EN BANC

[UDK No. 16838; May 11, 2021]

PEDRITO M. NEPOMUCENO, FORMER MAYOR-BOAC, MARINDUQUE, *Petitioner*, *v.* **PRESIDENT RODRIGO R. DUTERTE, SECRETARY FRANCISCO DUQUE, DEPARTMENT OF HEALTH, INTER-AGENCY TASK FORCE ON EMERGING INFECTIOUS DISEASES and GEN. CARLITO GALVEZ JR. [RET.], CHIEF IMPLEMENTER OF THE NATIONAL TASK FORCE AGAINST COVID-19,** *Respondents*.

R E S O L U T I O N

LOPEZ, J., *J.*:

Before this Court is a petition for writ of *mandamus* filed by Pedrito Nepomuceno (*petitioner*) against respondents President Rodrigo Duterte, Health Secretary Francisco Duque, and Gen. Carlito Galvez, Jr. (Ret.), as Chief Implementer of the National Task Force against COVID-19 (*respondents*), seeking to compel respondents to observe the Food and Drug Administration (*FDA*) rules on the acquisition, procurement and use of drugs, particularly on the issue of trials and procurement and use of COVID-19 vaccines, namely, the Sinovac vaccines and for them to properly observe the procurement law. Petitioner likewise prays for the DOH FDA to issue a Cease-and-Desist Order for the purchase and use of the Sinovac vaccine, and for it and all other COVID-19 vaccines to undergo the required trials in the Philippines before they are given the go signal for emergency and/or regular use.[1]

At the core of the petition is the concern raised by petitioner over the plan announced by the national government to procure vaccines produced by Sinovac (*Sinovac vaccine*) for distribution and administration to the Filipino people in order to contain the spread of infection brought about by the Severe Acute Respiratory Syndrome Coronavirus 2 (*SARS-CoV-2*), which causes the coronavirus disease

[1] *Rollo*, pp. 4-13.

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of COVID-19. This is despite reports raising doubts on the efficacy of the Sinovac vaccine and the absence of a concrete study on how it really fares in addressing the COVID-19 disease.

President Rodrigo Duterte, as the incumbent President of the Republic of the Philippines, must be dropped as a respondent

Before delving into the contents of the petition, President Rodrigo Duterte must be dropped as a respondent.

Settled is the rule that the President of the Republic of the Philippines cannot be sued during his/her tenure. This immunity from suit applies to President Rodrigo Duterte (*President Duterte*) regardless of the nature of the suit filed against him for as long as he sits as the President of the Republic of the Philippines. In the case of *De Lima v. President Duterte*,[2] Senator Leila De Lima (*Senator De Lima*) sued President Rodrigo Roa Duterte in a petition for a writ of *habeas data* seeking to enjoin the latter from committing acts allegedly violative of her right to life, liberty and security. In her petition, Senator De Lima argued that President Duterte is not entitled to immunity from suit, especially from a petition for the issuance of the writ of *habeas data*, because his actions and statements were unlawful or made outside of his official conduct. The Office of the Solicitor General countered that the immunity of the sitting President is absolute, and it extends to all suits, including petitions for the writ of *amparo* and writ of *habeas data*, and that the present suit is the distraction that the immunity seeks to prevent because it will surely distract the President from discharging his duties as the Chief Executive. In resolving the petition, this Court pronounced that presidential immunity applies regardless of the nature of the suit brought against an incumbent President. The rationale for this rule was explained in this wise:

> The concept of presidential immunity is not explicitly spelled out in the 1987 Constitution. However, the Court has affirmed that there is no need to expressly provide for it either in the Constitution or in law. Furthermore, the reason for the omission from the actual text of the 1987

[2] G.R. No. 227635, October 15, 2019.

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Constitution has been clarified by this exchange on the floor of the 1986 Constitutional Commission:

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

The existence of the immunity under the 1987 Constitution was directly challenged in *Rubrico v. Macapagal-Arroyo*, but the Court steadfastly held that Presidential immunity from suit remained preserved in our current system.

