Filed
Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

SEDFREY M. LINSANGAN,
Petitioner-Appellant,

v.

GOVERNMENT OF GUAM, ARTHUR SAN AGUSTIN, LOURDES LEON GUERRERO (Acting in their Official Capacity),
Respondents-Appellees.

Supreme Court Case No. CVA20-011
Superior Court Case No. SP0050-20

OPINION

Cite as: 2020 Guam 27

Appeal from the Superior Court of Guam
Argued and submitted on September 18, 2020
Via Zoom video conference

Appearing for Petitioner-Appellant:
Braddock J. Huesman, *Esq.*
Fisher Huesman P.C.
Core Pacific Bldg.
545 Chalan San Antonio, Ste. 302
Tamuning, GU 96913

Appearing for Respondents-Appellees:
James L. Canto II, *Esq.*
Deputy Attorney General
Office of the Attorney General
590 S. Marine Corps Dr
Tamuning, GU 96913

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

PER CURIAM:

[1] Petitioner-Appellant Sedfrey M. Linsangan appeals the Superior Court of Guam's dismissal and denial of his petition challenging the legality of actions taken by Respondents-Appellees Government of Guam, Arthur San Agustin, and Lourdes Leon Guerrero (*I Maga'hågan Guåhan*) in their official capacities (collectively, "Government") to control the spread of the 2019 novel coronavirus (COVID-19). In his petition, Linsangan sought (1) the release of quarantined passengers who arrived from Manila, Philippines, on March 19, 2020, claiming they were subject to invidious discrimination, and (2) an order revoking portions of Executive Order Nos. 2020-06 and 2020-07, which suspended sections of the Open Government Law ("OGL"). In a decision and order later reduced to a judgment, the Superior Court granted the Government's motion to dismiss Linsangan's petition, holding that Linsangan's request for the release of quarantined Manila passengers was moot and that his OGL claim was both moot and unripe. For the reasons below, we affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Because of the growing public health crisis related to the spread of COVID-19, *I Maga'hågan Guåhan* issued Executive Order No. 2020-03 declaring a state of public health emergency under 10 GCA § 19401. In declaring a state of public health emergency, *I Maga'håga* authorized the Department of Public Health and Social Services (DPHSS), through its Director, to exercise all emergency health powers enumerated in 10 GCA § 19401 *et seq*. Following the first confirmed cases of COVID-19 in Guam, *I Maga'håga* issued a series of executive orders designed to limit the spread of the virus.

[3] In Executive Order No. 2020-04, *I Maga'håga* ordered that, under 10 GCA § 3333:

> [A]ll persons who are non-residents who have been in a country with confirmed COVID-19 cases for more than one (1) week and do not possess a DPHSS recognized and certified document that attests that they are not infected with COVID-19, shall be restricted entry into Guam. . . .
>
> Any individual who enters into Guam without the proper documentation shall be quarantined pursuant to [10 GCA § 3333] and [10 GCA §§ 19604 and 19605].

Record on Appeal ("RA"), tab 14 (Decl. James L. Canto II Supp. Mot. Dismiss ("Canto Decl."), Apr. 10, 2020), Ex. B at 2 (Exec. Order No. 2020-04, Mar. 16, 2020). *I Maga'håga* further empowered DPHSS to issue guidance, subject to approval, to implement and enforce the order.

[4] In Executive Order No. 2020-06, *I Maga'håga* temporarily suspended portions of the Open Government Law, stating in part:

> The application of Sections 8103, 8107, 8108, 8109, 8110, 8114, and 8115 of Title 5 of the Guam Code Annotated are temporarily suspended until April 13, 2020. To ensure the public is well-informed in this time of emergency, public agencies shall document their meetings in minutes and continue compliance with Section 8113.1, Title 5 of the Guam Code Annotated. Actions taken at meetings of public agencies without compliance with all provisions of the Open Government Law shall not be effective until compliance with Section 8113.1, Title 5 of the Guam Code Annotated.

RA, tab 14 (Canto Decl.), Ex. C at 2 (Exec. Order No. 2020-06, Mar. 24, 2020). As justification, *I Maga'håga* stated, "while important functions of our government are executed by public agencies in meetings that are open to the public, such publicly attended meetings would jeopardize our efforts to slow the spread of COVID-19 throughout our island . . . ." *Id.* at 1.

[5] In Executive Order No. 2020-07, *I Maga'håga* lifted the suspension of meetings imposed in Executive Order No. 2020-06 and directed that "any government agency, board or commission[] is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to attend and to

address the body." RA, tab 14 (Canto Decl.), Ex. D at 2 (Exec. Order No. 2020-07, Mar. 28, 2020). *I Maga'håga* further directed:

> [A]ny government entity or agency which holds a meeting for the purpose of conducting public business shall provide public notice by submitting meeting information for posting on the website of the Office of the Attorney General of Guam. . . .
>
> [E]ach body must notice at least one telephonically or electronically accessible location from which members of the public shall have the right to observe and offer public comment at the public meeting . . . .

Id. at 3.

