ATTY. HOWARD M. CALLEJA, ATTY. JOSEPH PETER J. CALLEJA, ATTY. CHRISTOPHER JOHN P. LAO, DE LA SALLE BROTHERS INC., AS REPRESENTED BY BR. ARMIN A. LUISTRO, FSC, DR. REYNALDO J. EC...

G.R. No. 252578. December 07, 2021

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before this Court are 37 separate Petitions for Certiorari and/or Prohibition filed under Rule 65 of the Rules of Court (Rules), all assailing the constitutionality of Republic Act (R.A.) No. 11479 or the "Anti-Terrorism Act of 2020" (ATA).

A Brief Discussion on the History of Terrorism

Terrorism is not a new phenomenon; but clue to the lack of a well-accepted definition, even scholars have encountered difficulty in pinpointing its exact origin.[1] One of the earliest examples is that of the Jewish Zealots known as the Sicari - a group active during the Roman occupation of the Middle East during the first century.[2] The Sicari would use short daggers to murder Romans and Greeks in broad daylight and in front of witnesses to send a message to the Roman authorities and the Jews who have pledged their allegiance to them.[3] From 1090 to 1279, the Hashshashin (The Order of Assassins) killed Persians, Turks, and Syrians in the name of spreading pure Islam.[4]

The the term "terrorism" emerged from the French Revolution's period of terror known as the regime de la terreur.[5] During this period, the new government performed a series of massacres and public executions[6] to intimidate counterrevolutionaries and everyone whom it considered as its enemies.[7] In other words, terrorism was then viewed as a positive and necessary response to the threats faced by the state.[8]

By the 19[th] century, the general meaning of the term was closer to its contemporary understanding — subversive and illegal activities of the opponents of the ruling class performed in an attempt to change the order.[9] In 1878, the Narodnaya Volya ("People's Will" or "People's Freedom") was organized for the deliberate and methodical killing of selected victims, most of whom were high-ranking Russian government officials, culminating in the assassination of Tsar Alexander II, more commonly known as Alexander the Liberator.[10]

In the 20[th] century, violence was the motivating factor for many contemporary acts of terrorism which added new methods brought about by the technological and social developments of the time.[11] The 1930's also introduced a wave of political assassinations which led the League of Nations to prevent and punish terrorism and to establish an international criminal court.[12]

Fast-forward to the 21[st] century, terrorism is now associated with a plethora of acts which may be categorized according to the methods and means used, the goals pursued, and the actors behind them.[13] On September 11, 2001, militants associated with the Islamic extremist group Al-Qaeda committed a series of hijackings which

resulted to the death of almost 3,000 people, injuries to several hundred thousands of people, and billions of dollars in damage.[14] This incident, more commonly known as "9/11", gave rise to a cohesive global response to intensify the fight against terrorism.[15] However, despite several bombings,[16] sieges,[17] and massacres[18] worldwide, billions worth of damage in infrastructure, and the immeasurable fear instilled in the hearts of innocent people, there is still no single definition of terrorism which all states agree to.

According to scholarly literature, however, four distinctive characteristics are attributed to contemporary terrorism:

> First and foremost, terrorism is violence (or its threat) for political effect. Second, terrorism is a planned, calculated, and indeed systematic act. Third, terrorists are not bound by established rule of warfare or codes of conduct, and fourth, terrorism is designed to have far-reaching psychological repercussions beyond the immediate target or victim.[19] (Citations omitted)

Even if states and experts cannot agree on the definition of terrorism, one thing is clear: "in the modem world, terrorism is considered the most prevalent and the most dangerous form of endangering the security of both national states and the citizens thereof."[20]

Terrorism in the Philippines

Filipinos are no strangers to acts of terrorism. According to the Global Terrorism Index of 2020, there have been more than 7,000 deaths due to terrorism in the Asia-Pacific region from 2002 to 2019, and over 3,000 of these have occurred in the country.[21] Some of these incidents include:[22]

> Event/Location
>
> Year
>
> Killed
>
> Wounded
>
> Rizal Day Bombings
>
> 2000
>
> 22
>
> 100-
>
> General Santos City
>
> 2002
>
> 13
>
> 60-
>
> Zamboanga City
>
> 2002
>
> 23
>
> 100-
>
> Davao International Airport

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2003

22

143

Koronadal City

2003

10-

42-

General Santos City

2004

14+

70-

SuperFerry 14 bombing

2004

116-

-

Valentine's Day Bombings in Davao, Makati, and General Santos

2005

8-

147-

Mindanao Bombings

2009

13

91

Basilan Raid

2010

0

26

Davao Night Market Bombing

2016

14

60-

Jolo Cathedral Bombing

2019

23-

109

In 2017, pro-Islamic State of Iraq and al-Sham (ISIS) militants forcibly took over Marawi City and displaced 98 percent of the city's total population and residents from nearby areas.[23] It was considered the most violent urban terrorist attack in the Philippines' recent history.[24]

Local extremist groups such as the Abu Sayyaf Group (ASG), the Moro Islamic Liberation Front, and the Jemaah Islamiyah have claimed responsibility for the terrorist acts.[25] Alarmingly, foreign terrorist groups have also made their presence felt in the country. The ISIS has conducted terrorist operations through several local groups such as the Maute group, the ASG, and the Bangsamoro Islamic Freedom Movement.[26] The Philippines has also been a constant destination for foreign terrorist fighters from Indonesia, Malaysia, Europe, the Middle East, and North Africa.[27]

As a response to the growing problem of terrorism, R.A. No. 9372, otherwise known as the "Human Security Act of 2007" (HSA), was enacted, on February 8, 2007. However, despite its passage, the prevalence of terrorism in the country not only persisted but even escalated.

On June 18, 2012, R.A. No. 10168 or the "Terrorism Financing Prevention and Suppression Act of 2012" was signed into law. it was passed pursuant to the United Nations Security Council (UNSC) Resolution No. 1373[28] and other binding terrorism-related resolutions of the UNSC issued under Chapter VII of the UN Charter. In UNSC No. 1373, member states have agreed to undertake several measures to combat terrorism which include inter alia the following:

> (a) Prevent and suppress the financing of terrorist acts;
>
> (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
>
> (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
>
> (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons[.][29]

As with the HSA, R.A. No. 10168 did little to curb incidences of terrorism. The Court notes that out of almost 200 countries surveyed in the 2020 Global Terrorism Index, the Philippines ranked 10[th] worldwide, and remains to be the only country in Southeast Asia to be a part of the top 10.[30]

Even the onslaught of the COVID-19 pandemic was not enough to prevent the commission of these heinous acts. In August 2020, suicide bombers attacked Jolo, Sulu.[31] This resulted to the death of at least 14 people and the

wounding of 75 others.[32]

Legislative History and Underpinnings of the ATA

On August 13, 2019, the Senate Committees on National Defense and Security, Peace, Unification and Reconciliation, and Finance jointly conducted a hearing on Senate Bill (SB) Nos. 6, 21, and 640, all of which sought to amend certain provisions of the HSA. On September 30, 2019, the Senate Committees jointly submitted Committee Report No. 9, recommending the approval of SB No. 1083 to substitute SB Nos. 6, 21, and 630.

SB No. 1083 was sponsored at the plenary in the Senate on October 2 and November 5, 2019. This was deliberated upon on the floor on December 17, 2019, January 21, 2020, and January 27, 2020. After amendments, on February 26, 2020, the Senate approved on third and final reading SB No. 1083 entitled "An Act to Prevent, Prohibit, and Penalize Terrorism, thereby Repealing Republic Act No. 9372, otherwise known as the 'Human Security Act of 2007.'"[33]

On May 29, 2020, the Committees on Public Order and Safety and on National Defense and Security adopted the Senate version of the bill as an amendment to House Bill (HB) No. 6875, entitled "An Act to Prevent, Prohibit, and Penalize Terrorism, thereby Repealing Republic Act No. 9372 Otherwise Known as the 'Human Security Act of 2007.'" On May 30, 2020, the House Committees jointly submitted Committee Report No. 340 to the House of Representatives, recommending the approval, without amendment, of HB No. 6875.[34]

In a letter dated June 1, 2020, President Rodrigo R. Duterte certified the necessity for the immediate enactment of HB No. 6875 "to address the urgent need to strengthen the law on anti-terrorism and effectively contain the menace of terrorist acts for the preservation of national security and the promotion of general welfare."[35]

On June 2, 2020, HB No. 6875 was sponsored at the plenary for approval on second reading. On the same evening, the plenary approved HB No. 6875 on second reading with no amendments accepted.[36]

Thereafter, on June 3, 2020, HB No. 6875[37] passed the third reading with the House voting 173-31 with 29 abstentions.[38] The final tally of votes was changed the next day to 168-36, in order to reflect the corrections and retractions of several members.[39]

On June 9, 2020, the enrolled bill signed by then Speaker of the House Alan Peter Cayetano and Senate President Vicente Sotto III was transmitted to the Office of the President for the President's signature. Consequently, on July 3, 2020, President Duterte signed R.A. No. 11479, otherwise known as the ATA. The legislation was published in the Manila Bulletin and the Official Gazette on July 6, 2020, and took effect on July 22, 2020.

According to the ATA's principal author, Senator Panfilo Lacson, only one person has been convicted and only one group has been outlawed under the HSA due to the several difficulties in implementing this law.[40] The requirement of a predicate crime and the imposition of the P500,000.00 penalty per day of detention without a warrant, in case of the acquittal of the accused, are only some of the hurdles which law enforcement agencies have faced.[41]

The shortcomings of the HSA, along with other laws on money laundering, have also been noted by international bodies. One of these bodies is the Asia/Pacific Group (APG) on Money Laundering, an inter-governmental organization composed of 41 member jurisdictions in the Asia-Pacific region, including other groups and observers from outside the region.[42] The Philippines is one of its founding members.[43]

The APG is a "non-political and technical body committed to the effective implementation and enforcement of the internationally accepted standards against money laundering, financing of terrorism and proliferation financing set by the Financial Action Task Force (FATF)."[44] Its members undergo a regular mutual evaluation mechanism

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which culminates in a report containing the suggested measures which must be undertaken to fight money laundering and its related activities such as terrorism, drug trafficking, and kidnapping.[45]

In its 2019 Mutual Evaluation Report (MER), the APG noted that the Philippines had several deficiencies in relation to the FATF standards. These will be discussed in detail below. These deficiencies cannot simply be disregarded, because non-compliance with the FATF recommendations result to negative effects, the most significant of which are severe regulations such as discouragement of foreign investment and trading from compliant countries and international organizations.[46]

Current Developments Relative to the 37 Petitions

As aforementioned, 37 separate Petitions for Certiorari and/or Prohibition have been filed before this Court to challenge the ATA and prevent its implementation.

Petitioners primarily assail the validity of Sections 4 to 12 of the ATA due to their perceived facial vagueness and overbreadth that purportedly repress protected speech.[47] It is argued further that the unconstitutionality of the definition of terrorism and its variants will leave it with "nothing to sustain its existence."[48]

Petitioners who initiated the now consolidated challenges on the constitutionality of the ATA come from different sectors of society. Petitioners in the consolidated challenges include inter alia members of party-lists,[49] former and incumbent members of Congress,[50] members of socio-civic and non-governmental organizations,[51] members of Indigenous Peoples' (IPs) groups, Moros,[52] journalists,[53] taxpayers, registered voters, members of the Integrated Bar of the Philippines, students, and members of the academe.[54]

Some of the petitioners in G.R. No. 252904 (Longid v. Anti-Terrorism Council) include members of organizations critical of the government and are impleaded in the petition for proscription which the Department of Justice (DOJ) filed in 2018 pursuant to Section 17 of the HSA docketed as R-MNL-18-00925-CV (Department of Justice v. The Communist Party of the Philippines and the New People's Army a.La Bagong Hukbong Bayan) now pending before the Regional Trial Court (RTC) of Manila.[55]

Apart from the members of the academe and human rights lawyers who are petitioners in G.R. No. 252736 (Carpio. v. Anti-Terrorism Council), two former members of this Court also initiated this petition, former Senior Associate Justice Antonio T. Carpio (Carpio) and former Associate Justice and Ombudsman Conchita Carpio-Morales (Carpio-Morales).

To demonstrate petitioners' standing and how the enactment of the ATA personally affects them, they argue that petitioner Carpio's impassioned activism and criticism on the perceived inability of the Duterte administration to defend the rights of the Philippines over the West Philippine Sea dispute may expose him to prosecution for Inciting to Commit Terrorism under Section 9. They also claim that petitioner Carpio's words may be misconstrued under Section 4(c) as "extensive interference" with "critical infrastructure" intended to provoke or influence the government to take a particular action.[56] They also brought to the attention of the Court a now deleted Facebook post of presidential son and House of Representative member Paolo Duterte wherein he accused petitioner Carpio of being one of the personalities behind a destabilization plot.[57]

It is also averred that petitioner Carpio-Morales is exposed to the risk of being prosecuted under Section 4(c) of the ATA after she initiated a complaint with the International Criminal Court (ICC) against People's Republic of China (PROC) President Xi Jinping that may severely damage diplomatic relations between the Philippines and PROC. In a statement, President Duterte branded petitioner Carpio-Morales a "spokesman of the criminals."[58]

Petitioners point out that the advocacy efforts of petitioners Carpio and Carpio-Morales have earned the ire of

President Duterte who blamed them of any violence that may erupt as a result of the rising tension in Palawan. National Security Adviser (NSA) Hermogenes Esperon (Esperon) also described petitioner Carpio as a warmonger over the West Philippine Sea dispute.[59]

Meanwhile, in G.R. No. 252767 (Pabillo v. Duterte), petitioners comprise of officials of various religious and church groups including petitioner Rey Claro Cera Casambre (Casambre), who is one of the individuals named in the petition for proscription the DOJ initiated in the RTC of Manila.[60]

Another petitioner, the Rural Missionaries of the Philippines (RMP) alleges that on December 26, 2019, the Anti-Money Laundering Council (AMLC) caused the freezing of five bank accounts belonging to RMP - Northern Mindanao Sub-Region in Cagayan de Oro City, and RMP in Metro Manila for allegedly being connected to terrorism financing under R.A. No. 10168.[61] Petitioner RMP also claims that it had been described as Communist Party of the Philippines and the New People's Army (CPP/NPA) fronts, recruiters, and has been accused of providing material support to the CPP/NPA on various instances by officials of the government.[62]

Petitioner Sisters' Association in Mindanao (SAMIN) also asserts that its members experienced harassment due to their critical stand against the militarization of Moro and Lumad communities. Sr. Emma Cupin, MSM, a member of petitioner SAMIN is now allegedly facing trumped-up charges of robbery-arson and perjury. She was allegedly charged with robbery-arson based on a complaint the military filed in relation to a purported NPA attack on a military detachment. Meanwhile, the perjury case was supposedly initiated by NSA Esperon after RMP and other organizations filed a petition for Writ of Amparo to seek protection from the purported red-tagging, harassments, and other attacks on their members.[63]

It is also claimed that the United Church of Christ in the Philippines (UCCP) faces credible threat of prosecution due to its support for the rights of IPs, particularly, the Lumads. After the arrival of Lumad evacuees in UCCP Haran, arsonists have allegedly set the tents and the dormitories of the evacuees on fire. Anti-riot police were brought to force evacuees to return to their communities, and the paramilitary group "Almara" has allegedly threatened them with violence.[64]

On various occasions, the National Task Force to End Local Communist Armed Conflict has allegedly identified some of the religious or church groups, who are petitioners in this case, as established by the CPP/NPA in its social media accounts or during the interviews of its officials.[65] Petitioners suggest that the foregoing instances demonstrate the credible threat of prosecution they face under the ATA.[66]

Petitioner General Assembly of Women for Reforms, Integrity, Equality, Leadership and Action, Inc. (GABRIELA), its officers, members, and supporters also aver that they have been targets of human rights violations perpetrated by state forces and are constant targets of red-baiting and red-tagging. Trumped-up charges have allegedly been filed against several members and officers due to their affiliation to the organization.[67]

Petitioners who are members of the academe also maintain that the ATA will have a destructive chilling effect on academic freedom, an aspect of freedom of expression. According to them, their free thoughts and ideas in open debates and academic discussions on various issues about the government and society will expose them to potential prosecution under the ATA.[68]

In August 2020, the DOJ commenced the crafting of the implementing rules and regulations (IRR) of R.A. No. 11479. The DOJ approved and released the IRR on October 14, 2020.[69]

On September 23, 2020, respondent Anti-Terrorism Council (ATC) issued Resolution No. 10[70] automatically adopting the list of designated terrorists by the UNSC as well as directing the concerned agencies to impose and implement the relevant sanctions measures without delay, from the time of designation made by the UNSC and its

relevant Sanctions Committee.[71] In accordance with Section 36 of the ATA, respondent AMLC was also "directed to issue an ex parte order to freeze without delay any funds and other assets that are owned or controlled, directly or indirectly, including funds and assets derived or generated therefrom, by the designated individuals, groups, undertakings, entities included in the aforementioned UN Consolidated List."