While the concept of immunity from suit originated elsewhere, the ratification of the 1981 constitutional amendments and the 1987 Constitution made our version of presidential immunity unique. Section 15, Article VII of the 1973 Constitution, as amended, provided for immunity at two distinct points in time: the first sentence of the provision related to immunity during the tenure of the President, and the second provided for immunity thereafter. At this juncture, we need only concern ourselves with immunity during the President's tenure, as this case involves the incumbent President. As the framers of our Constitution understood it, which view has been upheld by relevant jurisprudence, the President is immune from suit *during his tenure*.

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Unlike its American counterpart, the concept of presidential immunity under our governmental and constitutional system does not distinguish whether or not the suit pertains to an official act of the President. Neither does immunity hinge on the nature of the suit. The lack of distinctions prevents us from making any distinctions. We should still be guided by our precedents.

Accordingly, the concept is clear and allows no qualifications or restrictions that the President cannot be sued while holding such office.

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Both Sen. De Lima and the OSG disagree on whether or not the statements of the President regarding her have been part of the discharge of the President's official duties, but our declaration herein that immunity applies regardless of the personal or official nature of the acts complained of have rendered their disagreement moot and academic.

Sen. De Lima argues that the rationale for Presidential immunity does not apply in her case because the proceedings for the writ of habeas data do not involve the determination of administrative, civil, or criminal liabilities. **Again, we remind that immunity does not hinge on the nature of the suit.** In short, presidential immunity is not intended to immunize the President from liability or accountability.

The rationale for the grant of immunity is stated in *Soliven v. Makasiar*, thus:

> The rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance of distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention.
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> The rationale has been expanded in *David v. Macapagal-Arroyo*:
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> x x x It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of

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> the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.

With regard to the submission that the President must first invoke the privilege of immunity before the same may be applied by the courts, Sen. De Lima quotes from *Soliven* where the Court said that "this privilege of immunity from suit, pertains to the President by virtue of the office and may be invoked only by the holder of the office; not by any other person in the President's behalf." But that passage in *Soliven* was made only to point out that it was the President who had gone to court as the complainant, and the Court still stressed that the accused therein could not raise the presidential privilege as a defense against the President's complaint. At any rate, if this Court were to first require the President to respond to each and every complaint brought against him, and then to avail himself of presidential immunity on a case to case basis, then the rationale for the privilege — protecting the President from harassment, hindrance or distraction in the discharge of his duties — would very well be defeated. It takes little imagination to foresee the possibility of the President being deluged with lawsuits, baseless or otherwise, should the President still need to invoke his immunity personally before a court may dismiss the case against him.[3]

Apropos, this Court holds, and reminds litigants once again that an incumbent President of the Republic of the Philippines cannot be sued in any proceeding. With executive power solely vested in the President of the Philippines,[4] he should be freed from any distraction that would imperil the performance of his duties as mandated by the Constitution. Thus, presidential immunity from suit shields President Duterte from facing any complaint or petition during his tenure. While he remains accountable to the people, the only proceeding for which he may be involved in litigation during his term of office is an impeachment proceeding, which is clearly not the present case. Hence, he is not a proper party to be sued in the instant petition.

Petitioner failed to point out any ministerial duty on the part of the respondents that would justify the issuance of a writ of mandamus

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[3] Citations omitted; emphases and underscoring supplied.

[4] CONSTITUTION, Article VII, Sec. 1.

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Going into the contents of the petition, the same must be outrightly dismissed.

Section 3, Rule 65 of the Revised Rules of Court is the governing provision that provides the requirements for a party to avail the relief of a writ of *mandamus*, to wit:

> **Section 3.** *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
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> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (3a)

From the foregoing, a writ of *mandamus* may issue in either of two (2) situations: *first*, "when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station"; *second*, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."[5]

The instant petition contemplates the first situation. Under this scenario, petitioner must raise the specific provision of law that enjoins the respondents to perform a duty resulting from their office, but which they unlawfully neglected to perform. In addition, petitioner must show that the act sought to be compelled concerns the performance of a ministerial duty, not a discretionary one. This requirement was explained in the case of *Philippine Coconut Authority v. Primex Coco Products, Inc.*[6] as follows:

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[5] *Lihaylihay v. The Treasurer of the Philippines Roberto Tan, et al.*, 836 Phil. 400, 412 (2018).

[6] 528 Phil. 365, 380-381 (2006).

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Mandamus, lies to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment. When an official is required and authorized to do a prescribed act upon a prescribed contingency, his functions are ministerial only, and *mandamus* may be issued to control his action upon the happening of the contingency.

For a writ of *mandamus* to be issued, it is essential that petitioner should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed. *Mandamus* applies as a remedy only where petitioner's right is founded clearly in law and not when it is doubtful. The writ will not be granted where its issuance would be unavailing, nugatory; or useless. (Citations omitted)

"*Discretion*," when applied to public functionaries, means a power or right conferred upon them by law or acting officially, under certain circumstances, uncontrolled by the judgment or conscience of others. A purely ministerial act or duty in contradiction to a discretionary act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[7]

Applying the foregoing standards, the petition must fail. Petitioner failed to point out the existence of a ministerial duty,

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[7] *Laygo, et al. v. Municipal Mayor of Solano, Nueva Vizcaya*, 803 Phil. 126, 138 (2017), citing *Roble Arrastre, Inc. v. Villaflor*, 531 Phil. 30, 47 (2006). (Citation omitted).

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which the law compels the respondents to perform with regard to the conduct of trial and procurement of vaccines for COVID-19, as prayed for in the petition. During the time when the national government planned to procure and enter into contracts for the procurement of the Sinovac vaccine, there was no law in effect that required the **mandatory** conduct of clinical trial for the procurement of any COVID-19 vaccine, including that produced by Sinovac. On the contrary, the requirement for the completion of clinical trials before a vaccine may be used in the Philippines as required by the Universal Healthcare Act was suspended for a period of three months.[8] Further, discretion was given to the government officials in addressing the spread of COVID-19, giving them enough leeway to decide the interventions they may see as proper by adopting, as a basis, guidelines issued and the best practices adopted by the World Health Organization and the United States Centers for Disease Control and Prevention.

The grant of discretion in favor of the President with respect to the manner of performing his duty to address the pandemic brought about by the spread of COVID-19 is fortified by the enactment of Republic Act No. 11494[9] *(R.A. 11494)*. The law paved the way for President Duterte to exercise powers that are necessary and proper to undertake and implement COVID-19 response and recovery interventions.[10] Pertinent provisions of R.A. 11494 read as follows:

> Sec. 4. *COVID-19 Response and Recovery Interventions*. – Pursuant to Article IV, Section 23(2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to undertake and implement the following COVID-19 response and recovery interventions:
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> (a) Following the World Health Organization (WHO) or the United States Centers for Disease Control and Prevention guidelines and best practices, adoption and implementation of measures to prevent or suppress further transmission and spread of COVID-19 through effective education, detection, protection,

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[8] See Sec. 12, R.A. 11494.

[9] *Bayanihan to Recover as One Act*, Approved: September 11, 2020.

[10] Sec. 4, *Bayanihan to Recover as One Act*, Approved: September 11, 2020.

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and treatment: *Provided*, That the percentage the population that will undergo COVID-19 testing shall be in accordance with WHO standards and global benchmarks, in areas identified by the Department of Health (DOH) and the Department of the Interior and Local Government (DILG) as epicenters of COVID-19 infections and in other areas where higher possibility of transmission of COVID-19 may occur or have occurred. The DOH and DILG shall adopt a COVID-19 testing and establishment of a contact tracing system including personal contact tracing whereby a person maintains a record of the places that he/she had been to and the people he/she had contact with: *Provided*, That any individual who tested positive for COVID-19 through laboratory confirmation at the national reference laboratory, sub-national reference laboratory, or a DOH-certified laboratory testing facility shall be automatically treated and if necessary, isolated in a DOH-accredited quarantine and isolation facility: *Provided, further*, That the IATF-EID shall identify and prioritize the areas and business activities critically impacted and severely affected by COVID-19 and with high probability of COVID-19 transmission, and coordinate with the relevant LGUs and government agencies for the implementation of the COVID-19 surveillance protocol: *Provided, furthermore*, That the DILG, in partnership with the LGUs and other government agencies, shall distribute the testing kits to DOH-accredited government hospitals and facilities that can perform testing: *Provided, finally*, That the DILG, in partnership with the LGUs, shall lead the contact racing efforts of the government;

x x x x

(d) Delivery of uninterrupted immunization program against vaccine preventable diseases especially on children amidst the COVID-19 pandemic, including vaccine for COVID-19;

x x x x

Sec. 12. *Procurement of COVID-19 Drugs and Vaccine*. — Notwithstanding any law to the contrary, the requirement of Phase IV trials for COVID-19 medication and vaccine stipulated in the Universal Health Care Law is hereby waived to expedite the procurement of said medication and vaccine: *Provided*, That these are recommended and approved by the WHO and/or other internationally recognized health agencies; *Provided, further*, That the minimum standards for the distribution of the said medication and vaccine shall be determined

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by the FDA and HTAC, as may be applicable: *Provided, furthermore*, That nothing in this Act shall prohibit private entities from conducting research, developing, manufacturing, importing, distributing or selling COVID-19 vaccine sourced from registered pharmaceutical companies, subject to the provisions of this Act and existing laws, rules and regulations: *Provided, finally*, That this section shall remain in effect three (3) months after December 19, 2020.

x x x x

When R.A. 11494 granted the President the authority "*to exercise powers that are necessary and proper* x x x," Congress devolved its power in favor of the President to give him full authority in terms of the direction to be taken by the government in its response to the spread of COVID-19. The President was given ample authority to exercise discretion in handling the procurement of the necessary vaccines. To bolster the discretion given to the President, he was even given the authority to procure vaccines that did not undergo Phase IV trials as required by the Universal Health Care Law. The only standard that has to be taken into account is that these vaccines are recommended and approved by the WHO and/or other internationally-recognized health agencies. Notably, all the vaccines that came into the Philippines need not undergo any clinical trial as long as it has been recommended by the WHO and/or other internationally-recognized health agencies. Petitioner did not even mention that the Sinovac vaccine was not recommended by any of these institutions.

To grant petitioner the relief he is seeking would further render nugatory Executive Order No. 121,[11] *(E.O. 121)* which was issued consistent with the authority granted by Congress to the President under R.A. 11494. E.O. 121 seeks to hasten the availability and use of COVID-19 drugs and vaccines as a measure to prevent and suppress the spread of COVID-19 as mandated by Sec. 4(a) of R.A. 11494, by giving authority to the Director-General of the FDA for the Emergency Use Authorization (*EUA*) of COVID-19 drugs and vaccines. Pertinent provisions thereof read as follows:

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[11] *Granting Authority to the Director General of the Food and Drug Administration to Issue Emergency Use Authorization for COVID-19 Drugs and Vaccines Prescribing Conditions Therefor, and for Other Purposes*, dated December 1, 2020.

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Section 1. Emergency Use Authorization for COVID-19 Drugs and Vaccines. The Director-General of the FDA is hereby authorized to issue an Emergency Use Authorization (EUA), subject to conditions provided in this Order.

Outside clinical trials and except in cases where a Compassionate Special Permit is issued, no unregistered COVID-19 drug and vaccine may be manufactured, sold, imported, exported, distributed or transferred without an EUA.

Section 2. Conditions for the Issuance of EUA. An EUA on a COVID-19 drug or vaccine shall be issued and remain valid only when all of the following circumstances are present:

i. Based on the totality of evidence available, including data from adequate and well-known controlled trials, it is reasonable to believe that the drug or vaccine may be effective to prevent, diagnose or treat COVID-19;

ii. The known and potential benefits of the drug or vaccine when used to diagnose, prevent or treat COVID-19 outweigh the known and potential risks of the drug or vaccine, if any; and

iii. There is no adequate, approved and available alternative to the drug or vaccine for diagnosing, preventing or treating COVID-19.

The issuance of an EUA precludes the need for the completion of the conduct of clinical trials. As long as the conditions are met, any vaccine given an EUA may now be administered in the Philippines. In evaluating the known and potential benefits of the drug or vaccine and its potential risks, as a factor in granting an EUA, the FDA takes into consideration the results of tests from abroad in addition to the tests done in the Philippines. The FDA, thus, gathers sufficient material information before it issues an EUA in favor of a vaccine. In the case of Sinovac vaccine, while many doubt its efficacy, it is not within the office of this Court to issue an order compelling the government to conduct further tests before the same can be distributed to the Filipino people. Notably, the FDA already granted an EUA in favor of Sinovac on February 22, 2021.[12] Aside from the standards set forth in E.O. 121, as well

[12] https://www.fda.gov.ph/wp-content/uploads/2021/03/EUA-SINOVAC-WEBSITE-3.pdf

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as a rigorous review of all submitted clinical trial data and product information, consideration was also given to the EUAs given by counterpart National Regulatory Authorities, such as China, Brazil and Indonesia, in favor of Sinovac.[13] In the absence of proof that the grant of an EUA was not made in accordance with law and prescribed procedure, this Court cannot issue an order that would stop the procurement and use of the Sinovac vaccine or require additional trials that are not mandated by law.

The absence of a ministerial duty to conduct clinical trials and to observe the general procurement requirement of public bidding as prayed for in the petition, is further strengthened by the enactment of Republic Act No. 11525 *(R.A. 11525)*, or the "COVID-19 Vaccination Program Act of 2021."[14] Signed into law on February 26, 2021, R.A. 11525 exempted the procurement of COVID-19 vaccines, including its ancillary supplies and services, from the general procurement requirement of public bidding, explicitly allowing its negotiated procurement under emergency cases, thus:

SEC. 3. *Procurement of COVID-19 Vaccines and Ancillary Supplies and Services*. — **Notwithstanding any law to the contrary, the DOH and the NTF, either through themselves jointly or in cooperation with any national government agency or instrumentality or LGU, are authorized to procure COVID-19 vaccines, including their ancillary supplies and services necessary for their storage, transport, deployment, and administration through Negotiated Procurement under Emergency Cases pursuant to Section 53(b) of Republic Act No. 9184 and Section 53.2 of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184:** *Provided*, That in the procurement of COVID-19 vaccines, the DOJ and the NTF shall be authorized to negotiate and approve the terms and conditions thereof in behalf of LGUs and other Procuring Entities including, but not limited to, the price and payment terms, making sure that there is price uniformity and to prevent price competition: *Provided, further*, That after the negotiations by the DOH and the NTF, the LGUs and other Procuring Entities are authorized to enter into supply agreement, advance market commitment, advance payment, research investment, purchase order or

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[13] *Id.*

[14] See also The Philippine National Deployment and Vaccination Plan for COVID-19 Vaccines (Interim Plan), January 2021.

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any similar arrangements or other requirements as may be identified by the DOH and the NTF.

Provided, finally, That an LGU is authorized to directly procure ancillary supplies and services necessary for the storage, transport, deployment and administration of COVID-19 vaccines through negotiated procurement under emergency cases prescribed under this section.

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R.A. 11525 also provides that only COVID-19 vaccines that are registered with the FDA as evidenced by a Certificate of Product Registration or which possess an Emergency Use Authorization (*EUA*) can be validly procured.[15] As the FDA had already issued an EUA in favor of the Sinovac vaccine on February 22, 2021 pursuant to the authority granted to it under E.O. 121[16] and with the allowance of its procurement through negotiated procurement, no valid ground exists to require the conduct of further clinical trials and public bidding.

It bears stressing that ample authority has been granted by the legislative department in favor of President Duterte to be able to speedily address the rising cases of COVID-19 in the Philippines. R.A. 11525 has to do away with the usual procedures adopted in terms of clinical trials and public bidding requirements in the procurement of vaccines because of the expediency required in addressing the pandemic. Extraordinary times that present an invisible threat to the health of individuals, unbeknown to humanity, require an immediate, exceptional response from the government. This exceptional response must of course be in line with the guidelines and actions undertaken by an international central authority which, in this case, is the WHO

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[15] Section 6 of RA No. 11525 reads, in pertinent part:

SEC. 6. *Transparency and Accountability in COVID-19 Vaccine Procurement*. — The National Government, as well as LGUs, private entities and the Philippine Red Cross, may only procure COVID-19 vaccines that are registered with the Philippine Food and Drug Administration (FDA) as evidenced by a valid Certificate of Product Registration (CPR) or which possess an Emergency Use Authorization (EUA). x x x

[16] *Supra* note 13; 14.

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and trusted international agencies. In all, petitioner failed to point out any provision of law that imposes a ministerial duty on the part of the respondents to perform an act in compliance with a specific mandate for conduct of clinical trial and procurement of COVID-19 vaccines, specifically that produced by Sinovac. The contrary even appears, respondents are given sufficient leeway to be exempted from the usual procedures in the conduct of clinical trials and usual procurement processes.

Petitioner's direct resort before this Court is improper

It is not amiss to point out that petitioner's direct resort before this Court is improper. A challenge to the efficacy of the Sinovac vaccine is a question of fact that is beyond the scope of this Court's jurisdiction. To go into the details of a vaccine's efficacy would require the presentation of its clinical trial results and a comparative analysis of the various results of the other vaccines in order to determine the acceptable standard of what an effective COVID-19 vaccine should be. However, it is a settled rule that the Supreme Court is not a trier of facts.[17] Complementing this rule is the doctrine of hierarchy of courts, which requires a party to file the appropriate petition in the proper court, especially when the petition calls for an examination of the factual issues raised in the petition. In the case of a petition for *mandamus*, Section 21 of *Batas Pambansa Bilang (B.P.)* 129 grants the regional trial court original jurisdiction in resolving a petition for the issuance of a writ of *mandamus* to wit:

> **Section 21.** *Original jurisdiction in other cases*. — Regional Trial Courts shall exercise original jurisdiction:
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> (1) In the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of their respective regions; and
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> (2) In actions affecting ambassadors and other public ministers and consuls.

Thus, the petition should have been filed with the appropriate regional trial court and not before this Court. The importance

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[17] See *Heirs of Teresita Villanueva v. Heirs of Petronila Syquia-Mendoza, et al.*, 810 Phil. 172, 177 (2017).

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of the doctrine of hierarchy of courts was expounded in the case of *Gios-Samar, Inc. v. Department of Transportation and Communications*,[18] as follows:

> In *Vergara, Sr. v. Suelto*, the Court's original jurisdiction over special civil actions for *mandamus* was invoked to compel a Municipal Trial Court (MTC) to issue summary judgment in a case for illegal detainer. There, we declared in no uncertain terms that:
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> > x x x As a matter of policy[,] such a direct recourse to this Court should not be allowed. **The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor[.]** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another, are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.** (Emphasis supplied.)
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> This so-called "policy" was reaffirmed two years later in *People v. Cuaresma*, which involved a petition for *certiorari* challenging the quashal by the City Fiscal of an Information for defamation on the ground of prescription. In dismissing the petition, this Court reminded litigants to refrain from directly filing petitions for extraordinary writs before the Court, unless there were special and important reasons therefor. We then introduced the concept of "hierarchy of courts," to wit:
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> > x x x This Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue

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[18] G.R. No. 217158, March 12, 2019. (Emphasis and underscoring supplied; citation omitted.)

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the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly, Intermediate Appellate Court), although prior to the effectivity of *Batas Pambansa Bilang* 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." **This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy.** x x x

The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometime even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land. x x x

This doctrine of hierarchy of courts guides litigants as to the proper venue of appeals and/or the appropriate forum for the issuance of extraordinary writs. Thus, although this Court, the CA, and the RTC have concurrent original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, parties are directed, as a rule, to file their petitions before the lower-ranked court. Failure to comply is sufficient cause for the dismissal of the petition.

x x x x x x x x x

Strict observance of the doctrine of hierarchy of courts should not be a matter of mere policy. It is a constitutional imperative given (1) the structure of our judicial system and (2) the requirements of due process.

First. The doctrine of hierarchy of courts recognizes the various levels of courts in the country as they are established under the Constitution and by law, their ranking and effect of their rulings in relation with one another, and how these different levels of court interact with one another. It determines the venues of appeals and the appropriate forum for the Issuance of extraordinary writs.

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Second. Strict adherence to the doctrine of hierarchy of courts also proceeds from considerations of due process. While the term "due process of law" evades exact and concrete definition, this Court, in one of its earliest decisions, referred to it as a law which hears before it condemns which proceeds upon inquiry and renders judgment only after trial. It means that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Under the present Rules of Court, which governs our judicial proceedings, warring factual allegations of parties are settled through presentation of evidence. Evidence is the means of ascertaining, in a judicial proceeding, the truth respecting a matter of fact: As earlier demonstrated, the Court cannot accept evidence *in the first instance*. By directly filing a case before the Court, litigants necessarily deprive themselves of the opportunity to completely pursue or defend their causes of actions. Their right to due process is effectively undermined by their own doing.[19]

The doctrine of hierarchy of courts, thus, reverberates the authority given by law at every level of the Judiciary. It helps emphasize the structure of the judicial system and preserves the principle of due process for litigants to avail of appropriate avenues in pursuing and defending their cases. The Supreme Court, as the final arbiter of laws, will lose significance if all petitions over which it has concurrent jurisdiction will be entertained. While there may be exceptions to this rule, petitioner failed to raise the applicability of any of the exceptions. These exceptions, which allow direct resort to this Court was enumerated in *Gios-Samar* as follows:

Aside from the special civil actions over which it has original Jurisdiction, the Court, through the years, has allowed litigants to seek direct relief from it upon allegation of "serious and important

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[19] Citations omitted.

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reasons." *The Diocese of Bacolod v. Commission on Elections (Diocese)* summarized these circumstances in this wise:

> (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
>
> (2) when the issues involved are of transcendental importance;
>
> (3) cases of first impression;
>
> (4) the constitutional issues raised are better decided by the Court;
>
> (5) exigency in certain situations;
>
> (6) the filed petition reviews the act of a constitutional organ;
>
> (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]
>
> (8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

A careful examination of the jurisprudential bases of the foregoing exceptions would reveal a common denominator — the issues for resolution of the Court are purely legal. Similarly, the Court in *Diocese* decided to allow direct recourse in said case because, just like *Angara*, what was involved was the resolution of a question of law, namely, whether the limitation on the size of the tarpaulin in question violated the right to free speech of the Bacolod Bishop.

We take this opportunity to clarify that the presence of one or more of the so-called "special and important reasons" is not the decisive factor considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. **Rather, it is the *nature* of the question raised by the parties in those "exceptions" that enabled us to allow the direct action before us.**[20]

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[20] *Gios-Samar, Inc. v. Department of Transportation and Communications*, *supra* note 18. (Emphasis supplied)

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Petitioner failed to point out any question of law worthy of consideration by this Court. He also failed to present any circumstance or nature of the question raised in the petition that would fall in any of the exceptions for which the legality of the actions taken by the respondents may be thoroughly examined. As discussed, the petition failed to comply with the requisites of a petition for *mandamus*, in addition to the infirmities that failed to take into account well-established principles in law and jurisprudence.

As the judicial branch of the government tasked to interpret laws, settle actual controversies, and keep every government office within the scope of their authority, it is not within the office of the Court to go beyond what the law requires, including those involving the procurement of COVID-19 vaccines. As the law has expressly excluded the conduct of clinical trials and exempted its procurement from the general rules of the bidding process, the Court cannot step in to add another layer of requirement before the procurement of COVID-19 vaccines, and their use, specifically those granted with EUA.

IN LIGHT OF THE FOREGOING, the instant petition is **DISMISSED**.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Leonen, Caguioa, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, M. Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.