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NO. CRQ26-001

IN RE:

**REQUEST OF LOURDES A. LEON GUERRERO, *I
MAGA'HÅGAN GUÅHAN*, RELATIVE TO ORGANIC ACT
LIMITS ON LEGISLATIVE CONDITIONS AFFECTING THE
GOVERNOR'S AUTHORITY TO ESTABLISH HOSPITALS**

**OPENING BRIEF
OF PETITIONER LOURDES A. LEON GUERRERO,
*I MAGA'HÅGAN GUÅHAN***

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I. STATEMENT OF JURISDICTION

This court has original jurisdiction over requests from the Governor of Guam to issue declaratory judgment interpreting any federal or local law “and upon any question affecting the powers and duties of [*I Maga’håga*] and the operation of the Executive Branch[.]” 7 GCA § 4104. *See also* 48 U.S.C.A. § 1424-1(a). Guam law expressly authorizes the Governor to request that this Court interpret federal or local law affecting her powers and duties and the operation of the Executive Branch:

I [Maga’hågan] Guåhan, in writing...may request declaratory judgments from the Supreme Court of Guam as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of *I [Maga’håga]* and the operation of the Executive Branch...The declaratory judgments may be issued only where it is a matter of great public interest and the normal process of law would cause undue delay. Such declaratory judgments *shall* not be available to private parties. The Supreme Court of Guam *shall*, pursuant to its rules and procedure, permit interested parties to be heard on the questions presented and *shall* render its written judgment thereon.

7 GCA § 4104 (emphasis in original).

This Court has held that § 4104 jurisdiction requires: (1) a matter of great public importance; (2) circumstances in which resolution through the normal process of law would cause undue delay; and (3) a subject appropriate for § 4104 review. *In re Request of Governor Carl T.C. Gutierrez*, 2002 Guam 1 ¶ 9.

In its March 24, 2026 Order (“3/24/26 Order”), the Court applied these standards to this Request and held that each requirement is satisfied. 3/24/26 Order at 8. This proceeding presents a separation-of-powers question concerning the interpretation of the Organic Act and the scope of executive authority, notwithstanding Respondent’s contention that the dispute concerns only the Attorney General. *Id.* at 7. The Court further confirmed that questions concerning the Governor’s powers and duties and the operation of the Executive Branch fall squarely within § 4104. *Id.*

The Court also rejected the argument that these issues should be resolved through ordinary litigation, holding that delay through the normal course of litigation would be undue and could result in concrete and irreparable consequences, including the potential loss of federal funding tied to timely project execution. *Id.*

Accordingly, jurisdiction is proper and has already been conclusively determined by this Court in this proceeding.

II. ISSUES FOR DECLARATORY JUDGMENT

1. Whether 48 U.S.C.A. § 1421g(a) confers upon the Governor enumerated authority to establish, maintain, and operate public-health services in Guam, including hospitals.
2. Whether generally applicable Guam statutes may be construed or applied in a manner that conditions, prevents, or effectively transfers ultimate

authority over the establishment of a hospital from the Governor, consistent with the Organic Act.

3. Whether disputes over the legality of executive action under 48 U.S.C.A. § 1421g(a) are to be resolved through judicial review or application of statutory approval mechanisms.

III. STATEMENT OF THE CASE

Petitioner seeks a declaratory judgment interpreting the Governor's authority under the Organic Act of Guam to establish public health facilities, including hospitals, and the scope of the Legislature's authority to enact laws of general application that may condition or prevent the exercise of that authority. Specifically at issue is whether Guam Procurement Law statutes, as construed to require Attorney General approval, may operate to prevent execution of contracts undertaken in furtherance of the establishment of a hospital in Mangilao, Guam.

The Organic Act provides that “[s]ubject to the laws of Guam, the Governor shall establish...public health services in Guam, including hospitals...at such places in Guam as may be necessary.” 48 U.S.C.A. § 1421g(a).

