Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FERDINAND V. TENDENILLA, MARIVIC L. SARAO, MA. IRENE ARSENIA L. BELLO and MACABANTOG D. BATAO,
Petitioners,

-versus-

HON. CESAR V. PURISIMA in his capacity as Secretary of the Department of Finance, HON. MAR A. ROXAS in his capacity as the Secretary of the Department of Interior and Local Government, HON. JOSEPH EMILIO A. ABAYA in his capacity as the Secretary of the Department of Transportation and Communications, HON. LEILA M. DE LIMA in her capacity as the Secretary of the Department of Justice, GEN. RICARDO A. DAVID, JR. in his capacity as the Commissioner of the Bureau of Immigration, BOARD OF AIRLINE REPRESENTATIVES and AIRLINE OPERATORS COUNCIL,
Respondents.

G.R. No. 210904

Present:

LEONEN, *J., Chairperson,*
CARANDANG,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:
November 24, 2021
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DECISION

LEONEN, *J.*:

This Court resolves a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals Decision[1] and Resolution[2] which dismissed petitioners' Petition for Certiorari and upheld the validity and constitutionality of the July 31, 2012 Memorandum issued by then Department of Finance Secretary Cesar Purisima (Secretary Purisima) and the August 3, 2012 Letter of Instruction issued by then Department of Transportation and Communication Secretary Mar Roxas (Secretary Roxas).[3]

Petitioners Ferdinand V. Tendenilla (Tendenilla), Marivic L. Sarao (Sarao), Ma. Irene Arsenia L. Bello (Bello) and Macabantog D. Batao (Batao) (collectively, Tendenilla, et al.) are Bureau of Immigration employees assigned to work at Ninoy Aquino International Airport.[4]

Since 1953, the Bureau of Immigration have issued various department issuances authorizing its employees to render overtime work at Philippine airports and seaports. The compensation for their overtime work, as well as their traveling, meal, board, and lodging expenses were collected by these employees from the shipping or airline companies. The practice was for the employees to send their billings to the airline companies, through their employees' association.[5]

The department issuances were issued pursuant to Section 7-A of Commonwealth Act No. 613, as amended by Republic Act No. 503, which states that the Commissioner may assign immigration employees to render overtime work. The compensation for these services shall be at rates fixed by the Commissioner and shall be shouldered by shipping, airline companies, or other persons served.[6]

Later, various airline companies expressed their dismay over having to shoulder the compensation of these government employees' overtime work.[7] In response, Secretary Purisima was instructed by then President Benigno S.

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1 *Rollo*, pp. 35–69. The August 12, 2013 Decision in CA-G.R. SP No. 126920 was penned by Associate Justice Noel G. Tijam (retired Associate Justice of the Supreme Court) and concurred in by Associate Justices Romeo F. Barza and Ramon A. Cruz of the Seventh Division, Court of Appeals, Manila.

2 Id. at 70–71. The January 14, 2014 Resolution was penned by Associate Justice Noel G. Tijam (retired Associate Justice of the Supreme Court) and concurred in by Associate Justices Romeo F. Barza and Ramon A. Cruz of the Former Seventh Division, Court of Appeals, Manila.

3 Id. at 14, 30–31, Petition for Review on Certiorari.

4 Id. at 15–16.

5 Id. at 36.

6 Commonwealth Act No. 613 (1940), The Philippine Immigration Act, as amended, sec. 7-A provides:
Assignment Of Immigration Employees to Overtime Work
SECTION. 7-A. Immigration employees may be assigned by the Commissioner of Immigration to do overtime work at rates fixed by him when the service rendered is to be paid for by shipping companies and airlines or other persons served.

7 *Rollo*, p. 36.

Aquino, III (President Aquino) to resolve the issue.[8]

On July 31, 2012 the Economic Managers' Cabinet Cluster held a meeting to address the complaints of the airline companies. Representatives from the Department of Budget and Management, Department of Transportation and Communication, Department of Agriculture, Department of Tourism, Department of Justice, Bureau of Customs, Manila International Airport Authority, and the Philippine Economic Zone Authority attended the meeting.[9]

On the same date, Secretary Purisima sent a Memorandum[10] to President Aquino informing him of the meeting's result during which they agreed to adopt a 24/7 shifting work schedule, thus:

> The meeting was convened to discuss the issue of rendition of overtime work at airports and other facilities for the provision of customs, immigrations and quarantine services (CIQ) and the payment thereof by private entities, particularly the airline companies at the airports.
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> During the said meeting, it was recognized that payment by private entities of overtime pay rendered by government personnel is a deterrent to the tourism industry and is generally regarded as an irregular activity. Issues concerning the issuance of mere acknowledgement receipts instead of official receipts were raised, as well as allegations of work slowdown occasionally experienced in this airports.
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> As an immediate response, it was agreed upon that operations for the rendition of CIQ services shall follow a shifting schedule to ensure an undisrupted 24 hour service. Further, effective immediately, overtime work rendered by any government personnel shall be paid by concerned agency applying government rates.
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> The following are the action points established:
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> 1. The DOF, DA and DOH shall issue directives to the Bureau of Customs (BOC), Bureau of Immigration (BI), Quarantine Services of Bureau of Plant Industry and Bureau of Animal Industry and Bureau of Quarantine and International Health Surveillance (BOQIHS), respectively. Instructing said agencies to discontinues charging overtime pay against private entities at airports, seaports and all other facilities (i.e. PEZA zones), effective 1 August 2012.
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> 2. The DOTC, through the Civil Aviation Authority Board, shall issue an advisory to all airline companies, informing them of the policy to discontinue charging private entities for overtime pay, and likewise directing them to stop paying any and all OT pay rendered by government personnel, effective 1 August 2012.
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> 3. The DBM shall prepare the appropriate rules governing payment of

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8 Id. at 297.
9 Id. at 36–37.
10 Id. at 126–128.

> overtime pay for personnel rendering CIQ, to be paid by the national government at government rates, subject to the rules of the Civil Service.
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> 4. The relevant agencies shall request from the DBM the creation of additional plantilla positions to address any shortage in any manpower resulting from the implementation of the shifting schedule, with the main international airports as the priority areas for the implementing of shifting schedule.
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> Worthy to note is the fact that legal bases of the BI and BOC for charging overtime pay against private entities are merely permissive, and not mandatory. Commonwealth Act No. 613 for the BI and RA No. 1937 for the BOC contain similar wordings and allow the Commissioners to assign their respective employees to render overtime work, payable by the persons served by such government employees. There is, however, no prohibition for the national government to shoulder the payment of such overtime work, especially since the same is not for the purpose of serving any specific person or entity but to complement the operations of the agency when necessary.
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> . . . .
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> The agencies under the DA in the conduct of quarantine services, on the other hand, find its legal basis in Executive Order No. 292, whereby it provides that services performed outside office hours shall be chargeable against the parties served. With the implementation of the shifting schedule for CIQ services, however, the provision will no longer be applicable as the services rendered will always be performed within office hours.
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> During the 31 July 2012 meeting, suggestions were made on the means to address manpower and queuing problems. These include outsourcing the services performed in the airports to ensure efficiency and quality of services, centralization of the procurement of CCTV cameras in the airports to enable proper monitoring of the CIQ services, and the propriety of using a random inspection of the passengers and airports instead of subjecting everyone to inspection, which was observed to be effective in other countries.[11]

In accordance with the Memorandum, Secretary Roxas issued the August 3, 2012 Letter of Instruction[12] directing the Board of Airline Representatives to discontinue paying government employees for the overtime customs, immigration, and quarantine services they performed. Pertinent portions of the letter stated:

> Pursuant to the Presidential directive, the concerned Cabinet secretaries agreed to adopt a policy wherein a 24/7 shifting schedule will be implemented and the government will fully finance the services rendered by the government employees in international airports. Hence, government agencies performing services in the international airports have been directed to field sufficient number of personnel in shifts to address

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[11] Id.

[12] Id. at 129–130.

their operational requirements to avoid rendering overtime.

> In view thereof, we are informing you of this policy of the government and request your assistance in relaying this information to airline companies and to advise them to stop paying overtime pay to said government employees, whether in case, in kind, or whatever form. We also request that you report to us any violation of this policy, including any work stoppage, work slow-down, or any form of action that affects the efficiency of their services, to enable the agencies concerned to implement corrective action.[13]

The Board of Airline Representatives complied with the directive and refused to pay the Bureau of Immigration employees' billings sent after the effectivity of the assailed issuances.[14]

Aggrieved, various Bureau of Immigration employees organization, as represented by Tendenilla, et al. filed with the Court of Appeals a Petition for Certiorari, Prohibition, and Injunction with Urgent Prayer for Issuance of a Temporary Restraining Order and/or Status Quo Ante Order and Writ of Preliminary Injunction assailing the Memorandum and Letter of Instruction.[15]

In its August 12, 2013 Decision, the Court of Appeals dismissed the Petition for Certiorari and upheld the constitutionality of the assailed Memorandum and Letter of Instruction, thus:

