

STATEMENT OF THE U.P. INSTITUTE OF HUMAN RIGHTS RE: HOUSE-TO-HOUSE SEARCH AND FORCED TRANSFER TO ISOLATION FACILITIES OF ASYMPTOMATIC COVID-19 PATIENTS

15 July 2020

Secretary Eduardo Año has announced a policy to allow the house to house search of COVID19 patients and the taking of said persons to isolation facilities. This will not only literally unlock the door to warrantless searches of our homes, but also open the proverbial floodgates to other human rights violations.

Sec. 2, Article III of the Constitution protects the right of the people to be secure in their houses “against unreasonable searches and seizures of whatever nature and for any purpose.” At the core of this guarantee is the immunity of one’s person, including the extensions of his/her person - houses, papers, and effects - against government intrusion [*Secretary of National Defense v. Manalo (2008)*].

To allow the police to enter our homes without our consent is a draconian measure that delegates to the police unfettered discretion. *Villanueva v. Querubin (1972)* underscored that the Constitution seeks to guard “a man’s prerogative to choose who is allowed entry to his residence” because as, the Court emphatically expressed, “[a person’s] house, however humble, is his castle.” Thus, it outlaws any unwarranted intrusion by government, which is called upon to refrain from any invasion of his dwelling and to respect the privacies of his life.” The Court further stressed that this right is crucial to human dignity and “that his privacy must not be disturbed except in case of overriding social need, and then only under stringent procedural safeguards.”

In *People v. Compacion (2001)*, the Supreme Court held that obtaining a warrant from the proper judicial authority prior to a search is not absolute, and among the exceptions recognized by law are “when the owner of the premises consents or voluntarily submits to a search” or “when the owner of the premises waives his right against such incursion.” The Court clarified, however, that “such waiver must constitute a valid waiver made voluntarily, knowingly and intelligently.” The Court held that a person who allows law enforcers “to enter his premises and his consequent silence during the unreasonable search and seizure could not be construed as voluntary submission or an implied acquiescence to warrantless search and seizure especially so when members of the raiding team were intimidatingly numerous and heavily armed.



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His implied acquiescence, if any, could not have been more than mere passive conformity given under coercive or intimidating circumstances and is, thus, considered no consent at all within the purview of the constitutional guarantee.”

Neither is the House-to-House policy justified under the Mandatory Reporting of Notifiable Diseases and Health (RA 11332). While the DOH is authorized to implement containment measures for disease prevention and control [Sec. 4 (f)(4)], RA 11332 does not override fundamental rights. On the contrary, there is a legitimate, almost absolute, expectation of privacy in one’s residence and that “warrantless inspections of dwellings and business premises are unreasonable thus requiring a search warrant.”[Dela Paz v. Ochoa (2019)]. Hence, a mere allegation of having contracted COVID does not trump constitutional protections.

If the government’s aim is to find COVID19 patients with mild symptoms, e.g. fever, a temperature check using no-contact thermometers—without having to enter the home—should suffice. If its aim is to find asymptomatic patients, how can a house-to-house search even achieve that purpose? And if its aim is to ferret out infected patients supposedly hiding inside their homes, the search will have to be so intrusive that it should already require a proper search warrant from a court of law. Moreover, a more insidious implication of the search of asymptomatic patients is that it portends the danger of unlawful access of sensitive personal health information. For fear of being placed in a facility, patients will be deterred from seeking consultation and testing, thereby exacerbating the problem.

It is not enough for supporters of this new policy to say that though prone to abuse, it is no different from every legitimate measure that can be abused. The fact is that otherwise valid rules on social distancing, mandatory facemasks, and community quarantine have been abused. Violators are being arrested and corralled into stadiums where COVID-19 safeguards are openly flouted and wantonly breached. Other violators have been shot, sexually harassed and, in a recent case, the victim was murdered after reporting that she had been raped by the policemen themselves.

The government’s goal to ensure that all infections are properly detected, traced, and treated is certainly salutary. But since the measures impinge upon constitutionally valued rights, they must be “narrowly tailored” specifically to attain that purpose without causing collateral damage to protected rights.

The policy is patently unconstitutional.

