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Supreme Court of Guam, Clerk of Court

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**IN THE SUPREME COURT OF GUAM**

<b>IN RE:</b>	)	Supreme Court Case No. CRQ20-002
	)	
<b>REQUEST OF LOURDES A. LEON</b>	)	
<b>GUERRERO, I MAGA' HÅGAN</b>	)	
<b>GUÅHAN, RELATIVE TO THE</b>	)	
<b>POWER OF THE EXECUTIVE</b>	)	<b>ORDER &amp; SCHEDULING ORDER</b>
<b>BRANCH TO ESTABLISH,</b>	)	
<b>MAINTAIN, AND OPERATE</b>	)	
<b>QUARANTINE FACILITIES IN</b>	)	
<b>GUAM AND TO PROMULGATE</b>	)	
<b>QUARANTINE AND SANITATION</b>	)	
<b>REGULATIONS FOR THE</b>	)	
<b>PROTECTION OF GUAM AGAINST</b>	)	
<b>THE IMPORTATION AND SPREAD</b>	)	
<b>OF DISEASE</b>	)	

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This matter comes before the court upon the filing of a Request for Declaratory Judgment by the Governor of Guam, Lourdes A. Leon Guerrero, on December 24, 2020. The Governor seeks a declaratory judgment interpreting 10 GCA §§ 19601, 19604, and 19605 and presents five questions to the court. Req. Declaratory J. at 10-11, Dec. 24, 2020. The statutes provide the framework for quarantine policies and procedures. The Governor appointed the Department of Public Health and Social Services (“DPHSS”) as the “primary public health authority,” Executive Order No. 2020-03 at 1, Mar. 14, 2020, “that acts principally to protect or preserve the public’s health.” 10 GCA § 19104(l). DPHSS is authorized to exercise the powers of the public health authority enumerated in the Islan Guåhan Emergency Health Powers Act. 10 GCA § 19101 *et seq.* DPHSS is a government agency within the Executive branch.

Title 7 GCA § 4104 permits the Governor of Guam or the Guam Legislature to request

1 declaratory judgments from this court in certain circumstances. *See* 7 GCA § 4104 (added by  
2 Guam Pub. L. 29-103:2, July 22, 2008). Before this court may exercise jurisdiction over a  
3 declaratory judgment under section 4104, three requirements must be satisfied:

4 First, the subject matter of the issues must be appropriate under 7 GCA § 4104 – that  
5 is, it must involve “the interpretation of any law, federal *or* local, lying within the  
6 jurisdiction of the courts of Guam to decide,” or “any question affecting the powers  
7 and duties of *I Maga’lahi* and the operation of the Executive Branch, or *I*  
8 *Liheslaturan Guåhan*, respectively.” Second, the issue or issues raised must be a  
“matter of great public interest.” Finally, “the issue must be such that its resolution  
through the normal process of law is inappropriate as it would cause undue delay.”

9 *In re Request of I Mina’ Trentai Dos Na Liheslaturan Guåhan Relative to the Use of Funds from*  
10 *the Tax Refund Efficient Payment Tr. Fund*, 2014 Guam 15 ¶ 12 [hereinafter *In re Tax Trust Fund*]  
11 (citations omitted).

12 Our first requirement mandates we address only questions over which we have proper  
13 subject matter jurisdiction—i.e., (1) questions interpreting the law; or (2) questions affecting the  
14 powers and duties of the Governor and the operation of the Executive branch, or the Legislature,  
15 respectively. 7 GCA § 4104. We previously determined that our subject matter requirement is a  
16 disjunctive test. *See In re Request of Governor Carl T.C. Gutierrez, Relative to the Organicity &*  
17 *Constitutionality of Pub. L. 26-35*, 2002 Guam 1 ¶ 11 [hereinafter *In re Request of Gutierrez II*];  
18 *In re Request of Calvo Relative to Interpretation & Application of Organic Act Section 1423B &*  
19 *What Constitutes Affirmative Vote of Members of I Liheslaturan Guåhan*, 2017 Guam 14 ¶¶ 14-  
20 15 [hereinafter *In re Request of Calvo*]. The Governor “requests interpretation involving both  
21 subjects.” Req. Declaratory J. at 10.  
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24 The questions submitted by the Governor ask us to interpret DPHSS’s powers to  
25 implement quarantine policy and the procedural requirements under 10 GCA §§ 19601, 19604,  
26 and 19605. We are authorized by 7 GCA § 4104 to address these questions because we are asked  
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1 to interpret local statutes as opposed to declaring statutes unconstitutional. *In re Request of*  
2 *Gutierrez II*, 2002 Guam 1 ¶ 12.

