

Republic of the Philippines  
**SUPREME COURT**  
Manila

**SATURNINO C. OCAMPO, TRINIDAD  
H. REPUNO, BIENVENIDO LUMBERA  
BONIFACIO P. ILAGAN, NERI  
JAVIER COLMENARES, MARIA  
CAROLINA P. ARAULLO, M.D.,  
SAMAHAN NG EX-DETAINEES  
LABAN SA DETENSYON AT ARESTO  
(SELDA) represented by DIONITO  
CABILLAS, CARMENCITA M.  
FLORENTINO, RODOLFO DEL  
ROSARIO, FELIX C. DALISAY,  
DANILO M. DELA FUENTE,**  
Petitioners,

-versus-

**G.R. NO.**  
For: Certiorari and Prohibition with  
Application for Temporary  
Restraining Order (TRO) and/or  
Preliminary Injunction.

**REAR ADMIRAL ERNESTO C.  
ENRIQUEZ (in his capacity as the  
Deputy Chief of Staff for Reservist  
and Retiree Affairs, Armed Forces of  
the Philippines), The Grave Services  
Unit (Philippine Army) and  
GENERAL RICARDO R. VISAYA (in  
his capacity as the Chief of Staff,  
Armed Forces of the Philippines),  
DEFENSE SECRETARY DELFIN  
LORENZANA, and HEIRS OF  
FERDINAND E. MARCOS,  
represented by his surviving spouse  
Imelda Romualdez Marcos,**  
Respondents.

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**PETITION FOR CERTIORARI and PROHIBITION**  
**WITH URGENT PRAYER FOR THE ISSUANCE**  
**OF A TEMPORARY RESTRAINING ORDER**  
**AND/OR WRIT OF PRELIMINARY INJUNCTION**

Petitioners, by Counsel, respectfully state:

**PREFATORY STATEMENT**

Another one for the bizarre books – a hero's burial for Ferdinand E. Marcos.

With thousands of Filipinos murdered and disappeared under his watch and billions of the peoples' money stolen during his regime, Marcos should have spent his last years in prison, and in his death in an unmarked and desolate grave. If not for his demise and the impunity typical of a failed State, Marcos would have never resurrected from the felon that he really has been.

But the strangest things happen in this part of the world. Amazingly, not only are his heirs back in power, but a hero's burial reserved only for the decent and brave beckons his return to glory. Indeed, in this part of the world, greed knows no civility and misfortune for the Filipino seems boundless. If only the gun salute intended for Marcos would marvelously become the sweet misfiring talisman that would turn the funeral cortege to serve divine justice.

In the meantime, let the sleeping dog continue to lie where lying confuses and confounds no one but his family.

Else, it would be a grave injustice.

**STATEMENT OF THE CASE**

1. This is a PETITION FOR CERTIORARI and PROHIBITION under Rule 65 of the Rules of Court, with an application for urgent relief by way of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction to REVERSE, SET ASIDE and ENJOIN the execution of the Executive Department's decision to allow the burial of the deposed and disgraced Ferdinand E. Marcos at

the Libingan ng mga Bayani with all the ceremonies that supposedly befit only Filipino Heroes with unblemished dignity and integrity.

2. Petitioners maintain that the Memorandum dated 07 August 2016 issued by Hon. Delfin N. Lorenzana with the subject "Interment of the late Former President Ferdinand Marcos Sr. at LNMB" and the directive on the interment of the late former President Ferdinand Marcos issued by Rear Admiral Ernesto C. Enriquez by command of General Ricardo R. Visaya, reportedly resulting from a verbal order of President Rodrigo R. Duterte, is patently illegally and was made with grave abuse of discretion amounting to lack or excess of jurisdiction and are therefore VOID.

3. Petitioners invoke the jurisdiction of this Honorable Court as there is no other plain, speedy and adequate remedy in the ordinary course of law under the circumstances.

### **THE PARTIES**

4. **PETITIONERS** are all Human Rights Violations Victims (HRVV) as defined under Section 3(c) of Republic Act 10368 or the Human Rights Victims Reparation and Recognition Act of 2013. They are also members of the class suit in the Human Rights Litigation Against the Estate of Ferdinand E. Marcos in MDL No. 840, CA No. 88-0390 in the US Federal District Court of Honolulu, Hawaii:

**a. SATURNINO C. OCAMPO**, Filipino, of legal age, was among the thousands who suffered from vicious torture, arbitrary arrest and illegal detention during the Marcos dictatorship. He was a former Representative of Bayan Muna Partylist and a co-author of House Bills 2962 and 1114 of the 13<sup>th</sup> and 14<sup>th</sup> Congress, respectively, or the Marcos Victims Compensation Bill, which would later be refiled and subsequently be enacted into law in its final form as RA 10368. He is currently the President of the Makabayan Coalition, a political coalition of Philippine progressive parties, with office address at B26 L3 JP Rizal St., New Capitol Estate I, Batasan, Quezon City;

**b. TRINIDAD G. REPUNO**, Filipino, of legal age, was among the thousands who suffered from atrocities perpetrated by the military during the Marcos regime. She was arbitrarily arrested and was subjected to electric shock torture while incarcerated. She is currently a member of the Board of the Samahan ng

mga Ex-Detainees Laban sa Detensyon at Aresto (SELDA), an organization of political prisoners and former political detainees in the country, with office address at 2/F Erythrina Building, Maaralin corner Matatag Sts., Central District, Diliman, Quezon City;

**c. BIENVENIDO LUMBERA**, is a National Artist for Literature, a recipient of the Ramon Magsaysay Award for Journalism, Literature and Creative Communications. He is also the chairperson of the Concerned Artists of the Philippines, an organization of artists, musicians, writers, filmmakers and cultural workers from various disciplines that work toward a nationalist, people-oriented art and culture. His postal address is 15-B Manigo St., UP Village, Quezon City;