On December 9, 2020, the ATC issued Resolution Nos. 12[72] and 13[73] designating as terrorists the CPP/NPA, and 16 organizations associated with the Islamic State and "other Daesh-affiliated groups in the Philippines."[74] Following the issuance of these resolutions, the AMLC issued Sanctions Freeze Orders against the CPP/NPA[75] and the Daesh-affiliated groups.[76]

On February 24, 2021, the ATC issued Resolution No. 16[77] wherein 10 individuals were designated as terrorists for their alleged membership in extremist groups designated under ATC Resolution No. 13 "based on verified and validated information obtained and consolidated by the National Intelligence Commiitee"(NICA).[78]

On April 21, 2021, the ATC issued Resolution No. 17[79] designating 19 individuals as terrorists due to their alleged ties with the CPP/NPA. Among the individuals designated in said resolution is petitioner Casambre.[80]

Incidentally, two Aetas, Jasper Gurung and Junior Ramos, were arrested in August 2020. They were the first individuals to be charged for violating Section 4 of the ATA after allegedly firing at the military which led to the death of one soldier in Crim. Case Nos. 2021-1284 to 1288. In an Order[81] dated July 15, 2021, the RTC of Olongapo granted the Demurrer to Evidence of the accused and ordered the dismissal of the charges on the ground of insufficiency of evidence.[82]

Issues

The following are the issues identified by the Court in its Revised Advisory dated January 5, 2021 based on a cursory reading of the petitions:

A. Preliminary issues

- Whether petitioners have legal standing to sue;

- Whether the issues raised in the petitions involve an actual and justiciable controversy;

- Whether petitioners' direct resort to the Supreme Court is proper;

- Whether facial challenge is proper; and

- Whether R.A. No. 11479 should already be declared unconstitutional in its entirety if the Court finds that the definition of terrorism and the powers of the ATC are constitutionally infirm.

B. Substantive issues

- Whether Section 4 defining and penalizing the crime of "terrorism" is void for vagueness or overbroad in violation of the constitutional right to due process, free speech and expression, to be informed of the nature and cause of accusation, and non-detention solely by reason of political beliefs.

- Whether Sections 5 to 14 defining and penalizing threats to commit terrorism, planning, training, preparing, and facilitating terrorism, conspiracy, proposal, inciting to terrorism, material support, and other related provisions, are:

- void for vagueness or overbroad in violation of the above-stated constitutional rights, as well as the freedom of religion, association, non-detention solely based on political beliefs, and academic freedom; and

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- violative of the prohibition against ex post facto laws and bills of attainder.

- Whether the uniform penalties for all punishable acts under Sections 4 to 14 violate the constitutional proscription against the imposition of cruel, degrading, or inhuman punishment;

- Whether surveillance under Section 16 violates the constitutional rights to due process, against unreasonable searches and seizures, to privacy of communication and correspondence, to freedom of speech and expression, to freedom of religion, and the accused's right to be presumed innocent;

- Whether judicial authorization to conduct surveillance under Section 17 violates the constitutional right against unreasonable searches and seizures, and forecloses the remedies under the rules on amparo and habeas data;

- Whether the following powers of the ATC are unconstitutional:

- power to designate terrorist individuals, groups and organizations under Section 25 for:

- encroaching upon judicial power and the Supreme Court's rule-making power;

- inflicting punishment ex post facto based on the adoption of the UNSC Consolidated List of designated terrorists, and other requests for designation by other jurisdictions or supranational jurisdictions; and

- violating due process and constitutional rights due to the lack of clear parameters for designation, absence of notice and hearing prior to designation, and lack of remedies to contest wrongful designation.

- power to approve requests for designation by other jurisdictions or supranational jurisdictions for violating the 1951 Refugee Convention and its 1967 Protocol;

- power to apply for the proscription of terrorist individuals, groups, and organizations under Section 26 for violating due process and constitutional rights;

- power to authorize arrest and detention without judicial warrant based on mere suspicion under Section 29 for violating the separation of powers (executive and judicial), and the constitutional rights to due process, against unreasonable searches and seizures, to bail, to be presumed innocent, and speedy disposition of cases;

- power to adopt security classifications for its records under Section 45 for violating the right to information;

- power to establish and maintain comprehensive database information systems on terrorism, terrorist activities and counterterrorism operations under Section 46(e) for violating the constitutional rights to clue process and privacy of communication and correspondence;

- power to grant monetary rewards and other incentives to informers under Section 46(g) for lack of clear parameters; and

- power to require private entities and individuals to render assistance to the ATC under Section 46(m) for violating the prohibition against involuntary servitude.

- Whether Section 27 of R.A. No. 11479 on preliminary and permanent orders of proscription violates the prohibition against ex post facto laws and bills of attainder, and unconstitutionally punishes mere membership in an organization;

- Whether the detention period under Section 29 of R.A. No. 11479 contravenes the Constitution, the Revised Penal Code (RPC), the Rules of Court, and international obligations against arbitrary detention;

- Whether the restriction under Section 34 violates the constitutional rights to travel, against incommunicado

detention, to bail and R.A. No. 9745, or the "Anti-Torture Act of 2009;"

- Whether Sections 35 and 36, in relation to Section 25, on the AMLC's authority to investigate inquire, and examine bank deposits, and freeze assets, violate the separation of powers (judicial), as well as the constitutional right to due process, and the right against unreasonable searches and seizures;

- Whether Section 49 on the extra-territorial application of R.A. No. 11479 violates the freedom of association and the prohibition against ex post facto laws and bills of attainder;

- Whether Section 54 on the ATC and DOJ's power to promulgate implementing rules and regulations constitutes an undue delegation of legislative power for failure to meet the completeness and sufficient standard tests;

- Whether Section 56 repealing R.A. No. 9372, or the HSA violates the constitutional mandate to compensate victims of torture or similar practices and right to due process;

- Whether R.A. No. 11479 violates the IP's and Moros' rights to self-determination and self-governance under the Constitution; and

- Whether the House of Representatives gravely abused its discretion by passing HB No. 6875 (consolidated version of the HBs to amend the HSA) in violation of the constitutionally-prescribed procedure.

Ruling of the Court

Procedural Issues

Considering the number, variety, and permutation of the issues raised in the 37 petitions which cover almost every conceivable and supposed constitutional violation of the enactment and enforcement of the ATA, some of which are mere hypothetical/theoretical suppositions, the Court finds it necessary and essential to dwell, first and foremost, on the attendant procedural issues upon which respondents are seeking its dismissal, in order to properly frame the substantive issues and to rightly resolve the merits of this case.

Without meaning to pre-empt the full and detailed discussion below, the Court gives the petitions clue course only in part. In reaching this conclusion, the Court has examined the interplay between the procedural issues, beginning with the doctrines on judicial review.

The Court takes cognizance of this case under its expanded judicial power.

Under Section 1, Article VIII of the 1987 Constitution, judicial power includes the duty of the courts of justice not only "to settle actual controversies involving rights which are legally demandable and enforceable", but also "to determine whether or not there has been grave abuse of discretion amounting to lack of excess of jurisdiction on the part of any branch or instrumentality of the Government," to wit:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The characterization of judicial power in the second paragraph of Section 1 speaks of two essential components,

and the first is what is now called the traditional scope of judicial power. This traditional concept of judicial power has existed since the Court was established.[83]

The 1987 Constitution, however, expanded the concept of judicial power. The development of the expanded scope of judicial power under the 1987 Constitution arose from the use and abuse of the political question doctrine during the Martial Law era under former President Ferdinand E. Marcos. In Kilusang Mayo Uno v. Aquino,[84] the Court reproduced Chief Justice Roberto Concepcion's explanation on the provision before the Constitutional Commission, viz.:

> The next provision is new in our constitutional law. I will read it first and explain.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.
>
> Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political question and got away with it. As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime.
>
> x x x x
>
> Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.
>
> This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.[85] (Emphasis and citations omitted)

The Court finds that this case mainly calls for the exercise of the Court's expanded judicial power. This is because the primordial issue animating the 37 petitions is the constitutionality of the ATA, a legislative (and not a judicial/quasi-judicial) act. Moreover, these 37 petitions undoubtedly ascribe grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Congress in enacting a law that violates fundamental rights.

The Court notes in this regard that petitioners, in seeking to check the grave abuse of discretion of the Congress in enacting the ATA, argue that the constitutional concerns raised by the ATA deserve a proactive judicial response. Relevantly, in Imbong v. Ochoa,[86] this Court had said:

> x x x [U]nlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the

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Constitution.[87]

Respondents on the other hand seek the dismissal of the 37 petitions, inter alia, on the ground that the propriety of the ATA's enactment is a political question that is beyond judicial scrutiny.[88] Citing Drilon v. Garcia,[89] the OSG argues that this Court must respect what motivated Congress to enact the ATA and how it wished to accomplish such intention.[90] In Tañada v. Cuenco[91] this Court said:

> x x x [T]he term "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of Corpus Juris Secundum x x x, it refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government." It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.[92]

The Court disagrees with the OSG. In the landmark case Tañada v. Angara,[93] the Court held that:

> In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. "The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld." Once a "controversy as to the application or interpretation of a constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide."
>
> (Article VIII, Section 1) emphasizes the judicial department's duty and power to strike down grave abuse of discretion on the part of any branch or instrumentality of government including Congress. It is an innovation in our political law. As explained by former Chief Justice Roberto Conception, "the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature."
>
> As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government.[94] (Citations omitted; emphases supplied)

The political question doctrine, then, cannot be raised by the government as a defense against the constitutional challenges to the ATA. This is in light of the Court's expanded power of judicial review, and more so because the question as to whether any part or instrumentality of the government had authority or had abused its authority to the extent of lacking jurisdiction or exceeding jurisdiction is not a political question.[95] This is besides the fact that petitioners have complied with the requisites which call for the Court to exercise its power of judicial review, whether under the traditional or under the expanded sense.

Petitioners' compliance with the requisites for judicial inquiry

When the issue of the unconstitutionality of a legislative act is raised, it is an established doctrine that the Court may exercise its power of judicial review if the following requisites are present:

(1)

An actual and appropriate case and controversy exists;

(2)

A personal and substantial interest of the party raising the constitutional question;

(3)

The exercise of judicial review is pleaded at the earliest opportunity; and

(4)

The constitutional question raised is the very lis mota of the case.[96]

Actual Case or Controversy

The first requisite of actual case or controversy is complied with when the matter before the court involves a "conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution."[97] In Falcis III v. Civil Registrar General,[98] it was explained that the Court does not generally act on petitions which merely allege that the assailed law is unconstitutional:

> It is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned. The judiciary interprets and applies the law. "It does not formulate public policy, which is the province of the legislative and executive branches of government." Thus, it does not - by the mere existence of a law or regulation - embark on an exercise that may render laws or regulations inefficacious. Lest the exercise of its power amount to a ruling on the wisdom of the policy imposed by Congress on the subject matter of the law, the judiciary does not arrogate unto itself the rule-making prerogative by a swift determination that a rule ought not exist. There must be an actual case, "a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."[99] (Citations omitted)

An actual case or controversy exists when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.[100] The issues presented must be definite and concrete, touching on the legal relations of parties having adverse interests.[101] There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.[102] Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice.[103] All these are in line with the well-settled rule that this Court does not issue advisory opinions,[104] nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be.[105] Instead, case law requires that there is ample showing of prima facie grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts.[106]

Closely linked to this requirement is that the question must be ripe for adjudication.[107] A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something has been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[108]

Petitioners argue that the present petitions involve an actual and justiciable controversy as the ATA and its IRR are already being enforced amidst serious allegations of unconstitutionality. They invoke the doctrine of expanded judicial review to convince this Court that an actual and justiciable controversy exists.[109]

In contrast, respondents allege that at the time the petitions were filed, the IRR of the ATA was not yet issued, nor has the government done any act in furtherance of the law. Moreover, the OSG states that mere theories and

possibilities of abuse do not constitute a conflict of legal rights. They argue that petitioners failed to present a prima facie grave abuse of discretion and that the burden is not satisfied by the mere assertion that the law is unconstitutional since all laws are presumed to be valid. Lastly, they assert that the case is not yet ripe for adjudication since the government has yet to do any act which constitutes an immediate threat to petitioners' rights.

The Court agrees with petitioners that the requisite of an actual case or controversy has been complied at least with respect to certain issues falling within the purview of the delimited facial analysis framework as will be herein discussed. This is because the consolidated petitions, in challenging the ATA, have sufficiently raised concerns regarding the freedom of speech, expression, and its cognate rights. As such, the petitions present a permissible facial challenge on the ATA in the context of the freedom of speech and its cognate rights - and it is only on these bases that the Court will rule upon the constitutionality of the law. Further, with respect to certain provisions of the ATA, petitioners have sufficiently shown that there is a credible and imminent threat of injury, as they may be subjected to the potential destructive consequences of designation as well as possible detention and prosecution. In fact, the Court is mindful that several of the petitioners have already come under the operation of the ATA as they have been designated as terrorists.

Locus Standi

The second requisite of personal and substantial interest concerns legal standing. Legal standing or locus standi is the "right of appearance in a court of justice on a given question."[110] The concept of locus standi calls for more than just a generalized grievance. It requires a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act being challenged.[111] The test is whether a party alleges such personal stake in the outcome of the controversy as to "assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[112] Thus, as a general rule, a party is not permitted to raise a matter in which he has no personal interest.

Where the party challenges the constitutionality of a law, he or she must not only show that the law is invalid, but that he has sustained or is in immediate or imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers in some indefinite way. He or she must show that he or she has been, or is about to be, denied some right or privilege to which he is lawfully entitled, or that he or she is about to be subjected to some burdens or penalties by reason of the statute complained of.[113] This rule is what governs when the constitutionality of a statute is questioned by a party who must, at the very least, show a credible threat of prosecution under the penal statute assailed.

Here, petitioners are suing before this Court as concerned Filipino citizens, members of the Philippine Bar, members of Congress, taxpayers, and victims of terrorist-tagging by State forces, who are under a credible threat of prosecution under the ATA. They also allege that their standing is satisfied due to the transcendental importance of the matters involved in this case and the serious threat the law poses on their sacred constitutional rights.[114] They maintain that injury to the individual is not the sole basis for the grant or recognition of standing before the Court as injury to a public right is also a sufficient basis.[115] Lastly, they argue that they are mounting a facial challenge on the grounds of void-for-vagueness and overbreadth, which allow third-party standing.

On the other hand, respondents allege that petitioners have no legal standing because they lack direct, substantial, and personal interest in this case.[116] The OSG points out that merely alleging motherhood statements such as "transcendental importance" or the violation of their constitutional rights are insufficient since petitioners fail to show any specific injury or suffering which have been brought about by the law.[117]

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Former Chief Justice Reynato S. Puno, who was appointed by the Court as amicus curiae in this case, emphasized the necessity of exempting the present petitions from the strict application of the rule on standing, explaining that:

> The ruling case law is that petitioners who assail a law as void on the basis of its vagueness and overbreadth are exempted from the strict rule on standing. A law that is vague and overly broad is considered as an immense evil and destructive of fundamental rights in a democratic regime, it ought to be struck down at the earliest opportunity by anyone in the body politic. It is a threat not just to one but it is a threat to all and anyone can represent all in excising it out from our statute book.[118] (Emphasis supplied)

The Court adopts the view of Former Chief Justice Reynato S. Puno, which finds support in the following pronouncement in Southern Hemisphere v. Anti-Terrorism Council[119] (Southern Hemisphere):

> Distinguished from an as-applied challenge which considers only extant facts affecting real litigants, a facial invalidation is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.[120] (Emphasis and underscoring supplied)

In an attempt to undermine petitioners' legal standing, the OSG cites Southern Hemisphere[121] where the Court dismissed the petitions challenging the constitutionality of the HSA - the predecessor of the ATA - on the ground that petitioners lacked legal standing, among others.[122] This Court, speaking through the ponencia of former Associate Justice Carpio-Morales, held that petitioners in that case were unable to show that they have suffered some actual or threatened injury because no case has been filed against them.[123] The Court also pointed out that there were other parties not before It with direct and specific interests, e.g., the first case of proscription filed against the Abu Sayyaf group.[124] The OSG now prays that the present petitions be dismissed on the same ground.

The Court is not impressed.

As had already been pointed out earlier in this discussion, petitioner Casambre in G.R. No. 252767 is among the 19 individuals designated as terrorists under ATC Resolution No. 17 due to his purported ties to the CPP/NPA. In addition, petitioner RMP in G.R. No. 252767 reported that its bank accounts had been frozen upon orders from the AMLC for allegedly being used to finance terrorism.[125]

It also did not escape the Court's attention that on May 12, 2021, respondent NSA Esperon labelled CPP Founding Chairperson Jose Maria Sison as the "number 1 red-tagger" and played an unverified and unauthenticated video where Jose Maria Sison purportedly enumerated organizations supporting armed rebellion. Thereafter, respondent NSA Esperon alleged that the International League of Peoples' Struggle, a formation of international solidarity with links to the CPP, met in Hongkong in 2020. He added that the meeting was attended by "Anakbayan, [Kilusang Mayo Uno], Bagong Alyansang Makabayan, GABRIELA, and several others,"[126] and the Court notes that these organizations are among those challenging the ATA.

