

OPENING STATEMENT OF THE SOLICITOR GENERAL

May it please this Honorable Court:

I am presenting to the Court the Government's Exhibit "1," the flag of ISIS recovered by the Scout Rangers on May 23, 2017 in Barangay Basak, Malulot, Marawi City. I do not have to tell you what atrocities have been committed in the name of ISIS, IS, or Daesh. What I can tell you is that lives of several soldiers of the Republic were lost to get this flag. This flag is the symbol of the rebellion being waged by Isnilon Hapilon, the leader of the Abu Sayyaf group, who together with the Maute group, Ansarul Khilafah Philippines (AKP), and Bangsamoro Islamic Freedom Fighters (BIFF), have pledged allegiance to ISIS. These rebels seek to establish a *wilayah* or Islamic province in Mindanao. In memory of the brave Filipino soldiers who sacrificed their lives to recover most of Marawi and stop the rebels from turning it into a *wilayah*, I respectfully request a moment of silence to honor their heroic efforts to protect Philippine sovereignty.

The crisis in Marawi City began in the early afternoon of May 23, 2017, when a deadly encounter erupted between government troops and the Maute group. The Maute group unleashed terror and havoc in the peaceful City of Marawi. They took over Marawi, in the process burning government facilities and even churches, causing a massive dislocation of Marawi residents and deaths among troops and civilians.

Responding swiftly to the incident, President Rodrigo Roa Duterte issued Proclamation No. 216, declaring a State of Martial Law and suspending the Privilege of the Writ of *Habeas Corpus* in the whole of Mindanao, pursuant to Section 18, Article VII of the 1987 Constitution. Were it not for the President's swift and decisive action in declaring martial law and suspending the privilege of the writ of *habeas corpus*, the rebels could have established a stronghold at the heart of Mindanao.

On May 25, 2017, President Duterte submitted the *Report relative to Proclamation No. 216* to the Congress. Senate President Aquilino "Koko" Pimentel III and Speaker of the House Pantaleon Alvarez received the *Report* at 21:55.

Both houses of the Congress, acting separately, discussed the President's report and decided that no joint session of the Senate and the House of Representatives was necessary. The Congress also made it known that there was no compelling reason to revoke Proclamation No. 216.

It must be emphasized that Congress has no duty or authority to affirm the declaration of martial law as it only has the power to revoke or extend martial law. Martial law is valid and takes effect without need of any concurrence by Congress.

The petitioners have initiated the present proceedings under the third paragraph of Section 18, Article VII of the 1987 Constitution to review the sufficiency of the factual basis of Proclamation No. 216 and nullify it “for utter lack of sufficient factual basis.”

PROCEDURAL ISSUES

This Honorable Court is now called upon to resolve the issues arising from the consolidated cases. Let me discuss the procedural issues first.

Defective petitions

At the outset, it must be pointed out that the petitions pending before this Honorable Court suffer from a number of defects, to name a few:

1. The failure of petitioner Erice to sign the verification and Certification of Non-Forum Shopping page, which defect was also noted by this Honorable Court;¹
2. The Professional Tax Receipt Number of the petitioners’ counsel is already outdated as it was obtained on August 16, 2016;
3. Irregularities in the notarial certification of the Verification and CNFS; and
4. Failure of Atty. Monsod to disclose his MCLE Compliance Number or MCLE Exemption Number.

The sheer number of defects reveal the petitioners’ total disregard of the Rules of Court. This should not be countenanced by this Honorable Court.

¹ Edgar Erice and Raul Daza were dropped as petitioners in SC Resolution dated June 6, 2017 in G.R. No. 231658 for failure to sign the petition.

On the standard of review

The petition is fatally flawed because it was not filed under any of the remedies provided under the Rules of Court. The Constitution specifies that martial law be questioned in a "appropriate proceeding." It is not enough for the petitioners to just declare that they have initiated the proceedings under the third paragraph of Section 18, Article VII of the 1987 Constitution. They must specify the remedy they used in filing the petition.

