian population, the strong combat capability, and seemingly limitless firepower and other resources that ISIS-inspired rebels have displayed in their attacks show that the interest of public safety required the issuance of Proclamation No. 216.

145. On 23 May 2017 alone, about 500 rebels marched along the main streets of Marawi and swiftly occupied strategic positions throughout the city. The ISIS-inspired local rebel groups were equipped with RPGs and ammunition for high-powered assault rifles. Between 23 May 2017 and 1 June 2017, thirty-eight (38) government troops were killed in action.⁹⁹

146. Even prior to the siege of Marawi, the ISIS-inspired local rebel groups had already launched a series of attacks in other parts of Mindanao indicating a concerted action and community of interest between and among these rebels. To

⁹⁹ See Powerpoint presentation, Annex "7".

recall, Davao City was rocked with a fatal bombing incident in a populous night market that resulted in the death of fifteen (15) civilians and caused injuries to seventy (70) others. Military intelligence reports indicate the ASG as the perpetrator of this deadly bombing. The incident led to the declaration of a state of national emergency. Through Proclamation No. 55, President Duterte called out the armed forces to prevent or suppress this lawless violence in Mindanao.

147. Still, the calling out of the armed forces in the whole of Mindanao proved ineffective to suppress the violence. The ISIS-inspired terror groups continued to wreak havoc in Mindanao—kidnapping and bombing incidents, murder, and attacks against government operatives happened in Basilan, Maguindanao, Tawi-Tawi, and Sulu, among others, in the period between November 2016 and April 2017.¹⁰⁰

148. The occupation of Marawi through the establishment of roadblocks around the city, and the destruction of schools, hospitals and churches, further require the proclamation of martial law. Through Proclamation No. 216, President Duterte has tapped the armed forces to deliver basic services to the people of Marawi, a function that the civilian government cannot, as of the moment, perform.

149. The importance of the suspension of the privilege of the writ of *habeas corpus* cannot likewise be overemphasized. It is a useful tool to effect the unimpeded capture of rebels within Marawi, and to quickly sever their connection with rebel groups outside the city's borders.

150. Foregoing premises considered, it is undeniable that public safety requires the issuance of Proclamation No. 216.

CONCLUSION

One hundred nineteen years ago, our heroes fought hard for the democracy we enjoy today. In our midst is a real and

¹⁰⁰ See AFP Intelligence Report entitled "*Significant Atrocities in Mindanao Prior to the Marawi City Incident*", Annex "5".

present danger that threatens our lives and much-cherished liberties. In response to this danger, President Duterte issued Proclamation No. 216.

Proclamation No. 216 enjoys the presumption of constitutionality, and the Petitioners miserably failed to ascribe grave abuse of discretion in its issuance. Quite the contrary, the Proclamation is amply supported by facts that a rebellion does exist, and the public safety requires it.

The filing of this Consolidated Comment defending the constitutionality of Proclamation No. 216 on the anniversary of our independence is perhaps no coincidence. It is a rallying call for every Filipino to unite behind one true flag and defend it against all threats from within and outside our shores.

Respondents invite this Honorable Court to uphold President Duterte's timely and decisive action, and be his partner in protecting and defending the country's sovereignty and territorial integrity.

PRAYER

WHEREFORE, premises considered, Respondents respectfully pray of this Honorable Court to:

- 1) **DENY DUE COURSE** to the Consolidated Petitions, and
- 2) **DISMISS** the Consolidated Petitions for fatal procedural defects and/or utter lack of merit.

Other just and equitable reliefs under the premises are likewise prayed for.

Makati City for Manila, 12 June 2017.