[6] Under *I Maga'håga's* designation authorizing DPHSS to exercise all emergency health powers, the DPHSS Director enacted a mandatory quarantine for all passengers arriving in Guam from Manila, Philippines. In an action brought by DPHSS before the Superior Court requesting the isolation or quarantine of passengers from the Philippines arriving on or about March 19, 2020, the Superior Court ordered the Government to release all passengers from quarantine after a fourteen-day period if such persons tested negative for COVID-19, did not show symptoms associated with COVID-19, or did not come into contact with someone who had tested positive for COVID-19. *See* RA, tab 24 at 3 (Dec. & Order re Pet. & Mot. Dismiss, Apr. 20, 2020); *see also In re Travelers Arriving in Guam from Manila, Philippines*, SP0049-20 (Order re Pets. for Order Authorizing Cont'd Isolation or Quarantine, Apr. 1, 2020).

[7] The DPHSS Director also issued Guidance Memo No. 2020-03 requiring quarantine at government-designated facilities for all passengers entering Guam regardless of their place of origin. In the memorandum, the Director stated:

> The purpose of this Directive is to separate all individuals who are entering Guam. Such individuals are reasonably suspected of having or being a carrier of SARS-CoV2, the virus that causes COVID-19. COVID-19 is a disease dangerous to the public health. Therefore, effective 12:00 AM, March 31, 2020, all persons entering Guam by air or sea shall be subject to a quarantine at a government-designated facility for a period of fourteen (14) days from their date of entry.

RA, tab 14 (Canto Decl.), Ex. E (DPHSS Guidance Memo. 2020-03, Mar. 29, 2020).

[8] In response to the Government's actions, Linsangan filed an action titled "Petitioning the Court to Issue Order to Release the Quarantined Residents from Manila Flight and Revoke Executive Order [Nos.] 2020-06, 07 of Governor to Suspend People Rights on Meetings and Sections [of OGL]." RA, tab 1 (Pet., Mar. 30, 2020). In the petition, Linsangan asked the trial court to release quarantined passengers who arrived in Guam from Manila on March 19, 2020, claiming "invidious discrimination" and alleging violations of numerous federal and local laws—specifically, 48 U.S.C.A. § 1421(b), (n), (e), and (u) and § 1422, the first nineteen amendments to the Constitution, and various provisions of the Islan Guåhan Emergency Health Powers Act. RA, tab 1 at 1-2, 4-6 (Pet.). Linsangan also requested that the court declare *I Maga'håga's* actions of suspending public participation in public meetings in Executive Order Nos. 2020-06 and 2020-07 to be inorganic and unconstitutional.

[9] In response, the Government moved to dismiss under Rules 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6) of the Guam Rules of Civil Procedure. Following a hearing, the trial court granted the Government's motion and dismissed Linsangan's petition on jurisdictional grounds, finding that Linsangan's request regarding the release of quarantined passengers was moot and that his claim of alleged violations of the OGL was both moot and unripe. The trial court thereafter entered judgment for the Government on all claims asserted by Linsangan, and Linsangan timely appealed.

II. JURISDICTION

[10] The court has jurisdiction over appeals from a final judgment of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-223 (2020)); 7 GCA §§ 3107(b), 3108(a) (2005).

III. STANDARD OF REVIEW

[11] We review questions of standing, mootness, and ripeness *de novo*. *In re A.B. Won Pat Int'l Airport Auth., Guam*, 2019 Guam 6 ¶ 14; *Rapadas v. Benito*, 2011 Guam 28 ¶ 13; *In re Moylan*, 2018 Guam 15 ¶ 6. A trial court's decision to grant a motion to dismiss for lack of subject matter jurisdiction is also reviewed *de novo*. *See Amerault v. Intelcom Support Servs., Inc*., 2004 Guam 23 ¶ 9.

IV. ANALYSIS

[12] This appeal concerns the justiciability doctrines of standing, mootness, and ripeness, as they relate to Linsangan's ability to challenge the Government's actions in response to the COVID-19 pandemic. Because the trial court dismissed Linsangan's petition on jurisdictional grounds, the legality of the quarantine measures ordered in Executive Order No. 2020-04 (and subsequent DPHSS directives) or the suspension of sections of the OGL in Executive Order Nos. 2020-06 and 2020-07 are not before this court. As such, we take no position as to whether *I Maga'håga's* actions in those orders were illegal or proper exercises of executive power in the context of a public health emergency.

[13] On appeal, Linsangan argues that his claim relative to the release of quarantined passengers was improperly dismissed as moot because the Government had exceeded (and continues to exceed) its spending authority by quarantining arriving passengers. *See* Appellant's Br. at 5-7 (June 18, 2020). He alleges taxpayer standing under 5 GCA § 7103 for the first time on appeal, arguing the statute "gives taxpayers the right to challenge illegal actions involving an expenditure of tax dollars by giving standing to a plaintiff where otherwise there would be none." *Id.* at 7; *see also* 5 GCA § 7103 (2005). He further argues that his claim relative to a violation of the OGL was improperly dismissed as unripe despite there being "obvious possible facts that could exist to state

a claim under Guam's notice pleading standard." Appellant's Br. at 9. We address these arguments in turn.