> **WHEREFORE,** the instant petition is **DISMISSED.** The Memorandum, dated July 31, 2012, issued by the DOF Secretary Cesar Purisima and the Letter issued by DOTC Secretary Mar Roxas, dated August 3, 2012, are declared **VALID and CONSTITUTIONAL.** The concerned agencies are hereby **DIRECTED** to comply with the directives under the said issuances.
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> Subject to Civil Service rules, the National Government, through the Department of Budget and Management (DBM), is hereby DIRECTED **to pay the overtime services** actually rendered by Bureau of Immigration employees for the month of August and September 2012, and thereafter if any, the legal basis being that under the said executive issuances, the National Government has assumed the payment of said obligation.
>
> The prayer for a Temporary Restraining Order and/or Writ of Preliminary Injunction is hereby **DENIED.** No costs.
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> **SO ORDERED.**[16] (Emphasis in the original)

It agreed with Tendenilla, et al. that the burden to pay the employees'

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13 Id.
14 Id. at 39.
15 Id. at 39–40.
16 Id. at 68.

overtime services falls with the airline companies. However, it clarified that the assailed issuances did not eliminate the airline companies' liability but merely implemented a no overtime policy.[17]

It further recognized the Commissioner's authority to adjust the working schedule of the Bureau of Immigration employees. It noted that as the Bureau's head, it is within the Commissioner's power to manage the its operations, and to control, direct, and supervise its employees.[18] In this regard, it held that the Bureau of Immigration's employees have no substantive right to demand overtime work as it is within the Commissioner's discretion to require overtime services.[19]

It likewise ruled that as the head of the executive department, the President exercises supervision and control over all executive departments, bureaus, and offices. Thus, the Commissioner's authority to fix the Bureau of Immigration employees' working hours may be carried out by the President or by the Cabinet Members as the President's alter ego.[20]

Finally, the Court of Appeals brushed aside the alleged applicability of *Carbonilla v. Board of Airline Representatives*.[21] It decreed that unlike *Carbonilla*,where the continued rendition of overtime services was allowed, the executive department in the present case opted to eliminate or reduce the rendition of overtime services.[22]

Tendenilla et al. moved for reconsideration, but it was denied in the January 14, 2014 Resolution of the Court of Appeals.

Dissatisfied, petitioners filed the present Petition for Review.

They argue that the Memorandum and Letter of Instruction are unconstitutional for contravening Article VI, Section 1 of the 1987 Constitution and Section 7-A of Commonwealth Act No. 613, as amended.[23]

They insist that in enacting Commonwealth Act No. 613, the legislature's intent was for the shipping companies, airlines, and other persons served to pay for the overtime work rendered by immigration employees.[24] They maintain that by adopting a 24/7 shifting policy, the executive department has usurped the legislature's power in that it discharged respondent Board of Airline Representatives from paying the

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17 Id. at 51–52.
18 Id. at 53–54 citing Section 3 of the Philippine Immigration Act.
19 Id. at 52–53.
20 Id. at 57–58.
21 673 Phil. 413 (2011) [Per J. Carpio, Second Division].
22 *Rollo*, pp. 59–62.
23 Id. at 22.
24 Id. at 22–23 and 28.

immigration employees' overtime pay.[25]

Petitioners further cite *Carbonilla* where this Court allegedly recognized the legislature's intent to limit the liability to those mentioned in Section 7-A of Commonwealth Act No. 613.[26]

They likewise contend that while it is discretionary on the executive department or Commissioner of Immigration to require overtime work, it is unlawful to abolish the rendition of overtime service and to exempt respondent Board of Airline Representatives from the liability of paying overtime pay.[27]

Finally, they assert that it would be unjust to shift to the taxpayers the liability of paying the immigration employees' overtime pay, transportation, and meal allowances, considering that not all taxpayers are travelers.[28]

In its Comment,[29] private respondent Board of Airline Representatives maintains that the Petition should be dismissed outright due to petitioners' failure to comply with the Rules of Court.[30] Particularly, it claims that the Petition's verification and certification of non-forum shopping was defective as it was only signed by petitioners Tendenilla and Bello and not by petitioners Sarao and Batao. Further, the Petition failed to attach material portions of the record that would support it, in violation of Rule 45, Section 4 of the Rules of Court.[31]

Private respondent likewise contends that the Memorandum and Letter of Instruction are valid and constitutional. It argues that the Court of Appeals correctly ruled that the Commissioner of Immigration has the discretion when to require overtime work.[32] It asserts that the petitioners have recognized this discretionary power of the Commissioner.[33]