Chapter 5 of Title 5 Guam Code Annotated establishes procurement procedures applicable to contracts requiring expenditure of public funds. 5 GCA § 5004(b). Under those statutes, the Attorney General “shall act as legal advisor during all phases of the solicitation or procurement process” for large procurements and,

upon approving contracts, “determine not only the correctness of their form, but their legality.” 5 GCA § 5150. In practice, however, § 5150 has been invoked as the asserted statutory basis for a blanket refusal to approve contracts associated with the hospital project, thereby preventing execution of agreements necessary to carry out the Governor’s authority under 48 U.S.C. § 1421g(a).

The American Rescue Plan Act of 2021 (“ARPA”) authorized federal funding for state and territorial recovery efforts, including funding distributed through the State and Local Fiscal Recovery Funds (“SLFRF”) program. Guam received funding under that program, subject to federal requirements governing eligible uses and deadlines for obligation and expenditure. Under applicable federal rules, such funds must be fully expended by December 31, 2026.

Since ARPA’s enactment, Governor Leon Guerrero has allocated Guam’s SLFRF funds across agencies and programs to address priority needs. On December 28, 2025, the Department of Administration (“DOA”) executed an interagency grant agreement (“IGA”) with the Guam Economic Development Authority (“GEDA”) to obligate approximately \$104 million for the initial phase of a new medical complex in Mangilao, Guam (“Mangilao Medical Campus” or “MMC”). The agreement provides for the design and construction of primary utility infrastructure, including electrical power, water, and sewer systems, and for related environmental and site analysis.

On March 2, 2025, GEDA executed a subgrant agreement with the Guam Power Authority, subgranting more than \$35 million to fund the installation of power infrastructure supporting the MMC Project. On April 1, 2025, GEDA executed a second subgrant agreement with the Guam Waterworks Authority, subgranting more than \$62 million to fund installation of water and wastewater infrastructure for the MMC Project.

On March 4, 2025, the Pacific Daily News reported that Attorney General Douglas B. Moylan (“AG Moylan”) stated that government officials who certified funds for the MMC Project would “assume the consequences of the law” because AG Moylan considered the project illegal.¹ The article further reported that AG Moylan would not approve contracts for construction of the hospital. *Id.*

On December 20, 2024, prior to execution of the DOA-GEDA IGA or the consequent subgrant agreements, AG Moylan filed suit in the District Court of Guam seeking injunctive relief to prevent the Governor from utilizing ARPA funds without legislative approval, and challenging whether various agencies involved in the project complied with other local and federal laws, including the Open

¹ Joe Taitano II, *AG: Spending on new hospital illegal, funds could be ‘clawed back’ from vendors*, *Pacific Daily News* (Mar. 4, 2025), https://www.guampdn.com/news/ag-spending-on-new-hospital-illegal-funds-could-be-clawed-back-from-vendors/article_5a5875cc-f7fe-11ef-9fe7-dba81a19f04e.html (reporting statements attributed to Attorney General Moylan)

Government Law and the National Environmental Policy Act. *Government of Guam, et al. v. Leon Guerrero, et al.*, District Court Case No. 25-CV-00041.

Though the Prayer for Relief in the Complaint requested “temporary, preliminary, and permanent” injunctions of the Governor’s actions, AG Moylan has not sought a temporary restraining order or preliminary injunction in that matter or any other, and instead relies on 5 GCA § 5150, which he interprets to require agencies executing contracts in furtherance of the hospital project to obtain his approval prior to execution—approval he has refused to provide. As a result, although funding has been obligated and agencies have undertaken preparatory steps, contracts necessary to carry out construction and infrastructure work for the MMC Project have not been executed.

