

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)



Senate
Office of the Secretary

13 JUL -3 P 2 :25

SENATE
S. No. **388**

RECEIVED BY: *ja*

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution, Article 3, Section 6 proscribes the impairment of the right to travel “except in the interest of national security, public safety, or public health, as may be provided by law.”

Section 3, Chapter 1, Title III, Book IV of Executive Order 292 (the Administrative Code of 1987) mandates the Department of Justice (DOJ) to uphold the rule of law by serving as the principal law enforcement agency of the government and as legal counsel and representative thereof. It tasks the DOJ to administer the criminal justice system in accordance with the accepted processes thereof consisting in, among other things, the investigation of crimes, prosecution of offenders and administration of the correctional system.

Pursuant thereto, the DOJ issued Department Circular No. 18 on 23 April 2007 to govern the issuance, lifting, and implementation of a Watchlist Order (WLO) against the accused in criminal cases pending preliminary investigation or petition for review before it. The validity of this circular, subsequently revised on 7 June 2010 by Department Circular No. 41, has in recent times been subjected to criticism and called into question.

The primary criticism is leveled against the DOJ’s perceived lack of power to issue hold departure orders (HDOs) and WLOs in the absence of a law.

Courts already possess inherent powers, implied from a general grant of jurisdiction and essential to the administration of justice, to issue HDOs. Such powers are indispensable in upholding the integrity of our institutions and ensuring that its people maintain faith and respect

for the rule of law. Absent such powers, the country's laws may be ignored with impunity, and public safety compromised, by the simple expedient of flight once charges are brought against violators in a court of law.

Withholding this same power from the DOJ pending preliminary investigation would visit a similar risk of flight during the earlier stages of the criminal proceedings.

On the other hand, a regulation allowing the State's chief prosecution arm to *motu proprio* restrict a person's constitutional right to travel upon the filing of a criminal complaint opens the doors for political harassment and oppression.

This bill requires the DOJ to apply to the courts for the issuance of an HDO. In so doing, it reconciles the DOJ's need to effectively carry out its prosecutorial functions with the Constitution, Article 3, Section 6.¹

over

MIRIAM DEFENSOR SANTIAGO

¹ This bill was originally filed during the Fifteenth Congress, Second Regular Session.

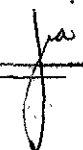
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1 AN ACT
2 IMPOSING LIMITATIONS ON THE RIGHT OF INTERNATIONAL TRAVEL
3 OF PERSONS UNDER INVESTIGATION, EMPOWERING THE REGIONAL
4 TRIAL COURTS TO ISSUE HOLD DEPARTURE ORDERS, AND FOR OTHER
5 PURPOSES

Be it enacted in the Senate and House of Representatives of the Philippines in the Congress assembled:

6 SECTION 1. *Short Title.* – This Act shall be known as “The Anti-Justice Evasion
7 Through Travel (JETT) Act of 2011.”

8 SECTION 2. *Declaration of Policy.* – The State upholds the right of persons to
9 international travel, except in the interest of national security, public safety, or public health. The
10 State likewise recognizes the necessity of regulating such a right in order to ensure that the
11 authority of its institutions to enforce the law and prosecute offenders is not negated by loss of
12 jurisdiction.

13 The State shall adopt sufficient measures to ensure that the right of persons to travel
14 across borders while under preliminary investigation shall not be impaired except upon a lawful
15 order by a court of law upon a finding that such a person is a flight risk, and such flight may
16 result either in a miscarriage of justice or a threat against national security, public safety, or
17 public health.

18 SECTION 3. *Definition of Terms.* – The following terms as used in this Act shall mean –

19 (a) “Secretary” refers to the Secretary of Justice;

1 (b) "Commissioner" refers to the Commissioner of Immigration;

2 (c) "Bureau" refers to the Bureau of Immigration; and

3 (d) "Hold Departure Order" refers to a Hold Departure Order issued by the Regional Trial
4 Court commanding the Commissioner to prevent the departure for abroad of Filipinos and/or
5 aliens named therein by including them in the Bureau's Hold Departure List.

6 SECTION 4. *Hold Departure Order.* – The Regional Trial Court (RTC) with jurisdiction
7 over the residence of the person sought to be held, upon application of the Secretary, may issue a
8 Hold Departure Order (HDO) under any of the following circumstances:

9 (a) Against the accused, irrespective of nationality, in criminal cases falling within the
10 jurisdiction of courts below the RTCs;

11 (b) Against the alien whose presence is required either as a defendant, respondent, or
12 witness in a civil or labor case pending litigation, or any case before an administrative agency of
13 the Government;

14 (c) Against the respondent, irrespective of nationality, in criminal cases pending
15 preliminary investigation, petition for review, or motion for reconsideration before the
16 Department of Justice or any of its provincial or city prosecution offices.

17 SECTION 5. *HDO Not Issued Without Notice, Exceptions.* – No HDO shall be granted
18 without hearing and prior notice to persons subject of the HDO. If it shall appear from facts
19 shown by affidavits or by the verified application that the accused, alien, or respondent is a flight
20 risk, and such flight may result either in (a) a miscarriage of justice or (b) prejudice against
21 national security, public safety, or public health, the court to which the application for HDO was
22 made, may issue *ex parte* a temporary HDO to be effective only for a period of thirty (30) days
23 from service on the person sought to be held, except as herein provided. Within the said thirty-
24 day period, the court must order said person to show cause, at a specified time and place, why a
25 permanent HDO should not be granted, determine within the same period whether or not the
26 permanent HDO shall be granted, and accordingly issue the corresponding order.

1 In the event that the application for HDO is not resolved within the said period, the
2 temporary HDO order is deemed automatically vacated.

3 SECTION 6. *Period of Validity.* – The validity of the HDO issued pursuant to this Act
4 shall be reckoned from the date of its issuance. The HDO shall be valid for two (2) years unless
5 sooner terminated.

6 SECTION 7. *Lifting or Cancellation of HDO.* – The HDO may be lifted or cancelled
7 under any of the following grounds:

8 (a) When the validity period of the HDO as provided for in the preceding section has
9 already expired;

10 (b) When the accused subject of the HDO has been allowed to leave the country during
11 the pendency of the case, or has been acquitted of the charge, or the case in which the
12 warrant/order of arrest was issued has been dismissed, or the warrant/order of arrest has been
13 recalled;

14 (c) When the civil or labor case or case before an administrative agency of the
15 government wherein the presence of the alien subject of the HDO is required has been dismissed
16 by the court or by appropriate government agency, or the alien has been discharged as a witness
17 therein, or the alien has been allowed to leave the country.

18 SECTION 8. *Implementation of HDO and Lifting/Cancellation.* – All orders issued
19 pursuant to this Act shall be immediately transmitted to the Commissioner for implementation,
20 copy furnished the person/s subject thereof, to give the latter adequate opportunity to contest the
21 order or request reconsideration thereof.

22 SECTION 9. *Allow Departure Order (ADO).* – Any person subject of HDO issued
23 pursuant to this Act who intends, for some exceptional reason, to leave the country may, upon
24 application under oath with the court issuing the HDO, be issued an ADO.

1 SECTION 10. *Issuance of Clearance/Certification of Not the Same Person.* – Any person
2 who is prevented from leaving the country because his or her name appears to be the same as the
3 one that appears in the HDO issued pursuant to this Act may, upon application under oath with
4 the court issuing the HDO, be issued a Certification to the effect that said person is not the same
5 person whose name appears in the issued HDO.

6 SECTION 11. *Separability Clause.* – If any part of this Act is held invalid or
7 unconstitutional, the other parts or provisions thereof not affected shall remain valid and
8 effective.

9 SECTION 12. *Repealing Clause.* – All laws, orders, issuances, rules, and regulations or
10 parts thereof inconsistent with the provisions of this Act are hereby repealed, modified, or
11 amended accordingly.

12 SECTION 13. *Effectivity.* – This Act shall take effect fifteen (15) days after its
13 publication in at least two (2) newspapers of general circulation.

Approved,