A. Linsangan's Claim Relative to the Release of Quarantined Passengers[1]

1. Linsangan does not have constitutional standing to assert his invidious discrimination claim

[14] In his petition, Linsangan sought the release of quarantined passengers who arrived in Guam from Manila on March 19, 2020, claiming invidious discrimination and alleging violations of numerous federal and local laws—namely, 48 U.S.C.A. § 1421(b), (n), (e), and (u) and § 1422 of the Organic Act of Guam, the first nineteen amendments to the Constitution, and various provisions of the Islan Guåhan Emergency Health Powers Act. In essence, he claimed the Government was engaging in invidious discrimination by improperly quarantining passengers arriving from Manila at government-designated quarantine facilities while similarly situated passengers arriving from other countries were exempt from the same requirements. As the Government argues, however, Linsangan lacks constitutional standing to assert this specific claim. *See* Appellees' Br. at 16 (July 20, 2020).

[15] "Traditional standing requirements" expressed in Article III of the U.S. Constitution apply to all claims asserted in Guam's courts; such requirements are jurisdictional in nature and cannot

[1] As a preliminary matter, we recognize that both the trial court and Linsangan confuse the issues of standing and mootness. For example, in the order dismissing Linsangan's claim, the trial court cited to jurisprudence regarding standing, and then stated, "the Court finds the question of [Linsangan's] standing moot." RA, tab 24 at 9 (Dec. & Order re Pet. & Mot. Dismiss, Apr. 20, 2020). The trial court then proceeded to analyze why Linsangan's claim regarding the release of quarantined passengers was moot without discussing how its finding of mootness either related to standing or deprived Linsangan of standing. *Id.* Linsangan also makes the confusing argument that, because he purportedly has taxpayer standing, "the Superior Court had a duty to allow . . . Linsangan discovery to determine the extent of the illegal expenditures. As such, the case was not moot, and it was error to dismiss it." Appellant's Br. at 8 (June 18, 2020). Such confusion is understandable given that mootness has been described as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (quoting *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 68 n.22 (1997)). Because the issues of standing and mootness are two distinct but related justiciability doctrines, we address the issue of Linsangan's standing to bring forth his invidious discrimination claim before turning to whether the claim was properly dismissed as moot.

be waived. *In re A.B. Won Pat Int'l*, 2019 Guam 6 ¶ 16. "If a party does not have standing to bring a claim, a court has no subject matter jurisdiction to hear the claim." *United Pac. Islanders' Corp. v. Cyfred, Ltd.*, 2017 Guam 6 ¶ 15 (quoting *Taitano v. Lujan*, 2005 Guam 26 ¶ 15). To satisfy the "irreducible constitutional minimum of standing," a plaintiff must: (1) have suffered an injury in fact, (2) demonstrate a causal connection between the injury and the complained-of conduct, and (3) show that a favorable decision by the court will likely redress the injury. *Benavente v. Taitano*, 2006 Guam 15 ¶ 15 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). As to the first element, "[a]n injury in fact must be concrete, particularized, and actual or imminent; it cannot be purely conjectural or hypothetical." *Guam Mem'l Hosp. Auth. v. Superior Court*, 2012 Guam 17 ¶ 12. In other words, "[a] plaintiff must always have suffered 'a distinct and palpable injury to himself,' that is likely to be redressed if the requested relief is granted." *In re A.B. Won Pat Int'l*, 2019 Guam 6 ¶ 20 (quoting *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979)).

[16] With respect to his claim seeking the release of quarantined passengers who were purportedly subject to invidious discrimination, Linsangan concedes on appeal that he lacks constitutional standing. Appellant's Br. at 9 ("Linsangan complains that the Government's requirement that only Manila passengers be quarantined . . . is invidious discrimination[,] . . . but he is not the person to bring the claim as he was not on a flight from Manila and was not forced into quarantine."). Linsangan further concedes that because "he did not suffer the discrimination, and the record is absent of allegations that the individuals who did face the discrimination are hindered from bringing their own claims, [he] has no standing to assert a civil rights claim on [the quarantined passengers'] behalf." *Id.* at 11.

[17] Separate from Linsangan's concession that he lacks constitutional standing for his claim of invidious discrimination, our examination of the petition shows that the allegations raised by Linsangan point neither to a distinct and palpable injury to him nor to an actual or imminent threat of injury. Rather, Linsangan raises only a general grievance over the Government's methods in quarantining passengers arriving from Manila. *See* RA, tab 1 at 2-3 (Pet.). Because Linsangan has suffered no distinct and palpable injury to himself and does not allege such injury in his petition, he does not have constitutional standing for his claim of invidious discrimination.

