



PRESS STATEMENT OF SOLICITOR GENERAL JOSE C. CALIDA **2 February 2018, Makati City**

Ombudsman Conchita Carpio-Morales decries that her kingdom is under siege by the Office of the President. She was quoted by the press saying that “in a society founded on the rule of law, the arbitrary disregard of a clearly worded jurisprudence coupled with a confident stance that it will be changed should never be countenanced.”

When the Ombudsman skewered then Mayor Junjun Binay by finding him guilty of graft over the Makati Parking Building, did she respect the *Aguinaldo* doctrine, which was the prevailing jurisprudence at that time? No. Now, she chides the Office of the President for ordering the preventive suspension of Overall Deputy Ombudsman Melchor Carandang (ODO), which she characterized as “a clear affront to the Supreme Court”. Look who’s talking?

The Ombudsman was supposed to investigate the fraudulent claims against the President. She, however, recused herself and passed the baton to ODO Carandang to do this task. But ODO bungled his job by exposing the President’s fake bank accounts. Guess who came to the rescue of ODO in January 2018? The Ombudsman of course. She sanctimoniously invoked a distorted interpretation of the Ombudsman’s independence to shield her office from accountability. This is a travesty of justice.

When the Ombudsman inhibited and left her ODO to decide in her stead, a procedural, legal, and ethical vacuum was created. The Constitution states that ODO is not an impeachable officer. The Ombudsman cannot also discipline the ODO for acts committed in a case where she inhibited herself as she will contradict herself. Neither can the ODO be disciplined by the other Deputy Ombudsmen due to lack of legal basis. This legal and ethical vacuum was not contemplated by the Supreme Court’s 2014 *Gonzales* decision. A deeply divided SC may have favored Deputy Ombudsman Emilio Gonzales then, but who will now discipline ODO Carandang who was acting under Ombudsman Morales’ fiat?

There is an obvious solution to the seeming impasse. Section 2, Article XI of the Constitution states, “The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. *All other public officers and employees may be removed from office as provided by law, but not by impeachment.*” The law referred to is the 1987 Administrative Code, which states in Section 20, Chapter 7, Title 1, Book III:

Sec. 20. Residual Powers. — Unless Congress provides otherwise, the President shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law.

The President, whose duty is to execute the laws, was forced to exercise his residual authority to discipline officials under the Executive Department. Besides, preventive suspension is not a penalty, which further differentiates this case from the *Gonzales* ruling. The President, in issuing the preventive suspension, merely filled the vacuum left by the Ombudsman’s masquerade, and enforced accountability in public service. Otherwise, we will just be paying lip service to the constitutional precept that public officers shall remain accountable at all times. One thing is clear: The Office of the Ombudsman is not a fourth branch of government.