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.

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.

If this Honorable Court is minded to exercise its power of judicial review notwithstanding the preceding defects, it has to take into consideration the following undeniable facts. The power to declare martial law is inherent in the President as the Commander-in-Chief. Despite the safeguards found in the present Constitution, the President, as Commander-in-Chief, continues to possess full discretion in declaring martial law and suspending the privilege of the writ of *habeas corpus*. Consistent with the principle of separation of powers, this discretion can only be corrected if it is attended with grave abuse. Otherwise stated, if there is sufficient factual basis for the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*, then it cannot be said that the President acted with grave abuse of discretion.

Grave abuse of discretion is the appropriate standard to judge a declaration of martial law for the following reasons:

First, when the President and Congress act together in the use of their constitutionally-bestowed powers, due deference should be given to the resulting action, which carry the weight

and approval of two branches of government, the members of which had been duly-elected by the Filipino people. The declaration of martial law and its affirmation by Congress carry with them the imprimatur of the Filipino people.

Second, the Supreme Court has original jurisdiction under Section 5, Article VIII of the 1987 Constitution over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus. Of these proceedings, it makes most sense that a petition for certiorari would be the “appropriate proceeding” referred to in Section 18, Article VII 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*.

Past government actions were reviewed by the Supreme Court through a *certiorari* proceeding pursuant to 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.

Third, jurisprudence examines the exercise of commander-in-chief powers, including martial law powers, under the lens of grave abuse of discretion. In *Lansang v. Garcia*, 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.

The Honorable Court can review the factual basis for the proclamation of martial law and suspension of the privilege of the writ of habeas corpus, notwithstanding that Congress has already acted on and resolved to support the declaration of martial law.

Given these considerations, the Court – if it does not peremptorily dismiss the petition on procedural grounds – should resolve the substantive issues through the standard of grave abuse of discretion, and decide whether the petitioners have sufficiently established the basis to nullify Proclamation No. 216, which has already been upheld by the two houses of the Congress.

I will now go to the substantive issues of this Petition.

SUBSTANTIVE ISSUES

What is the actual issue on this case? In their prayer, the petitioners seek to nullify Proclamation No. 216 alleging that there is insufficient factual basis. Jurisprudence, however, puts the burden on the petitioners² as it is incumbent upon them to show that the President's decision is totally bereft of factual basis. They who allege must prove. The petitioners miserably failed to overcome this *onus*.

We quote the words of this Honorable Court in the case of *IBP vs. Zamora*:

If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. ... Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information might be difficult to verify, or wholly unavailable to the courts.

History of ISIS and its connection to the terrorist groups in the Philippines

Martial law was declared in Mindanao by President Duterte because of the rebellion by terrorist groups led by the Maute and Abu Sanyaf groups. Martial law was not declared only because of the ongoing battle in Marawi City. The crisis in Marawi City is not an isolated incident but part of a bigger plot to establish an Islamic state in Mindanao in accordance with the call of ISIS.

By way of background, a discussion must be made regarding the Islamic State in Iraq and Syria or ISIS, otherwise known as Islamic State (IS), Islamic State in Iraq and Levant (ISIL), or its Arabic language acronym, DAESH. It is because of this jihadist proto-state that we now face this tragedy in Mindanao.

The Philippines has its own share of ISIS-linked terrorist groups. One of them is the Abu Sanyaf group, whose faction in Basilan is led by Isnilon Hapilon. Hapilon and forty other ASG members swore allegiance to ISIS and al-Baghdadi in a video posted on YouTube on July 23, 2014. Hapilon has been appointed

² G.R. No. 141284, August 15, 2000.

by ISIS as the “emir” or leader of all Islamic State forces in the Philippines.³ The ASG has now taken steps to reinforce his position and take advantage of the recognition and support of ISIS.

Recently, Hapilon and his followers were under pressure from continued military operations in Basilan. He needed to flee to the mainland of Mindanao. But his travel to the mainland had another purpose. It was a symbolic *hijra* or crusade to unite with the ISIS-inspired terrorist groups in Mindanao, which is a step in establishing the *wilayah*. The establishment of *wilayah* would signify secession from the Philippine Republic. Thus, Hapilon went to central Mindanao to link up with other terrorist groups like the Maute group.

The Maute group, which also calls itself Daulah Islamiyah, was founded by Omar and Abdullah Maute, the eldest of the Maute brothers.⁴ Prior to their allegiance to ISIS and its extremist ideology, they were known as an extortion gang and a private armed group.

After settling in the mainland of Mindanao, Hapilon lost no time in issuing a call to arms for all ISIS-linked groups to unite and stage violent attacks. And they have answered his call. In the months leading to the siege of Marawi City, there has been an escalation of terrorist attacks: (1) There have been a series of improvised explosive device (IED) attacks in the Zamboanga, Basilan, Sulu, and Tawi-Tawi (ZAMBASULTA) area; (2) On September 2, 2016, there was a bombing of the night market in Davao City perpetrated by the Maute group; (3) In Marawi City, members of the Maute Group ambushed military elements on February 16, 2016, attacking Major Jerico Mangalus and one other enlisted personnel; and (4) In Maguindanao, BIFF elements liquidated Corporal Joarsin Baliwan, Staff Sergeant Zaldy Caliman and Corporal Macadatar in separate incidents in February and April 2017. Seven military personnel stationed in military detachments in Maguindanao were likewise wounded by BIFF elements.

All of these terrorist acts taken together further the rebellion being undertaken by the ISIS-linked groups in Mindanao.

³ See “The Solid Structure” – Annex 2-A of the Consolidated Comment

⁴ See Institute for Policy Analysis of Conflict Journal Article, Pro-ISIS Groups in Mindanao and their links to Indonesia and Malaysia.

As pointed out by President Duterte in his Report to Congress, “these activities constitute not simply a display of force, but a clear attempt to establish the groups’ seat of power in Marawi City for their planned establishment of a DAESH *wilayah* or province covering the entire Mindanao.” Moreover, “the cutting of vital lines for transportation and power; the recruitment of young Muslims to further expand their ranks and strengthen their force; the armed consolidation of their members throughout Marawi City; the decimation of a segment of the city population who resist; and the brazen display of DAESH flags constitute a clear, pronounced, and unmistakable intent to remove Marawi City, and eventually the rest of Mindanao, from its allegiance to the Government.” President Duterte further went on to state that “[t]here exists no doubt that lawless armed groups are attempting to deprive the President of his power, authority, and prerogatives within Marawi City as a precedent to spreading their control over the entire Mindanao, in an attempt to undermine his control over executive departments, bureaus, and offices in said area; defeat his mandate to ensure that all laws are faithfully executed; and remove his supervisory powers over local governments.”

There is factual basis for the declaration of martial law and the suspension of the writ of habeas corpus.

Contrary to the petitioners’ allegations, the Marawi siege was not merely a “government-initiated armed conflict,” but a joint operation of the Philippine National Police and the Armed Forces of the Philippines that actually pre-empted and foiled the plan of the terrorists to burn down the city of Marawi and establish a *wilayah*.

Hapilon’s leadership consolidated the four insurgent groups in Mindanao, namely, the Basilan-based ASG, the AKP, the Maute group, and the BIFF, and solidified these terrorist rebel groups’ ties with ISIS. These terrorist elements, whose previous terrorist acts were separate and uncoordinated, are now openly under one leadership and are in outright rebellion against the government.

As a matter of fact, the petitioners themselves have admitted in their suit that the first element of rebellion is present in the instant case. There is a public uprising against the government. As regards the other elements, Hapilon and his cohorts have shown by their actions that they intend to remove

from the allegiance to the government parts of Philippine territory starting with Marawi.

It is under this milieu that the joint operations of the AFP and PNP to arrest Hapilon should be understood. The authorities were not just arresting a mere criminal but the head of a terrorist rebel organization seeking to establish an ISIS province in Mindanao.

The rebels planned to burn down the city of Marawi on the day of Ramadan on May 26, 2017. The Joint PNP-AFP operations raid of their safe house three days prior this date actually pre-empted the carefully-laid out plan, and forced the rebels to prematurely initiate the siege of Marawi.

The siege of Marawi is the most recent offensive launched by the rebels. The intention of the group is to make the siege a rallying cry of their rebellion and signal all their allied terrorist groups to simultaneously stage their own violent uprisings all across Mindanao so as to attain their aim of establishing the *wilayah*.⁵

Armed men rampaged through the streets of Marawi and swiftly occupied strategic positions throughout the city. Snipers positioned themselves atop buildings and began shooting on government troops. This prevented the soldiers from launching an organized offensive. They entered certain establishments such as Amai Pakpak Medical Center to have their wounded treated, then moved on to the City Jail and the Landbank of the Philippines.⁶ They burned Dansalan College. They spared no one, even killing teachers and other civilians.

The rebels seized Marawi not merely for the purpose of raid and pillage. They did not just intend to strike fear into the hearts of the populace. It was a coordinated act of an organized group against the government. They wanted to establish a caliphate and dismember Marawi from the Republic. They took over the city and set up roadblocks. They staged a power blackout throughout the whole city, resulting in the total collapse of the local government and the shutdown of local courts. The rebels were able to take control of major social, economic, and political institutions of Marawi City leading to its complete paralysis.

⁵ Slide 22.

⁶<http://www.sunstar.com.ph/cagayan-de-oro/local-news/2017/05/25/troops-maute-group-clash-marawi-city-3-dead-12-injured-543446> accessed on 29 May 2017.

One of the keys to the success of the rebels' assault was their mastery of the urban terrain of Marawi City. It allowed them to freely and swiftly move about the city, and gave them the advantage of accurately predicting where government troops were coming from, thereby improving their defenses.

The rebels were equipped with a large arsenal of military hardware, including rocket-propelled grenades (RPGs) that can destroy tanks. They also possess a vast amount of ammunition for high-powered assault rifles.

Military operations are continuing to end the rebellion being waged by Hapilon, the Maute group, and their cohorts. It is not an easy task. Because of its location and topography, Marawi City is easily accessible to other parts of Mindanao, making quelling the rebellion difficult. The place is a strategic starting point for the rebels to lay the ground work for their ultimate objective, which is to gain control and establish a *wilayah* in Mindanao.

Although the rebels may have initiated their rebellious activities in Marawi City, it does not necessarily mean that Marawi City is the culmination of their plans. The extensive network and linkages of the Maute group with foreign and local armed groups, as well as their continued alliance with other terrorist groups, are strong indications of their intention to expand their operations beyond Marawi City. The seeds of rebellion were already planted in different parts of Mindanao.

Public safety requires that the declaration of martial law and the suspension of the privilege of the writ of habeas corpus be made to apply to the entire region of Mindanao and not just to Marawi City. Being associated with the ASG, the Maute group undoubtedly enjoys support in other parts of Mindanao. The group has launched attacks in other parts of Mindanao, more particularly in Davao. Moreover, there are two other ISIS-linked local rebel groups-the AKP and the BIFF-which are waging attacks in other areas of Mindanao. Hence, placing the whole of Mindanao under martial law and suspending the privilege of the writ of habeas corpus thereat was a logical step for the President. Any scheme to tie his hands will render the government unable to suppress and ultimately put an end to the rebellion in the whole of Mindanao.⁷

Upon the declaration of martial law, the military was ordered to destroy the ISIS-linked rebellion of the Maute group and other

⁷ PP, p. 39-45.

local terrorist groups.⁸ After twenty days of combat operation, the high-value targets and most of the members of the Maute group were contained within Marawi City.⁹ Beginning May 23, 2017, a total of 232 rebels were neutralized and 134 high powered firearms and 19 low powered were recovered from them.¹⁰ Four ISIS flags were recovered, along with Php 79,000,000.00 in cash and checks. These gains, however, came at a high cost. On the part of the government forces, 61 of our brave soldiers and policemen died, and 289 were left wounded.

With the immediate declaration of martial law, the grand plan of the Maute group to take over Marawi City and extend it to the entire Mindanao to establish a *wilayah* was preempted.¹¹ The declaration of martial law and the suspension of the privilege of habeas corpus rendered the Maute group incapable of conducting further hostilities and spreading extremist violence. Normalcy is being restored.¹²

The armed hostilities as mentioned and narrated in the President's Report to Congress and Proclamation No. 216 indubitably show that there is "sufficient factual basis" for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* in the Mindanao group of islands. Indeed, the armed hostilities between the Maute group, the ASG, and other terrorist rebel groups, on one hand, and government forces, on the other, as described in those two Presidential issuances undoubtedly point to the existence of rebellion which gravely endangers public safety.

All the elements of rebellion were present when the President issued Proclamation No. 216.¹³ Proclamation No. 216 and the President's Report to Congress narrate the public and armed uprising in Marawi City on May 23, 2017, aimed at removing the allegiance of Marawi City to the government, and depriving the President of his powers and prerogatives to enforce

⁸ AFP Operational Directive 02-17.

⁹ PP, Slide 14.

¹⁰ PP, Slide 15.

¹¹ PP, Slide 16.

¹² PP, p. 19.

¹³ The elements of Rebellion are:

1. There is a public uprising and taking of arms against the government; and
2. The purpose of such uprising and taking of arms is either a) to remove from the allegiance of said government or its laws, (i) the territory of the Philippines or any part thereof, or (ii) any body of land, naval or other armed forces, or b) to deprive the chief executive or congress, wholly or partially, of any of their powers or prerogatives.

the laws of the lands not only in Marawi City but in the rest of Mindanao.

The gravamen of the crime of rebellion is an armed public uprising against the government. The facts as mentioned in Proclamation No. 216 and the President's Report to Congress show that, as of May 23, 2017 when the President declared martial law and suspended the privilege of the writ of *habeas corpus* in the Mindanao region, rebellion indeed existed.

The President's Report also provided a more detailed picture of the uprising and the motivation behind it -- to establish an DAESH *wilayah* in Mindanao with Marawi City as the armed groups' seat of power.

The petitioners erroneously relied on public statements by the military as reported by the media in order to question the factual basis of the declaration of martial law. What they failed to consider is that the conflict is real and some of these statements could have been made as a form of psychological warfare. The fact is that there is a rebellion and there are ongoing operations to halt it.

It cannot be gainsaid that 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.

This full discretion granted to the President by the Constitution includes the authority to make conclusions of fact and conclusions of law to declare martial law. These conclusions are made at the time he made the decision.

Section 18 of Article VII, limits 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." This means that the President is required to take into account only the situation at the time of the proclamation, even if subsequent events may not have been accurately reported.

Extending the "basis" to facts established or discovered **after** the proclamation unnecessarily subjects the President's discretion to an unrealistic standard. He is only expected to make decisions based on information available to him before the decision is made.

Petitioners argue that Proclamation No. 216 is void for vagueness as it includes the broad term “other rebel groups”. We submit that the identity of all rebel groups is irrelevant in determining the sufficiency of the factual basis for Martial Law. Besides, Proclamation No. 216 makes reference to Proclamation No. 55, which in turn cites Abu Sayyaf Group as another rebel group.

President’s full discretion in the exercise of his commander-in-chief powers

It is beyond dispute that the President’s exercise of his powers as Commander-in-Chief to call out the military to prevent or suppress lawless violence or to declare martial law should be swift and decisive if it is to have any effect at all.¹⁴ Furthermore, 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.

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.

Neither does the Constitution provide a need for calibration in the exercise of his Commander-in-chief powers.

The issue of which power the President should exercise is beyond the power of the Honorable Court to dictate. It is submitted that calibrating the graduated powers inherent in the President as the Commander-in-Chief under the guise of judicial review would amount to the Court replacing the President’s exercise of discretion with its own.

The President had already used his calling out powers last September 4, 2016 when he issued Proclamation No. 55 entitled, “*Declaring a State of National Emergency on Account of Lawless Violence in Mindanao*” due to the then-increasing concerted

¹⁴ IBP v. Zamora, 392 Phil. 618, 635 (2000).

attacks against the military and the populace. The use of calling-out power, however, could no longer address the ongoing rebellion. That is why martial law was declared by virtue of Proclamation No. 216.

The Constitution, under Section 18 of Article VII, gives the President the full discretion to choose which among his Commander-in-Chief powers should be used given the circumstances. In other words, the use of calling-out power is not a condition precedent to the proclamation of martial law; neither is the latter a condition precedent to the suspension of the privilege of the writ of habeas corpus. There is no sequential requirement for the use of these powers, as Section 18 of Article VII only provides for the requirements before they may be used.

The validity of the President's use of his calling out powers under Proclamation No. 55, series of 2016 is independent of the validity of the declaration of martial law under Proclamation No. 216, series of 2017. Declaring Proclamation No. 216 as unconstitutional will not affect the validity of Proclamation No. 55.

Nonetheless, given the gravity of the situation, a more expansive authority is needed by the President to fully engage the rebellion of these terrorist groups in Mindanao. The exigencies of the times require that the President should at least be given the flexibility to act in the interest of public safety.

There are ample safeguards in the implementation of martial law

Such flexibility should not be any cause for worry. President Duterte's declaration and implementation of martial law is markedly different from that of former President Marcos. In his General Order No. 1 dated May 30, 2017, President Duterte directed the Martial Law Administrator and the Martial Law Implementor to observe the limits of authority prescribed under the Constitution, the laws, as well as the rules and regulations. President Duterte likewise ordered that the constitutional rights of the Filipino people shall be respected and protected at all times. He even called on the Commission on Human Rights to assist in the protection of the citizen's constitutional and human rights. The Department of National Defense also established a Citizen's Assistance Desk where senior lawyers from the Public Attorney's Office have been made available to assist citizens with human

rights complaints. These highlight the government's goal of preventing human rights abuses that had been previously associated with martial law.

Epilogue

Your Honors, these are trying times. We are at war with an enemy that does not respect the laws and principles we live by. We are at war with an enemy that seeks to destroy our way of life and force its twisted ideology upon our people. Its goal is to take over Philippine territory and establish a caliphate in Mindanao, in allegiance with ISIS cohorts who continue to sow terror worldwide.

Already there are casualties to our military and police who are trying their best to protect our citizens. Civilians have been brutally murdered. Our people have been forced to flee from their homes and seek refuge from the atrocities committed by these criminals. These attacks by the rebels do not only occur in Marawi City but also in other parts of Mindanao.

The fight against these rebels will be long and arduous. The government cannot allow our country to be the next battleground in the war on terror. It cannot sit idly by and watch as the country is dismembered. It cannot allow fear and intolerance to be the new normal in this nation.

We ask that this Court permit the government to make use of all the tools granted to it by the Constitution. Among these tools is the President's power to declare martial law in times of invasion and rebellion when the public safety requires it. Martial law is seen by some as a draconian measure. But it is a measure exclusively granted to the President by our Constitution. These are extraordinary times. They require extraordinary measures. Affirming Proclamation No. 216 will help the government end the rebellion, bring the rebels before the bar of justice, and procure stability and a lasting peace in Mindanao.