To be clear, no court has issued an order enjoining the Governor or her designees from actions in furtherance of the establishment of the new hospital. No judicial determination has been made that the project or the use of ARPA funds for that purpose is unlawful, and no court has prohibited the Governor from proceeding. In the absence of any judicial relief, the Attorney General has relied on 5 GCA § 5150 to refuse approval of contracts associated with the project, preventing execution of agreements necessary to proceed with installation of infrastructure supporting the hospital. The Attorney General’s refusal to approve such contracts has operated as a complete barrier to contract execution for the MMC Project.

Governor Leon Guerrero does not seek resolution of any individual contract dispute or determination of the legality of any particular contract. Rather, she seeks a declaration whether Guam law may operate to prevent or condition the Governor's exercise of authority under 48 U.S.C. § 1421g(a) absent a judicial determination that such exercise is unlawful or an order enjoining her actions, and whether the Governor and her designees may proceed with the execution of contracts in furtherance of that authority notwithstanding the Attorney General's refusal to approve them, unless and until such action is enjoined by a court.

IV. SUMMARY OF THE ARGUMENT

This case presents a discrete, but fundamental, separation-of-powers question: whether statutes of general applicability may be applied in a manner that prevents the Governor from exercising an enumerated power under the Organic Act absent judicial review. It does not involve a facial challenge to Guam Procurement Law or to the Attorney General's statutory role. Rather, it concerns whether those statutes, as applied, may operate to block execution of contracts undertaken in furtherance of the Governor's authority to establish a hospital under 48 U.S.C.A. § 1421g(a).

The Organic Act expressly assigns to the Governor the authority to establish, maintain, and operate public health services, including hospitals. 48 U.S.C.A. § 1421g(a). Separately, the Organic Act also provides that "[t]he legislative power of Guam shall extend to all rightful subjects of legislation *not inconsistent with the*

provisions of this chapter and the laws of the United States applicable to Guam.” 48 U.S.C.A. § 1423a (emphasis added). Under § 1423a, Guam law must be consistent with the Organic Act and therefore may not be applied in a manner that conditions, restricts, or effectively transfers authority expressly vested in the Governor, including her authority to establish a hospital.

Since December 2024, 5 GCA § 5150, a statute of general applicability, has been invoked and applied in a manner that has prevented execution of contracts necessary to proceed with the establishment of a hospital. Application of Section 5150 does not operate as a neutral procedural framework. It functions as a barrier to execution, effectively converting statutory review of contracts into a mechanism that halts the exercise of an enumerated Organic Act power and renders the Governor’s exercise of that power contingent on approval by another official not subject to the Governor’s supervision or control. In practical effect, it operates as the functional equivalent of injunctive relief, without judicial authorization and without the safeguards that ordinarily govern such relief.

The Organic Act does not permit such a result. The Governor’s express authority under § 1421g(a) may not be circumvented through the application of statutes of general applicability. The legality of executive action under § 1421g(a) must be resolved through judicial review, not through the application of statutory approval mechanisms. To permit otherwise would allow an official performing a

purely statutory role to override an enumerated Organic Act function without judicial authorization, effectively displacing the Organic Act-designated decisionmaker. Absent a judicial determination of unlawfulness, Guam law may not operate to halt the Governor's exercise of that authority.

Accordingly, the Court should confirm that statutes of general applicability, including procurement and contract review provisions under § 5150, may not be applied to prevent execution of contracts necessary to establish a hospital under § 1421g(a) absent a judicial determination of unlawfulness or an order enjoining such action, and that the Governor and her designees may proceed with such contracts notwithstanding the Attorney General's refusal to approve them, unless and until enjoined by a court.

V. ARGUMENT

This case turns on a straightforward question of constitutional structure: whether the Governor may exercise authority expressly vested in her office under the Organic Act unless and until it is restrained through judicial process, or whether her actions may be restrained by statute. The Governor submits that the only result compelled by the Organic Act and the separation of powers is that statutory approval mechanisms may not be applied to prevent execution of contracts undertaken pursuant to her Organic Act authority, and that, unless and until her actions are enjoined by a court, the Governor and her designees may proceed with contracts in

furtherance of § 1421g(a) notwithstanding the Attorney General’s refusal to approve them.