2. Linsangan's alternative theory of taxpayer standing was not properly invoked below, and we decline to review such arguments on appeal

[18] As Linsangan admittedly has not suffered a distinct and palpable injury to himself to advance his claim of invidious discrimination, he now attempts on appeal to characterize the claim as a taxpayer lawsuit under 5 GCA § 7103. *See* Appellant's Br. at 11, 17. Linsangan argues that "Guam law gives taxpayers the right to challenge illegal actions involving an expenditure of tax dollars by giving standing to a plaintiff where otherwise there would be none." *Id.* at 7. He alleges that because he has taxpayer standing under 5 GCA § 7103, "the Superior Court had a duty to allow [him] discovery to determine the extent of the illegal expenditures." *Id.* at 8. In response, the Government argues this court should not consider Linsangan's arguments on taxpayer standing because Linsangan never articulated or properly invoked taxpayer standing in any of the proceedings or pleadings below. Appellees' Br. at 30. We agree. Because Linsangan never alleged or invoked taxpayer standing before the trial court as an alternative basis for his invidious discrimination claim, we decline to address this issue on appeal.

[19] Linsangan's petition is entitled "Petitioning the Court to Issue Order to Release the Quarantined Residents from Manila Flight and Revoke Executive Order [Nos.] 2020-06, 07 of Governor to Suspend People Rights on Meetings and Sections [of OGL]." RA, tab 1 at 1 (Pet.).

The first sentence reads: "The actions taken by the Governor and Public Health to quarantine residents from [the] Manila flight on March 19, 2020 constitutes [sic] invidious discrimination." *Id.* at 1-2 (emphasis omitted). In our review of the petition, the factual basis for Linsangan's claim regarding the release of quarantined passengers was not about supposed illegal expenditures, but about his concern that the quarantine measures imposed by the Government regarding passengers arriving from Manila were discriminatory. *See id.* at 3 (alleging that Government "single[s] out Manila passengers when there[] [is] only 2 cases in March 15 that come from Manila and now only 7 out of 53 cases as of March 29, 2020" and that "passenger[s] from Manila flight [were] discriminated [against]"); *id.* at 6 (asking court "to release the quarantined people and let them self[-]quarantine in their homes").

[20] The only expressed references to potential improper government spending are two instances in which Linsangan implies that the funds spent to quarantine passengers arriving from Manila may have exceeded statutory limits. First, Linsangan alleges, without articulating any supporting facts, a violation of section 19803(c)(2) of the Islan Guåhan Emergency Health Powers Act, which places a ceiling on the amount the Government can spend without legislative appropriation upon declaration of a public health emergency. *See* RA, tab 1 at 5 (Pet.); 10 GCA § 19803(c)(2) (2005). Second, in an addendum to the petition, Linsangan alleges the cost spent to quarantine individuals "is a waste of local funds, exceeded the authority by the officials, [and] disregarded and violated Legislative authority on appropriation." RA, tab 1 at 7 (Pet.).

[21] While these two assertions may imply that government expenditures related to the quarantine of passengers may have exceeded statutory limits, they do not form a sufficient basis for a taxpayer standing action because Linsangan fails to allege sufficient facts linking such assertions with any illegal spending. Because of this deficiency, these two assertions amount to

mere speculation as to how the Government was funding its efforts to quarantine passengers and whether such funding might be better spent on other methods to control the spread of COVID-19. *See* RA, tab 6 at 3 (Statement of Standing Jurisdiction, Mar. 31, 2020) ("I am concerned with the spending of our [p]ublic [o]fficials on [q]uarantined residents. Based on my estimate, for 200 people we are spending 40,000.00 to 60,000.00 a day which is unnecessary. . . . This money should be used to buy protective gear and testing kits.").

[22] Moreover, Linsangan did not request in his petition the return of government funds that may have been inappropriately spent, which is the purpose of taxpayer standing actions under 5 GCA § 7103. *See* 5 GCA § 7103. Linsangan's failure to seek return of government funds reveals the true nature of the petition—to secure the release of passengers Linsangan believed were subject to invidious discrimination. And even if Linsangan meant to plead a taxpayer standing action, Linsangan never raised in the proceedings below that the trial court was incorrectly reviewing the petition through the prism of an invidious discrimination claim when he was purportedly asserting a taxpayer standing action, as he now argues on appeal.

[23] By presenting his invidious discrimination claim under a new legal theory not properly invoked before or addressed by the trial court, Linsangan waived his arguments on taxpayer standing. In order for this court to consider the claim, we would need to exercise our discretion to hear matters raised for the first time on appeal. *See In re A.B. Won Pat Int'l*, 2019 Guam 6 ¶ 15 (finding newly raised theory of standing waived but exercising discretion); *see also, e.g.*, *Pluet v. Frasier*, 355 F.3d 381, 385 n.2 (5th Cir. 2004) (finding that new legal theory on appeal regarding prudential standing was waived); *Huron v. Cobert*, 809 F.3d 1274, 1280 (D.C. Cir. 2016) (finding new theories of standing raised for first time on appeal were waived). "[A]s a matter of general practice, 'this court will not address an argument raised for the first time on appeal.'" *Tanaguchi-*

Ruth + Assocs. v. MDI Guam Corp., 2005 Guam 7 ¶ 78 (quoting *Univ. of Guam v. Guam Civ. Serv. Comm'n*, 2002 Guam 4 ¶ 20); *see also Hemlani v. Hemlani*, 2015 Guam 16 ¶ 34 ("[B]ecause the trial court has not actually addressed this issue . . . , we are reluctant to address it in the first instance on appeal.").