Private respondent also insists that the Philippine Immigration Act's use of the word "may" confirms that the rendition of overtime work is merely permissive.[34] To support its position, it cites the Revised Administrative Code of 1987 and its Omnibus Implementing Rules which empower the Commissioner of Immigration, and ultimately the President and his or her alter egos, to adjust the work schedules of employees in the

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25 Id. at 25–27.
26 Id. at 27–29.
27 Id. at 24–25.
28 Id. at 28.
29 Id. at 154–191.
30 Id. at 169.
31 Id. at 171–173.
32 Id. at 173.
33 Id. at 177.
34 Id. at 175.

executive department.[35] It also maintains that the determination of whether to impose overtime work is a political question beyond this Court's review.[36]

It further argues that there was no usurpation of legislative power considering that the Memorandum and Letter of Instruction were issued pursuant to the quasi-legislative powers of the Executive.[37]

It likewise asserts that the Court of Appeals correctly ruled that *Carbonilla* is inapplicable.[38] Finally, it contends that the national government may assume the burden of paying the immigration employees' overtime pay considering the services they perform are essential parts of the State's police power.[39]

For their part, public respondents Secretaries Purisima and Roxas, Joseph Emilio A. Abaya, Leila M. De Lima and Retired General Ricardo A. David, Jr. (Commissioner David) maintain that the Memorandum and Letter of Instruction are valid and constitutional.[40]

First, they contend that petitioners have no right to demand overtime work since it is within the Commissioner's discretion to decide whether the immigration employees should render overtime service.[41]

Second, they argue that the adoption of the 24/7 work schedule was an exercise of the President's power of control over the executive department. They claim that included in this power of control is the President's right to interfere in the Commissioner' exercise of their discretion.[42]

They further maintain that under the proposed 24/7 work schedule, sufficient number of immigration personnel will be deployed on three eight-hour shifts. With this arrangement, the operational requirements of airport, seaports, and similar facilities will be addressed while minimizing the need for overtime work.[43]

Third, they assert that the government may pay the employees' overtime services and allowances. They cite Book VI, Chapter 7, Section 63 of the Administrative Code which allegedly permits the government to source the funds from "any unexpected balance of the appropriation for

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35 Id. at 179–180.
36 Id. at 181.
37 Id. at 181–185.
38 Id. at 186.
39 Id. at 188–190.
40 Id. at 682.
41 Id. at 683–685.
42 Id. at 685–686.
43 Id.

salaries and wages authorized in the General Appropriations Act[.]"[44]

They claim that both Book VI, Chapter 7, Section 63 of the Administrative Code and Section 7-A of the Immigration Act provide for the mechanisms by which Bureau of Immigration employees' overtime pay may be paid. According to them, the employees' overtime services may either be shouldered by the government from the unexpected balance of the appropriation for salaries and wages authorized in the General Appropriations Act or by the shipping companies, airlines or other persons served.[45]

Assuming that Section 7-A of the Immigration Act prevails over the Administrative Code, the government may still shoulder the payment of the employees' overtime services. They insist that the term "other persons served" include the government inasmuch as they and the general public benefit from the services rendered by the immigration employees.[46]

Finally, they contend that the Petition should be denied outright due to lack of proper verification and certification of non-forum shopping.[47]

In their Reply, petitioners counter that they have substantially complied with the requirements on verification and certification against forum shopping.[48] They likewise claim that the documents attached to the Petition are sufficient to enable this Court to rule on the issues involved.[49]

On the substantive issues, petitioners offer the following arguments:

First, they contend that the discretion given to the Commissioner of Immigration on assigning immigration employees for overtime work is subject to the condition that the overtime pay be shouldered by airline companies or other persons served.[50]

Second, they argue that contrary to the Court of Appeals' finding, the assailed Memorandum and Letter of Instruction do not eliminate the need for overtime work. They maintain that despite the implementation of the 24/7 shifting schedule, overtime work is still being rendered.[51]

Third, they insist that Section 7-A of the Immigration Act, a special

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44 Id. at 687.
45 Id. at 688–690.
46 Id. at 690–691.
47 Id. at 694.
48 Id. at 750, Consolidated Reply.
49 Id. at 752.
50 Id. at 753–756.
51 Id. at 756–758.

law, prevails over the Administrative Code which is a general law.[52]

Lastly, they reiterate that the Memorandum and Letter of Instruction contravene Section 7-A of the Immigration Act and that the ruling in *Carbonilla* should be made applicable in this case.[53]

For this Court's resolution are the following issues:

First, whether or not the Petition should be dismissed outright for failure to comply with rules on verification and certification against forum shopping;

Second, whether or not the Memorandum and Letter of Instruction violate Article VI, Section 1 of the Constitution; and

Finally, whether or not the Memorandum and Letter of Instruction contravene Section 7-A of the Immigration Act.