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4 However, we are not authorized to address broad questions regarding the powers and  
5 duties of DPHSS under the second subject matter prong. We must strictly construe the language  
6 of 7 GCA § 4104 because our jurisdiction over declaratory judgment actions is limited to “certain  
7 narrow questions.” *In re Tax Trust Fund*, 2014 Guam 15 ¶ 11. Section 4104 explicitly limits  
8 questions from the Governor to the powers and duties of the Governor and the Governor’s  
9 operation of the Executive Branch. 7 GCA § 4104; *In re Request of Gutierrez II*, 2002 Guam 1 ¶  
10 19. Here, the Governor’s questions center on the powers and duties of DPHSS, not her own. We  
11 lack statutory authority to address questions regarding the powers and duties of DPHSS under  
12 this prong. Thus, we are only authorized to address the Governor’s questions on interpretation of  
13 the law.  
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16 We may reach certain narrow questions of DPHSS’s authority because we have subject  
17 matter jurisdiction to interpret 10 GCA §§ 19601, 19604, and 19605. Analysis of those statutes  
18 will no doubt include discussion of DPHSS’s powers and duties in the context of those statutes.  
19 However, we cannot opine on broader questions affecting the powers and duties of DPHSS.

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21 In addition, we must determine whether the specific questions presented in a declaratory  
22 judgment action are appropriately requesting interpretation of the law. *See In re Tax Trust Fund*,  
23 2014 Guam 15 ¶ 20 (limiting question to statutory interpretation and declining to address whether  
24 statute was violated in fact); *In re Request of Calvo*, 2017 Guam 14 ¶ 50 (declining to address  
25 question inaccurately framed as interpretation of a statute).  
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1 For these reasons, we find the following two questions are appropriately before us<sup>1</sup>:

2 1. May quarantine orders be challenged on constitutional grounds?

3 a. If yes, what level of scrutiny should be applied to the court’s review, whether  
4 rational, intermediate, or strict?

5 2. May a court modify a quarantine order issued by DPHSS?

6 a. If yes, under what circumstances may a court modify a quarantine order issued  
7 by DPHSS?

8 b. If yes, does such modification impinge on the Governor’s power and duties to  
9 quarantine and protect against the spread of disease and interfere with the  
10 operations of the Executive Branch?

11 The Governor presented five questions to the court. Req. Declaratory J. at 11. We decline  
12 to address the Governor’s questions regarding CDC guidelines as they involve questions of the  
13 powers and duties of DPHSS rather than questions of statutory interpretation. We also decline to  
14 address the question of amenities in a quarantine facility because it is duplicative. The question  
15 is a more specific variation of Question 2 and can be addressed within Question 2 rather than as  
16 a separate question.<sup>2</sup>

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18 Our declaratory judgment statute also requires the issues be a matter of great public  
19 interest and the normal process of law would unduly delay resolution. We find both these  
20 requirements met.

21 The Governor’s questions to the court are requests to interpret 10 GCA §§ 19601, 19604,  
22 and 19605 with respect to DPHSS’s powers to develop and implement quarantine policy and  
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26 <sup>1</sup> The Governor’s questions to the court use slightly different wording and organization. For example, the  
27 Governor asks whether “a court may modify a lawful quarantine order,” and we removed the word “lawful” from  
the question.