**d. BONIFACIO P. ILAGAN** Filipino, of legal age, widowed, was a victim of human rights violations during the Marcos martial law regime, including warrantless arrest, illegal search, thievery, vicious physical and mental torture, sexual abuse, illegal and inhuman detention, and forced labor; He is the Vice Chair of SELDA and convenor of CARMMA (Campaign Against the Return of the Marcoses to Malacanang). He is a member of the class suit that was filed and won against the Marcos estate in Hawaii. He may be served with court processes at 57 Espejo Avenue, Don Jose Heights, Commonwealth, Quezon City, Metro Manila;

**e. NERI JAVIER COLMENARES**, Filipino, of legal age, was arrested without a warrant of arrest by the martial law government during a crack down against the Bacolod Catholic Church. He was then a student leader. Even if he was a mere teenager at that time, the military heavily tortured him for nearly a week with physical torture including beatings, electric shocks, M-16 bullets in between his fingers and serious mental torture including the notorious Russian roulette. Due to his active involvement in the students rights and welfare movement he was imprisoned for a total of about four years on trumped up charges. As a member of Congress he authored RA 10368 popularly known as the Marcos Human Rights Violations Compensation Act together with other pro human

rights legislators. He is also one of the 10,000 victims in the Marcos Human Rights case in Hawaii. He can be served with notices and other processes of the Honorable Court at the undersigned Counsel's address as indicated hereunder;

**f. MARIA CAROLINA P. ARAULLO, M.D.**, Filipino, of legal age, was likewise a martial law victim, having been illegally arrested and detained while she was a student leader. She is currently the Chairperson of the Bagong Alyansang Makabayan (BAYAN) with office address at 4<sup>th</sup> Floor, Erythrina Building, Maaralin corner Matatag Sts., Central District, Diliman, Quezon City;

**g. SAMAHAN NG EX-DETAINEES LABAN SA DETENSYON AT ARESTO (SELDA)** represented by **DIONITO CABILLAS, CARMENCITA M. FLORENTINO, RODOLFO C. DEL ROSARIO, FELIX C. DALISAY AND DANILO M. DELA FUENTE.** SELDA is an organization of political prisoners and former political detainees in the country, with office address at 2/F Erythrina Building, Maaralin corner Matatag Sts., Central District, Diliman, Quezon City;

The Petitioners may also be served with notices and other processes of this Honorable Court through the undersigned counsel.

**5. RESPONDENTS** are:

**a) REAR ADMIRAL ERNESTO C. ENRIQUEZ** in his capacity as the Deputy Chief of Staff for Reservist and Retiree Affairs of the Armed Forces of the Philippines. He may be served with notices and other processes of the Honorable Court at the Armed Forces of the Philippines Reserve Command (AFPRESKOM) Camp General Emilio Aguinaldo, Quezon City;

**b) GENERAL RICARDO R. VISAYA** in his capacity as the Chief of Staff of the Armed Forces of the Philippines. He may be served with notices and

other processes of the Honorable Court at Camp General Emilio Aguinaldo, Quezon City;

**c) HON. DELFIN N. LORENZANA** in his capacity as the Secretary of National Defense. The Libingan ng mga Bayani or the Heroes' Cemetery is a property of the Armed Forces of the Philippines (AFP) and is being administered by the Philippine Veterans' Affairs Office (PVAO) which is an agency attached to the Department of National Defense (DND). He may be served with notices and other processes of the Honorable Court at Segundo Avenue, Camp General Emilio Aguinaldo, Quezon City;

**d) HEIRS OF FERDINAND EDRALIN MARCOS**, represented by his surviving spouse Imelda Romualdez Marcos. She may be served with notice and other processes of this Honorable Court at Room 218 North Wing Building, House of Representatives, IBP Road, Quezon City.

### **STATEMENT OF THE FACTS**

6. In 1993 there was an agreement between the Philippine government under then Pres. Fidel Ramos and the Marcos family represented by Respondent former first lady Imelda Marcos and Ferdinand Marcos Jr. in relation to the return of the cadaver of President Marcos to the Philippines from Hawaii where he died on September 28, 1989.

7. The body of the elder Marcos was allowed to be flown back to the Philippines after the heirs of Marcos agreed to three conditions namely:

- a) That the body of Pres. Marcos will be immediately transported to Ilocos Norte upon arrival without fanfare.
- b) That the body of Pres. Marcos be buried in Ilocos Norte; and
- c) The ceremony for the burial was to be for military honors for the rank of major.<sup>1</sup>

8. Marcos was eventually interred in a Mausoleum in Ilocos Norte amid rituals and honors<sup>2</sup>.

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<sup>1</sup> <http://newsinfo.inquirer.net/805893/deal-marcos-burial-in-ilocos> last accessed on 10 August 2016.

9. In 2014 there were media reports<sup>3</sup> that the Marcoses were open to the burial of Marcos in Ilocos Norte as proposed by then Vice President Jejomar Binay.

10. During the campaign period for the 2016 Presidential elections then candidate Rodrigo Duterte publicly announced that he will allow the burial of former President Ferdinand Marcos at the Libingan ng mga Bayani. He reiterated this public pronouncement when he became president without giving details on how this will be implemented, leaving it to the Marcoses to process the same with the proper authorities.

11. These pronouncements were met with opposition by various sectors including victims or relatives of human rights violations of torture, illegal arrest, arbitrary detention, disappearances and summary executions during martial law. Family members of the thousands who died during martial law also protested these public pronouncements with the hope that the plan will not push through.