The Petition is bereft of merit.

I

The Rules of Court provides for the manner by which an appeal by certiorari may be brought before the Supreme Court. Particularly, Rule 45 Section 1[54] requires that the Petition for Review on Certiorari be verified. In addition, Section 4[55] of the same rule states that the petition must contain a sworn certification against forum shopping.

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52 Id. at 759–760.

53 Id. at 760–766.

54 RULES OF COURT, Rule 45, sec. 1 provides:
SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

55 RULES OF COURT, Rule 45, sec. 4 provides:
SECTION 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.

The purpose of the verification requirement is "to secure an assurance that the allegations in the petition have been made in good faith or are true and correct, and not merely speculative."[56] Meanwhile, a certificate against forum shopping is demanded based on "the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to an orderly judicial procedure."[57]

In *Altres v. Empleo*,[58] this Court laid down the guidelines regarding the requirements on verification and certification against forum shopping:

> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
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> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
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> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
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> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons".
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> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
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> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[59] (Citations omitted)

In this case, while the verification and certification against forum shopping attached to the Petition is defective for having been signed only by

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56 *Spouses Lim v. Court of Appeals*, 702 Phil. 634, 642 (2013) [Per J. Brion, Second Division].

57 *Torres v. Specialized Packaging Development Corp.*, 477 Phil. 540, 551 (2004) [Per J. Panganiban, First Division].

58 594 Phil. 246 (2008) [Per J. Carpio-Morales, En Banc].

59 Id. at 261–262.

Tendenilla and Bello,[60] this Court finds that petitioners have substantially complied with the verification and certification requirements.

As correctly argued by petitioners, Tendenilla and Bello are both officers of Immigration Officers' Association of the Philippines and the Bureau of Immigration Ninoy Aquino International Airport Employees' Association. As officers of these associations, they represent their fellow employees who were affected by the assailed issuances. Further, they are aware of their colleagues' concerns regarding the assailed issuances, giving them ample knowledge to swear to the truth of the allegations in the Petition. Finally, petitioners share a common interest in declaring the assailed issuances unconstitutional and claiming their overtime pay.[61]

Time and again, this Court has stressed the importance of procedural rules in the administration of justice as they are designed to ensure that substantive rights are enforced in an orderly and speedy manner.[62] These rules should be treated with utmost respect considering that its purpose is to address the worsening problem of delay in resolving rival claims.[63]

Nonetheless, litigation is not a game of technicalities. Parties should be given sufficient opportunity to ventilate their case.[64] As this Court held in *Heirs of Zaulda v. Zaulda*:[65]

> The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, *giving a false impression of speedy disposal of cases* while actually resulting in more delay, if not miscarriage of justice."[66] (Emphasis in the original, citation omitted)

Considering that petitioners substantially complied with the requirements on verification and certification, this Court deems it proper to relax the rules of procedure to afford the petitioners ample opportunity to establish the merits of their appeal.

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60 *Rollo*, p. 104.
61 Id. at 750.
62 *Santos v. Court of Appeals*, 275 Phil. 894 (1991) [Per J. Cruz, First Division].
63 *Osmeña v. Commission on Audit*, 665 Phil. 116, 124 (2011) [Per J. Brion, En Banc].
64 *Barra v. Civil Service Commission*, 706 Phil. 523 (2013) [Per J. Brion, Second Division].
65 729 Phil. 639 (2014) [Per J. Mendoza, Third Division].
66 Id. at 651.

II

The second and third issues being interrelated, this Court shall discuss them simultaneously.

The principle of separation of powers is a basic tenet of our democratic and republican system of government. It "refers to the constitutional demarcation of the three fundamental powers of government."[67] Legislative power, which refers to the authority to make, alter, and repeal laws, is a power which has been vested in Congress.[68] Executive power, defined as "the power to enforce and administer the laws," is reposed in the President.[69] The Judiciary, on the other hand, is tasked with interpreting the law.[70]

The principle was thoroughly discussed in a separate opinion in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*:[71]

