EN BANC

G.R. No. 227635 – LEILA M. DE LIMA, *Petitioner*, **v. PRESIDENT RODRIGO R. DUTERTE,** *Respondent*.

Promulgated:
October 15, 2019

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

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

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

In *Aguinaldo*, this Court held:

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

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

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

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

releasing presidential appointments, including those to the Judiciary.[4]

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

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

> a. The August 11, 2016 public statement of President Duterte threatening to destroy Senator De Lima. The statement reads: "I know I'm the favorite whipping boy of the NGOs and the human rights stalwarts. But I have a special *ano kaya no*. She is a government official. One day soon I will: – *bitiwan ko yan* in public and I will have to destroy her in public." Incidentally, in the same event, President Duterte insinuated that with the help of another country, he was keeping surveillance of her. "*Akala nila na hindi rin ako nakikinig sa kanila*. So while all the time they were also listening to what I've done, I've also been busy, and with the help of another country, listening to them;"
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> b. The statement uttered in a briefing at the NAIA Terminal 3, Pasay City in August 17, 2016 wherein President Duterte named Sen. De Lima as the government official he referred to earlier and at the same time accused her of living an immoral life by having a romantic affair with her driver, a married man, and of being involved in illegal drugs. "There's one crusading lady, whose even herself led a very immoral life, taking his (sic) driver as her lover... Paramour *niya ang driver nya naging hooked rin sa drugs because of the close association.* You know, when you are an immoral, dirty woman, the driver was married. So you live with the driver, it[']s concubinage."
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> c. The statements that described her as an immoral woman; that publicized her intimate and personal life, starting from her new boyfriend to her sexual escapades; that told of her being involved in illegal drugs as well as in activities that included her construction of a house for her driver/lover with financing from drug-money; and
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> d. The statements that threatened her ("*De Lima, you are finished*") and demeaned her womanhood and humanity. "If I were De Lima, ladies and gentlemen, I'll hang myself. Your life has been, *hindi lang* life, the innermost of your core as a female is being serialized everyday. *Dapat kang mag-resign*. You resign. and "De Lima better hang yourself... *Hindi ka na nahiya sa sarili mo*. Any other woman would have slashed her throat. You? *Baka akala mo artista ka. Mga artistang x-rated paglabas sa,*

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

5 Ponencia, p. 1.

6 Id. at 2.

pagkatapos ng shooting, nakangiti...".[7]

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

> WHEREFORE, the petitioner respectfully prays the Honorable Court that judgment be rendered:
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> [1] Granting a Writ of *Habeas Data* –
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> a. Enjoining respondent and any of his representatives, agents, assigns, officers, or employees from collecting information about petitioner's private life outside the realm of legitimate public concern;
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> b. Disclosing to the petitioner the name of the foreign country who, according to respondent, "helped him" listen in on petitioner, the manner and means by which he listened in on petitioner, and the sources of his information or where the data about petitioner's private life and alleged private affairs came from;
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> c. Ordering the deletion, destruction or rectification of such data or information; and
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> d. Enjoining the respondent from making public statements that (i) malign her as a woman and degrade her dignity as a human being; (ii) sexually discriminate against her; (iii) describe or publicize her alleged sexual conduct; (iv) constitute psychological violence against her; and (v) otherwise violate her rights or are contrary to law, good morals, good customs, public policy, and/or public interest; and
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> [2] Conceding unto petitioner such further and other reliefs this Honorable Court may deem just and equitable in the premises.[9]

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

Now, this Court, in its Resolution promulgated on October 15, 2019,

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7 Id. at 2–3.
8 Id. at 3–4.
9 Id. at 4–5.
10 Id. at 5.
11 Id. at 6.

resolves to dismiss[12] the Petition without giving due course or passing on the merits on the basis that President Duterte is absolutely immune from any suit during his incumbency.

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

I

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

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

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

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

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12 Id. at 22.

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

14 Id.

15 25 Fed. Cas. 55 (1807).

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

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

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

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

> It may be argued, however, that the present action is one to recover damages against the Governor and the others mentioned in the cause, for the illegal acts performed by them, and not an action for the purpose of in any way controlling or restraining or interfering with their political or discretionary duties. No one can be held legally responsible in damages or otherwise for doing in a legal manner what he had authority, under the law, to do. Therefore, if the Governor-General had authority, under the law, to deport or expel the defendants, and the circumstances justifying the deportation and the method of carrying it out are left to him, then he can not be held liable in damages for the exercise of this power. Moreover, if the courts are without authority to interfere in any manner, for the purpose of controlling or interfering with the exercise of the political powers vested in the chief executive authority of the Government, then it must follow that the courts can not intervene for the purpose of declaring that he is liable in damages for the exercise of this authority. . . .
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> . . . .
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> If it be true that the Government of the Philippine Islands is a government invested with "all the military, civil, and judicial powers necessary to govern the Philippine Islands until otherwise provided by Congress" and that the Governor-General is invested with certain important political duties and powers, in the exercise of which he may use his own discretion, and is accountable only to his superiors in his political character and to his own conscience, and the judicial department of the Government is without authority to interfere in the control of such powers, for any purpose, then it must follow that the courts can not take jurisdiction in any case against him which has for its purpose the declaration that such acts are illegal and that he is, in consequence, liable for damages. To allow such an action would, in the most effective way possible, subject the executive and political departments of the Government to the absolute control of the judiciary. *Of course, it will be observed that we are here treating only with the political and purely executive duties in dealing with the political rights of aliens. The conclusions herein reached should not be extended to cases where vested rights are involved. That question must be left for future consideration.*[19] (Emphasis in the original)

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[18] Id. at 557–558.
[19] Id. at 578–580.

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

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

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

> SECTION 15. The President shall be immune from suit during his tenure. Thereafter, no suit whatsoever shall lie for official acts done by him or by others pursuant to his specific orders during his tenure.
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> The immunities herein provided shall apply to the incumbent President referred to in Article XVII of this Constitution.[21]

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

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

> "Mr. Suarez. Thank you.
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> The last question is with reference to the committee's omitting in

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

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

> the draft proposal the immunity provision for the President. I agree with Commissioner Nolledo that the Committee did very well in striking out this second sentence, at the very least, of the original provision on immunity from suit under the 1973 Constitution. But would the Committee members not agree to a restoration of at least the first sentence that the President shall be immune from suit during his tenure, considering that if we do not provide him that kind of an immunity, he might be spending all his time facing litigations, as the President-in-exile in Hawaii is now facing litigations almost daily?
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> Fr. Bernas. The reason for the omission is that we consider it understood in present jurisprudence that during his tenure he is immune from suit.
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> Mr. Suarez. So there is no need to express it here.
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> Fr. Bernas. There is no need. It was that way before. The only innovation made by the 1973 Constitution was to make that explicit and to add other things.
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> Mr. Suarez. On that understanding, I will not press for any more query, Madam President.
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> I thank the Commissioner for the clarification."[22]

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

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

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

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

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

24 Id. at 187.

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

26 Id. at 400.

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

the dismissal of those cases since he enjoyed immunity from all kinds of suits.

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

> We now come to the scope of immunity that can be claimed by petitioner as a non-sitting President. The cases filed against petitioner Estrada are *criminal in character. They involve plunder, bribery and graft and corruption.* By no stretch of the imagination can these crimes, especially plunder which carries the death penalty, be covered by the allege (*sic*) mantle of immunity of a non-sitting president. Petitioner cannot cite any decision of this Court licensing the President to commit criminal acts and wrapping him with post-tenure immunity from liability. *It will be anomalous to hold that immunity is an inoculation from liability for unlawful acts and omissions.* The rule is that unlawful acts of public officials are not acts of the State and the officer who acts illegally is not acting as such but stands in the same footing as any other trespasser.
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> Indeed, a critical reading of current literature on executive immunity will reveal a *judicial disinclination to expand the privilege* especially *when it impedes the search for truth or impairs the vindication of a right.* In the 1974 case of *US v. Nixon*, US President Richard Nixon, *a sitting President*, was subpoenaed to produce certain recordings and documents relating to his conversations with aids and advisers. Seven advisers of President Nixon's associates were facing charges of conspiracy to obstruct justice and other offenses which were committed in a burglary of the Democratic National Headquarters in Washington's Watergate Hotel during the 1972 presidential campaign. President Nixon himself was named an unindicted co-conspirator. President Nixon moved to quash the subpoena on the ground, among others, that the President was not subject to judicial process and that he should first be impeached and removed from office before he could be made amenable to judicial proceedings. The claim was rejected by the US Supreme Court. It concluded that "when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice." In the *1982 case of Nixon v. Fitzgerald*, the US Supreme Court further held that the immunity of the President from *civil damages covers only "official acts."* Recently, the US Supreme Court had the occasion to reiterate this doctrine in the case of *Clinton v. Jones* where it held that the US President's immunity from suits for money damages arising out of their official acts is inapplicable to unofficial conduct.
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> *There are more reasons not to be sympathetic to appeals to stretch the scope of executive immunity in our jurisdiction.* One of the great themes of the 1987 Constitution is that a *public office is a public trust.* It declared as a state policy that "(t)he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." It ordained that "(p)ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." It set the rule that "(t)he right of the

> State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel." It maintained the Sandiganbayan as an anti-graft court. It created the office of the Ombudsman and endowed it with enormous powers, among which is to "(i)nvestigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient." The Office of the Ombudsman was also given fiscal autonomy. *These constitutional policies will be devalued if we sustain petitioner's claim that a non-sitting president enjoys immunity from suit for criminal acts committed during his incumbency.*[28] (Emphasis in the original)

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

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

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

From these cases, the following principles are established:

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

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

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

30 Id. at 763–764.

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

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

II

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

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

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

> The *habeas data* rule, in general, is designed to protect by means of judicial complaint the image, privacy, honor, information, and freedom of information of an individual. It is meant to provide a forum to enforce one's right to the truth and to informational privacy, thus safeguarding the constitutional guarantees of a person's right to life, liberty and security against abuse in this age of information technology.
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> It bears reiteration that like the writ of amparo, *habeas data* was conceived as a response, given the lack of effective and available remedies, to address the extraordinary rise in the number of killings and enforced disappearances. Its intent is to address violations of or threats to the rights to life, liberty or security as a remedy independently from those provided under prevailing Rules.[32]

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

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

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

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

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

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

> It bears stressing that since there is no determination of administrative, civil or criminal liability in amparo and *habeas data* proceedings, courts can only go as far as ascertaining responsibility or accountability for the enforced disappearance or extrajudicial killing. As we held in *Razon v. Tagitis*:
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> > It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines responsibility, or at least accountability, for the enforced disappearance for purposes of imposing the appropriate remedies to address the disappearance. ***Responsibility*** refers to the extent the actors have been established by substantial evidence to have ***participated*** in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. ***Accountability***, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited ***involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility*** defined above; or who are ***imputed with knowledge*** relating to the enforced disappearance and who carry the burden of disclosure; or those who ***carry, but have failed to discharge, the burden of extraordinary diligence in the investigation*** of the enforced disappearance. In all these cases, the issuance of the Writ of Amparo is justified by our primary goal of addressing the

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

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

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

> disappearance, so that the life of the victim is preserved and his liberty and security are restored.[37] (Emphasis in the original)

Aggrieved parties in a petition for a writ of *habeas data* are not precluded from filing civil, criminal, or administrative cases, or from filing a separate criminal action.[38] For this petition, the only reliefs that may be granted are the following: (1) to enjoin the act complained of; (2) to grant access to the database or information; or (3) to order the deletion, destruction, or rectification of the erroneous data or information.[39]

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

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

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

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

Petitions for writs of amparo and *habeas data* are not to be treated within the same sphere as civil, criminal, and administrative cases. In

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

38 RULE ON THE WRIT OF HABEAS DATA, secs. 20–22 provide:

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

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

When a criminal action and a separate civil action are filed subsequent to a petition for a writ of *habeas data*, the petition shall be consolidated with the criminal action.

After consolidation, the procedure under this Rule shall continue to govern the disposition of the reliefs in the petition.

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

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

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

40 *David v. Macapagal-Arroyo*, 522 Phil. 705, 764 (2006) [Per J. Sandoval-Gutierrez, En Banc].

Secretary of National Defense v. Manalo:[41]

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

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

> SECTION 6. *Petition.* — A verified written petition for a writ of habeas data should contain:
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> (a) The personal circumstances of the petitioner and the respondent;
>
> (b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party;
>
> (c) The actions and recourses taken by the petitioner to secure the data or information;
>
> (d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known;
>
> (e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent.
>
> In case of threats, the relief may include a prayer for an order enjoining the act complained of; and
>
> (f) Such other relevant reliefs as are just and equitable.[44]

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

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41 589 Phil. 1 (2008) [Per C.J. Puno, En Banc].

42 Id. at 41 *citing* Deliberations of the Committee on the Revision of the Rules of Court, August 10, 2007; August 24, 2007; August 31, 2007; and September 20, 2008.

43 RULE ON THE WRIT OF HABEAS DATA, sec. 7.

44 RULE ON THE WRIT OF HABEAS DATA, sec. 6.

45 *Secretary of Defense v. Manalo*, 589 Phil. 1, 41 (2008) [Per C.J. Puno, En Banc].