28 <sup>2</sup> The Governor’s questions were: “Are CDC guidelines mandatory in Guam?”; “Are CDC guidelines  
regarding quarantine for travelers binding on DPHSS such that DPHSS may not implement a quarantine policy that  
is more restrictive than CDC guidelines?”; “May a court grant a request for release from quarantine on the basis of  
amenities provided in quarantine facilities?”

1 statutory procedural requirements. These questions are a “matter of great public interest” as  
2 Guam has been in a state of emergency since March 14, 2020. Executive Order No. 2020-03,  
3 Mar. 14, 2020. Quarantine measures have been a part of the Government’s response to the  
4 COVID-19 public health emergency since the first cases of COVID-19 were confirmed on the  
5 island. Executive Order No. 2020-04, Mar. 16, 2020. This requirement is met because the issues  
6 are “significant in substance” and “relate” to DPHSS’s “presently existing governmental duty” as  
7 the Executive agency delegated by the Governor to develop and implement quarantine policy. *In*  
8 *re Request of Gutierrez for a Declaratory Judgment as to the Organicity of Guam Public Law 22-*  
9 *42, 1996 Guam 4 ¶¶ 4-5* [hereinafter *In re Request of Gutierrez I*].  
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12 In addition, the questions are such that their resolution through the normal process of law  
13 would cause undue delay. We expect that a Government appeal of an adverse judgment by the  
14 trial court in the “quarantine cases” would likely require jurisdictional briefing and justiciability  
15 analysis before reaching the substantive issues. Under the unique circumstances of a public health  
16 emergency and the importance of the policies developed to respond to COVID-19, the estimated  
17 difference in speed between reaching these issues through the normal processes of law is  
18 excessive relative to 7 GCA § 4104. *See In re Request of Gutierrez I, 1996 Guam 4 ¶ 7.*  
19 Therefore, the jurisdictional requirements of 7 GCA 4104 are met and this court has the authority  
20 to issue declaratory judgments over appropriate questions of statutory interpretation.  
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23 Given the above, the Governor and any interested parties are invited to brief the following  
24 two questions:

- 25 1. May quarantine orders be challenged on constitutional grounds?
  - 26 a. If yes, what level of scrutiny should be applied to the court’s review, whether  
27 rational, intermediate, or strict?
- 28 2. May a court modify a quarantine order issued by DPHSS?

1 a. If yes, under what circumstances may a court modify a quarantine order issued  
2 by DPHSS?

3 b. If yes, does such modification impinge on the Governor's power and duties to  
4 quarantine and protect against the spread of disease and interfere with the  
5 operations of the Executive Branch?

6 Briefing will proceed as follows:

7 The Governor's opening brief must be served and filed by **January 20, 2021**.

8 Any interested parties must serve and file its brief by **February 8, 2021**. See Guam R.  
9 App. P. 14(e).

10 The Governor may serve and file a reply brief by **February 15, 2021**.

11 The court will hold a status conference on **Wednesday, February 17, 2021, at 10:00**  
12 **a.m.**, and will hear oral argument on **Tuesday, February 23, 2021, at 10:00 a.m.**, both in the  
13 Supreme Court Virtual Courtroom through the Zoom platform. The panel will consist of Chief  
14 Justice F. Philip Carbullido, Associate Justice Robert J. Torres, and Associate Justice Katherine  
15 A. Maraman. Any objection to the competency of any justice must be served and filed  
16 by **Friday, February 12, 2021, by 5:00 p.m.** in accordance with the procedures and  
17 requirements of 7 GCA § 6107.  
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21 **SO ORDERED** this 31st day of December, 2020.

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24                   /s/                    
25 **ROBERT J. TORRES**  
26 **Associate Justice**

24                   /s/                    
25 **KATHERINE A. MARAMAN**  
26 **Associate Justice**

27  
28   /s/    
**F. PHILIP CARBULLIDO**  
**Chief Justice**