> The system of separation of powers contemplates the division of the functions of government into its three (3) branches: the legislative which is empowered to make laws; the executive which is required to carry out the law; and the judiciary which is charged with interpreting the law. Consequent to the actual delineation of power, each branch of government is entitled to be left alone to discharge its duties as it sees fit. Being one such branch, the judiciary, as Justice Laurel asserted in *Planas v. Gil*, "will neither direct nor restrain executive [or legislative action". Expressed in another perspective, the system of separated powers is designed to restrain one branch from inappropriate interference in the business, or intruding upon the central prerogatives, of another branch; it is a blend of courtesy and caution, "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other."[72] (Citations omitted)

Essentially, the principle "ordains that each of the three branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere."[73]

Petitioners insist that the Executive violated Article VI, Section 1 of the Constitution when it enacted the assailed issuances.[74] They insist that

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67 *Belgica v. Ochoa*, 721 Phil. 416, 534 (2013) [Per J. Perlas-Bernabe, En Banc].

68 *Government of the Philippine Islands v. Springer*, 50 Phil. 259 (1927) [Per J. Malcolm, Second Division].

69 *Ople v. Torres*, 354 Phil. 948 (1998) [Per J. Puno, En Banc].

70 *Belgica v. Ochoa*, 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, En Banc].

71 J. Velasco, Dissenting Opinion in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387 (2008) [Per J. Carpio-Morales, En Banc].

72 Id. at 706.

73 *Gerochi v. Department of Energy*, 554 Phil. 563, 584 (2007) [Per J. Nachura, En Banc].

74 *Rollo*, p. 22.

the decision to abolish overtime work and adopt a 24/7 shifting schedule is a policy decision falling within Congress' discretion.[75] They further contend that it is mandatory to render overtime work at airports. They claim that the elimination of overtime work and implementation of a 24/7 shifting policy constitute a circumvention of Section 7-A of the Immigration Act.

Petitioners' arguments are unmeritorious.

At the outset, a perusal of Section 7-A reveals that the discretion of whether immigration employees may render overtime services falls on the Commissioner of Immigration. The provision states:

> SECTION. 7-A. Immigration employees may be assigned by the Commissioner of Immigration to do overtime work at rates fixed by him when the service rendered is to be paid for by shipping companies and airlines or other persons served."

Pursuant to this provision, it is the Commissioner who determines whether employees may perform overtime work as well as who among them would be assigned. Being discretionary in nature, the employees have no substantive right to demand the rendition of overtime work.

The word "may" in Section 7-A, corroborates the discretionary nature of the rendition of overtime services. Settled is the rule "that the word 'may' denotes discretion, and cannot be construed as having a mandatory effect."[76]

Nonetheless, this Court stresses that while the law gives the Commissioner the discretion on whether to require immigration employees to render overtime work, the exercise of this discretion is not without qualification. The law imposes a condition that when employees are assigned by the Commissioner to work overtime, their services should be paid by "shipping companies and airlines or other persons served."[77]

The Commissioner of Immigration exercised this discretion by enacting various department issuances providing for the guidelines and regulations concerning the immigration employees' rendition of overtime work. These department issuances provided for the rate of overtime services, including how the employees will be paid.[78] Particularly, Department Issuance No. 369 states that overtime services, among others, shall be paid by shipping and airline companies.[79]

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75 Id. at 25.
76 *Republic Planters Bank v. Agana, Sr.*, 336 Phil. 1, 23 (1991) [Per J. Hermosisima, Jr., First Division].
77 Commonwealth Act No. 613 (1940) as amended, sec. 7-A.
78 *Rollo*, pp. 107–125. Annexes A to E of the Petition for Certiorari before the Court of Appeals.
79 Id. at 121–125. Department Order No. 369 dated November 7, 2000.

While the law grants the discretion to the Commissioner of Immigration, the President, in the exercise of his or her power of control over the Executive, may revise, review, set aside, or substitute the Commissioner's exercise of this discretion.[80]

Notably, the Bureau of Immigration is an office which forms part of the executive branch of the government. As part of the executive department, the Commissioner of Immigration is subject to the presidential power of control. In *Carpio v. Executive Secretary*[81] this Court explained the extent of this power:

> This presidential power of control over the executive branch of government extends over all executive officers from Cabinet Secretary to the lowliest clerk and has been held by us, in the landmark case of *Mondano vs. Silvosa*, to mean "the power of [the President] to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter." It is said to be at the very "heart of the meaning of Chief Executive."[82] (Citations omitted)

Corollary to this power of presidential control is the doctrine of qualified political agency. The doctrine was elucidated in *Manalang-Demigillo v. Trade and Investment Development Corp. of the Phils.*:[83]

> The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.[84]

Likewise, in *Philippine Institute for Development Studies v. Commission on Audit*:[85]

> *The doctrine of qualified political agency acknowledges the multifarious executive responsibilities that demand a president's attention,*

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80 Id. at 686.
81 283 Phil. 196 (1992) [Per J. Paras, En Banc].
82 Id. at 204.
83 705 Phil. 331 (2013) [Per J. Bersamin, En Banc].
84 Id. at 347–348
85 G.R. No. 212022, August 20, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65612> [Per J. Leonen, En Banc].