12. On 07 August 2016, Respondent Secretary of National Defense DELFIN N. LORENZANA issued a Memorandum addressed to Armed Forces of the Philippines Chief of Staff General Ricardo R. Visaya directing the latter to *“undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned”*

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<sup>2</sup> “ Eventually, after series of rituals and ceremonies, Marcos' remains were interred in a mausoleum in his hometown for public display, according to his family, until the government yields to Imelda's demand for a burial in the [National Heroes' Cemetery](#) in [Manila](#) (See Imelda Marcos Plans Funeral Extravaganza For Ex-Dictator -- Hoopla Abounds As Body Arrives In Home Province **By William Branigin** *Washington Post*)

<sup>3</sup> Heirs open to Marcos' burial in Ilocos Norte with military honors  
Published September 22, 2014 4:02pm By [AMITA LEGASPI](#), GMA News

The Marcos family remains open to burying their patriarch, the late strongman Ferdinand Marcos, in Ilocos Norte, his son and namesake, Senator Ferdinand “Bongbong” Marcos Jr said Monday.

The senator said they never turned down the recommendation of Vice President Jejomar Binay for the burial of the former President in his hometown with military honors. President Benigno Aquino III earlier tasked Binay to study the issue on a state burial for Marcos.

“The recommendation made by Vice President Binay was made in conference with us, the family and so it was impossible (that we will turn it down), it was rejected by the Palace. The recommendation made by Binay was rejected by the Palace, not by the Marcos family,” he told reporters.- See more at:

<http://www.gmanetwork.com/news/story/380308/news/nation/heirs-open-to-marcos-burial-in-ilocos-norte-with-military-honors#sthash.bOhIFH6C.dpuf>

and to “*coordinate closely with the Marcos family*” regarding the date of interment and the transfer of Marcos’ remains from Ilocos Norte to the Libingan ng mga Bayani. A copy of the said Memorandum is attached hereto as **Annex “A.”** A certified true copy of the said Memorandum has been requested and will be submitted forthwith.

13. On 12 August 2016, the Armed Forces of the Philippines through the Army Chief Public Affairs issued a press release, a copy of which is attached hereto as **Annex “B,”** entitled “Army receives interment directive for former Pres. Marcos.”<sup>4</sup>

a. On August 10, 2016 the Philippine Army has received a Directive from Rear Admiral Ernesto C. Enriquez (Philippine Navy), deputy chief of staff for reservist and retiree affairs for the interment of the late Pres Ferdinand Marcos at the Libingan ng mga Bayani. He is under the command of Armed Forces of the Philippines chief General Ricardo Visaya.

b. Based on the directive, the Army is required to provide vigil, bugler/drummer, firing party, military host/pallbearers, escort and transportation, and arrival and departure honors.

c. Philippine Army has designated a protocol officer to make lateral coordination with the family of the late former President Marcos on the details of the interment plan.

14. The said directive<sup>5</sup> by Respondent Enriquez was reportedly based on the instructions<sup>6</sup> of Respondent AFP Chief of Staff General Visaya who in turn was reportedly instructed by Respondent DND Secretary Lorenzana to “*undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned*” and to “*coordinate closely with the Marcos family*” regarding the date of interment and the transfer of Marcos’ remains from Ilocos Norte to the Libingan ng mga Bayani. President Duterte through media interviews admitted that he will allow Marcos Sr. be

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<sup>4</sup> <http://www.army.mil.ph/pr/2016/aug/120816.html> last accessed on 14 August 2016.

<sup>5</sup> Certified copies have been requested and will be submitted forthwith.

<sup>6</sup> [https://www.facebook.com/notes/presidential-communications-government-of-the-philippines/dnd-memorandum-on-the-interment-of-the-late-former-president-ferdinand-marcos-at/1403745846321739?comment\\_id=1403779092985081&comment\\_tracking=%7B%22tn%22%3A%22R0%22%7D.](https://www.facebook.com/notes/presidential-communications-government-of-the-philippines/dnd-memorandum-on-the-interment-of-the-late-former-president-ferdinand-marcos-at/1403745846321739?comment_id=1403779092985081&comment_tracking=%7B%22tn%22%3A%22R0%22%7D.)<sup>6</sup>

Certified copies have been requested and will be submitted forthwith

interred at the LMB as this was a campaign promise he made during the campaign.<sup>7</sup>

### **STATEMENT OF THE ISSUES**

- I. WHETHER THE INSTANT PETITION SATISFIES THE PROCEDURAL REQUISITES FOR JUDICIAL REVIEW.
  
- II. WHETHER OR NOT PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ALLOWING AND ORDERING THE BURIAL OF THE REMAINS OF THE LATE DICTATOR FERDINAND MARCOS AT THE LIBINGAN NG MGA BAYANI.
  
- III. WHETHER PETITIONERS ARE ENTITLED TO INJUNCTIVE RELIEF.

### **ARGUMENTS**

#### **I. THE INSTANT PETITION SATISFIES THE PROCEDURAL REQUISITES FOR JUDICIAL REVIEW.**

##### ***a. Petitioners possess the required standing to file this instant case.***

15. Petitioners have legal standing to sue.

16. *Locus standi* is –

**a right of appearance in a court of justice on a given question." Specifically, it is "a party's personal and substantial interest in a case where he has sustained or will sustain direct injury as a result" of the act being challenged, and "calls for more than just a generalized grievance.<sup>8</sup>**

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<sup>7</sup> These directives and preparations, Petitioners humbly submit, may be taken judicial notice of by this Honorable Court.

<sup>8</sup> *Bayan Muna vs Romulo*, G.R. No. 159618 February 1, 2011.

17. A clear legal right, as defined by this Honorable Court, is **“a right clearly founded in, or granted by law; a right which is inferable as a matter of law.”**<sup>9</sup>

18. Petitioners in this case are all human rights advocates or human rights violations victims (HRVVs) or persons, as defined under Section 3(c) of RA 10368, **“whose human rights were violated by persons acting in an official capacity and/or agents of the State xxx.”** They were arrested, incarcerated, and tortured during the period set forth by the law or from 21 September 1972 to 25 February 1986.<sup>10</sup>

19. Most of the Petitioners are likewise among the Plaintiffs in the historic class suit against the estate of former President Ferdinand Marcos. The class suit was filed in a Hawaii Court in the 1990s seeking to recover compensation for the human rights violations perpetrated during the Marcos dictatorship. As plaintiffs in the said suit, the Petitioners are conclusively presumed to be HRVVs under Section 17 of the same Act.