A. 48 U.S.C.A. § 1421g(a) Confers Upon the Governor Enumerated Authority to Establish Public Health Facilities, Including Hospitals.

As this Court has already recognized, this case presents a separation-of-powers question concerning the scope of the Governor’s authority under the Organic Act and the extent to which Guam law may operate to condition or prevent the exercise of that authority. This inquiry does not turn on whether any statute facially prohibits executive action. Rather, it asks whether statutes of general applicability, as applied, operate to restrict or effectively transfer ultimate authority over the establishment of a hospital in a manner inconsistent with the Organic Act.

Section 1421g(a) of the Organic Act provides that “[s]ubject to the laws of Guam, the Governor shall establish...public health services in Guam, including hospitals...at such places in Guam as may be necessary.” This is an express and enumerated grant of authority to the Governor. It assigns to the Governor the duty and authority to establish public health services, including hospitals, and to determine where such facilities are necessary. The statute assigns this function to the Governor.

This Court has recognized that § 1421g(a) confers a specific grant of executive authority that prevails over more general legislative authority. In interpreting the same statutory provision, the court held that “the specific enumerated quarantine

powers granted to the Governor in § 1421g(a) control over a general grant of power to the Legislature in § 1423a.” *In re Leon Guerrero*, 2021 Guam 6 ¶ 27 (“Leon Guerrero I”). The court further explained that the Legislature “may not enact laws in derogation of the Governor’s quarantine authority in § 1421g(a).” *Id.* This principle applies equally here. The authority to establish public health services, including hospitals, is likewise a specific grant to the Governor and may not be displaced or curtailed through the application of general legislation.

The court also emphasized that § 1421g(a) reflects a “command of the Organic Act” assigning “ultimate responsibility” to the Governor. *Id.* at ¶ 33 (quoting *Bordallo v. Baldwin*, 624 F.2d 932, 934 (9th Cir. 1980)). This language confirms that the Governor’s authority under § 1421g(a) is not merely administrative, but a direct constitutional assignment of responsibility for the establishment and operation of public health services.

The phrase “subject to the laws of Guam” does not alter this allocation of authority. In *Leon Guerrero I*, the Court rejected the argument that the phrase incorporates ordinary separation-of-powers principles, explaining that such an interpretation would render the Governor’s enumerated authority surplusage. *Leon Guerrero I*, 2021 Guam 6 ¶ 27. Instead, the phrase operates within the framework of § 1423a, which limits legislative power to subjects “not inconsistent with the provisions” of the Organic Act. *Id.* Accordingly, Guam law must be consistent with

§ 1421g(a) and may not be applied in a manner that interferes with, conditions, or prevents the Governor’s execution of that enumerated authority.

This framework is also consistent with Ninth Circuit precedent. As this Court has explained in discussing Ninth Circuit authority, where the Organic Act assigns a specific function to one branch, that specific grant controls over more general legislative authority. *See Leon Guerrero I*, 2021 Guam 6 ¶ 39 (discussing *Nelson v. Ada*, 878 F.2d 277 (9th Cir. 1989)). As between the Governor and the Legislature, the Governor holds the more specific grant of authority over the establishment of public health services under § 1421g(a).

The authority to “establish” public health services necessarily includes the authority to determine whether such services shall exist, where they shall be located, and what infrastructure is required for their operation. Section 1421g(a) directs that the Governor “shall establish” public health services, including hospitals, “at such places in Guam as may be necessary.” The Governor is the only actor identified in the sentence. The statute assigns to the Governor both the duty to establish such services and the authority to carry out that directive. The phrase “as may be necessary” modifies the Governor’s obligation and supplies the standard governing her action. The statute does not assign to any other branch the authority to determine where such services are necessary. The determination of whether and where a

hospital will be established is therefore committed to the Governor as part of her enumerated authority under § 1421g(a).