> *such that the delegation of control power to his or her Cabinet becomes a necessity.* Unless the Constitution or law provides otherwise, Cabinet members have the president's imprimatur to exercise control over the offices and departments under their respective jurisdictions, which authority nonetheless remains subject to the president's disapproval or reversal.[86] (Emphasis supplied, citation omitted)

In this case, pursuant to then President Aquino's directive, the alter egos of the President, particularly the economic managers' cabinet cluster, held a meeting to discuss the employees' overtime issue at airports. During their meeting, it was recognized that the practice of airline companies paying for government employees' overtime services was viewed as an irregular activity deterrent to the tourism industry. They then adopted the 24/7 shifting policy and issued the assailed Memorandum and Letter of Instruction.

Thus, the 24/7 shifting policy adopted by the alter egos of the President remains valid until and unless reversed by the Chief Executive.

II (A)

Petitioners next contend that the adoption of a 24/7 shifting exonerated private respondent Board of Airline Representatives from its obligation to pay the Bureau of Immigration employees' overtime services.

Petitioners' argument is misplaced.

To reiterate, the discretion granted to the Commissioner of Immigration on whether to require immigration employees to render overtime work is subject to a condition that the overtime services rendered be paid by "shipping companies and airlines or other persons served."[87]

However, it must be stressed that the limitation provided by law as to who will shoulder the burden of paying the overtime services applies only when overtime work is rendered. When the services performed do not constitute overtime work, Section 7-A finds no application.

Under the adopted 24/7 shifting policy, the government agencies, including the Bureau of Immigration, rendering customs, immigration, and quarantine services, shall follow a shifting schedule wherein its employees shall be divided into three eight-hour shifts. Sufficient number of personnel will be deployed per shift to ensure that the operational requirements at airports and other facilities are met. With this arrangement, there will be no

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86 Id.

87 Commonwealth Act No. 613 (1940) as amended, sec. 7-A.

need for the rendition of overtime work and all services rendered will always be performed within office hours.[88] Considering that no overtime work will be rendered, the limitation under Section 7-A will not apply.

II.B

Petitioners maintain that it is legally impermissible for the national government to pay the overtime services of immigration employees. They insist that it would be unfair for the taxpayers to carry the burden of paying the employees' overtime services since not all taxpayers are travelers.[89]

Petitioners' assertions fail to persuade.

The executive department, in the assailed Memorandum, acknowledged that during the new policy's introduction, the number of immigration employees is insufficient to cope with the demands of a 24/7 shifting policy. Pertinent portions of the Memorandum state:

> As an immediate response it was agreed upon that operations for the rendition of CIQ services shall follow a shifting schedule to ensure an undisrupted twenty-four hour service. Further effective immediately, overtime work rendered by an government personnel shall be paid by the concerned agency, applying government rates.
>
> The following are the action points established:
>
> . . . .
>
> 3. The DBM shall prepare the appropriate rules governing payment of overtime pay for personnel rendering CIQ, to be paid by the national government at government rates, subject to the rules of the Civil Service.
>
> 4. The relevant agencies shall request from the DBM the creation of additional plantilla positions to address any shortage in any manpower resulting from the implementation of the shifting schedule, with the main international airports as the priority areas for the implementing of shifting schedule.[90]

In its Decision, the Court of Appeals observed that while the purpose of the 24/7 shifting policy was to minimize, if not eliminate, the rendition of overtime work, overtime work may still be required during the new policy's initial stage of implementation. Further, it held that the national government may undertake to pay the overtime work rendered,[91] stressing that the

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88 *Rollo*, p. 128.
89 Id. at 29.
90 Id. at 127.
91 Id. at 63.

government's obligation to pay the overtime services rendered is brought by the immigration employees' employment in the government,[92] thus:

> Viewed in this light, the undertaking of the Government to finance overtime services must be viewed to reinforce their obligation as employer of the concerned employees who may be incidentally required to still render overtime work. Indeed, while the law recognizes the right of the employer to demand overtime work from his employees, it imposes the concomitant obligation upon the employer to pay his workers additional compensation for overtime, Sundays' and legal holidays' work as well as nighttime work.
>
> In other words, the assumption by the National Government of the obligation of paying overtime compensation should be viewed as an obligation or expense which the Government must necessarily undertake while it transitions from the current to the new system of work in the bureau.
>
> Such undertaking should certainly not be construed to change, amend or repeal Sec. 7A of the Philippine Immigration Act because it is only a consequent obligation for any residual overtime work which may still be necessary in the process of initially reducing and ultimately eliminating the prior system of rendering overtime work.[93] (Emphasis in the original)

This Court agrees that the national government may shoulder the payment of the immigration employees' overtime services.