[24] And while standing is a "threshold jurisdictional matter," the lack of which "may be raised at any stage of the proceedings, including for the first time on appeal," we have expressed caution in addressing novel issues about standing when used as a "backdoor for waived arguments." *Cho v. Fujita Kanko Guam, Inc.*, 2009 Guam 21 ¶ 36 (citations omitted); *see also Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 109-110 (2001) (per curiam) (declining to consider plaintiff's belated arguments and evidence regarding standing that had "never been presented to any lower court"); *Huron*, 809 F.3d at 1280 (holding that appellate discretion to address new arguments raised on appeal applies to standing); *Common Cause of Pa. v. Pennsylvania*, 558 F.3d 249, 263 (3d Cir. 2009) ("A litigant generally cannot create standing through new allegations asserted for the first time on appeal."); *Pluet*, 355 F.3d at 384-85 & n.2 (refusing to "disturb the district court's judgment" based on plaintiff's new standing argument because it was "an entirely new legal theory raised for the first time on appeal"); *In re Hen House Interstate, Inc.*, 177 F.3d 719, 724 (8th Cir. 1999) (declining to consider alternative statutory basis for standing raised for first time on appeal). We reserve our discretion to review waived arguments for extraordinary circumstances including: "(1) when review is necessary to prevent a miscarriage of justice or to preserve the integrity of the judicial process; (2) when a change in law raises a new issue while an appeal is pending; and (3) when the issue is purely one of law." *Tanaguchi-Ruth*, 2005 Guam 7 ¶¶ 80, 82 (quoting *Dumaliang*, 2000 Guam 24 ¶ 12 n.1).

[25] In his pleadings, however, Linsangan fails to articulate why we should exercise our discretion to hear new arguments on standing never presented below. His only argument is a single sentence that acknowledges our discretion to hear new arguments raised for the first time on appeal. *See* Appellant's Br. at 2. Permitting Linsangan's appeal based on taxpayer standing, without it being invoked and considered below and absent any articulated reason by Linsangan for the exercise of our discretion, would present a procedural quandary on appeal for three reasons.

[26] First, Linsangan's invidious discrimination claim was dismissed by the trial court on mootness grounds, not on standing. Therefore, the issue on appeal is whether the trial court improperly dismissed Linsangan's invidious discrimination claim as moot.

[27] Second, because Linsangan invokes taxpayer standing for the first time on appeal, the trial court did not address his arguments in the first instance, and "it is not the province of an appellate court to 'hypothesize or speculate about the existence of an injury [Linsangan] did not assert' to the [trial] court." *Huron*, 809 F.3d at 1280 (quoting *Kawa Orthodontics, LLP v. Sec'y, U.S. Dep't of the Treasury*, 773 F.3d 243, 246 (11th Cir. 2014)). As the Government argues, the detriment of exercising our discretion to consider novel issues of standing is "even more significant here, as Linsangan's newly purported Taxpayer Statute claim is mentioned only in passing (if at all) in his pleadings, and its determination would entangle [the] court beyond its appellate function." Appellees' Br. at 42. We agree. Determining whether Linsangan had taxpayer standing and then remanding the matter would deprive the trial court of its function in making first-instance determinations of disputed legal or factual issues. *See Bivins v. State ex rel. Okla. Mem'l Hosp.*, 917 P.2d 456, 464 (Okla. 1996) (holding that trial court's function in every case is to make first-instance determinations of disputed law or fact issues).

[28] Third, as the trial court did not address taxpayer standing, there is no record on which the court can rely to appropriately review the issue. This is because Linsangan's arguments on appeal regarding taxpayer standing are far more extensive than the mere inferences to this theory in the petition such that they represent a new legal theory never considered below. And critical to the considerations of fairness in the review of issues raised for the first time on appeal is the existence of a complete and factually developed trial court record. *See Guam Election Comm'n v. Responsible Choices for all Adults Coal.*, 2007 Guam 20 ¶ 99 ("This court has discretion to hear arguments raised for the first time on appeal 'when the issue presented is purely one of law and either does not depend on the factual record developed below, or the pertinent record has been fully developed.'" (quoting *Bolker v. Comm'r*, 760 F.2d 1039, 1042 (9th Cir. 1985))); *Quan Xing He v. Gov't of Guam*, 2009 Guam 20 ¶ 54 ("Because the record is insufficient to resolve these issues for the first time on appeal, we express no opinion as to these matters."); *San Union, Inc. v. Arnold*, 2017 Guam 10 ¶ 19 ("Although most of the arguments raised for the first time on appeal are questions of law, they are matters on which the court would benefit from a fuller record."). Without a factually developed trial court record, we would be resorting to speculation and conjecture over the basis for Linsangan's taxpayer standing arguments; thus, we decline to address Linsangan's new arguments on taxpayer standing and proceed to review the trial court's finding of mootness.

3. The trial court properly dismissed Linsangan's claim of invidious discrimination as moot

[29] Linsangan argues the trial court's finding of mootness was erroneous because "the Superior Court had a duty to allow [him] discovery to determine the extent of the illegal expenditures [for

his taxpayer standing claim]. As such, the case was not moot, and it was error to dismiss it."[2] Appellant's Br. at 8. In response, the Government argues that Linsangan's initial claim of invidious discrimination was properly dismissed as moot because the passengers he was seeking to release "were released prior to the adjudication of the issue by the trial court." Appellees' Br. at 17. We agree.