Bordallo v. Baldwin does not compel a different result. There, the Ninth Circuit addressed legislation governing the structure and operation of a hospital and held that the Legislature may enact laws concerning matters such as governance, size, and related characteristics. 624 F.2d at 934–35. At the same time, the court made clear that the Legislature may not “negate the command of the Organic Act that the ultimate responsibility for the governance of the Hospital be in the Governor.” *Id.* at 934.

The court’s statement that the Legislature may determine whether a hospital shall exist was dicta and was not necessary to its holding, which addressed legislative control over hospital *governance* and operations. It was not directed to, and does not analyze, the Governor’s separate and specific authority under § 1421g(a) to *establish* public health services.

This Court has expressly recognized that statements not necessary to the resolution of a case are not controlling and may be disregarded. *See Underwood v. Guam Election Comm’n*, 2006 Guam 17 ¶ 37 (“The Ninth Circuit’s statement ... was not necessary to the adjudication of the case. We therefore regard it as dicta.”); *id.* ¶ 39 (“Only holdings that are necessary for the adjudication of a case should be treated as precedent.”). As in *Underwood*, the statement in *Bordallo* was not

necessary to the resolution of the issue before the court and therefore does not control here.

Nothing in *Bordallo* analyzes, much less limits, the Governor's enumerated authority under § 1421g(a). Nor does the opinion reconcile its passing statement with the Organic Act's express assignment of establishment authority to the Governor or with § 1423a's limitation that Guam law may not be inconsistent with that grant.

Properly understood, *Bordallo* confirms only that the Legislature may legislate with respect to hospitals so long as it does not displace the Governor's authority under the Organic Act. It does not support the application of Guam law in a manner that prevents the Governor from exercising her authority to establish a hospital absent judicial intervention.

While § 1423a limits the Legislature from enacting laws addressing the structure or characteristics of a hospital that conflict with the Governor's exercise of her authority under § 1421g(a), nothing in that provision prevents coordination between the political branches or the Governor's acceptance of conditions tied to legislative appropriations. Such coordination, however, does not alter the source of authority under the Organic Act or permit Guam law to condition or restrict its exercise. It reflects political accommodation, not legal constraint. Where, as here, the Governor is acting pursuant to federal funds awarded and obligated for that purpose, rather than through legislative appropriation, such coordination is not

required, and Guam law may not be applied to condition or prevent the exercise of her authority to establish hospitals.

Accordingly, § 1421g(a) confers upon the Governor a specific and controlling grant of authority to establish public health services, including hospitals. That power necessarily includes authority to determine whether such services shall exist, where they shall be located, and what infrastructure is required for their operation. The Legislature may not enact laws that displace that authority, nor may Guam law be applied in a manner that interferes with, conditions, or effectively prevents the Governor's execution of that authority.

This allocation of authority is not incidental. The Organic Act assigns to the Governor the authority to “establish, maintain, and operate” public health services, including hospitals, in 48 U.S.C.A. § 1421g(a).² That assignment reflects a deliberate allocation of responsibility within Guam's governing structure.

Laws of general applicability may not be applied in a manner that displaces it or prevents execution of such powers. Where the Organic Act assigns a function to the Governor, it identifies both the decisionmaker and the locus of responsibility.

² As this Court has explained, that provision reflects the continuation of the Governor's historically broad executive authority dating back to the Naval administration, under which centralized control over public health and infrastructure resided in the executive. *Leon Guerrero I*, 2021 Guam 6 ¶¶ 29–33.

That assignment cannot be reallocated through statutory mechanisms that allow another official to control or halt its exercise.

For that reason, Guam law may not be applied in a manner that interferes with or prevents the Governor's execution of a function that the Organic Act assigns to her.