Considering the application of the contested provisions of the ATA and the threat of the imposition of consequences associated with being a terrorist, several petitioners including inter alia petitioners Carpio, Carpio-Morales, Casambre, RPM, Anakbayan, Kilusang Mayo Uno, Bagong Alyansang Makabayan, and GABRIELA have personal interests in the outcome of the consolidated petitions. The Court finds that petitioners have sufficiently alleged the presence of credible threat of injury for being constant targets of "red-tagging" or "truth-tagging." Therefore, they satisfy the requisites of the traditional concept of legal standing.

The above notwithstanding, the Court finds that even if Casambre, RPM, Anakbayan, Kilusang Mayo Uno, Bagong Alyansang Makabayan, and GABRIELA had not come under the actual operation of the ATA, there

would still have been no legal standing impediments to grant due course to the petitions because they present actual facts that also partake of a facial challenge in the context of free speech and its cognate rights. It is clear that unlike Southern Hemisphere, the ATA presents a freedom of expression issue, and on this point, the pronouncement in Disini v. Secretary of Justice[127] (Disini) is now the prevailing authority:

> In an "as applied" challenge, the petitioner who claims a violation of his constitutional right can raise any constitutional ground - absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness. Here, one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. It prohibits one from assailing the constitutionality of the statute based solely on the violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.
>
> A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute. The rationale for this exception is to counter the "chilling effect" on protected speech that conies from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence.[128] (Emphases supplied)

Besides, petitioners may be treated as non-traditional suitors who may bring suit in representation of parties not before the Court. In Funa v. Villar,[129] the rule on non-traditional suitors as recognized in David v. Macapagal-Arroyo[130] was summarized. The legal standing of the following individuals is recognized when specific requirements have been met:

> (1)
>
> For taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
>
> (2)
>
> For voters, there must be a showing of obvious interest in the validity of the election law in question;
>
> (3)
>
> For concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled at the earliest time; and
>
> (4)
>
> For legislators, there must be a claim that the official action complained of infringes their prerogatives as legislators.[131]

From the foregoing characterizations of the rule on locus standi, it is settled that legal standing is a procedural technicality which this Court may choose to waive or relax in cases involving transcendental importance to allow individuals or groups to sue even though they may not have been personally injured by the operation of the law.[132] Indeed, procedural barriers should not be allowed to impede this Court's prerogative in resolving serious legal questions which greatly affect public interest.[133]

Regardless of the type of non-traditional suitor that they allege to be - legislators, concerned citizens, or taxpayers - all petitioners cry foul over the law's grave and imminent threat to their constitutional rights. They are asking this Court to recognize that the ATA infringes on their rights to due process, free speech, expression, association,

and academic freedom, to name a few. These petitions involve matters of transcendental importance and constitutional questions which must be addressed by this Court immediately.

Earliest Opportunity

As to the third requisite of "earliest opportunity," this Court held in Arceta v. Mangrobang[134] that it does not mean immediately elevating the matter to this Court. Earliest opportunity means that the question of unconstitutionality of the act in question should have been immediately raised in the proceedings in the court below. Since the present constitutional challenge against the statute was directly filed with this Court, the third requisite of judicial review of "earliest opportunity" is complied with because the issue of constitutionality is raised at the first instance.

Lis Mota

The fourth requisite of lis mota means that this Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground.[135] Thus, petitioners must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.[136] The lis mota requirement is based on the rule that every law has in its favor the presumption of constitutionality,[137] and to justify its nullification, there must be a clear and unequivocal breach of the Constitution and not one that is doubtful, speculative, or argumentative.[138]

The Court finds that the lis mota requirement is complied with by the very nature of the constitutional challenge raised by petitioners against the ATA which deal squarely with the freedom of speech, expression, and its cognate rights. Evidently, freedom of expression and its cognate rights are legally demandable and enforceable, and any violation or perceived violation by the law that chills or restricts the exercise of such rights inescapably involve questions regarding its constitutionality.

Nevertheless, the Court should dismiss the following petitions: Balay Rehabilitation Center, Inc. v. Duterte, docketed as G.R. No. 253118, and Yerbo v. Offices of the Honorable Senate President and the Honorable Speaker of the House of Representatives (Yerbo), docketed as UDK No. 16663.

The Balay Rehabilitation Center, Inc. petition must be dismissed on the ground of lack of merit, as the arguments raised in questioning the validity of the ATA are hinged on existing laws and not the Constitution. While petitioners did claim that they are at extreme risk of being designated as terrorists and suspected of violating Sections 4 to 13 of the ATA and that many provisions of the ATA violate the fundamental right to due process and equal protection under the Constitution, the context of these arguments are based on their claim that the ATA violates and diminishes the protections under R.A. No. 9344 or the Juvenile Justice and Welfare Act; R.A. No. 9745, or the Anti-Torture Act of 2009; and R.A. No. 10353, or the Anti-Enforced or Involuntary Disappearance Act of 2012, which protections they claim are guaranteed by the Constitution. Further, a careful reading of this petition shows no allegation or claim of a supposed violation of the freedom of speech, expression, or their cognate rights.

Meanwhile, the Yerbo petition should be dismissed for being fundamentally flawed both in form and substance. The Yerbo petition has utterly failed to comply with the requirements of form, whether under Rule 56 or Rule 65 of the Rules, and has not raised any substantial argument that would merit this Court's attention. While the petitioner claims that the ATA uses an overbroad definition of terrorism, he does not discuss his specific reasons why he believes it to be so and does not provide arguments in support thereof, stating merely that this claim was "[a]ccording to Human Rights Watch."[139] He also included a statement that "[t]he new counterterrorism law could have a horrific impact on basic civil liberties, due process, and the rule of law," but attributes the same to a

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person named "Phil Robertson"[140] with no proper reference therefor and similarly, no particular reasons why be thinks this is so. The petitioner would go on to cite statements and declarations of the Human Rights Watch and Phil Robertson two more times, seemingly drawing around these sources as the basis of his petition. The foregoing is indicative of what the petitioner will eventually submit as his "arguments" against the ATA, because after an exceptionally terse discussion on why Section 29 runs afoul of Section 2, Article III of the Constitution, the petitioner merely averred that:

> As to his other grounds for seeking the nullity of certain provisions and/or sections of RA No. 11479, herein petitioner adopts the legal arguments and diseussions of his co-petitioners for lack of time since he Avas told by LBC and JRS Express that it takes at least two (2) weeks for his documents/mail matter to reach Metro Manila.[141] (Emphasis supplied)

To the Court's mind, this explanation, and more so the failure to state any substantial argument by merely adopting those in the other petitions, is simply unacceptable and shows utter disrespect to the Court. Considering that this Court is a court of last resort, it should not waste its time and resources in entertaining petitions containing averments such as the one quoted above.

Hierarchy of Courts, Direct Recourse, and the Doctrine of Transcendental Importance

Relative to the exercise of judicial review, this Court must also delve on the propriety of filing these 37 petitions directly with this Court. Case law has shown that this Court may relax procedural requirements, particularly the rule on standing, on account of transcendental importance — the Court will do the same for this case, as the resolution of its merits is of paramount importance since it immediately affects the fundamental rights of the people. For indeed, when those who challenge the official act are able to craft an issue of transcendental significance to the people, this Court can exercise its sound discretion and take cognizance of the suit in the manner necessary for the just resolution of the case.[142]

Under Section 5(1) of Article VIII, this Court has original jurisdiction over petitions for certioriari, prohibition, and mandamus. In GIOS-SAMAR v. Department of Transportation and Communications[143] (GIOS-SAMAR), the Court held that:

> The 1987 Constitution and the Rules of Court promulgated, pursuant to its provisions, granted us original jurisdiction over certain cases. In some instances, this jurisdiction is shared with Regional Trial Courts (RTCs) and the Court of Appeals (CA). However, litigants do not have unfettered discretion to invoke the Court's original jurisdiction. The doctrine of hierarchy of courts dictates that, direct recourse to this Court is allowed only to resolve questions of law, notwithstanding the invocation of paramount or transcendental importance of the action. This doctrine is not mere policy, rather, it is a constitutional filtering mechanism designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land.[144] (Emphasis and underscoring supplied)

In The Diocese of Bacolod v. Commission on Elections,[145] the Court enumerated the instances where deviation from the strict application of the doctrine of hierarchy of courts is permitted. These include: (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) when the issues involved are of transcendental importance; (3) in cases of first impression; (4) when the constitutional issues raised are better decided by the Court; (5) when the exigency or time element presented in the case cannot be ignored; (6) when the petition filed reviews the act of a constitutional organ; (7) when petitioners have no other plain, speedy, and adequate remedy in the ordinary course of law; and (8) when the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[146] Under any of these circumstances, a petitioner may be permitted to seek direct resort

to this Court through certiorari and/or prohibition under Rule 65 of the Rules.

In the present petitions, there are serious and compelling reasons justifying direct resort to this Court. Genuine issues involving the constitutionality of the ATA are raised in the petitions which must be immediately addressed. Various constitutional provisions safeguarding the right to free speech and its cognate rights have been invoked in challenging the law. The far-reaching implications, which encompass both present and future generations, if these constitutional issues remain unresolved, warrant the immediate action of this Court. While the intention of the legislature in enacting the ATA is noble and laudable, this Court cannot simply brush aside the perceived threats to fundamental rights that petitioners raised. The necessity of resolving these pressing issues affecting fundamental rights is clear.

To be clear, parties cannot acquire direct audience before this Court by merely invoking the doctrine of transcendental importance if the matter they bring raises issues of fact which require the presentation of evidence. As recounted in GIOS-SAMAR, the term "transcendental importance" was first used in Araneta v. Dinglasan,[147] a case which involved no dispute as to the facts.[148] Therefore, there was no impediment for a direct recourse to this Court. In similar cases such as Angara v. Electoral Commission[149] and Chavez v. Public Estates Authority[150] (Chavez v. PEA), the Court affirmed that it is when there are no factual questions - or when there are extant factual issues but they are not material to the constitutional issue - that direct recourse to this Court under Section 5, Article VIII of the Constitution may be permitted. Otherwise, the hierarchy of courts must be observed. Thus, in Chavez v. PEA, the Court declared:

> The principle of hierarchy of courts applies generally to cases involving factual questions. As it is not a trier of facts, the Court cannot entertain cases involving factual issues. The instant case, however, raises constitutional issues of transcendental importance to the public. The Court can resolve this case without determining any factual issue related to the case. Also, the instant case is a petition for mandamus which falls under the original jurisdiction of the Court under Section 5, Article VIII of the Constitution. We resolve to exercise primary jurisdiction over the instant case.[151] (Emphasis supplied)

Consequently, inasmuch as this Court is not a trier of facts, petitions which purport to be facial challenges but are actually riddled with material questions of fact cannot be ordinarily entertained. A loose invocation of transcendental importance is not sufficient. Thus, in GIOS-SAMAR, the Court ruled that:

> x x x [T]he transcendental importance doctrine does not clothe us with the power to tackle factual questions and play the role of a trial court. The only circumstance when we may take cognizance of a case in the first instance, despite the presence of factual issues, is in the exercise of our constitutionally-expressed task to review the sufficiency of the factual basis of the President's proclamation of martial law under Section 18, Article VII of the 1987 Constitution.[152]

Nevertheless, as will be shown, infra, the consolidated petitions present an actual case or controversy concerning the effects of certain provisions of the ATA on the freedom of expression and its cognate rights. As observed, the Court may take up and facially pass upon those questions of constitutionality with no need to delve into extant factual issues. To that extent, the hierarchy of courts need not be strictly observed, permitting direct recourse to this Court.

Facial and As-Applied Challenges in Constitutional Litigation

In constitutional litigation, two modes of challenging the constitutionality of a statute have emerged: "as-applied" and "facial." Petitioners came to this Court through the latter mode, seeking to nullify the entirety of the ATA

even before it could be enforced.

In an as-applied challenge, the question before the Court is the constitutionality of a statute's application to a particular set of proven facts as applied to the actual parties. It is one "under which the plaintiff argues that a statute, even though generally constitutional, operates unconstitutionally as to him or her because of the plaintiffs particular circumstances."[153] Put in another way, the plaintiff argues that "a statute cannot be applied to [him or] her because its application would violate [his or] her personal constitutional rights."[154] Thus, an as-applied challenge is strictly predicated on proven facts particular to an individual and his or her relation to the statute in question. If the facts so warrant, "case severability" may occur, where the Court "severs" or separates the unconstitutional applications of the statute from the constitutional applications of the same statute,[155] but the statute itself may not be completely struck down. That said, it is conceivable that a case which starts out as an as-applied change may eventually result in the total invalidation of the statute if, in the process, the Court is satisfied that it could never have any constitutional application.[156] Meanwhile, a facial challenge seeks the entire invalidation of a statute because, in the words of United States v. Salerno[157] (Salerno) as cited in Estrada v. Sandiganbayan[158] (Estrada) "no set of circumstances exists under which the [statute] would be valid."[159]

Philippine jurisprudence has described a facial challenge as "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."[160] As will be demonstrated, the originally American concepts of "as-applied" and "facial" challenges have not, over time, been understood in Philippine jurisprudence in the same way as in American case law.

Scholars point to the 1912 case of Yazoo & Mississippi Valley Railway Co. v. Jackson Vinegar Co[161] (Yazoo) as one the earliest cases where the U.S. Supreme Court used an "as-applied" analysis. In this case, the railway company argued that a Mississippi statute "imposing a penalty on common carriers for failure to settle claims for lost or damaged freight in shipment within the state within a reasonable specified period" is unconstitutional under the Due Process and Equal Protection clauses of the Fourteenth Amendment. The U.S. Court was not convinced, finding that the statute merely provided a "reasonable incentive for the prompt settlement, without suit, of just demands of a class admitting of special legislative treatment." The railway company had also argued that if the statute was void as to them, then it is void in toto or as to all other possible cases where the statute might apply. The U.S. Supreme Court disagreed, opining as follows:

> x x x [T]his Court must deal with the case in hand, and not with imaginary ones. It suffices, therefore, to hold that, as applied to cases like the present, the statute is valid. How the state court may apply it to other cases, whether its general words may be treated as more or less restrained, and how far parts of it may be sustained if others fail, are matters upon which we need not speculate now.[162] (Emphasis and underscoring supplied)

Thus, in Yazoo, the U.S. Supreme Court reaffirmed the traditional principle on standing that it cannot rule upon the rights of individuals not before it. It can only grant relief to a plaintiff for matters that are of interest to him. The case, therefore, upheld the principle that constitutional rights are generally understood to be "personal and may not be asserted vicariously."[163]

In the 1940 case of Thornhill v. Alabama,[164] however, the U.S. court first suggested that the traditional rules on standing might be different in the context of the First Amendment.[165] In that case, one Byron Thornhill, a union member of the Brown Wood Preserving Company, was on strike and was proven to have told Clarence Simpson, a non-union member, that "they were on strike, and did not want anybody to go up there to work." On said facts, Thornhill was found guilty of a misdemeanor under Section 3448 of the 1923 Alabama State Code, which prohibited "go[ing] near to or loiter[ing] about the premises or place of business of [another] person x x x with the

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intent of influencing, or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by such persons, firm, corporation, or association x x x x." The U.S. Supreme Court reversed Thornhill's conviction and ruled that Section 3448 was facially invalid based on the overbreadth doctrine, viz.:

> Proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas.... [The] threat [of censorship] is inherent in a penal statute, like that in question here, which does not aim specifically at evils within the allowable area of state control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press.... An accused, after arrest and conviction under such a statute, does not have to sustain the burden of demonstrating that the State could not constitutionally have written a different and specific statute covering his activities as disclosed by the charge and the evidence introduced against him.[166] (Emphases and underscoring supplied)

Thus, it was in Thornhill that the U.S. Supreme Court implicitly recognized the ramifications of the overbreadth doctrine to standing. This was later emphasized in Broadrick v. Oklahoma,[167] viz.:

> x x x [T]he Court has altered its traditional rules of standing to permit - in the First Amendment area - "attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity." Dombrowski v. Pfister, 380 U. S., at 486. Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression. (Emphasis and underscoring supplied)

Therefore, in contrast to an as-applied challenge, a facial challenge permits third-party standing before the court.

Later, in Salerno, it was said that "a facial challenge to a legislative Act is the most difficult challenge to mount successfully, since the challenge must establish that no set of circumstances exists under which the [statute] would be valid."[168] In Salerno, which this Court cited in Estrada, the question before the U.S. Supreme Court was whether the Bail Reform Act of 1985 may be facially invalidated for violating the Fifth and Eight Amendments of the U.S. Constitution. The U.S. Court said: "[t]he feet that the Bail Reform Act might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment."[169]

Since Salerno, U.S. jurisprudence took on a trajectory which this Court has not pursued. In 2015, the U.S. Supreme Court clarified in City of Los Angeles v. Patel[170] that facial challenges are allowed under the First Amendment,[171] Second Amendment,[172] the Due Process Clause of the Fourteenth Amendment,[173] and the Foreign Commerce Clause.[174] One scholar notes that a facial invalidation even occurred under the Equal Protection Clause in the 1954 case of Brown v. Board of Education.[175] Another observes that Separation of Powers may also be a basis,[176] citing INS v. Chadha[177] and Clinton v. City of New York.[178]

In Philippine jurisprudence, however, the Court has consistently adhered to the scope of facial challenges relative only to free speech cases.

One of the earliest instances where this Court applied a "facial" analysis of the constitutionality of a statute was the 1969 case of In The Matter Of Petition For Declaratory Relief Re: Constitutionality Of Republic Act 4880.[179] At issue were the additions made by R.A. No. 4880 to the Revised Election Code prohibiting early nominations of candidates and limiting the campaign period. Petitioners directly resorted to this Court, arguing that the new sections violated the freedoms of speech, assembly, and association. Although a majority of the Court's members viewed R.A. No. 4880 as overly broad, it was not enough to satisfy the 2/3 majority to strike down the law as required by Section 10, Article VIII of the 1935 Constitution. Still, the ponencia made the

important point that facial challenges have been permitted only in freedom of speech cases, citing Thornhill, among others, viz.:

> x x x [W]e now consider the validity of the prohibition in Republic Act No. 4880 of the too early nomination of candidates and the limitation found therein on the period of election campaign or partisan political activity alleged by petitioners to offend against the rights of free speech, free press, freedom of assembly and freedom of association. In effect what we are asked to do is to declare the act void on its face, no evidence having been introduced as to its actual operation. There is respectable authority for the court having the power to so act. Such fundamental liberties are accorded so high a place in our constitutional scheme that any alleged infringement manifest in the wording of statute cannot be allowed to pass unnoticed.[180] (Emphases and underscoring supplied)

The concept of a "facial challenge" did not appear again until Associate Justice Vicente V. Mendoza applied it in his Separate Opinion in the 2000 case of Cruz v. Secretary of Environment,[181] in which he said:

> The only instance where a facial challenge to a statute is allowed is when it operates in the area of freedom of expression. In such instance, the overbreadth doctrine permits a party to challenge the validity of a statute even though as applied to him it is not unconstitutional, but it might be if applied to others not before the Court whose activities are constitutionally protected. Invalidation of the statute "on its face" rather than "as applied" is permitted in the interest of prevcntiim a "chilling" effect on freedom of expression. x x x[182] (Emphases and underscoring supplied)

Justice Mendoza reiterated his position in his Concurring Opinion in Estrada. In the main opinion of that case, the Court formally adopted the doctrine that facial challenges are limited only to freedom of expression cases. Since then, Philippine jurisprudence has developed to clarify the scope of a facial challenge, but in all cases, the Court has not deviated from the principle that it is permitted only when freedom of expression and its cognate rights are affected. In Romualdez v. Sandiganbayan,[183] the Court initially declared that penal statutes cannot be the subject of facial invalidation, viz.:

> Indeed, an "on-its-face" invalidation of criminal statutes would result in a mass acquittal of parties whose cases may not have even reached the courts. Such invalidation would constitute a departure from the usual requirement of "actual case and controversy" and permit decisions to be made in a sterile abstract context having no factual concreteness. In Younger v. Harris,[184] this evil was aptly pointed out by the U.S. Supreme Court in these words:
>
> "[T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative' remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, x x x ordinarily results in a kind of case that is wholly unsatisfactory, for deciding constitutional questions, whichever way they might be decided."
>
> For this reason, generally disfavored is an on-its-face invalidation of statutes, described as a "manifestly strong medicine" to be employed "sparingly and only as a last resort." In determining the constitutionality of a statute, therefore, its provisions that have allegedly been violated must be examined in the light of the conduct with which the defendant has been charged.[185] (Emphasis sand underscoring supplied, italics in the original)

The above ruling was then reiterated in Spouses Romualdez v. Commission on Elections,[186] where it was stressed that in Philippine jurisdiction, the Court has not until that point declared any penal law unconstitutional based on the void-for-vagueness the doctrine, which holds "that a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application."[187] Former Senior Associate

Justice Antonio T. Carpio dissented, explaining that the overbreadth and vagueness doctrines are indeed inapplicable to penal statutes for purposes of mounting a facial challenge, but only when such penal statutes do not involve free speech.

The applicability of facial challenges of penal statutes was brought up again in Southern Hemisphere,[188] where this Court said:

> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.
>
> This rationale does not apply to penal statutes. Criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.
>
> The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. (Citations omitted; emphasis supplied; underscoring in the original)

However, Justice Carpio's dissent in Spouses Romualdez v. Commission on Elections was adopted by the Court in Disini, where the Court categorically stated that "when a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable." Thus, in Disini, the Court applied a facial analysis in invalidating Section 5 of the Cybercrime Prevention Act based on the void-for-vagueness doctrine, viz.:

> A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if lie claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute.
>
> The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence. x x x
>
> Section 5 with respect to Section 4(c)(4) is unconstitutional. Its vagueness raises apprehension on the part of internet users because of its obvious chilling effect on the freedom of expression, especially since the crime of aiding or abetting ensnares all the actors in the cyberspace front in a fuzzy way. What is more, as the petitioners point out, formal crimes such as libel are not punishable unless consummated. In the absence of legislation tracing the interaction of nelizcns and their level of responsibility such as in other countries, Section 5, in relation to Section 4(c)(4) on Libel, Section 4(c)(3) on Unsolicited Commercial Communications, and Section 4(c)(2) on Child Pornography, cannot stand scrutiny. (Citations omitted; emphasis and underscoring supplied)

Only a few months alter Disini, the Court said in Imbong that facial challenges may be launched to assail the validity of statutes which concern cognate rights to the freedom of speech, viz.:

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> In United States (US) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only protected speech, but also all other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.
>
> In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statues, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights.[189] (Emphases and underscoring supplied)

On this score, the inclusion of the phrase "other fundamental rights" has been construed by petitioners as including all other rights in the Constitution. Thus, they suppose that the ATA may be facially challenged for violating, inter alia, due process, the right to be presumed innocent, or the right to bail. However, based on its peculiar context (i.e., assertion of religious freedom), it is highly apparent that the phrase "other fundamental rights", as explained in Imbong, was clearly in reference to freedom of expression and its cognate rights (such as religious freedom) in juxtaposition to "strictly penal statutes".

In sum, the prevailing Philippine jurisprudence is that facial challenges on legislative acts are permissible only if they curtail the freedom of speech and its cognate rights based on overbreadth and the void-for-vagueness doctrine. Facial challenges have not been recognized as applicable to other provisions of the Constitution or the separation of powers. On this point, it is worth repeating that Philippine jurisprudence on facial challenges developed in a different trajectory from the American experience since Salerno. And the Court, at this time, finds it improper to expand the scope of facial challenges to all other constitutional rights, as it is not even material, much more necessary for the just disposition of this already complex case. Moreover, it appears that if such position is adopted at this time, the judiciary will be put in a precarious position where it may be inundated with numerous petitions to invalidate statutes as soon as they come into effect.

Furthermore, as a rule, facial challenges are disfavored. As explained by the U.S. Supreme Court in Washington State Grange v. Washington State Republic Party:[190]

> Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of "premature interpretation of statutes on the basis of factually barebones records."[191] Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither "anticipate a question of constitutional law in advance of the necessity of deciding it" nor "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied."[192] Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that "[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people."[193] (Citations omitted)

Thus, the Court remains cognizant of the dangers of favoring facial challenges that Washington State Grange identified. A contrary judicial policy may affect the balance which the separation of powers seeks to keep and may effectively turn the Court into a "third chamber of Congress".

Considering the above discussion, the Court grants due course to these consolidated petitions as permissible facial challenges only in relation to the provisions of the ATA which involve and raise chilling effects on freedom of expression and its cognate rights in the context of actual and not mere hypothetical facts. These permissible issues for facial analysis are, as adopted from the Court's Advisory dated January 5, 2021 are:

> 1. Whether Section defining and penalizing the crime of "terrorism" is void for vagueness or overbroad in violation of the constitutional right to x x x free speech and expression;
>
> 2. Whether Section [5, 6, 8, 9, 10, and 12] defining and penalizing threats to commit terrorism, [training terrorism], x x x proposal, inciting to terrorism, [training as material support], are:
> a. Void for vagueness or overbroad in violation of the [freedom of speech and expression x x x and freedom of association] x x x[194]

The Court shall also rule upon the following issues which relate to provisions of the ATA that have a chilling effect on speech in the context of the actual facts presented in this case, viz.:

> 6. Whether the following powers of the ATC are unconstitutional:
> a. Power to designate terrorist individuals, groups and organization under Section 25 x x x
>
> b. Power to approve requests for designation by other jurisdictions or supranational jurisdictions x x x
>
> c. Power to apply for the proscription of terrorist individuals, groups, and organizations under Section 26 x x x
>
> d. Power to authorize arrest and detention without judicial warrant based on mere suspicion under Section 29 x x x

7. Whether Section 28 of R.A. 11479 on preliminary and permanent orders of proscription x x x unconstitutionally punishes mere membership in an organization

8. Whether the detention period under Section 29 of R.A. 11479 contravenes the Constitutional, the Revised Penal Code, the Rules of Court, and international obligations against arbitrary detention;

x x x x

11. Whether Section 49 on the extra-territorial application of R.A. 11479 violates the freedom of association x x x x[195]

Finally, the Court also finds it prudent to discuss the issue of whether the House of Representatives gravely abused its discretion by passing HB No. 6875 (consolidated version of the house bills to amend the Human Security Act) in violation of the constitutionally-prescribed procedure.[196]

The Court, in its sound discretion, delimits the issues in these cases accordingly, and hence finds it proper to refrain from adjudicating all other issues that do not relate to the freedom of expression and its cognate rights, or those that are too speculative and raise genuine questions of fact that require the submission of concrete evidence, such as:

> - Whether Sections x x x [7, 13] to 14 defining and penalizing threats to commit terrorism, planning, training, preparing, and facilitating terrorism, conspiracy, proposal, inciting to terrorism, material support, and other related provisions, are:
>
> a.
>
> x x x
>
> b.
>
> violative of the prohibition against ex post facto laws and bills of attainder.
>
> - Whether the uniform penalties for all punishable acts under Sections 4 to 14 violate the constitutional proscription against the imposition of cruel, degrading or inhuman punishment;

x x x x

- Whether judicial authorization to conduct surveillance under Section 17 x x x forecloses the remedies under the rules on amparo and habeas data;

- Whether the following powers of the ATC are unconstitutional:

x x x x

b.

power to approve requests for designation by other jurisdictions or supranational jurisdictions for violating the 1951 Refugee Convention and its 1967 Protocol

x x x x

c.

power to adopt security classifications for its records under Section 45 for violating the right to information;

f.

power to establish and maintain comprehensive database information systems on terrorism, terrorist activities and countcrtcrrorism operations under Section 46 (c) for violating the constitutional rights to due process and privacy of communication and correspondence;

g.

power to grant monetary rewards and other incentives to informers under Section 46 (g) for lack of clear parameters; and

h.

power to require private entities and individuals to render assistance to the ATC under Section 46 (m) for violating the prohibition against involuntary servitude.

x x x x

- Whether the restriction under Section 34 violates the constitutional rights to travel, against incommunicado detention, to bail and R.A. No. 9745 (Anti-Torture Act of 2009);

x x x x

- Whether Section 56 repealing R.A. No. 9372 (Human Security Act of 2007), violates the constitutional mandate to compensate victims of torture or similar practices and right to due process;

- Whether R.A. No. 11479 violates the Indigenous Peoples and Moros' rights to self-determination and self-governance under the Constitution;

These shall be resolved in the proper actual case entailing the adjudication of questions of feet and the reception of evidence which the Court is institutionally incapable to perform. The Court must emphasize, however, that this holding, does not, will not, and should not preclude subsequent challenges by individuals or groups who may, in the future, eventually come before this Court once again to assail the constitutionality of the unresolved provisions of the law.[197]

R.A. No. 11479 cannot be declared unconstitutional in its entirety.

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Petitioners aver that the essential provisions animating the ATA are impaired by constitutionality which would leave the law without any reason to exist since its legislative purpose can no longer be served.[198] They suggest that without Section 4, the crimes penalized in Sections 5 to 12 will lose their meaning as they are all dependent on its definition of what constitutes terrorism.[199] Meanwhile, the OSG claims that because of the separability clause of the ATA, the rest of the provisions will survive.[200] The separability clause of the ATA states that:

> If for any reason any part or provision of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall remain and continue to be in full force and effect.[201]

This issue is resolved by the fact that the Court does not find the essential provisions of the ATA, particularly the definition of terrorism under Section 4 of the ATA, absolutely unconstitutional, as will be explained in full below.

Section 4 and Related Offenses

Having circumscribed the scope of issues that should be the appropriate subjects for decision in this case due to the nature of the petitions filed against the ATA, the standing of petitioners, and the transcendental significance of the matters raised, the Court now turns to resolve the constitutional challenges involving Section 4, as well as those specific to its related offenses.

Petitioners maintain that Section 4 of the ATA, which defines terrorism as a crime, is void for vagueness and overbreadth. They claim that the provision violates due process for failing to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid, and gives law enforcers unbridled discretion in carrying out its provisions, thereby becoming an arbitrary flexing of the government muscle.[202] The perceived imprecision in the language of Section 4 is allegedly aggravated by the phrase "regardless of the stage of execution", which they interpret as punishing any kind of action including expressions of thought.[203]

In particular, petitioners contend that Section 4 (a) is vague as the act is punished so long as there is intent to "cause death or serious bodily injury to any person." This allegedly gives law enforcers free rein to charge people as terrorists by simply claiming that an act was committed with intent to cause death or serious bodily injury regardless of the outcome.[204]

Petitioners also argue that Section 4 (b) is vague, since "extensive damage or destruction" has no ascertainable standards under the ATA, as well as overbroad, because the same phrase is not limited to physical or material damage. Thus, petitioners insist that Section 4 (b) can penalize legitimate criticism as "terrorism" because it may extensively damage the reputation of the government.[205]

Section 4 (c) is also being assailed for being vague and overbroad. Petitioners aver that it is vague because the terms "extensive" and "interference" are not defined. Without any objective standard to guide police officers, petitioners maintain that these stale agents will have to rely purely on their own instincts, perceptions, or predilections. The provision also allegedly suffers from overbreadth because the failure to define the parameters of the term "interference" may cover any form of dissent, thereby chilling constitutionally protected speech or assemblies expressing grievances against the government.[206]

Petitioners similarly interpret Section 4 (d) and (e) as vague and overbroad due to the perceived imprecision of certain phrases such as "of biological, nuclear, radiological or chemical weapons" and "weapons, explosives" and the absence of standards in narrowing the scope of prohibited acts. In addition, Section 4 (e) is also deemed to be overbroad because the phrase "dangerous substances" may cover anything harmful to humans, including lawful substances.[207]

With regard to the proviso of Section 4, petitioners insist that without a clear definition of the phrases "serious risk to public safety" and "serious physical harm", it gives a presumption that any act that can be characterized

with "intent" to cause a certain measure of "risk" or "harm" which constitutes as terrorism. Petitioners interpret the argument of the OSG that the proviso is a matter of defense that the accused has the burden to prove as repugnant to the constitutional presumption of innocence.[208]

Petitioners further argue that the vagueness of Section 4 cannot be remedied by the IRR as this would constitute an undue delegation of legislative power.[209] They also submit that the vague formulation of Section 4 cannot be saved by invoking international legal instruments.[210]

Notably, the overarching issue relative to Section 4 before the Court, as summarized in the Court's Advisory for the oral arguments is whether the challenged provision is void for vagueness and overbroad.

Section 4 has two distinct ports - the main part provides the actus reus, the mens rea, and the corresponding imposable penalty for the crime of terrorism, while the second part is the proviso.

Section 4 of the ATA provides:

> Section 4. Terrorism. - Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:
>
> (a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;
>
> (b) Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property;
>
> (c) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;
>
> (d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and
>
> (e) Release of dangerous substances, or causing fire, floods or explosions
>
> when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code": Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety. (Emphasis supplied)

When deconstructed, Section 4 of the ATA consists of two distinct parts: the main part and the proviso.

The main part of Section 4 provides for the actus reus, the mens rea, and corresponding imposable penalty for the crime of terrorism; in this regard, the main part is thus subdivided into three components. The first component enumerates the conduct which consists of the actus reus of terrorism, i.e., Section 4(a) to (e), or the overt acts that constitute the crime. The second component enumerates the purposes or intents of any of the actus reus, i.e., to intimidate the general public or a segment thereof; to create an atmosphere or spread a message of fear; to provoke or influence by intimidation the government or any international organization; to seriously destabilize or

destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety. This is the mens rea component of terrorism, which is inferred from the nature and context of the actus reus. The third component provides the imposable penalty for the crime of terrorism, i.e., life imprisonment without the benefit of parole and the benefits of R.A. No. 10592.[211]

On the other hand, the proviso, if rephrased into its logical inverse, purports to allow for advocacies, protests, dissents, stoppages of work, industrial or mass actions, and other similar exercises of civil and political rights to be punished as acts of terrorism if they are "intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."

On the basis of this deconstruction, it is evident that the main part chiefly pertains to conduct, while the proviso, by clear import of its language and its legislative history, innately affects the exercise of the freedom of speech and expression. Hence, considering the delimitation pursuant to the facial analysis as above explained, the Court's ruling shall focus on (albeit not exclusively relate to) the proviso of Section 4 in light of its chilling effect to petitioners in this case.

Tests of Constitutionality in Facial Challenges and Guiding Premises in Statutory Construction in the Analysis of Section 4

It is a long-standing principle in statutory construction that every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution.[212] The grounds for nullity must be clear and beyond reasonable doubt.[213] Thus, in passing upon the validity of a law, the Court will afford some deference to the statute and places a heavy burden on the party assailing the law to prove the basis for its invalidity by demonstrating that there is a clear and unequivocal breach of the Constitution, and not one that is speculative or argumentative.[214]

The Constitution, however, abhors prior restraints on speech.[215] Thus, a law does not enjoy the presumption of constitutionality if it restrains speech.[216] Instead, a presumption of unconstitutionality arises. This presumption proceeds from the constitutional command under Section 4, Article III that no law shall be passed abridging free speech, expression, and their cognate rights. And this mandate, in turn, is actualized by the Court through the many iterations of the dictum that said rights are accorded preference or a high place in the constitutional scheme that any alleged infringement manifest in the language of the statute cannot be allowed to pass unnoticed.[217] In such cases, therefore, it becomes the burden of government to establish the law's constitutionality. Instructive on this rule is the separate opinion of Associate Justice Marvic Mario Victor F. Leonen in Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City:[218]

> Fundamental rights which give rise to Strict Scrutiny include the right of procreation, the right to marry, the right to exercise First Amendment freedoms such as free speech, political expression, press, assembly, and so forth, the right to travel, and the right to vote.
>
> Because Strict Scrutiny involves statutes which cither classifies on the basis of an inherently suspect characteristic or infringes fundamental constitutional rights, the presumption of constitutionality is reversed; that is, such legislation is assumed to be unconstitutional until the government demonstrates otherwise. The government must show that the statute is supported by a compelling governmental interest and the means chosen to accomplish that interest are narrowly tailored.[219] (Emphases and underscoring supplied)

The Court has thus declared that any restriction to the freedom of speech or expression should be treated as an exemption[220] - any act that chills or restrains speech is presumed invalid and any act that chills or restrains

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speech is hobbled by the presumption of invalidity and should be greeted with furrowed brows.[221]

The Court has usually approached the analysis of whether there is an impermissible restraint on the freedom of speech based on the circumstances of each case and, from there, determined the appropriate test with which to evaluate the government issuance or act that constituted such restraint.[222] In this regard, it should be noted that in Romualdez v. Sandiganbayan[223] and Spouses Romualdez v. Commission on Elections,[224] the Court said that "the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing 'on their faces' statutes in free speech cases or, as they are called in American law, First Amendment cases." Thus, the Court shall endeavor to apply these doctrines in light of the facial challenge on the proviso of Section 4 as petitioners themselves raise.

Under the vagueness doctrine, a law is constitutionally defective when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary Hexing of the Government muscle.[225]

Closely related to the vagueness doctrine[226] is the overbreadth doctrine, under which a law may be struck down as unconstitutional if it achieves a governmental purpose by means that are unnecessarily broad and thereby invade the area of protected freedoms.[227] In Philippine jurisprudence, originally, it had special application only to free-speech cases under non-penal laws.[228] However, the prevailing doctrine, as espoused in Disini, is that penal statues may be facially challenged under the overbreadth doctrine to counter the "chilling effect" on protected speech that comes from statutes violating free speech because a person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime.[229] As distinguished from the vagueness doctrine, the overbreadth doctrine assumes that individuals will understand what a statute prohibits and will accordingly refrain from that behavior, even though some of it is protected.[230]

Meanwhile, the strict scrutiny standard is a two-part test under which a law or government act passes constitutional muster only if it is: (1) necessary to achieve a compelling State interest; and (2) the least restrictive means to protect such interest or narrowly tailored to accomplish said interest.[231] Unlike the overbreadth doctrine, it is not limited to free speech cases. It is employed by the courts when the law or government act interferes with other basic liberties guaranteed under the Constitution.[232] When the freedom of speech is involved, strict scrutiny has been applied when the restraint on speech is content-based, i.e., the restriction is based on the subject matter of the utterance or speech.[233]

In this relation, a content-based prior restraint on speech is constitutionally permissible if it passes the clear and present danger rule, which rests on the premise that speech may be restrained because there is substantial danger that the speech will likely lead to an evil which the government has a right to prevent. This rule requires that the evil consequences sought to be prevented must be substantive, "extremely serious and the degree of imminence extremely high."[234] The latest iteration of the clear and present danger rule is the "Brandenburg test", which the U.S. Supreme Court articulated in the case of Brandenburg v. Ohio,[235]

explaining that "constitutional guarantees of free speech and tree press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[236]

Thus, the Court shall proceed from the foregoing analytical framework, as will be seen below.

The main part of Section 4 of the ATA cannot be assailed through a facial challenge.

To recall, the issues raised by petitioners against the main part of Section 4, i.e., that it is void for vagueness, that it is overbroad, or that it fails to meet the strict scrutiny test, assume that what are sought to be punished therein is speech. This assumption is inaccurate.

As had been observed above, the main part of Section 4 chiefly pertains to conduct. It is plain and evident from the language used therein that the enumeration refers to punishable acts, or those pertaining to bodily movements that tend to produce an effect in the external world, and not speech. The acts constitutive of the crime of terrorism under paragraphs (a) to (e) are clearly forms of conduct unrelated to speech, in contradistinction with the enumeration in the proviso, which are forms of speech or expression, or are manifestations thereof.

In light of the foregoing considerations, the perceived vagueness and overbreadth of the main part of Section 4 may be inconsistent with the delimited facial challenge framework as herein discussed. Nonetheless, to guide the bench, bar and public, the Court deems it prudent to clarify some of petitioners' mistaken notions on the same. As shown below, none of petitioners have amply demonstrated, even prima facie, its facial unconstitutionality. Hence, the presumption of constitutionality of said main part - being a primarily non-speech provision - must stand. Proceeding therefrom, it is instructive to first examine the general definition of terrorism.

Terrorism, as defined in Section 4 of the ATA, is not impermissibly vague.

The Court must reiterate, for purposes of this discussion, that there is no consensus definition of terrorism in the international community. Even the UN Office on Drugs and Crime (UNODC) notes that the 2011 judgment of the Special Tribunal for Lebanon, which had declared that there exists a customary definition of transnational terrorism, has been widely criticized.[237] Admittedly, this lack of consensus in the international community has presented challenges in the international effort to stop terrorism.

The absence, however, of an internationally-accepted standard definition of terrorism is of no moment and should not concern the Court. The UNODC itself is aware that under the principle of incorporation, "domestic law will prevail in practice, including for constitutional reasons."[238] For this reason, the Court has approached the definitional issue primarily from the perspective of Philippine constitutional law and criminal law theory. There will, of course, be a time when international law will come into play with some of the other issues of this case. But for purposes of Section 4 of the ATA, what the Court is confronted with is a question involving Philippine constitutional and criminal law.

That said, the Court does not agree that Section 4 deserves total invalidation due to the perceived vagueness and imprecision of the definition of terrorism as a crime, as provided in the main part of Section 4.

As previously demarcated, the main part of Section 4 has three components; with the first component providing the actus reus, and the second component providing the mens rea. It is from these first two components - the actus reus and the mens rea - as expressed in the main part of Section 4, that the crime of terrorism should be construed.

Thus, in the case of Section 4(a), it should be clarified that the crime proven is not terrorism if all that the prosecution is able to prove is that the accused committed an act intended to cause death, serious bodily injury, or danger to a person's life. Section 4(a) does not punish the very act of intending death, serious bodily injury, or danger to a person's life. Such a reading improperly dissects that portion of Section 4, and reads it in a vacuum;

one should not be completely impervious to terrorism's overarching concept which is, essentially, to cause or threaten to cause damage or harm of sufficient magnitude in order to achieve the actor's intended result/purpose, such as to intimidate the general public, create an atmosphere or spread a message of fear, or intimidate or destabilize the government. The same observation rings true for the acts mentioned under Section 4(b) to (e). The Court notes in this regard that neither the text nor the congressional records support petitioners' view as to the lack of clarity and preciseness in the definition of terrorism, as borne out by the following exchanges in the Senate:

> Senator Drilon. Mr. President, if we read the provision carefully, the acts enumerated in (A) to (E) would be punished when the purpose of such act, by its nature and context, is to intimidate or put fear except an actual bombing because that would be covered by other sections. It is just the purpose to induce government by force to do or to abstain from doing such an act. Our question here, Mr. President, what is the difference between this and the crime of grave threats under the Revised Penal Code?
>
> Senator Lacson. It is the purpose, Mr. President. A simple crime of grave threats without the purpose of sowing terrorism or committing terroristic acts, iba po iyon. We are always bound by the intent and purpose of the act.
>
> Senator Drilon. In other words, it is a national security issue that makes it an act of terrorism or not?
>
> Senator Lacson. Not necessarily, Mr. President.
>
> Senator Drilon. Yes, but...
>
> Senator Lacson. As we defined it and as the gentleman mentioned earlier, ito iyong Section 4, iyong fundamental. Ito po, "The purpose of such act, by its nature and context, is to intimidate, put in fear, force or induce the government or any international organization, or the public to do or to abstain from doing any act, or seriously destabilize or destroy the fundamental political economic or social structures of the country..."
>
> Senator Drilon. So, just in answer to my question, what distinguishes an ordinary crime of grave threat is the purpose of the offender in committing the crime.
>
> Senator Lacson. That is correct, Mr. President.
>
> Senator Drilon. So that, if it is for the purpose of intimidating, put in fear, force or induce the government or any international organization, or the public to do or abstain from doing an act, that is considered a terrorist act.[239] (Emphases and underscoring supplied)

In Valenzuela v. People of the Philippines,[240] the Court has stated that "as a postulate in the craftsmanship of constitutionally sound laws, it is extremely preferable that the language of the law expressly provide when the felony is produced", for "without such provision, disputes would inevitably ensue on the elemental question whether or not a crime was committed, thereby presaging the undesirable and legally dubious set-up under which the judiciary is assigned the legislative role of defining crimes."

A textual review of the main part of Section 4 shows that its first and second components provide a clear correlation and a manifest link as to how or when the crime of terrorism is produced. When the two components of the main part of Section 4 are taken together, they create a demonstrably valid and legitimate definition of terrorism that is general enough to adequately address the ever-evolving forms of terrorism, but neither too vague nor too broad as to violate due process or encroach upon the freedom of speech and expression and other fundamental liberties.

Petitioners say much about the supposed vagueness of many of the clauses or phrases in Section 4, such as "regardless of the stage of execution", "endangers a person's life", "extensive damage or destruction", "government or public facility, public place or private property", "extensive interference", "weapons and explosives", or "dangerous substances."[241] Petitioners ground the vagueness of these words and phrases on the

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fact that the ATA itself does not define them and consequently, deprives persons of "fair notice that his contemplated conduct is forbidden."[242] They contend that Section 4 is intentionally ambiguous to allow for operational expediency[243] and "encourages arbitrary and erratic arrests and convictions."[244]

The Court, once again, disagrees.

In Romualdez v. Sandiganbayan,[245] the Court said that "the absence of a statutory definition of a term used in a statute will not render the law 'void for vagueness,' if the meaning can be determined through the judicial function of construction."[246] Furthermore, in Caltex v. Palomar,[247] the Court said:

> Construction, verily, is the art or process of discovering and expounding the meaning and intention of the authors of the law with respect to its application to a given case, where that intention is rendered doubtful, amongst others, by reason of the fact that the given case is not explicitly provided for in the law (Black, Interpretation of Laws, p. 1).[248] (Emphasis and underscoring supplied)

In Estrada v. Sandiganbayan,[249] this Court explained that:

> The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. It must be stressed, however, that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld - not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act, it would be impossible to provide all the details in advance as in all other statutes. x x x[250] (Citations omitted; emphases and underscoring supplied)

Based on the foregoing, a law remains valid if the perceived vague terms used therein can be saved by proper judicial construction. After all, the phraseology/wording of penal laws are generally broad in nature. It is well-settled that penal laws, such as the ATA, inherently have an in terrorem effect which is not reason enough to invalidate such laws. Otherwise, the state may be restricted from preventing or penalizing socially harmful conduct.[251] Moreover, it is likewise settled that "lawmakers have no positive constitutional or statutory duty to define each and every word in an enactment, as long as the legislative will is clear, or at least, can be gathered from the whole act."[252] In reminding courts to take extra caution before annulling a law on the ground of vagueness or overbreadth, amicus curiae Former Chief Justice Reynato S. Puno explained that:

> This extra cautious approach is a recognition of the principle of separation of power where Congress is given the power to make laws, to set the policy of what is protected and unprotected conduct, a policy that is not interfered by the judiciary unless demonstrated as clearly violative of the tenets of the Constitution. Thus, courts set high barriers before allowing these challenges based on vagueness or overbreadth to succeed. In the words of this Court in David v. Arroyo, (G.R. No. 1713, et seq. May 3, 2006), viz: "... a facial challenge on the ground of overbreadth is the most difficult to challenge to mount successfully, since the challenges must establish that there can be no instance when the assailed law may be valid."[253] (Emphasis in the original)

To be invalidated, the law must be utterly vague on its face, such that it cannot be clarified by cither a saving clause or by construction.[254]

In Dans v. People,[255] as reiterated in Romualdez v. Sandiganbayan, the Court used a simpler test which consists merely of asking the question: "What is the violation?" Anything beyond this, the "how's" and the "why's," are evidentiary matters which the law itself cannot possibly disclose in view of the uniqueness of every case.[256] Based on these tests, petitioners failed to demonstrate that the same is impermissibly vague. To demonstrate, a person of common intelligence can understand that Section 4(a) punishes an "act intended to cause

death, serious physical injury, or danger to another person." He cannot, under the guise of "vagueness", feign ignorance and claim innocence because the law had not specified, in exacting detail, the instances where he might be permitted to kill or seriously endanger another person to intimidate the government. The same goes for all the other acts listed in Section 4(b) to (e) in conjunction with the mens rea components. Ultimately, how these terms will be construed will depend on the facts of a given case. In the absence of such facts, the Court cannot now come up with a formulaic understanding of such terms which could then be indiscriminately applied to future cases. Verily, sufficient leeway should be given to the courts for the conduct of judicial construction in relation to actual cases; and, it is in the context of actual cases that our relatively new jurisprudence on the subject of terrorism should be allowed to evolve.

The various general terms in Section 4 are not unconstitutionally vague.

In addition to the discussion above, the Court points out that a limiting construction may be imposed on a statute if it is "readily susceptible" to such a construction, such that the "text or other source of congressional intent identified a clear line that this Court could draw."[257]

A cursory examination of each of the supposedly general terms in the main part of Section 4 betrays no reasonable or justifiable basis to hold them as unconstitutionally vague. A few points to keep in mind:

Firstly, the Court is not without authority to draw from the various aids to statutory construction, such as the legislative deliberations, to narrowly construe the terms used in the ATA and thus limit their scope of application. For example, the phrase "engages in acts intended to" can be construed by the Court to simply refer to acts that cause or result in the specifically listed or enumerated acts (i.e., death, serious bodily injury, etc.). The phrase "endangers a person's life" in subsection (a), on the other hand, can be construed as a restatement of the contemplated scenarios of "death or serious bodily injury" in the same provision. In parallel, the extensive destruction caused to "government or public facility, public place, or private property," as stated in subsection (b), can be construed as contemplating the same severity of damage as that contemplated in critical infrastructure in subsection (c), and which critical infrastructure is in turn defined under Section 3(a). To mention, examples of terrorist acts in recent history are the Marawi siege and the Jolo bombings in 2019. At this juncture, and without precluding the evolution of jurisprudence through actual cases, it is safe to assume that anything less that fails to meet the standard of sufficient magnitude may not be properly categorized as terrorism as defined under the statute, but rather as mere ordinary crimes. Hence, the terms used in the purposes, such as "intimidation," "public emergency," "seriously undermine public safety," and "atmosphere" of fear, must all be understood in this context.

Secondly, the meaning of the other terms used in the main part of Section 4 can be found in jurisprudence as well as in dictionaries. For example, Black's Law Dictionary defines "bodily injury"[258] as "any physical or corporeal injury; not necessarily restricted to injury to the trunk or main part of the body as distinguished from the head or limbs; physical injury only; localized abnormal condition of the living body; injury caused by external violence;"[259] and "public place"[260] as "a place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighbouring public, among others."[261] Jurisprudence, on the other hand, defines "public safety"[262] as that which "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters,"[263] while the phrase "political structure"[264] has been used in

jurisprudence[265] in reference or relating to the government, its structure, and/or its administration.[266]

The phrase "regardless of the stage of execution" is not unconstitutionally vague.

In the same vein, it is further observed that Section 4 penalizes any of the enumerated acts under subsections (a) to (e) regardless of the stage of execution, i.e., attempted, frustrated, and consummated. An attempt to commit or the frustrated commission of any of the enumerated acts may be somehow regarded as inchoate crimes, i.e., crimes that were initiated but not completed, or acts that assist in the commission of another crime.[267] In foreign cases and legal literature, inchoate crimes are regarded as incomplete offences, but which are deemed to have been committed despite the non-completion of the substantive offense, or the target crime or ultimate offense sought to be achieved, and the non-realization of the intended harm.[268] They are punished as a preventative measure to curtail the occurrence and incidence of harm, particularly in cases "where there is a substantial likelihood of harm occurring, and where that harm is of a particularly egregious nature."[269]

Petitioners argue that since Section 4 punishes terrorism regardless of the stage of execution, "the mere thought and inception of an idea in a person is criminalized to be already an act of terrorism".[270] This argument, however, finds no support in criminal law theory and jurisprudence. No law can punish a man for what he thinks, imagines, or creates in his mind. Mental acts are not punishable even if they would constitute a crime had they been carried out. Mere intention producing no effect can never be a crime.[271]

Since Section 4(a) to (e) is an enumeration of acts, then the phrase "regardless of the stage of execution" that immediately follows can only refer to "external acts" and specifically, the acts of execution,[272] such as, for example, Hying airplanes into towers, bombing churches, and taking hostages. To illustrate, the acts referred to in Section 4 (a) are similar to murder under Article 248[273] or serious illegal detention under Article 267[274] of the RPC. Section 4 (e), which refers to the unlawful manufacture, sale, acquisition, disposition, importation, or possession of an explosive or incendiary device is similar to the offense punished under Section 3 of Presidential Decree No. 1866,[275] as amended and destructive arson under Section 2 of Presidential Decree No. 1613.[276]

The assailed phrase itself is likewise not vague. The three stages of execution - attempted, frustrated, and consummated are defined under Article 6 of the RPC. The Court notes that Article 10 of the same Code provides that it shall have supplementary effect[277] to special penal laws, such as the ATA. It can be reasonably inferred that Congress, by explicitly referring to "stages of execution", intended for terrorism, whether attempted, frustrated, or consummated, to be punished with life imprisonment without parole and the benefits under R.A. 10592. The legislative intent, therefore, is to treat attempted terrorism just as seriously as consummated terrorism. This is in congruence with the preventative thrust of the ATA and provides legal basis to prosecute and convict actors in failed terrorist plots.

The qualifying clause "when the purpose of such act, by its nature and context" is not unconstitutionally vague.

Petitioners cite the case of Groot v. Netherlands,[278] where the UN Human Rights Committee allegedly held that the similar phrase "the purpose of such act, by its nature and context, is to intimidate the general public" is insufficient to satisfy the principle of legal certainty.[279] This is a bewildering misquotation of the case, because the UN Human Rights Committee actually decided that Groot's communication was inadmissible and ruled that the interpretation of domestic legislation is essentially a matter for the courts of the State concerned, viz.:

> 4.3 The author has further claimed to be a victim of a violation of article 15 of the Covenant, because he could not have foreseen that article 140 of the Criminal Code, on the basis of which he was convicted, was applicable to his case by virtue of its imprecision. The Committee refers to its established jurisprudence [Sec, inter alia, the Committee's decision in communication No. 58/1979 (Anna Maroufidou v. Sweden), para. 10.1 (Views adopted on 9 April 1981).] that interpretation of domestic legislation is essentially a matter for the courts and authorities of the State party concerned. Since it does not appear from the information before the Committee that the law in the present case was interpreted and applied arbitrarily or that its application amounted to a denial of justice, the Committee considers that this part of the communication is inadmissible under article 3 of the Optional Protocol.

Petitioners additionally argue that "nature" and "context" is vague because "nature" may mean "inherent character" or "instinct, appetite, desire" or "a spontaneous attitude" or "external world in its entirety"; while "context" means either "the interrelated conditions in which something exists or occurs" or "parts of a discourse".[280] This is a facetious argument and symptomatic of the mischievous wordplay that some lawyers cunningly exploit. Petitioners forget the maxim noscitur a sociis in statutory construction which has been explained as follows:

> x x x [W]here a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated. This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[281]

Thus, "nature" in Section 4 cannot be reasonably interpreted to mean "instinct, appetite, desire," "a spontaneous attitude," "external world in its entirety," because such definitions would render the word "nature" absurd in connection with the other terms in Section 4. Therefore, "nature," as used in Section 4, can only refer to the inherent character of the act committed. By a similar process of elimination, "context" can only refer to the interrelated conditions in which any of the acts enumerated in Section 4(a) to (e) was committed. These are the standards which law enforcement agencies, the prosecution, and the courts may use in determining whether the purpose of or intent behind any of the acts in Section 4(a) to (e) is to intimidate the public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, etc.

Terrorism as defined in the ATA is not overbroad.

Likewise, petitioners' claim of overbreadth on the main part of Section 4 fails to impress. A careful scrutiny of the language of the law shows that it is not overbroad since it fosters a valid State policy to combat terrorism and protect national security and public safety, consistent with international instruments and the anti-terrorism laws of other countries.

The Court notes that the ATA's definition of terrorism under the main part of Section 4 is congruent with the UN's proposed Comprehensive Convention on International Terrorism[282] which defines terrorism under Article 2(l)

as follows:

> 1. Any person commits an offence within the meaning of the present Convention if that person, by any means, unlawfully and intentionally, causes:
> (a) Death or serious bodily injury to any person; or
>
> (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or to the environment; or
>
> (c) Damage to property, places, facilities or systems referred to in paragraph 1 (b) of the present article resulting or likely to result in major economic loss;

when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

The ATA definition is also similar to the definition as provided under Title II, Article 3 of Directive (EU) 2017/541[283] of the European Union:

> 1. Member States shall take the necessary measures to ensure that the following intentional acts, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation, are defined as terrorist offences where committed with one of the aims listed in paragraph 2:
>
> (a) attacks upon a person's life which may cause death;
>
> (b) attacks upon the physical integrity of a person;
>
> (c) kidnapping or hostage-taking;
>
> (d) causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
>
> (e) seizure of aircraft, ships or other means of public or goods transport;
>
> (f) manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons;
>
> (g) release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;
>
> (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
>
> (i) illegal system interference, as referred to in Article 4 of Directive 2013/40/EU of the European Parliament and of the Council (1) in cases where Article 9(3) or point (b) or (c) of Article 9(4) of that Directive applies, and illegal data interference, as referred to in Article 5 of that Directive in cases where point (c) of Article 9(4) of that Directive applies;
>
> (j) threatening to commit any of the acts listed in points (a) to (i).
>
> 2. The aims referred to in paragraph 1 are:
>
> (a) seriously intimidating a population;
>
> (b) unduly compelling a government or an international organisation to perform or abstain from performing

any act;

(c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.[284] (Emphases supplied)

Noticeable patterns from the different definitions of terrorist acts in other international instruments[285] equally bear similarities to the definition adopted under Section 4 of the ATA.

Anent anti-terrorism laws of other countries, the Court observed that the United Kingdom's Terrorism Act 2000[286] defined terrorism as follows:

(1) In this Act "terrorism" means the use or threat of action where -
(a) the action foils within subsection (2),

(b) the use or threat is designed to influence the government or an international governmental organization or to intimidate the publie or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious racial or ideological cause.

(2) Action falls within this subsection if it -

(a) involves serious violence against a person,

(b) involves serious damage to property,

(c) endangers a person's life, other than that of the person committing the action,

(d) creates a serious risk to the health or safety of the public or a section of the public, or

(e) is designed seriously to interfere with or seriously to disrupt an electronic system.[287] (Emphases supplied)

While the 2002 Terrorism (Suppression of Financing) Act of Singapore[288] provides:

(2) Subject to subsection (3), for the purposes of this Act, "terrorist act" means the use or threat of action -
(a) where the action -
(i) involves serious violence against a person;

(ii) involves serious damage to property;

(iii) endangers a person's life;

(iv) creates a serious risk to the health or the safety of the public or a section of the public;

(v) involves the use of firearms or explosives;

(vi) involves releasing into the environment or any part thereof, or distributing or otherwise exposing the public or any part thereof to -
(A) any dangerous, hazardous, radioactive or harmful substance;

(B) any toxic chemical; or

(C) any microbial or other biological agent, or toxin;

(vii) disrupts, or seriously interferes with, any public computer system or the provision of any service directly related to communications infrastructure, banking and financial services, public utilities, public transportation or public key infrastructure;

(viii) disrupts, or seriously interferes with, the provision of essential emergency services such as the police, civil defence and medical services; or

(ix) involves prejudice to public security or national defence; and

(b) where the use or threat is intended or reasonably regarded as intending to -

> (i) influence or compel the Government, any other government, or any international organisation to do or refrain from doing any act; or
>
> (ii) intimidate the public or a section of the public, and includes any action specified in the Second Schedule.

As seen from these instruments, the language employed in Section 4 of the ATA is almost identical to the language used in other jurisdictions. Nonetheless, this does not mean that the definitions nor the standards set by others must be followed by the Congress to the letter. It simply shows that Congress did not formulate the definition of terrorism out of sheer arbitrariness, but out of a desire to be at par with other countries taking the same approach, presumably so that they could also take a more proactive attitude in combating terrorism, especially in light of the well-documented variety of modes, targets, and purposes of attacks that have been described as "terroristic".

The present realities point to the conclusion that terrorism is constantly evolving - a matter emphasized by Associate Justice Rodil V. Zalameda during the interpellations:

> ASSOCIATE JUSTICE ZALAMEDA:
>
> Now, Counsel, you are saying that the USA or the Human Security Acy is a better law than the ATA because it states [therein] the predicate crimes to constitute terrorism, am I right? One of the reasons why you think it is a better law?
>
> ATTY. CADIZ:
>
> Yes, your Honor, the predicate crimes are enumerated.
>
> ASSOCIATE JUSTICE ZALAMEDA:
>
> But would this not restrict the prosecution and deterrence of terrorism, if you state the predicate crimes?
>
> ATTY. CADIZ:
>
> I don't believe so, Your Honor. But let us put this in a proper context. We all live in an imperfect world, there will be imperfections, we could not guarantee a terror-free country, no country will be able to guarantee that, Your Honor, but in balancing our individual right as stated in the Bill of Rights, Your Honor, I think the Human Security Act is the better law, Your Honor.
>
> ASSOCIATE JUSTICE ZALAMEDA:
>
> But you say that terrorism, the concept of terrorism is continuously evolving. If you state in the law the predicate crimes, how about in the future where a future definition of terrorism may encompass other acts or other crimes?
>
> x x x x
>
> ASSOCIATE JUSTICE ZALAMEDA:
>
> x x x When predicate crimes [are] not encompassed by the Human Security Act because terrorism is continuously evolving, what happens now if there is such act?

> ATTY. CADIZ:
>
> Your Honor, I could not, at this point in time, think of any other evolving predicate crime which is not covered by the Human Security Act, Your Honor.[289] (Emphases supplied)

The Court notes that the general wording of the law is a response to the ever-evolving nature of terrorism. The Court recognizes that Congress cannot be expected to enumerate all specific acts which may be resorted to by terrorists in pursuing their goals. Congress should not be compelled to use overly specific terminologies in defining terrorism when, by the normal political processes, it has perceived that the intended results of terrorist acts greatly vary from one attack to another.

The Congress, in enacting the ATA, now allows the government to take a preventative stance against terrorism. Terrorism laws worldwide were not merely enacted for punishment but mainly for prevention.[290] Not only is it impossible to predict all the means and methods which terrorists may use to commit their dastardly deeds, but it will also be debilitating on the counter-terrorist operations of the State. The Court is well aware of how terrorists can choose to take children as hostages and to kill them at will[291] or they can simply disseminate a video of a pilot being burned to death, along with a statement that those who have sided with the United States "will be punished."[292] Thus, government cannot afford to patiently wait for an act of terror to happen because lives are always at stake. Requiring an exhaustive list of predicate crimes from Congress is impractical because of the wide range of possible terrorist acts. As one scholar puts it:

> The advent of terrorist attacks designed to cause mass casualties, with no warning, sometimes involving the use of suicide, and with the threat of chemical, biological, radiological or nuclear weapons means that we can no longer wait until the point of attack before intervening. The threat to the public is simply too great to run that risk...the result of this is that there are occasions when suspected terrorists are arrested at an earlier stage in their planning and preparation than would have been the ease in the past.[293] (Emphasis supplied)

Without a doubt, the discussions on the history of terrorism and the reasons behind the enactment of anti-terrorism laws worldwide unequivocally show that terrorism greatly threatens the safety and security of the people. "In the modern world, terrorism is considered the most prevalent and the most dangerous form of endangering the security of both national states and the citizens thereof."[294] This Court cannot turn a blind eye to the grim realities brought about by terrorism. Addressing this complex problem is not only essential for physical safety per se but for the genuine enjoyment of human rights. According to the Office of the United Nations High Commissioner for Human Rights:

> Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have a real impact on the enjoyment of human rights.
>
> Security of the individual is a basic human right and the protection of individuals is, accordingly, a fundamental obligation of Government. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to protect them against the threat of terrorist acts and bringing the perpetrators of such acts to justice.[295] (Emphases supplied)

To reconcile the seemingly competing interests of national security and exercise of human rights, it is important to acknowledge that human rights are not absolute. Under a strict scrutiny lens, national security is a compelling state interest that justifies some necessary, proportionate, and least intrusive restrictions on the exercise and enjoyment of particular liberties. The Court finds that the main part of Section 4 of the ATA adopts the necessary, proportionate, and least restrictive means in its implementation to counter the complex issue of terrorism in the country. Again, the general wording of the law is a response to the ever-evolving nature of terrorism. Congress

cannot be expected to enumerate all specific acts which may be resorted to by terrorists in pursuing their goals.

In any event, concerned citizens are not left without a remedy since any perceived vagueness or overbreadth of the terms used in the main part of Section 4 may still be assailed in the appropriate actual cases that may be brought before the courts at the proper time beyond the auspices of this delimited facial challenge. Inasmuch as terrorism is an ever-evolving phenomenon, so too must jurisprudence evolve based on actual cases, not speculative theories or ideas.

The "Not Intended" Clause of Section 4's proviso is unconstitutional under the strict scrutiny test, as well as the void for vagueness and overbreadth doctrines.

Section 4's proviso, however, is a different story. It states:

> x x x x
>
> Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.[296] (Emphasis supplied)

The proviso is a proper subject of a facial analysis, because based on its text, it is a provision that innately affects speech and expression as it directly pertains to "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights". It has been argued that the proviso may be seen as a safeguard on the freedom of expression to the extent that in order to convict an advocate, dissenter, or protester under Section 4, the State must be able to prove that the advocacy, dissent, protests, and other mass actions are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety. Instructive on this point is the exchange between Senator Lacson and his colleagues, viz.:

> Senator Drilon: Currently, we see a lot of rallies, protests in Hong Kong. That kind of protests has led to the collapse of the economy of Hong Kong practically. The anti-government protests have gone on for six months and have really harmed the economy. Now, assuming for the sake of argument, that something similar happens here, would that act or the act of the protesters be considered as an act of terrorism because they are compelling the government to do something by force or intimidation?
>
> Senator Lacson: No, Mr. President. It will not be included because the fundamental rights are always respected even in this proposed measure.
>
> Senator Drilon: Yes, but supposed as in Hong Kong, there were instances of violence.
>
> Senator Lacson. But we are always bound by the purpose, Mr. President. To allow them to exercise their fundamental rights, their freedom, even to choose their leaders, to exercise suffrage. If that is the purpose, it does not constitute an act of terrorism, Mr. President...that such acts, no matter how violent, if the purpose is not as enumerated under the proposed measure, then those are not acts of terrorism.
>
> For example, even if there is violence on the streets to call for freeing Senator De Lima, that is not terrorism, Mr. President. That is a legitimate exercise of the freedom to assemble. But they may be punished under the Revised Penal Code.
>
> Senator Drilon: After the MOA-AD was rejected as unconstitutional, there was some violence in Mindanao, and the objective was, very clearly, to press for the passage of the Bangsamoro Basic Law. If this measure was law at that time, would the members of the Bangsamoro be liable for terrorism? The purpose, Mr. President, is

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to compel the government to enact the Bangsamoro Basic Law.

Senator Lacson: Well, I suppose what they are fighting for is their right to self-determination, Mr. President. So, it may not constitute a terrorist act. x x x

Senator Hontiveros: If, for example, a labor group threatens to strike or to conduct work stoppage, and said strike or work stoppage may be argued by some to result in major economic loss, even destroy the economic structure of the country, could members of this labor group be considered terrorists?

Senator Lacson: Mayroon pong proviso rito na basta legitimate exercise of the freedom of expression or mag-express ng dissent, hindi po kasama rito, hindi mako-cover. Explicitly provided po iyan set Section 4, iyong last paragraph po. Nandiyan.

Senator Hontiveros: What if in the process of strike or work stoppage nagkaroon ng dispersal, nagkaroon ng karahasan?