[30] Mootness is a threshold jurisdictional issue under the well-settled concept that "[c]ourts may not give opinions upon moot questions or abstract propositions." *Town House Dep't Stores, Inc. v. Ahn*, 2000 Guam 32 ¶ 9; *see also Rapadas*, 2011 Guam 28 ¶ 16 (explaining mootness doctrine). "A claim becomes moot only when the issues are no longer live or the parties lack a legally cognizable interest in the outcome." *Town House*, 2000 Guam 32 ¶ 9 (quoting *United States v. Ripinsky*, 20 F.3d 359, 362 (9th Cir. 1994)). "[I]ntervening events or changed circumstances that make it impossible for a reviewing court to grant the complaining party effectual relief will render a case moot." *Rapadas*, 2011 Guam 28 ¶ 16. A court, however, may still reach the merits of a mooted appeal if the appeal is "capable of repetition yet evading review." *People v. Blas*, 2016 Guam 19 ¶ 17 (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)). The "capable of repetition yet evading review" exception to mootness is applicable when "(1) the duration of the challenged action is too short to be fully litigated; and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Basil Food Indus. Servs. Corp. v. Territory of Guam*, 2019 Guam 29 ¶ 12.

[31] In his initial petition, Linsangan requested the release of individuals quarantined after arriving from Manila on March 19, 2020. Our review of the record indicates that, besides those

[2] Linsangan's new arguments on taxpayer standing impose several procedural hurdles with respect to our disposition of whether his initial claim of invidious discrimination was properly dismissed as moot. *See* Part IV.A.2. Thus, we address only the mootness of Linsangan's initial claim of invidious discrimination as originally decided by the trial court.

individuals who had tested positive for COVID-19 or had come into contact with persons who had tested positive for COVID-19, any individuals quarantined after arriving in Guam from the Philippines on March 19, 2020, were released.[3] As the Government rightfully points out, "[t]his effectively ended the controversy raised by Linsangan" as to his claim of invidious discrimination. Appellees' Br. at 18.

[32] Given that "[m]ootness can arise at any stage of litigation," including on appeal, the question over the release of passengers is also moot before this court because "the issues involved in the trial court no longer exist" as "intervening events . . . [have] render[ed] it impossible for the . . . court to grant the complaining party effectual relief." *Rapadas*, 2011 Guam 28 ¶ 16 (alterations in original); *see also Tumon Partners, LLC v. Shin*, 2008 Guam 15 ¶ 37 ("It is a well-settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction . . . ." (quoting *Sullivan v. McDonald*, 913 A.2d 403, 405 (Conn. 2007))). Specifically, the claim is moot because (1) Executive Order No. 2020-04, which prompted Linsangan's invidious discrimination claim, has been replaced and updated numerous times since he filed his underlying petition; and (2) on the day before Linsangan filed his petition, the Director of DPHSS issued Guidance Memo No. 2020-03 requiring quarantine at government-designated facilities for all persons entering Guam, regardless of their place of origin. *See* RA, tab 14 (Canto Decl.), Ex. E (DPHSS Guidance Memo. 2020-03). Therefore, the trial court properly determined that Linsangan's initial claim of invidious discrimination was moot, and the matter has been further mooted on appeal by actions of the Government requiring quarantine of all persons entering Guam regardless of their place of origin.

[3] In dismissing the matter as moot, the trial court took judicial notice of facts and findings in various petitions that were heard before the trial court judge regarding the quarantine of passengers arriving from Manila. *See* RA, tab 24 at 2 (Dec. & Order re Pet. & Mot. Dismiss); *see also In re Travelers Arriving in Guam from Manila, Philippines*, SP0049-20 (Order re Pets. for Order Authorizing Cont'd Isolation or Quarantine, Apr. 1, 2020).

[33] Even if Linsangan's invidious discrimination claims were not moot, perhaps because the quarantine of individuals is "capable of repetition yet evading review," Linsangan still admittedly lacks constitutional standing to bring forth his invidious discrimination claim. And "if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a . . . judicial forum." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 191 (2000).

4. Under the circumstances, the trial court was not required to *sua sponte* allow Linsangan to amend his complaint

[34] Separate from his jurisdictional arguments, Linsangan argues that because he was initially a *pro se* litigant, the trial court "had a duty to allow [him] to replead and not dismiss the [petition] in its entirety." Appellant's Br. at 22. He also extends this same argument to his OGL violation claim. *See* Appellant's Reply Br. at 8 (July 30, 2020). While courts should "afford considerable leeway toward *pro se* litigants," *see Ji v. Toves*, 2020 Guam 2 ¶ 13, we have never held there to be a "duty" that requires a trial court to always provide a *pro se* litigant an opportunity to replead his case before dismissal. Rather, we give deference to a *pro se* party's litigation efforts. *Allen v. Richardson*, 2020 Guam 13 ¶ 8; *Ji*, 2020 Guam 2 ¶ 13; *San Union*, 2017 Guam 10 ¶ 34; *McGhee v. McGhee*, 2008 Guam 17 ¶ 11. "We also 'provide lenient treatment' of those efforts and give the parties 'every fair opportunity to present their case[s]." *Allen*, 2020 Guam 13 ¶ 8 (alteration in original) (citation omitted). However, "[t]he leniency accorded [to] *pro se* litigants cannot extend to depriving their opponent of due process." *Ji*, 2020 Guam 2 ¶ 13 (second alteration in original) (quoting *Beck & Panico Builders, Inc. v. Straitman*, C.A. No. 08A-08-014 PLA, 2009 WL 5177160, at *5 (Del. Super. Ct. Nov. 23, 2009)).