B. The Legislature May Not Enact Statutes of General Applicability That Operate to Condition, Restrict, or Effectively Transfer the Governor's Enumerated Authority Under 48 U.S.C.A. § 1421g(a)

The Legislature's authority under the Organic Act extends only to subjects "not inconsistent with the provisions of this chapter." 48 U.S.C.A. § 1423a. That limitation applies to statutes of general applicability. Such statutes may regulate the manner in which executive authority is exercised, but may not be applied to interfere with, condition, or effectively transfer authority expressly vested in the Governor under § 1421g(a). This limitation reflects the settled principle that a specific grant of authority under the Organic Act controls over statutes of general applicability that would otherwise restrict its exercise.

The Governor does not challenge the general validity of Guam Procurement Law or 5 GCA § 5150. These statutes govern procurement in the ordinary course. Nor does the Governor seek a determination regarding the scope of the Attorney General's authority under Guam law. The issue is narrower. It is whether statutes of general applicability may be applied in a manner that prevents the execution of

contracts undertaken pursuant to the Governor's enumerated authority to establish a hospital.

This case therefore presents an as-applied limitation grounded in the Organic Act's structural allocation of authority. Statutes of general applicability may not be applied in a manner that reallocates, conditions, or effectively transfers ultimate execution authority over the establishment of a hospital under § 1421g(a).

Under Guam Procurement Law, the Attorney General serves as legal advisor during certain procurements and, when reviewing contracts, determines "the correctness of their form" and their legality. 5 GCA § 5150. As applied here, that framework is being used to prevent execution of contracts undertaken in furtherance of the establishment of a hospital. Without a judicial order enjoining the Governor's actions or determining that those actions are unlawful, the Attorney General has withheld approval of contracts associated with the project, preventing execution of agreements necessary to proceed. This is not a neutral application of procedural review. It is the exercise of a statutory role in a manner that halts execution of the Governor's policy decision without judicial authorization.

This is not merely a procedural effect. It is a substantive one. By withholding approval, the Attorney General has prevented execution of contracts necessary to carry out the Governor's authority under § 1421g(a). In practical operation, § 5150 is not functioning as a mechanism for review, but as a mechanism for control. It

enables the exercise of decision-making authority over whether execution may occur at all. The Attorney General's asserted authority to withhold approval cannot accomplish indirectly what the Legislature itself could not do directly. If the Legislature may not enact a law that blocks the Governor's exercise of her authority under § 1421g(a), it likewise may not vest another officer with the power to achieve that same result through contract review. As applied here, § 5150 operates in direct conflict with the Governor's specific authority under § 1421g(a), and under *Leon Guerrero I*, that specific grant controls.

Courts have recognized that where a statutory approval mechanism operates to delay or block implementation, it functions as a veto. In *Legislative Research Commission v. Brown*, the court held that the power to delay implementation is, in practical effect, the power to prevent execution. 664 S.W.2d 907, 918–19 (Ky. 1984). The same functional concern arises here. Where execution of contracts is contingent on approval that may be withheld indefinitely, the approval requirement operates as a *de facto* veto over execution. Such a veto is incompatible with the Organic Act, which vests execution authority in the Governor and does not permit that authority to be overridden by a statutory approval mechanism.

Although § 5150 assigns the Attorney General a function in reviewing contracts “as to form and legality,” that function does not include authority to prevent execution of otherwise authorized action. Federal courts addressing similar

statutory frameworks have rejected interpretations that would allow an attorney general to use a review function to block implementation of authorized programs. In *Citizens Energy Coalition of Indiana v. Sendak*, the court explained that the attorney general’s role is limited to assessing legality and form and does not permit rejection of contracts that are otherwise lawful, emphasizing that such an interpretation would “paralyze” implementation of the underlying program. 594 F.2d 1158, 1162–63 (7th Cir. 1979).

Applied in this manner, § 5150 does more than regulate process. It permits a non-judicial officer to halt execution of executive action based on an asserted legal position, without any judicial determination of unlawfulness. The withholding of approval in this context operates as the functional equivalent of injunctive relief—preventing execution altogether—without judicial authorization and without satisfying the standards that govern such relief.

As applied, § 5150 operates to condition the Governor’s execution of her § 1421g(a) authority on the approval of the Attorney General, effectively transferring ultimate authority concerning the establishment of a hospital from the Governor to the Attorney General. Though § 5150 is a statute of general applicability, it is inconsistent with the Organic Act where, as applied, it produces that result. The Organic Act does not permit an enumerated executive function to be conditioned on the approval of another official.

The Organic Act embodies a structural separation of powers in which executive authority is vested in the Governor. *See* 48 U.S.C.A. § 1422. This limitation is structural. It functions as Guam's constitutional framework, and its assignment of authority to the Governor cannot be abridged, conditioned, or displaced by statutes of general applicability enacted by the Legislature. A statutory scheme that permits another official to prevent the execution of executive action is inconsistent with that allocation of authority.

This does not mean that Guam law has no role. The Legislature may enact laws governing procurement and the use of public funds, so long as those laws are not inconsistent with the Organic Act. It may also attach conditions to legislative appropriations. Such laws operate within their proper sphere when they regulate process, timing, and administration. But they may not be applied in a manner that interferes with or prevents the execution of an enumerated executive function. Where the Governor is acting pursuant to an enumerated grant of authority under § 1421g(a), and where no court has determined that such action is unlawful, Guam law may not operate to prevent the Governor from carrying out that function.

Guam law sets forth procedural requirements governing the form and documentation of contracts, and § 5150 operates, in the ordinary course, to assign the Attorney General a role in that process to provide legal advice and review as to form and legality for agency contracts. *See* 5 GCA § 5150; *In re Leon Guerrero*,

2024 Guam 18 ¶¶ 23–25 (“Leon Guerrero II”). Even in that context, however, the Attorney General serves as legal counsel to the government and does not exercise independent decision-making authority over contract execution.

The Legislature therefore may not, through statutes of general applicability, confer upon the Attorney General a decision-making role that permits him to control or prevent execution of contracts undertaken pursuant to the Governor’s enumerated authority under the Organic Act. As this Court has recognized, the Attorney General is “the attorney representing his client, the Government of Guam,” and “should not replace the Governor in setting policy.” *Leon Guerrero II*, 2024 Guam 18 ¶¶ 25–26. Where concerns regarding legality arise, those concerns may be addressed through correction, internal processes, or judicial review. They do not authorize a non-judicial officer to refuse to proceed in a manner that prevents execution altogether. A contrary rule would convert a legal advisory function into a *de facto* veto over the Governor’s enumerated authority, and permit a general statute to operate in a manner inconsistent with the Organic Act. The Court has rejected that result. *See Leon Guerrero I*, 2021 Guam 6 ¶ 27.

The Ninth Circuit has recognized a similar limitation. Where the Organic Act assigns responsibility to the Governor, the Legislature may not enact laws that

negate that command or transfer ultimate authority to another actor. *Bordallo*, 624 F.2d at 934–35.³

Because § 1421g(a) constitutes a specific grant of authority, it controls over conflicting statutes of general applicability enacted pursuant to § 1423a, including procurement review provisions as applied here. Accordingly, the Legislature may not enact statutes of general applicability that condition, restrict, or effectively transfer the Governor’s authority under 48 U.S.C.A. § 1421g(a), and such statutes may not be applied in a manner that interferes with, conditions, or prevents the Governor’s execution of that authority. Where Congress has vested authority in the Governor, that authority may be exercised unless and until a court restrains that action.

C. The Organic Act Requires That Disputes Over the Legality of Executive Action Be Resolved by the Courts, Not Through Statutory Veto

The Governor does not seek a declaration that her actions are immune from review or that she may proceed without legal constraint. Nor does she challenge the validity of Guam Procurement Law or the Attorney General’s role in advising on

³ See *Bordallo*, 624 F.2d at 934–35. As discussed *supra* Section V.A, *Bordallo* addressed legislative action concerning hospital governance and operation. It did not address the Governor’s authority to establish hospitals under 48 U.S.C.A. § 1421g(a), which was not before the court. It does not authorize application of a statute of general applicability in a manner that prevents the Governor from exercising enumerated authority under § 1421g(a).

matters of legality. The question presented is narrower and structural: who decides whether the Governor's exercise of her Organic Act authority is unlawful, and who may act on that determination. Under the Organic Act, that determination belongs to the judiciary.

The Legislature may not, through statutes of general applicability, assign to another official the authority to supervise, condition, or block the Governor's exercise of an enumerated Organic Act powers based on that official's own view of the law. To permit such an arrangement would allow a statutory actor to displace the constitutional decisionmaker and to restrain executive action without judicial involvement.

That is what has occurred here. The Attorney General has not obtained injunctive relief. No court has determined that the Governor's actions are unlawful. Yet, execution of contracts necessary to carry out the Governor's authority has been prevented based solely on the Attorney General's asserted interpretation of law. The Organic Act does not permit that result.

Where an official believes that the Governor is acting unlawfully, the law provides an established remedy: to seek judicial relief. Courts are equipped to evaluate claims of illegality, apply governing standards, and issue appropriate orders where warranted. That process ensures both accountability and adherence to the rule of law.

What the Organic Act does not permit is the unilateral exercise of a veto over executive action based on a non-judicial officer's legal conclusions. Allowing such a mechanism would collapse the distinction between legal advice and binding legal judgment, and would permit statutes of general applicability to operate as a substitute for judicial review.

The separation of powers requires a different result. The Governor may exercise authority expressly vested in her by the Organic Act unless and until a court determines that such action is unlawful and restrains it. Absent such determination, Guam law may not be applied to prevent execution of contracts undertaken pursuant to § 1421g(a).

Accordingly, the Governor does not seek a blank check. She seeks confirmation of the constitutional structure: that questions of legality are resolved by the courts, and that executive authority expressly conferred by the Organic Act may not be halted by unilateral action sanctioned by the Legislature in the absence of judicial review.

The question is not whether the Governor's actions are subject to review. It is whose review is required to restrain her from acting. The Organic Act answers that question: not the Legislature or its designee. The Attorney General is not the Court. He does not have the authority to determine whether the Governor's actions are

unlawful or should be halted. It is the Court alone that may restrain executive action, applying established legal standards.

VI. CONCLUSION

For the foregoing reasons, the Court should declare that statutes of general applicability, including procurement and contract review provisions, may not be applied to condition the Governor's exercise of authority under 48 U.S.C. § 1421g(a) in a manner that prevents or delays execution absent a judicial determination of unlawfulness or an order enjoining such action. The Court should further declare that the Governor and her designees may proceed with the execution of contracts in furtherance of that authority notwithstanding the Attorney General's refusal to approve them, unless and until enjoined by a court.

Respectfully submitted this 9th day of April, 2026.

OFFICE OF THE GOVERNOR OF GUAM
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By: /s/ Leslie Travis

LESLIE A. TRAVIS

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STATEMENT OF RELATED CASES

Pursuant to Appellate Rule 13(l), Petitioner hereby certifies that she is unaware of any cases related to the instant matter.

Respectfully submitted this 9th day of April, 2026.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type volume limitation of Rule 16(a)(7)(B) because this brief contains 5,653 number of words, excluding the parts of the brief otherwise exempted from Rule 16(a)(7)(B)(iii).

Respectfully submitted this 9th day of April, 2026.

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CERTIFICATE OF SERVICE

I, LESLIE A. TRAVIS, hereby certify that on the 9th day of April, 2026, I caused copies of the Brief of Petitioner Lourdes A. Leon Guerrero, *I Maga'håga Guåhan* to be served via the Supreme Court of Guam's electronic filing and service system on the following:

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