20. The foregoing facts sufficiently establish Petitioners' *locus standi* to institute this instant Petition, having such material and substantial interest in preventing the interment of the late dictator at the Libingan ng mga Bayani:

a) Firstly, the interment of Marcos Sr. at LMB will send a cynical and odious message that Marcos is a hero and directly distorts the historical fact that he committed plunder and human rights violations during martial law thereby portraying human rights violations victims as liars for besmirching Marcos' reputation as a hero. It must be noted that the Marcoses have been asserting that Marcos be buried in the LMB not for anything else except to boost their assertion that Marcos was a hero and not a plunderer and human rights violator, and in so doing, camouflages reality and misrepresent established facts.

b) Petitioners are plaintiffs/judgment creditors in the Hawaii case under *Hilao vs. Estate of Ferdinand Marcos* which found Marcos guilty of guilty of human rights violations and awarded to plaintiffs more than US\$ 2 Billion for damages. The said judgment is pending execution and the burial of Marcos in LMB could affect the already difficult search for Marcos hidden wealth and the full execution of the judgment.

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<sup>9</sup> *Palileo vs Castro*, G.R. No. L-3261, December 29, 1949.

<sup>10</sup> Section 3(c), RA 10368.

c) Petitioners are also qualified as beneficiaries under RA 10368 and an LMB burial may taint their claims under the law.

These show the substantial interest of Petitioners to the issue of the burial of Ferdinand Marcos Sr. in the Libingan ng mga Bayani.

21. In any case, the Honorable Court may waive the requirements on *locus standi* in the exercise of its discretion. Verily, such requirement is a mere procedural technicality that may be applied liberally in cases of transcendental importance and when the issues raised have far-reaching implications.<sup>11</sup>

22. Further, Petitioners, as taxpayers, question the illegal expenditure of public funds, as the military honors to be accorded the former dictator, as well as his burial, entail the use of public funds and public property.

23. In the case of **Landbank of the Philippines v. Cacayuran**<sup>12</sup> the Court held that :

**It is hornbook principle that a taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that there is wastage of public funds through the enforcement of an invalid or unconstitutional law.**

***b. The case is ripe for judicial determination.***

24. This case and the issues involved herein are ripe for judicial determination, noting that the assailed Directive of Respondent Enriquez has been transmitted and is actually being

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<sup>11</sup> **David vs Arroyo** G.R. No. 171396 May 3, 2006. In taking cognizance of the case of **Del Mar v. PAGCOR**<sup>11</sup>, the Court noted that “the issues raised in the present petitions have generated an oasis of concern, even days of disquiet in view of the public interest at stake.” Citing **Ramos v. CA et al**<sup>11</sup>, the Court pointed out that under case law, “rules of procedure are but tools designed to facilitate the attainment of justice such that when its rigid application tends to frustrate rather than promote substantial justice, this Court has the duty to suspend their operation.”

<sup>12</sup> G.R. 191667. April 17, 2013.

implemented as admitted by the Philippine Army through their press release.<sup>13</sup>

25. In this connection, Justice Eduardo Nachura has a brief but insightful discussion on the Court's power of judicial review in his dissenting opinion in **De Castro vs. JBC**<sup>14</sup>, to wit:

**As an essential ingredient for the exercise of the power of judicial review, an actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible to judicial resolution. The controversy must be justiciable—definite and concrete—touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on one hand, and a denial thereof, on the other; that is, the case must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. The rationale for this requirement is to prevent the courts through avoidance of premature adjudication from entangling themselves in abstract disagreements, and for us to be satisfied that the case does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire.**

26. The issue of whether or not the burial of Marcos in LMB violates, contradicts or is inconsistent with the law as well as public policy has been squarely raised by the acts of Respondent Enriquez in issuing the assailed Memorandum and the Army's admission that they are implementing the same.

***c. The instant case does not violate the doctrine of hierarchy of courts.***

27. While it is a settled principle that the issuance of the writs of Certiorari, Prohibition and even Mandamus is shared concurrently

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<sup>13</sup> Annex "B," herein.

<sup>14</sup> G.R. Nos. 191002, 191032, 191057, 191149, 191342 & 191429 and AM No. 10-2-5-SC March 17, 2010.

by this Honorable Court, the Court of Appeals and the Regional Trial Court, the invocation of this Court's original jurisdiction to issue these writs are allowed **“when there are special and important reasons therefor, clearly and specifically set out in the petition.”**<sup>15</sup>

28. As seen, exceptions to the rule on hierarchy of courts may be set aside for special, compelling and important reasons.<sup>16</sup>

***d. This case is of transcendental importance.***

29. Paramount public interest dictates that the issues raised in this Petition be aptly categorized as those of transcendental importance.

30. An issue may be considered of transcendental importance when it has a **“potentially pervasive influence on the social and moral well being of this nation”**<sup>17</sup> and hence, **“their proper and just determination is an imperative need.”**<sup>18</sup>

31. The interment of the remains of the late dictator at the Libingan ng mga Bayani and the conferment of a hero's burial have far-reaching implications apart from a mere personal injury to the Petitioners. This is a matter that has legal, moral and political implications to the country, to the Filipino people, the international community and even the history of mankind.

**II. PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ORDERING AND ALLOWING THE BURIAL OF THE REMAINS OF FERDINAND MARCOS AT THE LIBINGAN NG MGA BAYANI.**

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<sup>15</sup> ***CREBA vs Secretary of Agrarian Reform***, G.R. No.187256, February 23, 2011.