Section 7-A of the Immigration Act states that following may assume the burden of paying the overtime work: (1) shipping companies; (2) airline companies; and (3) other persons served.

The term "other persons served," as correctly argued by public respondents, is broad enough to cover the government and the general public who both enjoy the overtime services rendered by immigration employees.[94]

The Bureau of Immigration is the Department of Justice's primary enforcement arm in ensuring that all foreigners within the Philippine jurisdiction comply with existing laws.[95] Its duties include the regulation of foreign nationals' entry, stay, and departure in the country. It "[a]ssists local and international law enforcement agencies in securing the tranquility of the state against foreigners whose presence or stay may be deemed threats to national security, public safety, public morals and public health[.]"[96] It is also tasked to prevent the trafficking of persons by adopting measures for

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92 Id. at 62.
93 Id. at 64.
94 Id. at 691.
95 Bureau of Immigration, *Functions*, available at <https://immigration.gov.ph/the-bureau/functions> (last accessed on November 24, 2021).
96 Id.

the apprehension of suspected traffickers.[97]

Further, as pointed out by public respondents:

> The functions of BI officials and employees go beyond the mere stamping of the passports or travel documents of incoming and outgoing airline or shipping line passengers. These officials and employees have the primordial duty to determine and exclude illegal and undesirable foreigners or aliens who commit or may commit acts inimical to public safety and security, public welfare and progress. They also play a big role in the country's disease prevention because they, in coordination with the Department of Health (DOH) and Bureau of Quarantine, are part of the initial screening of arriving passengers to prevent the entry of deadly diseases such as Severe Acute Respiratory Syndrome (SARS) or Ebola.[98]

Accordingly, there is no legal impediment for the national government to shoulder the payment of overtime services.

III

Lastly, petitioners reliance on *Carbonilla*[99] is misplaced.

Unlike in this case where Bureau of Immigration employees are involved, *Carbonilla* pertained to Bureau of Customs employees.

Further, the issue in the *Carbonilla* differs from the subject matter involved in this case. The question in *Carbonilla* was whether airline companies, aircraft owners, and operators are considered as other persons served by Bureau of Custom employees under Section 3506 of the Tariff and Customs Code of the Philippines.

Meanwhile, the issues in this case involve the power of the executive department to validly implement a 24/7 shifting policy and whether the government should pay for the immigration employees' overtime services.

Be that as it may, even *Carbonilla* does not preclude the government

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97 Republic Act No. 9208 (2002), sec. 16(f).
SECTION 16. *Programs that Address Trafficking in Persons*. — The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs:
. . . .
(f) Bureau of Immigration (BI) — shall strictly administer and enforce immigration and alien administration laws. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure and shall ensure compliance by the Filipino fiancés/fiancées and spouses of foreign nationals with the guidance and counseling requirements as provided for in this Act.

98 *Rollo*, p. 691.

99 *Carbonilla v. Board of Airline Representatives*, 673 Phil. 413 (2011) [Per J. Carpio, Second Division].

from shouldering the payment of overtime services. This Court, in *Carbonilla*, recognized that the overtime services may be paid by all taxpayers of the country whether they are travelers or not, thus:

> The overtime pay of BOC employees may be paid by any of the following: (1) all the taxpayers in the country; (2) the airline passengers; and (3) the airline companies which are expected to pass on the overtime pay to passengers. If the overtime pay is taken from all taxpayers, even those who do not travel abroad will shoulder the payment of the overtime pay. If the overtime pay is taken directly from the passengers or from the airline companies, only those who benefit from the overtime services will pay for the services rendered. Here, Congress deemed it proper that the payment of overtime services shall be shouldered by the "other persons served" by the BOC, that is, the airline companies. This is a policy decision on the part of Congress that is within its discretion to determine. Such determination by Congress is not subject to judicial review.[100]

WHEREFORE, the Petition is **DENIED**. The August 12, 2013 Decision and January 14, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 126920 are **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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[100] Id. at 440.

WE CONCUR:

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice