

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5111

Introduced by **HONORABLE EDCEL C. LAGMAN**

EXPLANATORY NOTE

Any restriction or limitation to basic constitutional rights must be adjudicated and imposed by the proper judicial forum with strict observance of due process. This authority or jurisdiction should not be exercised by or delegated to agencies headed by presidential political appointees who succumb to partisan pressures or defer to political importuning at the expense of civil liberties.

Section 6 of Article III of the Bill of Rights of the 1987 Constitution provides that "Neither shall the right to travel be impaired except in the interest of national security, or public health, as may be provided by law." Unfortunately, the Congress has yet to enact the implementing law.

A "Watch List Order" (WLO) has been pejoratively likened to a rogues' gallery, a roll of infamy and a scroll of criminals whose movements have to be monitored to avert flight from justice. Arbitrary inclusion in the WLO is a virtual incarceration by innuendo and conviction by publicity.

The indiscriminate inclusion of a person's name in the WLO even prior to the filing of a formal complaint with the prosecutor's office and finding of a probable cause to support indictment or before the institution of an information in court, besmirches such person's reputation, convicts before trial and criminalizes alleged acts without due process.

The Department of Justice (DOJ) or the Bureau of Immigration (BI) must apply before the proper court for the issuance of a Hold Departure Order (HDO) based on compelling and competent evidence and with attendant due process, instead of requiring persons listed in the WLO to secure clearance or Allow Departure Order (ADO) in order to travel.

The recent inclusion of some personalities in the WLO, while others facing investigation or prosecution are spared, demands the forthwith enactment of a law, as envisioned by the Constitution, to fully protect the right to travel and provide judicious standards on the restriction and limitation of such right.

Due to congressional default, the present regulations and restrictions on the right to travel are enforced pursuant to administrative fiat. In DOJ Circular No. 17, which prescribes the rules and regulations governing the issuance of HDO, the President, the DOJ Secretary and the proper Regional Trial Court have concurrent jurisdiction to issue an HDO. There is no requirement of prior hearing and notice before an HDO can be issued. Both the President and the DOJ Secretary are political officials whose disposition could be anchored on considerations other than "judicial" and whose actions can be other than judicious.

The Constitution mandates that it must be the Congress which may provide by law on how the right to travel could be reasonably impaired based on the constitutional prescription of "in the interest of national security, and public health." Accordingly, this bill includes the following provisions:

(1) Exclusive jurisdiction to issue an HDO shall be vested in the proper court where a criminal case is pending or which has jurisdiction over a complaint which is pending preliminary investigation by an appropriate prosecutorial office in the event an information is filed;

(2) Persons included in the WLO issued by the Secretary of Justice cannot be barred from traveling without a final HDO issued by the proper court;

(3) The proper court shall conduct a hearing after due notice to the person or persons whose travel is sought to be prevented and to the applicant for the issuance of an HDO who may be the complainant, the DOJ or the BI;

(4) Any HDO previously issued shall be lifted automatically by the proper court (a) once the accused is acquitted; (b) the preliminary investigation is terminated with the dismissal of the complaint; (c) when the applicant, the DOJ or the BI desists or withdraws the application; and (d) the HDO has expired two years after it has become final and executory; and

(5) The issuance of an HDO shall be based solely on the constitutional ground of "in the interest of national security, or public health", which shall be established by the applicant based on competent and compelling evidence.

Perforce, judicial magistrates, not partisan officials, must decide issues which may lead to the impairment of civil liberties like the right to travel which is guaranteed not only by the Constitution but also by the

Universal Declaration of Human Rights and the International Covenant on
Civil and Political Rights.

Approval of this bill is earnestly recommended.



EDCEL C. LAGMAN

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AN ACT
UPHOLDING THE CONSTITUTIONAL RIGHT TO TRAVEL AND GRANTING TO
THE PROPER COURT THE EXCLUSIVE JURISDICTION TO ISSUE
HOLD DEPARTURE ORDERS

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

SECTION 1. *Short Title.* This Act shall be known as the "Right to Travel Act of 2011".

SEC. 2. *Declaration of National Policy.* Consistent with Section 6 of Article III on the Bill of Rights of the 1987 Constitution, Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Convention on Civil and Political Rights, it is hereby declared the national policy to uphold, protect and promote the right to travel of all persons, both Filipino citizens and aliens, and such right shall not be impaired except in the interest of national security, and public health.

SEC. 3. *Definition of Terms.* The following words, phrases and acronyms used in this Act shall mean as follows:

(a) Accused – A person or persons against whom an information charging the commission of a crime or offense has been filed in court after the final termination of a preliminary investigation wherein the investigating or prosecutorial agency or body has determined the existence of a probable cause against such person or persons.

(b) Allow Departure Order (ADO) – A judicial order which permits or allows the travel of an accused or respondent in a criminal proceeding.

(c) BI – The Bureau of Immigration which is headed by a Commissioner and is an attached agency of the Department of Justice.

(d) DOJ – The Department of Justice which is an executive line department headed by the Secretary of Justice.

(e) Hold Departure Order (HDO) – A judicial order preventing the travel or departure of an accused or respondent to a foreign country or destination.

(f) National Security – A composite term encompassing a broad range of facets for the protection, promotion and enhancement of the survival and defense of the State, its sovereignty, territorial integrity and its cherished institutions vis-à-vis both domestic and foreign circumstances, factors and forces.

(g) Proper Court – A trial court of competent jurisdiction which has taken cognizance of an information filed against the accused or the trial court which shall have jurisdiction over a case or complaint which is pending preliminary investigation by an appropriate prosecutorial office in the event an information is filed.

(h) Public Health – Refers to safeguarding and improving the health of the nation or community as a whole by preventing, treating and isolating diseases, epidemics and health hazards.

(i) Public Safety – Refers to the welfare and protection of the general public from dangers arising from criminality and disasters.

(j) Respondent – A person or persons subject to a preliminary investigation being conducted by the appropriate investigating and prosecutorial agency like the Office of the Provincial or City Prosecutor, Department of Justice and the Office of the Ombudsman.

(k) Watch List Order (WLO) – An administrative list of accused and respondents prepared by the DOJ or the BI as a basis for an application for the issuance of an HDO by the proper court.

SEC. 4. *HDO and ADO.* No accused or respondent in any criminal proceeding shall be barred or prohibited from exercising the right to travel unless the proper court has issued an HDO which has become final and executory.

Aside from denying an application for an HDO in proper cases, the court may issue instead an ADO giving clearance to the travel of an accused or respondent with or without reasonable restrictions or conditions.

SEC. 5. *Exclusive Judicial Jurisdiction.* Exclusive jurisdiction to issue an HDO or ADO shall be vested in the proper court which shall conduct a hearing after due notice to the accused or respondent whose travel is sought to be prevented and to the applicant for the issuance of an HDO who can be the complainant, the BI or the DOJ.

The issuance of an HDO or ADO can be appealed by the adverse party to a higher court in accordance with the Rules of Court.

An HDO shall have a validity of two (2) years from its finality.

SEC. 6. *Proof Required.* The issuance of an HDO shall be based on competent and compelling evidence adduced by the applicant clearly showing that prohibiting the travel of the accused or respondent is in the interest of national security, public safety or public health.

SEC. 7. *Watch List Order (WLO).* A WLO shall not be the basis for holding or preventing the travel of the accused or respondent unless there is an HDO duly issued with finality by the proper court.

In the preparation of a WLO, the DOJ or BI shall assure that only accused or respondents are included in the WLO after a preliminary hearing determining that their inclusion is in the interest of national security, public safety and public health.

SEC. 8. *Lifting of HDO.* An HDO shall be lifted automatically by the proper court (a) once the accused is acquitted; (b) the preliminary investigation is terminated with the dismissal of the complaint; (c) when the applicant, the DOJ or the BI desists or withdraws the application; and (d) the HDO has expired two years after it has become final and executory.

SEC. 9. *Repealing Clause.* All laws and issuances inconsistent with this Act are hereby repealed or amended accordingly.

SEC. 10. *Separability Clause.* If any provision of this Act is declared unconstitutional, the validity of the other provisions shall not be affected by such declaration.

SEC. 11. *Effectivity Clause.* This Act shall take effect fifteen (15) days after its publication in two (2) national newspapers of general circulation.

Approved,