<sup>16</sup> ***UNICAN vs NEA*** G.R. No. 187107 January 31, 2012.

In ***Diocese of Bacolod vs Comelec***,<sup>16</sup> the Supreme Court held that the doctrine of hierarchy of the courts is not an iron-clad rule. The exceptions to the doctrine apply when the issues involved are of transcendental importance, or are cases of first impression or the time element presented cannot be ignored., or Petitioners rightly claim that they had no other plain, speedy and adequate remedy in the ordinary courts of law that could free them from the injurious effects of respondents' acts, or the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by broader interest of justice.

<sup>17</sup> ***Imbong vs Ochoa***, G.R. No. 204819 April 8, 2014.

<sup>18</sup> *Id.*

32. There is grave abuse of discretion amounting to lack or excess of jurisdiction where there is a –

**presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; a patent and gross abuse of discretion amounting to an evasion of a positive duty or to a virtual refusal to perform a duty imposed by law or to act in contemplation of law; an exercise of power in an arbitrary or despotic matter by reason of passion and hostility; or a blatant abuse of authority to a point so grave and so sever as to deprive the court of its very power to dispense justice.<sup>19</sup>**

33. The assailed Memorandum and the resulting acts of Respondents implementing the process allowing the burial of the remains of the late dictator Marcos Sr. constitutes grave abuse of discretion amounting to lack or excess of jurisdiction as it is contrary to law and against public policy.

***a. Existing laws prohibit the burial of Ferdinand Marcos at the Libingan ng mga Bayani.***

34. Respondents' reliance on existing laws and guidelines that absolutely allows the burial of Marcos in LMB is without legal basis. The fact that former President Ramos and the succeeding presidents have exercised discretion and refused the burial of Marcos in the LMB shows that such an assertion that Marcos has a right to be buried in the LMB is without statutory support. In fact, the reverse is true and Marcos is not qualified under any law or guideline.

35. While Marcos was a former president of the Philippines and a soldier who allegedly valiantly fought during World War II, a claim that is more a concocted self-serving and grandiose fable than a fact the interment of his remains at the Libingan ng mga Bayani is contrary to law.

36. Respondents Enriquez and Grave Services Unit of the Philippine Army explain that the following persons are qualified to be buried at the Libingan ng mga Bayani as provided under AFP

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<sup>19</sup> ***People vs Judge Lagos***, G.R. No. 184658, March 06, 2013.

Regulations G 161-373: 'Allocation of Cemetery Plots at the LNMB,' issued on 9 April 1986 by then AFP Chief of Staff Gen. Fidel V. Ramos and then President Corazon C. Aquino which prescribes who are entitled to be interred in the LNMB.

37. It is noteworthy that then President Fidel Ramos, who authored the regulation used to justify Marcos' interment did not even see Marcos qualified under that Regulation.

38. AFP Regulations G 161-373, listed those who are entitled to be interred in the LNMB by the Army Grave Services Unit under the AFP deputy Chief of Staff for Reservists and Retirees:

- a. Medal of Valor awardees
- b. Presidents or commanders-in-chief, AFP
- c. Secretaries of National Defense
- d. AFP Chiefs of Staff
- e. Generals/Flag officers of the AFP
- f. Active and retired military personnel of the AFP (including active draftees and trainees who died in the line of duty and active reservists and CAFGU Active Auxilliary who died in combat-related activities)
- g. Former members of the AFP who laterally entered or joined the Philippine Coast Guard and the Philippine National Police.
- h. Veterans of the Philippine Revolution of 1890, World War I, World War II, and recognized guerillas
- i. Government dignitaries, statesmen, national artists and other persons whose interment or re-interment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense.<sup>20</sup>

39. Note that the same regulation and the AFP further clarified that *"those who have been dishonorably discharged from service, or personnel convicted of an offense involving moral turpitude, do not qualify for interment at the cemetery."*<sup>21</sup> It can be validly raised that the intent and spirit of this regulation is anathema or is mocked by the planned interment of an internationally known scoundrel like the late dictator even if technically and strictly speaking he has lamentably not been *"dishonorably discharged from service,"* or *"convicted of an offense involving moral turpitude."* To hold otherwise and debate on how many angels can dance on a head of a

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<sup>20</sup> <http://www.rappler.com/nation/134509-heroes-cemetery-guidelines-afp> last accessed on 11 August 2016.

<sup>21</sup> *Id.*

pin would led to an absurd situation that torturers, thieves, fascists, plunderers, drug lords and narco-generals even, who have not been “dishonorably discharged from service,” or “convicted of an offense involving moral turpitude” may adorn the so-called heroes’ cemetery with their shining and spanking mausolea.

40. To start with, the Libingan ng mga Bayani was created by virtue of Republic Act 289<sup>22</sup> or “An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National Heroes and Patriots of the Country” (RA 289). RA 289 was approved on 16 June 1948.

41. Section 1 of RA 289 provides that the purpose of the construction of a national pantheon is:

To perpetuate the memory of all the Presidents of the Philippines, national heroes and patriots **for the inspiration and emulation of this generation and of generations still unborn, xxx. (Emphasis supplied).**

42. The burial of Ferdinand Marcos at the Libingan ng mga Bayani simply mocks and taunts Section 1 of RA 289.

43. The reason is obvious. The Philippine experience under the Marcos dictatorship should not be emulated and cannot serve as an inspiration to this generation and to the next generation of Filipinos. This Honorable Court can take judicial notice of this fact. It need not be unduly belabored.

44. It has been 44 years since the declaration of Martial Law. Under the banner of a supposed *Bagong Lipunan* (New Society), then President Marcos unleashed his brutal dictatorial rule. For the first three (3) years since the declaration of Martial Law on 21 September 1972, over 50,000 people had been arrested.<sup>23</sup> Thousands more were tortured, summarily executed and disappeared. The martial law regime was described by international historian Alfred W. McCoy as the “**apex of a pyramid of terror.**”<sup>24</sup>

45. This may have happened four (4) decades ago and two (2) EDSA uprisings thereafter, but the wisdom gained from those dark years of Philippine democracy is an enduring beacon for present and

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<sup>22</sup> <http://www.chanrobles.com/republicacts/republicactno289.html>

<sup>23</sup> Amnesty International Report dated 11-28 November 1981, cited in <http://martiallawfiles.wordpress.com/the-toll-on-human-lives-and-rights/> last accessed on 02 October 2014.

<sup>24</sup> Historian Alfred W. McCoy, as cited in <http://www.manilatimes.net/3257-fact-checking-the-marcos-killings-1975-1985/255735/> last accessed on 12 August 2016.

future generations. More importantly, the courage and sacrifices of the victims of martial law must never be forgotten and their heroism must persistently be trumpeted.

46. Moreover, Section 2(c) of RA 289 provides that:

“Sec. 2. There is hereby created a Board of National Pantheon composed of the Secretary of the Interior, the Secretary of Public works and Communications and the Secretary of Education and two private citizens to be appointed by the President of the Philippines with the consent of the Commission on Appointments which shall have the following duties and functions:

X x x.

(c) To cause to be interned therein the mortal remains of all Presidents of the Philippines, the national heroes and patriots;”

47. The Public Respondents who ordered and will cause the internment and burial of the iconic dictator and outstanding tyrant Ferdinand Marcos at the Libingan ng mga Bayani are not members of the Board of National Pantheon. The Board or any of its members did not order the internment and burial of Ferdinand Marcos at the Libingan ng mga Bayani.

48. It is noteworthy also to point out that this planned hero’s burial of a personification of everything that is undemocratic will be contradictory or inconsistent with another relevant law. Forty years after the declaration of martial law, the Philippine government finally recognized the plight of the victims of human rights violations during the Marcos dictatorship. It enacted Republic Act 10368 or the Human Rights Victims Reparation and Recognition Act of 2013.

49. The aforesaid law declares, as a matter of policy:

**SEC. 2. Declaration of Policy. — Section 11 of [Article II of the 1987 Constitution of the Republic of the Philippines](#) declares that the State values the dignity of every human, person and guarantees full respect for human rights. Pursuant to this declared policy, Section 12 of Article III of the Constitution prohibits the use of torture, force, violence, threat, intimidation, or any other means which vitiate the free will and mandates the compensation and rehabilitation**

**of victims of torture or similar practices and their families.**

**By virtue of Section 2 of Article II of the Constitution adopting generally accepted principles of international law as part of the law of the land, the Philippines adheres to international human rights laws and conventions, the Universal Declaration of Human Rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment which imposes on each State party the obligation to enact domestic legislation to give effect to the rights recognized therein and to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, even if the violation is committed by persons acting in an official capacity. In fact, the right to a remedy is itself guaranteed under existing human rights treaties and/or customary international law, being peremptory in character (*jus cogens*) and as such has been recognized as non-derogable.**

**Consistent with the foregoing, it is hereby declared the policy of the State to recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity. The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime.**

**Similarly, it is the obligation of the State to acknowledge the sufferings and damages inflicted upon persons whose properties or businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or**

**those whose freedom of movement was restricted, and/or such other victims of the violations of the Bill of Rights.**

50. Apart from the human rights violations during the Marcos dictatorship, the fact remains undisputed that Marcos and his family, during his term, acquired billions worth of ill-gotten wealth, some of which are still subjects of pending litigations while much remain hidden. Moreover, the foreign debt his administration incurred ballooned and actually rendered future generations of Filipinos, even those still unborn, heavily indebted by the millions.

51. On the above matter, the Supreme Court, in **Marcos vs Manglapus**,<sup>25</sup> spoke in this wise:

**Nor are the woes of the Republic purely political. The accumulated foreign debt and the plunder of the nation attributed to Mr. Marcos and his cronies left the economy devastated. The efforts at economic recovery, three years after Mrs. Aquino assumed office, have yet to show concrete results in alleviating the poverty of the masses, while the recovery of the ill-gotten wealth of the Marcoses has remained elusive.**

52. Also, the fact that Marcos served as a soldier during World War II will not entitle him to a hero's burial at the Libingan ng mga Bayani.

53. In a study conducted by the National Historical Commission of the Philippines (NHCP), Marcos' incredulous claim of being a World War II hero and bemedalled soldier failed to pass the test of historical verification. The NCMB study, in sum, demonstrated that:

- a. Mr. Marcos lied about receiving US medals: Distinguished Service Cross, Silver Star, and Order of the Purple Heart, which he claimed as early as about 1945.

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<sup>25</sup> G.R. No. 88211 September 15, 1989.

b. His guerilla unit, the Ang Mga Maharlika was never officially recognized and neither was his leadership of it.

c. US officials did not recognize Mr. Marcos' rank promotion from Major in 1944 to Lt. Col. By 1947.

d. Some of Mr. Marcos' actions as a soldier were officially called into question by upper echelons of the US military, such as his command over the Allas Intelligence Unit (described as "usurpation"), his commissioning of officers (without authority), his abandonment of USAFIP-NL presumably to build an airfield for Gen. Roxas, his collection of money for the airfield (described as "illegal"), and his listing of his name on the roster of different units (called a "malicious criminal act").

Mr. Marcos' military record is fraught with myths, factual inconsistencies, and lies. xxx. When, moreover, a historical matter is under question or grave doubt, as expressed in the military records about Mr. Marcos' actions and character as a soldier, the matter may not be established or taken as a fact. A doubtful record also does not serve as sound, unassailable basis of historical recognition of any sort, let alone burial in a site intended, as its name suggests, for heroes.<sup>26</sup>

54. It has been an established rule that **"if the language of the law is plain, clear and unambiguous, courts simply apply the law according to its express terms."**<sup>27</sup>

55. Under the principle that **"the intent or the spirit of the law is the law itself,"**<sup>28</sup> Public Respondents cannot derogate from the clear intent of the legislature in the enactment of Republic Act 289 in relation to RA 10368. RA 289 is rather clear, the creation of a national pantheon, now the Libingan ng mga Bayani, is for **the inspiration and emulation of this generation and of generations still unborn.**

56. Thus:

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<sup>26</sup> <https://drive.google.com/file/d/0B9c6mrxl4zoYS2i0UWFENEp6TkU/view>  
last accessed on 11 August 2016.

<sup>27</sup> ***League of Cities of the Philippines vs Comelec***, G.R. No. 176951  
November 18, 2008.

<sup>28</sup> *Id.* G.R. Nos. 176951, 177499, 178056 December 21, 2009.

***Ratio legis est anima.*** The spirit rather than the letter of the law. A statute must be read according to its spirit or intent, for what is within the spirit is within the statute although it is not within its letter, and that which is within the letter but not within the spirit is not within the statute. Put a bit differently, that which is within the intent of the lawmaker is as much within the statute as if within the letter; and that which is within the letter of the statute is not within the statute unless within the intent of the lawmakers. Withal, courts ought not to interpret and should not accept an interpretation that would defeat the intent of the law and its legislators.<sup>29</sup>

57. Despite all of the above, respondent Enriquez ordered the Grave Services Unit of the Philippine Army, to give Marcos a hero's burial complete with gun salute, buglers and other ceremonial acts reserved for heroes who should serve as **"inspiration and emulation of this generation and of generations still unborn."** We hope the planned gun salute, if not stopped dead on its tracks, will not misfire.

58. The order of Respondent Enriquez is a grave abuse of discretion amounting to lack or excess of jurisdiction and should accordingly be voided.

***b. The interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani is contrary to public policy.***

59. In addition to the grounds already mentioned and discussed above, the interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani is contrary to public policy.

60. Based on the guidelines of the AFP on who are qualified to be buried at the Libingan ng mga Bayani, *"personnel who were dishonorably separated/reverted/discharged from the service" and authorized personnel who were convicted by final judgment of an offense involving moral turpitude* cannot be interred at the Libingan ng mga Bayani.<sup>30</sup> The spirit of the law the mockery of which the ghost

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<sup>29</sup>

*Id.*

<sup>30</sup>

See Note 16.

of the dictator three decades after wants to haunt us with is a categorical imperative.

61. In a greater sense , the ouster of Marcos through the collective action of the Filipino people on February 1986, known as the People Power Uprising, is sufficient enough to disqualify him from interment at the Libingan ng mga Bayani. To be collectively ousted from office for moral decadence and depravity is dishonorable enough and such political action by the Filipino is far, far greater than a judicial conviction for a crime that involves moral turpitude.

62. Trends under existing case law define and discuss moral turpitude in the following wise:

**a. *In re Carlos Basa*.**<sup>31</sup>

"Moral turpitude," it has been said, "includes everything which is done contrary to justice, honesty, modesty, or good morals." (Bouvier's Law Dictionary, cited by numerous courts.) Although no decision can be found which has decided the exact question, it cannot admit of doubt that crimes of this character involve moral turpitude. The inherent nature of the act is such that it is against good morals and the accepted rule of right conduct. (*In re Hopkins* [1909], 54 Wash., 569; *Pollard vs. Lyon* [1875], 91 U.S., 225; 5 Ops. Atty.-Gen. P. I., 46, 185; decisions of the Supreme Court of Spain of November 30, 1876 and June 15, 1895.)

**b. *IRRI vs NLRC*.**<sup>32</sup>

This is not to say that all convictions of the crime of homicide do not involve moral turpitude. Homicide may or may not involve moral turpitude depending on the degree of the crime. Moral turpitude is not involved in every criminal act and is not shown by every known and intentional violation of statute, but whether any particular conviction involves moral turpitude may be a question of fact and frequently depends on all the surrounding circumstances. While . . . generally but not always, crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, it, cannot always be ascertained whether moral turpitude does or does not exist by

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<sup>31</sup> December 7, 1920.  
<sup>32</sup> G.R. NO. 97239 May 12, 1993.

classifying a crime as *malum in se* or as *malum prohibitum*, since there are crimes which are *mala in se* and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only. **It follows therefore, that moral turpitude is somewhat a vague and indefinite term, the meaning of which must be left to the process of judicial inclusion or exclusion as the cases are reached.** (Emphasis supplied)

***c. Dela Torre vs Comelec:***<sup>33</sup>

Not every criminal act, however, involves moral turpitude. It is for this reason that "as to what crime involves moral turpitude, is for the Supreme Court to determine." In resolving the foregoing question, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, the rationale of which was set forth in "Zari v. Flores," to wit:

"It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited."

63. The crimes of Marcos against the Filipino people and even against humanity involved moral turpitude.

64. Hence, public policy dictates that he is not entitled to any hero's burial notwithstanding the fact of his presidency, which he overly abused, and his military record, which remains dubious up to the present.

65. Public policy is defined as "that principle of law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good."<sup>34</sup>

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<sup>33</sup> 327 Phil 1144, 1150-1151 (1996).

<sup>34</sup> ***Gonzalo vs Tarnate, Jr.***, G.R. No. 160600 January 15, 2014.

***c. The interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani with the honors that supposedly befit only Filipino Heroes with overall unblemished integrity and dignity is contrary to the Constitution.***

69. The Public Respondents' acts not just to inter Ferdinand E. Marcos at the Libingan ng mga Bayani but also to give him honors – when doing so by both text and intent is limited only to Filipino Heroes with overall unblemished integrity and dignity – is contradictory to the express provisions of the Constitution:

**ARTICLE II  
Declaration of Principles and State Policies  
State Policies**

**SECTION 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.**

**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.**

72. Public office is a public trust. Obviously, by the Public Respondent's acts to give a plunderer *par excellence* a free ride to immortality, not the notoriety that he richly deserves, flouts the principles that "[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption" and 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."

73. For how can such honesty and integrity be promoted and defended when a dishonest and disgraced public official, such as

Ferdinand E. Marcos, after his removal from power, can snatch respect and thereby re-write not only history but his culpability via the back door of declaring and celebrating him a hero?

74. The Public Respondent's decision to re-furbish the tattered image of Ferdinand E. Marcos also goes against the constitutional precept that corruption, just like the ill-gotten wealth that it spawns, is never forgotten and hence the action against its rich proceeds never prescribes.

75. The Constitution provides the compass that all must follow. The interpretation of RA 289 ought to be consistent with the Constitution whose precepts are set against extolling the corrupt and the crook. That is how Sec. 1 of RA 289 should be understood.

***d. The Armed Forces of the Philippines Regulations that supposedly support the interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani with the honors that supposedly befit only Filipino Heroes is contrary to the Constitution and RA 289 and is therefore void.***

76. The AFP Regulations – that allegedly allows the burial of Ferdinand Marcos in a manner that supposedly befits only Filipino Heroes – is obviously contrary to the precepts of both the Constitution and RA 289.

77. Again, Section 1 of the statute is very clear: “To perpetuate the memory... for the inspiration and emulation of this generation and of generations still unborn.” The AFP cannot excise this purpose in its reading of RA 289 and make a regulation that unduly expands the entitlement to the National Pantheon or the Libingan ng mga Bayani.

78. In this same manner, the AFP cannot undo what the Constitution proclaims about public office and reduce the concept of public office to mere titles and positions in the bureaucracy so that in the end the AFP can have the last say on who is and who will be a Hero. Given the public perception of the AFP, it should be the last agency in this part of the planet to have the last say on how heroism is to be exemplified.

79. For being contrary to the Constitution and RA 289, the AFP Regulations should be nullified and the standard as set forth in the Constitution and RA 289 be imposed in determining entitlement to the conferment of this type of honors.

80. Finally assuming just for the sake of argument that Marcos is qualified under the law and AFP guidelines, whatever benefits and courtesies due him have been waived and contracted away by the Respondent Marcos family when they agreed with the Philippine government that Marcos will be buried in Batac Ilocos Norte.

80. In 1993 there was an agreement between the Philippine Government represented by Pres. Fidel Ramos and the Marcos family and his Estate represented by former First Lady Imelda Marcos and former Ilocos Norte Governor and later Senator Ferdinand Marcos Jr that Ferdinand Marcos Sr will be buried in Ilocos Norte. The Marcoses cannot now renege on that contractual obligation.

81. The Marcos family has interred Ferdinand Marcos Sr. in a mausoleum in Ilocos Norte since 1993. To abandon the agreement, reboot the entire process, exhume his remains and allow his burial at the LMB is to relieve the terror and horrors of his victims who have, until now, not been given justice. While his victims will be forgotten, Marcos will be remembered as a president given a hero's burial in violation of the law and even their contractual commitment with the Philippine government.

82. This will not achieve the purpose of closure espoused or accepted by others. While Marcos rests in peace in his Libingan ng mga Bayani, his victims who continue to cry out for justice, can never rest in peace.

83. The tyrant, dictator, and puppet must stay where he is. Let us just let sleeping dogs lie.

**APPLICATION FOR THE ISSUANCE OF A WRIT OF  
PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING  
ORDER (TRO)**

80. Petitioners move for the issuance of a Status Quo Ante Order and/or Writ of Preliminary Injunction and/or a Temporary Restraining Order (TRO) to enjoin the further implementation of the Memorandum issued by Respondent DND Secretary Lorenzana dated 07 August 2016 as well as the directive on the interment of the late former President Ferdinand Marcos issued by Rear Admiral Ernesto C. Enriquez by command of General Ricardo R. Visaya. This is in order to protect their substantive rights and interests while this case is pending before the Honorable Court.

81. From all the foregoing, Petitioners were able to clearly show that they are entitled to the issuance of an injunctive relief for having complied with the requirements set forth by the rules, to wit:

- (a) the invasion of right sought to be protected is material and substantial;
- (b) the right of the complainant is clear and unmistakable; and
- (c) there is an urgent and paramount necessity for the writ to prevent serious damage.<sup>35</sup>

### **PRAYER**

**WHEREFORE**, premises considered, Petitioners humbly pray that:

1. Upon the filing of this Petition, a Status Quo Ante Order or a Temporary Restraining Order, and/or a Writ of Preliminary Injunction be issued requiring Respondents to maintain and observe the status quo prevailing before the questioned act;
2. After due hearing and deliberation, declaring the Memorandum dated 07 August 2016 of Secretary of National Defense DELFIN N. LORENZANA and the directive on the interment of the late former President Ferdinand Marcos issued by Rear Admiral Ernesto C. Enriquez by command of General Ricardo R. Visaya to inter Ferdinand E. Marcos at the Libingan ng mga Bayani and to provide a hero's burial NULL and VOID for being illegal and contrary to law, public policy, morals and justice.

Other reliefs just and equitable are likewise prayed for.

RESPECTFULLY SUBMITTED. 12 August 2016, Quezon City for the City of Manila.

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<sup>35</sup> PSBA vs Tolentino-Genilo, G.R. No. 159277 December 21, 2004.

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#### **EXPLANATION**

Copies of this Petition were sent to the parties through registered mail and to the Office of the Solicitor General through LBC due to time and personnel constraints.

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