> SECTION 15. *Summary Hearing.* — The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.
>
> SECTION 16. *Judgment.* — The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall enjoin the act complained of, or order the deletion, destruction, or rectification of the erroneous data or information and grant other relevant reliefs as may be just and equitable; otherwise, the privilege of the writ shall be denied.
>
> Upon its finality, the judgment shall be enforced by the sheriff or any lawful officer as may be designated by the court, justice or judge within five (5) work days.
>
> SECTION 17. *Return of Service.* — The officer who executed the final judgment shall, within three (3) days from its enforcement, make a verified return to the court. The return shall contain a full statement of the proceedings under the writ and a complete inventory of the database or information, or documents and articles inspected, updated, rectified, or deleted, with copies served on the petitioner and the respondent.
>
> The officer shall state in the return how the judgment was enforced and complied with by the respondent, as well as all objections of the parties regarding the manner and regularity of the service of the writ.
>
> SECTION 18. *Hearing on Officer's Return.* — The court shall set the return for hearing with due notice to the parties and act accordingly.
>
> SECTION 19. *Appeal.* — Any party may appeal from the judgment or final order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.
>
> The period of appeal shall be five (5) work days from the date of notice of the judgment or final order.
>
> The appeal shall be given the same priority as *habeas corpus* and amparo cases.[46]

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

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[46] RULE ON THE WRIT OF AMPARO, secs. 15–19.

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

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

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

> Petitioners first take issue on the President's purported lack of immunity from suit during her term of office. The 1987 Constitution, so they claim, has removed such immunity heretofore enjoyed by the chief executive under the 1935 and 1973 Constitutions.
>
> Petitioners are mistaken. The presidential immunity from suit remains preserved under our system of government, albeit not expressly reserved in the present constitution. Addressing a concern of his co-members in the 1986 Constitutional Commission on the absence of an express provision on the matter, Fr. Joaquin Bernas, S.J. observed that it was already understood in jurisprudence that the President may not be sued during his or her tenure. The Court subsequently made it abundantly clear in *David v. Macapagal-Arroyo*, a case likewise resolved under the umbrella of the 1987 Constitution, that indeed the President enjoys immunity during her incumbency, and why this must be so:
>
> > Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. . . .
>
> And lest it be overlooked, the petition is simply bereft of any allegation as to what specific presidential act or omission violated or

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47 Ponencia, pp. 16–17.

48 627 Phil. 37 (2010) [Per J. Velasco, Jr., En Banc].

threatened to violate petitioners' protected rights.[49]

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

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

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

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

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

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

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49 Id. at 62–63 *citing David v. Macapagal-Arroyo*, 522 Phil. 705, 763–764 (2006) [Per J. Sandoval-Gutierrez, En Banc].

50 678 Phil. 532 (2011) [Per J. Villarama, Jr. En Banc].

51 Id. at 557.

52 Id. at 570.

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

It is not impossible that the president, as the head of State, has unimpeded access to data and information on all citizens. But the entity that holds access to this data or information is not the president, in his or her *personal* capacity, but the *Office* of the President. Thus, respondents in the petition for the writ of *habeas data* may plead the defenses of national security, state secrets, or privileged communication.[54] While the president is the titular head of the Office, there are several employees that must assist him or her in its operations. Thus, it is the executive secretary, as the head of the Office of the President, that is named the party respondent in petitions assailing the president's official acts.[55]

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

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

III

The invocation of presidential immunity from suit must be balanced with legitimate State interests. In *Estrada*, this Court observed that "a critical reading of current literature on executive immunity will reveal a

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53 J. Sereno, Dissenting Opinion in *Balao v. Macapagal-Arroyo*, 678 Phil. 532, 587 (2011) [Per J. Villarama, Jr. En Banc].

54 RULE ON THE WRIT OF HABEAS DATA, sec. 10.

55 *See Aguinaldo v. Aquino III*, 801 Phil. 492 (2016) [Per J. Leonardo-De Castro, En Banc].

56 *Soliven v. Makasiar*, 249 Phil. 394, 400 (1988) [Per Curiam, En Banc].

judicial disinclination to expand the privilege especially when it impedes the search for truth or impairs the vindication of a right."[57] Indeed, the Constitution declares as its principles and State policies:

> ARTICLE II
> Declaration of Principles and State Policies
>
> SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.
>
> . . . .
>
> SECTION 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.[58]

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

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

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

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

While the president remains immune from suit during incumbency, petitions for a writ of amparo or *habeas data* may still be filed against his or her official acts, as long as the executive secretary, or the relevant officers, are named as party respondents. The Petition's automatic dismissal on the ground of immunity, without any other means of redress, demeans the values enshrined in our Constitution. It sets a dangerous precedent that the

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57 *Estrada v. Desierto*, 406 Phil. 1, 76 (2001) [Per J. Puno, En Banc].
58 CONST., art. II, secs. 1 and 27.

president is untouchable and cannot be held accountable for extrajudicial killings and enforced disappearances committed during his or her incumbency.

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

MARVIC M.V. F. LEONEN
Associate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court