[35] Because of the deference and leniency a tribunal should afford a *pro se* litigant, Linsangan seems to argue the trial court was required to *sua sponte* grant him leave to amend his petition and

correct any defects before dismissal. Though we acknowledge the "rule favoring liberality in amendments to pleadings is particularly important for the pro se litigant," *Id.* (quoting *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000)), Linsangan never requested leave to amend his petition to properly raise taxpayer standing as a basis for jurisdiction. Without requesting leave to amend, it was not improper for the trial court to dismiss Linsangan's claim of invidious discrimination, considering that, in reviewing the Government's motion to dismiss, the trial court was contemplating its very power to hear the matter. When the trial court determined it lacked jurisdiction to address Linsangan's petition, dismissal was not only proper given the circumstances, but required under the Guam Rules of Civil Procedure. *See* Guam R. Civ. P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").

[36] When reading Linsangan's petition with the deference given to a *pro se* litigant, it is clear that it involved what he characterized as "invidious discrimination," an issue he now admits he has no standing to litigate.[4] *See* Appellant's Br. at 9. His argument on appeal that he "properly pled that the Governor illegally spent money," thereby invoking jurisdiction under 5 GCA § 7103, contradicts both the pleadings below and Linsangan's request that we exercise our discretion in considering his new legal theory of taxpayer standing for the first time on appeal. *Id.* at 21-22.

[4] Linsangan also seems to suggest that, considering his initial status as a *pro se* litigant, the trial court was required to ascertain for itself that his subtle references to allegedly illegal government expenditures were meant to assert a taxpayer action under 5 GCA § 7103. *See* Appellant's Br. at 21-22. While a *pro se* litigant is owed deference, the trial court should not be seen as an advocate for a *pro se* litigant and should not read causes of action into a complaint or petition that were not properly asserted. *See Caspino v. Caspino*, DCA Civ. No. 87-00065A, S.C. Domestic No. 1445-86, 1988 WL 242619, at *2 (D. Guam App. Div. June 7, 1988) ("Courts should not act as advocates for pro se litigants, but should provide lenient treatment of their efforts."). In our reading of the petition, it is clear that Linsangan meant to invoke a claim of invidious discrimination, as opposed to a taxpayer action. Thus, we do not believe the trial court improperly failed to address the issue of taxpayer standing or had any duty under the circumstances to make further inquiries into Linsangan's references to illegal government spending, even as a *pro se* litigant.

[37] While the trial court was not required under the circumstances to allow Linsangan to amend his petition, he is not deprived from "repleading" his action, as he argues, because the trial court did not dismiss Linsangan's petition with prejudice. Should Linsangan believe a cause of action exists regarding what he describes as "illegal expenditures on quarantines," he may plead a new action invoking taxpayer standing under 5 GCA § 7103 as a potential basis for jurisdiction.

B. Linsangan's OGL Claim was Properly Dismissed on Ripeness Grounds[5]

[38] In his petition, Linsangan alleged as follows regarding his OGL claim: "I am also petitioning that the executive order by the Governor to suspend people['s] right to attend government meeting[s] and hearing[s] be revoked, cancelled and declare[d] null and void. The Governor is in conflict and violation of Section 1422 of [the] Organic Act, Bill of Rights, and Constitutional rights." RA, tab 1 at 6 (Pet.). In its analysis, the trial court determined that Linsangan's claim regarding violation of the OGL "lacks ripeness because he does not allege any past or imminent meeting where public access and participation was inhibited." RA, tab 24 at 12 (Dec. & Order re Pet. & Mot. Dismiss). We agree.[6]

[5] Because the trial court did not make an express finding as to standing regarding the OGL claim, only assuming standing to reach the issues of mootness and ripeness, we decline to address Linsangan's arguments on appeal that he enjoys automatic standing to challenge violations of the OGL. *See* Appellant's Br. at 7.

[6] Though we agree with the trial court's findings, we feel it necessary to address Linsangan's framing of the issue on appeal. In his brief, Linsangan argues that because Guam follows the "no set of facts" notice standard for pleading, the trial court erred when it required more than notice pleading in initially dismissing his matter as unripe. Appellant's Br. at 3, 9. He alleges that during the hearing below on the Government's motion to dismiss, the trial court improperly asked if Linsangan had any knowledge of any violations of the OGL during the four days that the laws were suspended, to which he purportedly answered no. *Id.* at 9. Because a trial court may consider matters outside the pleadings in construing a motion to dismiss for lack of jurisdiction, the trial court's consideration of Linsangan's undisputed oral admissions was not improper. *See Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977) ("Because at issue in a factual 12(b)(1) motion is the trial court's jurisdiction[—]its very power to hear the case[—]there is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case."); *Osborn v. United States*, 918 F.2d 724, 728 n.4 (8th Cir. 1990) (stating that court may look to evidence outside pleadings when deciding motion to dismiss under Rule 12(b)(1)). Additionally, we find no relevance to Linsangan's arguments relative to the pleading standard because the trial court clearly granted the Government's motion to dismiss on jurisdictional grounds, not under Rule 12(b)(6). *See* RA, tab 24 at 12 (Dec. & Order re Pet. & Mot. Dismiss). Therefore, we apply ripeness principles under *de novo* review.

[39] "Ripeness is a prudential doctrine which seeks to 'prevent[] courts from entangling themselves in "abstract disagreements."'" *In re Moylan*, 2018 Guam 15 ¶ 7 (alteration in original) (quoting *People v. Gay*, 2007 Guam 11 ¶ 8). While "[t]he standing question is whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of . . . jurisdiction[,] [t]he ripeness question is whether the harm asserted has matured sufficiently to warrant judicial intervention. Both questions bear close affinity to one another." *Immigrant Assistance Project of L.A. Cnty. Fed'n of Labor (AFL-CIO) v. I.N.S.*, 306 F.3d 842, 859 (9th Cir. 2002) (citations omitted and internal quotation marks omitted).

[40] In determining whether a matter is ripe for review, a court considers two factors: "(1) whether the issues are fit for judicial consideration and (2) the hardship to the parties if consideration is withheld." *In re Moylan*, 2018 Guam 15 ¶ 7. Regarding the first factor, "[a] question or claim is fit for judicial consideration when 'the issues raised are primarily legal, do not require further factual development, and the challenged action is final.'" *Gay*, 2007 Guam 11 ¶ 8 (quoting *Verizon Cal. Inc. v. Peevey*, 413 F.3d 1069, 1075 (9th Cir. 2005) (Bea, J., concurring)). Conversely, "[a]n issue is not 'fit' for judicial review when it involves 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Id.* (alteration in original) (quoting *United States v. Dibiase*, 687 F. Supp. 38, 42 (D. Conn. 1988)); *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985). Because the "[i]nquiry into 'ripeness asks whether the facts have developed sufficiently so that an injury has occurred or is likely to occur, rather than being contingent or remote,'" an injury that is speculative or contingent is unripe. *In re Moylan*, 2018 Guam 15 ¶ 7 (quoting *Patterson v. Planned Parenthood of Hous. & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998)); *see also Gay*, 2007 Guam 11 ¶ 8 (describing ripeness doctrine).

[41] Here, the trial court specifically determined that Linsangan's OGL violation was unripe "because he does not allege any past or imminent meeting where public access and participation was inhibited." RA, tab 24 at 12 (Dec. & Order re Pet. & Mot. Dismiss). This finding was proper because Linsangan's petition is devoid of: (1) any reference to a specific violation of the OGL after *I Maga'håga* temporarily suspended certain provisions of the OGL in Executive Order No. 2020-06, or (2) any reference to any past or imminent meeting where public access and participation in public meetings were prohibited. Rather, Linsangan's allegations in the petition were speculative and amount to a general grievance as to the legality of *I Maga'håga's* actions in suspending provisions of the OGL, not to any specific violation.

[42] Linsangan's arguments as to the ripeness of his OGL claim lend further credence to the speculative nature of the claim. For example, Linsangan argues that, had the trial court not dismissed the matter, he could have pursued discovery to ascertain whether any meetings were held in violation of the OGL. Appellant's Br. 7. He further states he should have been allowed to amend his complaint as a *pro se* litigant to "do additional research." Reply Br. at 8. These arguments demonstrate that the facts have not been developed to the degree necessary to establish that an injury—in this case, an OGL violation—has occurred or is likely to occur. And as the Government points out, Linsangan makes no allegation (even on appeal) that any public meetings were held in violation of the OGL, let alone that Linsangan himself had attempted or hoped to attend such a public meeting. *See Gay*, 2007 Guam 11 ¶ 8 ("[A]n issue is not 'fit' for judicial review when it involves 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (quoting *Dibiase*, 687 F. Supp. at 42)). Because any violation of the OGL was contingent on the Government actually holding public meetings during the time the OGL was suspended, the matter was not ripe for judicial review. Nonetheless, Linsangan is not prevented

from filing a new action below should he discover any specific violations to the OGL resulting from the measures taken by *I Maga'håga* in Executive Order No. 2020-06.[7]

V. CONCLUSION

[43] Because the trial court properly dismissed Linsangan's invidious discrimination claim as moot and his claim regarding violation of the Open Government Law as unripe, we **AFFIRM** the judgment of the Superior Court.

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
F. PHILIP CARBULLIDO
Chief Justice

[7] As we find that Linsangan's OGL claim was properly dismissed as unripe, we find it unnecessary to review the trial court's determination as to the mootness of the claim.