Senator Lacson. Hindi po kasi, unang-una, hindi naman iyon ang intent. Ang intent ng mga nagprotesta, mga laborers ay mag-strike, mag-express ng kanilang sariling dissent o iyong expression ng kanilang pagprotesta sa puwedeng sabihin na naling mga bad labor practices. So, hindi po papasok dito sa probisyong ito. Malinaw po iyon. x x x (senators talking about the ending proviso of Section 4)

Senator Pimentel: Why was there a need to immediately qualify? Is there a danger or a close relationship between exercise of basic rights and some acts which can be mistaken for as terrorist acts?

Pero nag-aalala lamang ako na immediately after defining terrorist acts, we have to clarify that the exercise of fundamental rights will not be covered. So, mayroon palang danger na mapagkamalan ang exercise of basic rights as a terrorist act kasi sinunod kaagad natin.

Senator Lacson: For clarity and for emphasis, Mr. President, para lamang malinaw, this is one of the safeguards. Kasi if we do not include that proviso, I am sure the gentleman will be interpellating along that line. Bakit kulang? That is why we deemed it wise na i-qualify na lamang natin na hindi kasama iyong legitimate exercise of the freedom of expression, et cetera.

Senator Pimentel: So, in the legitimate exercise of a right, can there be an attack?

Senator Lacson. Yes, Mr. President. Puwedeng mag-erupt.

Senator Lacson. Iyong legitimate exercise of the freedom of expression, et cetera, might result in some violence that could result in destruction of properties or loss of lives, hindi po mako-cover iyon, and that is the reason why we included that proviso or that qualification. Para lamang malinaw, Mr. President.

Senator Pimentel. In that scenario where there is a legitimate exercise of fundamental rights, who made the attack?

Senator Lacson. Those expressing dissent in the exercise of their freedom of expression. Kung mag-result regardless of who initiated, that could be initiated by their act of expressing their freedom of dissent or expression na nag-result sa violence, then they should not be covered under the definition of a terrorist act because, again, babalik na naman tayo sa intent and purpose.

Senator Pimentel: Definitely, ang intent niya is legitimate exercise of fundamental rights. So, we just made it doubly clear, Mr. President. (Emphases and underscoring supplied; italics in the original)

During the Oral Arguments, however, the following exchange transpired:

ASSOCIATE JUSTICE CARANDANG:

> The [proviso] of Section 4 states: Terrorism shall not include advocacy, protest, dissent, stoppage of work and so on which are not intended to cause death or serious physical harm to a person, to endanger [a] person's life or to create a serious risk to public safety. Does this effectively put the burden of evidence on the accused to prove that the exercise of his rights is legitimate?
>
> ASSISTANT SOLICITOR GENERAL RIGODON:
>
> Yes, Your Honor, because this proviso is a matter of defense, Your Honor. x x x Once the prosecution has established the commission of the acts mentioned in the first paragraph and has also established the purpose, then it is incumbent upon the accused to raise as a defense that he is merely exercising his civil or political rights.[297] (Emphases and underscoring supplied)

Based on the above, the most contentious portion of the proviso is the clause "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety". For purposes of brevity, it is henceforth referred to as the "Not Intended Clause."

The "Not Intended Clause" under Void for Vagueness and Overbreadth

The OSG's interpretation of the proviso is consistent with Rule 4.4. of the ATA's IRR and therefore accurately represents the government's official position. The OSG is of the view that under Section 4's proviso, the mens rea behind the speech may be attributed or inferred in the same manner as it can be done with the overt acts of terrorism defined under Section 4(a) to (e). During the Oral Arguments, this was made apparent in the following exchange:

> ASSOCIATE JUSTICE CARANDANG:
>
> You know that intent is in the mind, how can you...how can you extract intent from the mind of the person?
>
> ASSISTANT SOLICITOR GENERAL RIGODON:
>
> Perhaps is there is...through the overt act, your Honor. We can perhaps apply by analogy the principles developed by the Supreme Court with respect to the crimes under the Revised Penal Code where the intent was gathered from the overt acts committed by the accused.[298]

This is an unprecedented view and is practically problematic, especially because the proviso's scope of application is indeed very large and contemplates almost all forms of expression. It may be recalled that in Diocese of Bacolod v. Comelec,[299] the Court held that:

> Speech is not limited to vocal communication. "[C]onduct is treated as a form of speech sometimes referred to as 'symbolic speech[,]' such that when 'speech' and 'nonspeech' elements are combined in the same course of conduct, the communicative element of the conduct may be sufficient to bring into play the [right to freedom of expression]."[300]

The proviso also applies to "other similar exercises of civil and political rights," which, under constitutional law jurisprudence, refers not only to those guaranteed under the 1987 Constitution, but also those protected under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.[301]

The proviso was supposedly included in Section 4 to safeguard and protect said rights. To the Court's mind, it was enough for Congress to state that terrorism as defined in Section 4 "shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights." However,

Congress unnecessarily included the "Not Intended Clause," thereby invading the area of protected freedoms. In fact, the government's official understanding of the "Not Intended Clause" achieves the exact opposite of the proviso's supposedly noble purpose. As rightly pointed out by petitioners, it "shifts the burden" upon the accused "to prove that [his] actions constitute an exercise of civil and political rights,"[302] contrary to the principle that it is the government that has the burden to prove the unconstitutionality of an utterance or speech.

Admittedly, there are existing laws that penalize certain kinds of speech when communicated with a specific intent, but they are not constitutionally defective because the burden of proving said intent lies with the government. For instance, in libel cases, it is the prosecution who must prove that the speaker had a "malicious" state of mind in publishing the defamatory statement.[303] The courts, of course, may infer "malicious intent" or "actual malice" based on the defamatory nature of the statement,[304] but in so doing, the accused is not burdened with proving the lack of such intent. The prosecution's burden is not shifted to the accused. In contrast, the "Not Intended Clause" requires a person accused under Section 4 to prove that his advocacy, protest, dissent, or any other exercise of his civil and political rights was not tainted with intent to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

More significantly, the "Not Intended Clause" causes serious ambiguity since there are no sufficient parameters that render it capable of judicial construction. To demonstrate this ambiguity, one may dangerously suppose that "intent to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" may be inferred from strong public clamor attendant to protests, mass actions, or other similar exercises of civil and political rights. However, by their very definition, these types of speeches are intended to express disapproval against someone else's proposition or stance on a given issue and corollary to that, to advance one's own proposition[305] and thus, should not be considered as terrorist conduct. Without any sufficient parameters, people are not guided whether or not their impassioned and zealous propositions or the intense manner of government criticism or disapproval are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety. Notably, these types of speech essentially refer to modes of communication by which matters of public interest may be discussed truthfully and brought to the attention of the public. They are vehicles by which the core of civil liberties in a democracy are exercised.

On this score, it is thus important to highlight that, more dangerous than the proviso's post-indictment effects are its pre-indictment effects. Even prior to a court action being filed against the protester or dissenter, the proviso creates confusion as to whether the exercise of civil and political rights might be interpreted by law enforcers as acts of terrorism and on that basis, lead to his incarceration or tagging as a terrorist. Such liberties are abridged if the speaker-before he can even speak-must ready himself with evidence that he has no terroristic intent. This is not acceptable under the Constitution. To this extent, Atty. Jose Manuel Diokno's observations ring true:

> No other law makes the exercise of constitutional rights a crime when actuated by a certain intent. No other law empowers the State to arrest its people for exercising rights guaranteed by the Constitution, based solely on a law enforcer's subjective opinion of their state of mind, x x x By including such exercise in its definition of terrorism, the law puts petitioners [and other speakers] smack in the hot zone of proscribed criminal activity. The sword that the law dangles over their heads is real. The chilling effect on their rights is palpcible.[306]

As such, the Court agrees with petitioners that the proviso's "Not Intended Clause" is void for vagueness as it has a chilling effect on the average person. Before the protester can speak, he must first guess whether his speech would be interpreted as a terrorist act under Section 4 and whether he might be arrested, indicted, and/or detained for it. They will have to contend whether the few hours they would spend on the streets to redress their grievances against the government is worth the prospect of being indefinitely incarcerated, considering that terrorism under Section 4 would be an unbailable offense as per Section 7, Rule 114 of the Rules on Criminal Procedure.[307]

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The danger of the clause is made graver by the fact that by shifting the burden to the accused to explain his intent, it allows for law enforcers to take an "arrest now, explain later" approach in the application of the ATA to protesters and dissenters-only that it must be the latter who does the explaining, which makes it even more insidious. The chilling effect created by the aforesaid vague clause is sharply brought to the fore in this case especially when one considers the ATA's provisions on designation, proscription, and arrest and detention. The vagueness of such provision is likely to result in an arbitrary flexing of the government muscle, which is equally aversive to due process.

In this relation, the Court recognizes that a person's reputation influences his capacity and credibility as a speaker. In the 1912 case of Worcester v. Ocampo,[308] the Court said:

> x x x x
>
> The enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty or property. It is one of those rights necessary to human society that underlie the whole scheme of human civilization.
>
> x x x x
>
> A good name is to be chosen rather than great riches, and favor is better than silver or gold.[309]

An ordinary citizen might forego speaking out against the government if only to avoid being branded as a terrorist by the government. Even when a dissenter has successfully defended himself in court, he may never be fully rid of the stigma of having been once labelled a "terrorist" by his own government. Terrorism is a very serious thing - and one may not be inclined to listen to a person's opinion on matters of public interest solely because he is tagged as a terrorist. A person who has never been charged as a terrorist would be more credible. One can preserve his reputation by strictly and cautiously choosing the words he or she would speak regarding public matters - or to be more certain, by choosing not to say anything at all. But that is precisely what is meant to be "chilled".

Moreover, the vagueness is magnified by the fact that there are also threat, proposal, and inciting to terrorism provisions in the ATA. If speech is to be penalized, then threat, proposal, and inciting are not the proper offenses to cover the punishable speech. Therefore, the "Not Intended Clause" only serves to confuse the safeguarding purpose of Section 4's proviso. To the Court, the same cannot be saved by judicial construction, thus rendering it void for vagueness.

Furthermore, the "Not Intended Clause" renders the proviso overbroad. By virtue of the said clause, Section 4 supposes that speech that is "intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" is punishable as terrorism. This abridges free expression, since this kind of speech ought to remain protected for as long as it does not render the commission of terrorism imminent as per the Brandenburg standard, which, as will be explained below, is the proper standard to delimit the prohibited speech provisions, such as inciting to terrorism, proposal, and threat. By plainly punishing speech intended for such purposes, the imminence element of the Brandenburg standard is discounted as a factor and as a result, the expression and its mere intent, without more, is enough to arrest or detain someone for terrorism. This is a clear case of the chilling of speech.

The Strict Scrutiny Standard vis-a-vis the Brandenburg Test relative to Inciting to Terrorism, etc.

Under its original formulation in Schenck v. U.S.,[310] the question under the clear and present danger rule is

"whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger rule that they will bring about the substantive evils that Congress has a right to prevent."[311] It has undergone several permutations since Schenck but the rule was fortified by the U.S. Supreme Court into its current form in Brandenburg v. Ohio[312] (Brandernurg), which states that:

> x x x [T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.[313]

When quizzed on the proviso of Section 4, which punishes offenders with life imprisonment, the OSG always ended up talking about incitement to terrorism,[314] which is also punished under Section 9. Notably, the Brandenburg standard, with its more stringent formulation, is more in line with the strict scrutiny standard, which equally applies to facial challenges as per Romualdez. In this light, the government has the burden of demonstrating that the speech being restrained was: (1) directed to inciting or producing imminent lawless action; and (2) is likely to incite or produce such action.

For sure, the freedom of speech is not absolute, but it is fundamentally antithetical to the foundational principles of a democratic society if a statute impresses upon the mind of law enforcers that the purpose of the freedom of speech and the exercise of civil and political rights per se is to incite or produce imminent lawless action and that it is likely to produce such action, as per Brandenburg. Therefore, as will be expounded below, so as to guard against any chilling effects on free speech, the Court clarifies that the provisions on inciting to terrorism (Section 9), as well as any possible speech-related terrorist crimes, such as proposal (Section 8), threat (Section 5), and the like, should only be considered as crimes if the speech satisfies the Brandenburg lest based on its nature and context.

The "Not Intended Clause" also fails the strict scrutiny test.

Parallel to vagueness and overbreadth analysis, the strict scrutiny test can additionally be used to determine the validity of the "Not Intended Clause", being a government regulation of speech. Thus, applying this test, the government has the burden of proving that the regulation: (1) is necessary to achieve a compelling State interest; and (2) is the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.

Here, the government has not shown that said clause passes strict scrutiny. While there appears to be a compelling state interest, such as to forestall possible terrorist activities in light of the global efforts to combat terrorism, punishing speech intended "to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" is not the least restrictive means to achieve the same. To the Court, for speech to be penalized it must pass the Brandenburg standard, which the "Not Intended Clause" completely discounts. Furthermore, there are already provisions that subsume such standard, such as the provision on Inciting to Terrorism. Thus, as it stands, the "Not Intended Clause" only blurs the distinction between terroristic conduct and speech, and hence, is not narrowly tailored to subserve the aforesaid State interest.

All told, the "Not Intended Clause" fails the void for vagueness, overbreadth, and strict scrutiny tests, because it curtails, as well as obscures, not only certain kinds of protected speech but the very freedom to speak itself. While Congress is constitutionally empowered to restrict certain forms of speech to prevent or deter terrorism, it must do so in a reasonably clear and non-abusive manner narrowly tailored to achieve that purpose, so as not to sweep unnecessarily and broadly towards the protected freedom of speech.

Considering the foregoing disquisition, it is evident that the "Not Intended Clause" in Section 4's proviso impermissibly restrains freedom of speech or expression. With that in mind, however, the Court need not strike down the entirety of the proviso. It is proper for the Court to excise only so much of a statute as is necessary to save it from unconstitutionality. The Court finds that only the "Not Intended Clause", i.e., "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" needs striking down. What precedes it, the phrase "Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights," is hereby retained because it accurately reflects the legislative intent and affirms the Court's view on this issue. Therefore, the Court strikes down the "Not Intended Clause" as unconstitutional and categorically affirms that all individuals, in accordance with Section 4 of Article III of the 1987 Constitution, are free to protest, dissent, advocate, peaceably assemble to petition the government for redress of grievances, or otherwise exercise their civil and political rights, without fear of being prosecuted as terrorists under the ATA.

In this regard, the Court wishes to convey, as a final point on Section 4, that terrorism is not ordinarily the goal of protests and dissents. Such exercises of the freedom of speech are protected, even if they might induce a condition of unrest or stir people to anger. Incitement aside, intimidating the government or causing public unrest is not unlawful per se if the means taken to cause such intimidation or unrest is through speech, discourse, or "expressive conduct". The foundation of democracy, by design, is a populace that is permitted to influence or intimidate its government with words, even those that induce anger or create dissatisfaction.[315] Thus, in Chavez v. Gonzales,[316] one of the amici curiae in this case, the Former Chief Justice Reynato S. Puno said:

> Freedom of speech and of the press means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, and to take refuge in the existing climate of opinion on any matter of public consequence. When atrophied, the right becomes meaningless. The right belongs as well - if not more - to those who question, who do not conform, who differ. The ideas that may be expressed under this freedom are confined not only to those that are conventional or acceptable to the majority. To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of the unorthodox view, though it be hostile to or derided by others; or though such view induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us. (Emphases and underscoring supplied; citations omitted)

Facial Challenge on Sections 5, 6, 8, 9, 10, and 12

The delimited facial challenge as above-discussed likewise permits this Court to address the challenge against the validity of Sections 5 (Threat to Commit Terrorism), 8 (Proposal to Commit Terrorism), 9 (Inciting to Commit Terrorism) and 12 (Providing Material Support to Terrorists) to the extent that they seek to penalize speech based on their content. Additionally, the Court will address the objections against Section 6 (Planning, Training, Preparing, and Facilitating the Commission of Terrorism) in relation to Section 3(k), as well as Section 10 (Recruitment to and Membership in a Terrorist Organization) in the same vein that they purportedly affect free speech as well as its cognate rights of academic freedom and freedom of association.

At the onset, it is important to reiterate that the Constitution abhors prior restraints on speech.[317] It has been held time and again that the public expression of ideas may not be prohibited merely because the ideas are themselves unconventional or unacceptable to the majority.[318] The prohibition against restriction on speech "may well include sometimes unpleasantly sharp attacks on government and public officials"[319] and extends even to mere abstract teaching x x x of the moral propriety or even moral necessity for a resort to force and violence.[320] Accordingly, the Constitution will not permit proscription of advocacy except where such

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advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action pursuant to the Brandenburg standard.[321]

Also, it bears reiteration that any governmental action that restricts speech comes to this Court carrying a heavy presumption against its constitutionality[322] pursuant to the constitutional command under Section 4, Article III that no law shall be passed abridging free speech, expression, and their cognate rights. In such situations, and whenever appropriate and necessary for the just disposition of the case, the doctrines of strict scrutiny, overbreadth, and vagueness may be used for testing 'on their faces' statutes encroaching on free speech and its cognate rights.

Threat to Commit terrorism, as penalized under Section 5, of the ATA is neither unconstitutionally vague nor overbroad.

Section 5 of the ATA provides:

> Section 5. Threat to Commit Terrorism. - Any person who shall threaten to commit any of the acts mentioned in Section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years.

Its counterpart provision in the IRR is found in Rule 4.5 which states that:

> There is threat to commit terrorism when an intent to commit terrorism as defined in Section 4 of the Act is communicated by any means to another person or entity under circumstances which indicate the credibility of the threat.

Petitioners argue that Section 5 is constitutionally problematic because it deviates from how "threats" are understood in Philippine case law as in Reyes v. People,[323] where the Court held that a "threat" refers to "the deliberate purpose of creating in the mind of the person threatened the belief that the threat would be carried into effect"[324] and is therefore impermissibly vague and overbroad.

Petitioners' claim is untenable. According to Reyes,[325] cited by petitioners themselves, a statement becomes a threat when the speaker is successful in making the hearer or recipient believe that the threat would be carried out. Since Reyes, the Court decided other seminal cases discussing the circumstances when a statement becomes a "threat" as contemplated by law. In U.S. v. Paguirigan,[326] the Court said that a threat made in jest or in the heat of anger, under circumstances which show that the intention to which the threat gave utterance was not persisted in, is only a misdemeanor. While in Caluag v. People,[327] the Court appreciated the hostile events that occurred preceding the threat, as well as the acts of the accused simultaneous to his utterance.

Based on the foregoing, the Court, pursuant to its duty to interpret the law, appears to have consistently interpreted threat to refer only to those "credible" threat statements, the determination of which shall be based on the circumstances under which the statements were made. Notably, Rule 4.5 of the IRR appears to have adopted the "credible" threat standard when it restricts the application of Section 5 only to communications made "under circumstances which indicate the credibility of the threat" consistent with the foregoing judicial interpretation. For these reasons, the Court finds that Section 5 is not impermissibly vague.

The Court is also not convinced that Section 5 suffers from overbreadth. As already explained, the State, under Section 4, is not permitted to create a prima facie case of terrorism against persons who engage in protests, dissents, advocacies, and other exercises of civil and political rights. Consequently, when a statement is uttered in circumstances that would clearly qualify it as political speech, it cannot be punished as a "threat" under Section 5,

as illustrated in U.S. v. Watts[328] (Watts), which petitioners cite. In Watts, the question was whether the following statements of therein petitioner Watts during a political debate at a small public gathering constituted a "threat" under an American statute:

> They always holler at us to get an education. And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J (referring to then US President Lyndon B. Johnson).[329] (Emphasis supplied)

The U.S. Supreme Court ruled that Watts' statement was not a "threat" considering its conditional nature and the context in which it was made, opining that it was "political hyperbole" and a "kind of very crude offensive method of stating political opposition to the President."[330] Proceeding from the Court's holding with regard to Section 4, an analysis similar to Watts is proper under Section 5 of the ATA, so that even the crudest forms of political speech should be differentiated from true or "credible" threats of terrorism in order to be punishable under Section 5. As thus circumscribed, Section 5 does not appear overbroad.

More significantly, in the interpretation and application of the provisions of Sections 5, the Brandenburg standard, which the Court deems incorporated in its reading, should be applied. Thus, statements or communication can only be penalized as threats when they are: (1) directed to producing imminent terrorism; and (2) is likely to produce such action.

All told, as thus construed and circumscribed, Section 5 does not appear to be impermissibly vague and overbroad so as to chill free speech and its cognate rights.

Participating "in the x x x training x x x in the commission of terrorism" under Section 6 is neither unconstitutionally vague nor overbroad.

Section 6 of the ATA provides:

> Section 6. Planning, Training, Preparing, and facilitating the Commission of Terrorism. - It shall be unlawful for any person to participate in the planning, training, preparation and facilitation in the commission of terrorism, possessing objects connected with the preparation for the commission of terrorism, or collecting or making documents connected with the preparation of terrorism. Any person found guilty of the provisions of this Act shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

"Training" under Sections 6 and 3 (k) of the ATA is argued to implicate academic freedom specifically guaranteed under Section 5 (2), Article XIV of the 1987 Constitution and more broadly guaranteed under Section 4, Article III. In Ateneo de Manila University v. Hon. Capulong,[331] the Court said:

> The essential freedoms subsumed by Justice Felix Frankfurter in the term "academic freedom" cited in the case of Sweezy v. New Hampshire, thus: (1) who may teach; (2) what may be taught; (3) how it shall be taught; and (4) who may be admitted to study. x x x "Academic freedom", the term as it evolved to describe the emerging rights related to intellectual liberty, has traditionally been associated with freedom of thought, speech, expression and the press; in other words, with the right of individuals in university communities, such as professors, researchers and administrators, to investigate, pursue, discuss and, in the immortal words of Socrates, "to follow the argument wherever it may lead," free from internal and external interference or pressure. (Emphasis supplied)

Proceeding from the averments in the petitions, the Court deems that Section 6 is susceptible to a facial challenge insofar as it penalizes "training", which refers to the "giving of instruction or teaching" as provided under Section 3(k). Thus, in accordance with the identified delimited parameters of the present permissible facial challenge, the Court passes upon Section 6 with regard to "training" only and withholds judgment as regards the other punishable acts, i.e., "planning," "preparing," and "facilitating" terrorism.

To expound, for petitioners, "training" in Section 6 is vague or overly broad because even though it is defined under Section 3(k), the term "instruction" is nevertheless undefined. Petitioners in G.R. No. 252580, for example, point out that the ATA curtails the academic freedom of professors who teach Marxism or Thomas Aquinas' philosophy on the justification of war. They fear that under this provision, the study or re-enactment of Dr. Jose Rizal's El Filibusterismo, a work which the Spanish colonial government had considered subversive, might be considered as pretext for the state to arrest teachers and students.[332]

These arguments fail to impress. Section 3(k) defines training as the "giving of instruction or teaching designed to impart a specific skill in relation to terrorism as defined hereunder, as opposed to general knowledge." Properly construed with this definition, training may be penalized under Section 6 only when: (1) the "training" is with the purpose of committing terrorism; (2) the training is intentionally designed to impart a skill in relation to terrorism; and (3) the skill imparted has specific relation to a projected act of terrorism, not mere general knowledge. Thus, in order to be punishable under Section 6, the transfer of knowledge must be demonstrated to have been done knowingly and willfully with the specific aim of capacitating the trainee to commit an act of terrorism.

Accordingly, the foregoing construction should foreclose any interpretation that would include "skill" as ordinarily and broadly understood, especially considering that the teaching of "general knowledge", as in classroom instruction done for purely academic purposes and in good faith, is expressly excluded from the definition of training under Section 3(k). To the Court's mind, the parameters found in Section 3(k) betrays a legislative intent to put a stop to the knowing and deliberate transfer of specific skills in connection with projected terrorist acts, and not the imparting of knowledge in the general and broad sense.

Of course, it is not appropriate for the Court to describe at this time what "specific skill" is as juxtaposed to "general knowledge". Such a distinction is better made in an actual case with proven facts. What is clear at this time is that an educator or trainer may not be convicted under Section 6 if the State fails to prove that the "training" satisfies the parameters outlined above.

Moreover, in the interpretation and application of the provisions of Sections 6 in relation to training, the Brandenburg standard is deemed incorporated. Thus, teaching or the giving of instructions can only be penalized as training within the ambit of Section 6 when they are: (1) directed to producing imminent terrorism; and (2) is likely to produce such action.

Accordingly, as construed under the lens of Brandenburg, Section 6 in relation to Section 3(k) only pertains to "training" which is directed to produce the commission of terrorism and is likely to produce such action. In Brandenburg, the U.S. Supreme Court said that "the mere abstract teaching x x x of the moral propriety or even moral necessity; for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action."[333] On this understanding of Section 6, the Court does not find Section 6 impermissibly vague or overbroad so as to violate petitioners' academic freedom.

Proposal to Commit Terrorism under Section 8 of the ATA is neither unconstitutionally vague nor overbroad.

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Section 8 of the ATA provides:

> Section 8. Proposal to Commit Terrorism. - Any person who proposes to commit terrorism as defined in section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years.

The foregoing provision must be read together with the definition provided in Section 3(g) which states:

> (g) Proposal to Commit Terrorism is committed when a person who has decided to commit any of the crimes defined and penalized under the provisions of this Act proposes its execution to some other person or persons.

and Rule 4.8 of the IRR which provides:

> It shall be unlawful for any person to propose to commit terrorism as defined in Section 4 of the Act.
>
> There is proposal to commit terrorism when a person who decided to commit terrorism as defined in Section 4 of the Act proposes its execution to some other person or persons.
>
> Prosecution for this crime shall not be a bar to prosecution for acts of terrorism defined and penalized under Section 4 of the Act.
>
> Any such person found guilty therefor shall sutler the penalty of imprisonment of twelve (12) years.

Petitioners argue that Section 8 is inconsistent with Section 3(g) because the former penalizes "a person who proposes to commit terrorism as defined in Section 4" only, whereas the latter penalizes "a person who has decided to commit ANY of the crimes defined and penalized under the provisions of this Act [(and thus, not only Section 4)] and proposes its execution to some other person or person." Because Section 3(g) is not only broader than Section 8 but also includes the element of "deciding to commit", petitioners argue that Section 8 is unconstitutionally vague.[334] They also argue that Section 8 is overly broad because its scope is unclear, and it does not consider the intent of the speaker.[335]

The Court finds that Section 8 is the controlling provision as it is what actually penalizes the act of proposal. According to Article 8 of the Revised Penal Code (RPC), which has supplementary application to special laws,[336] conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor. In this case, Section 8 penalizes proposal only when the crime being proposed are those that are defined in Section 4. It does not provide for a penalty for proposal of the other acts prohibited under the ATA. This reading also appears to be the official understanding of the government because Rule 4.8 of the IRR refers only to Section 4. Therefore, Section 3(g) should not be construed as expanding the scope of the crime of proposal to all the other provisions of the ATA. A contrary construction is not only unreasonable but would also contradict the statutory rule that all parts of a statute are to be harmonized and reconciled so that effect may be given to each and every part thereof, and that conflicting intention in the same statute are never to be supposed or so regarded, unless forced upon the court by an unambiguous language.[337]

This notwithstanding, Section 3(g) serves an important purpose in clarifying and delineating the punishable speech covered by Section 8. As outlined above, Section 3 (g) provides that proposal to commit terrorism, as penalized under Section 8, is committed when a person who has decided to commit terrorism "proposes its execution to some other person or persons." Notably, this definition is virtually a copy of the definition of "proposal" in Article 8 of the RPC. Evidently, "deciding to commit" is not superfluous. It is an element which the State must prove in prosecuting cases under Section 8 of the ATA. Without this necessary element, the speech does not equally fall within the Brandenburg standard - that is, that the same is directed to producing imminent lawless action and is likely to produce such action. Thus, without the element of "deciding to commit" in Section 3(g), the concept of "proposal" in Section 8 would indeed be overly broad. Of course, the Court cannot at this time speculate how the element of "deciding to commit" would be proven in any given case. Courts can only

apply its proper construction with more detail in the context of an actual case. Nonetheless, for guidance, suffice it to say that the Court does not agree with petitioners that Section 8 is vague and overly broad.

Inciting to Commit Terrorism under Section 9 of the ATA is not facially unconstitutional.

Section 9 of the ATA provides:

> Section 9. Inciting to Commit Terrorism. - Any person who, without taking any direct part in the commission of terrorism, shall incite others to the execution of any of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end, shall suffer the penalty of imprisonment of twelve (12) years.

In relation thereto, Rule 4.9 of the IRRs states:

> Rule 4.9. Inciting to commit terrorism
>
> It shall be unlawful for any person who, without taking any direct part in the commission of terrorism, shall incite others to commit the execution of any of the acts specified as terrorism as defined in Section 4 of the Act.
>
> There is incitement to commit terrorism as defined in Section 4 of the Act when a person who does not take any direct part in the commission of terrorism incites others to the commission of the same in whatever form by means of:
> i. speeches;
> ii. proclamations;
> iii. writings;
> iv. emblems;
> v. banners; or
> vi. other representations;

and the incitement is done under circumstances that show reasonable probability of success in inciting the commission of terrorism.

In determining the existence of reasonable probability that speeches, proclamations, writings, emblems, banners or other representations would help ensure success in inciting the commission of terrorism, the following shall be considered:

> a. Context
>
> Analysis of the context should place the speech, proclamations, writings, emblems, banners, or other representations within the social and political context prevalent at the time the same was made and/or disseminated;
>
> b. Speaker/actor
>
> The position or status in the society of the speaker or actor should be considered, specifically his or her standing in the context of the audience to whom the speech or act is directed;
>
> c. Intent
>
> What is required is advocacy or intent that others commit terrorism, rather than the mere distribution or circulation of material;

> d. Content and form
>
> Content analysis includes the degree to which the speech or act was provocative and direct, as well as the form, style, or nature of arguments deployed in the speech, or the balance struck between the arguments deployed;
>
> e. Extent of the speech or act
>
> This includes such elements as the reach of the speech or act, its public nature, its magnitude, the means of dissemination used and the size of its audience;
>
> f. Causation
>
> Direct causation between the speech or act and the incitement.

Any such person found guilty therefor shall suffer the penalty of imprisonment of twelve (12) years.

Petitioners contend that Section 9 fails to distinguish between legitimate dissent and terrorism which leads to the curtailment of their right to freedom of speech. On the other hand, the OSG insists that Section 9 deals with unprotected speech since it involves advocating imminent lawless action which endangers national security.

The Court rules in favor of the government.

Without doubt, terrorism and communication that can directly and unmistakably lead to or aid terrorist activities raise grave national security concerns that would justify government regulation of speech. The State therefore has the right, nay, the duty, to prevent terrorist acts which may result from incitement. As held in Dennis v. United States,[338] the impending overthrow of the government by force and violence is certainly a substantial enough interest to limit speech, for if the government cannot protect its very structure from armed attack, it must follow that no subordinate value can be protected:

> Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, Ibis is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected. If, then, this interest may be protected, the literal problem which is presented is what has been meant by the use of the phrase 'clear and present danger' of the utterances bringing about the evil within the power of Congress to punish.
>
> Obviously, the words cannot mean that before the Government may act, it must wait until the putsch is about to be executed, the plans have been laid and the signal is awaited. If the government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the government is required. The argument that there is no need for Government to concern itself, for government is strong, it possesses ample powers to put down a rebellion, it may defeat the revolution with ease needs no answer. For that is not the question. Certainly, an attempt to overthrow the government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt x x x We must therefore reject the contention that success or probability of success is the criterion.[339] (Emphases supplied)

Even Chavez v. Gonzales[340] - one of the main cases that petitioners rely on to support their claim - recognized that matters concerning national security in relation to the freedom of speech are treated differently.

The international community as well recognizes the need for States .to collectively act to punish incitement to terrorism to prevent terrorists from exploiting technology to support their acts.[341] In UNSC Resolution 1624 (2005), the UNSC expressed its deep concern that "incitement of terrorist acts x x x poses a serious and growing

danger to the enjoyment of human rights, threatens the social and economic development of all States, undermines global stability and prosperity, and must be addressed urgently and proactively by the United Nations and all States."[342] This shows that the fight against the incitement of terrorist acts has been given importance not only in the country but internationally as well.

Notably, aside from a compelling state interest, the strict scrutiny test, which applies to content-based speech restrictions, requires the necessity and proportionality of the means used to curtail the exercise of free speech rights. Under Section 9 of the ATA, inciting is committed by any person who, without taking any direct part in the commission of terrorism, shall incite others to the execution of the acts specified in Section 4. While the terms "inciting" or "incitement" are not themselves defined in the ATA, reference can be made to the Senate deliberations which shows that Section 9 was intended to operate only within a narrow and confined area of speech where restrictions are permitted, and only within the confines of the intent-purposes parameters of Section 4.[343]

> Senator Lacson: Kapag sinabi nating "inciting" directed against the general public, ito iyong puwedeng mag-lead doon sa pag-commit ng terrorist acts. Pero kung wala namang call to commit violence or to commit terrorist activities or terrorist acts, then hindi nainan po siguro puwedeng masaklaw nitong batas.
>
> Senator Hontiveros: No problem, Mr. President. Paano po nalin susukatin iyong panganib? How do we measure danger? How do we determine when the conduct, lalo na kung indirect conduct, actually causes a danger of such acts being committed?
>
> Senator Lacson: Well, it redounds to the violence that will be created. Babalik na naman tayo roon sa intent at saka iyong purpose noong pag-i-incite to commit terrorist acts, Mr. President.
>
> Senator Lacson: We will be guided by the existing jurisprudence in this regard and there are many, Mr. President. Iyong Chavez vs. Raul Gonzales, marami po ito na puwede natin gawing reference at the proper time.[344] (Underscoring supplied)

Thus, based on this legislative intent, statements may only be penalized under Section 9 if the speaker clearly intended the hearers to perform any of the punishable acts and for the purposes enumerated under Section 4.

The foregoing legislative characterization of incitement appears to reflect the international understanding of "incitement" as "a direct call to engage in terrorism, with the intention that this will promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurrine."[345] It also appears to heed the United Nations Secretary General's recommendation for states to prosecute direct incitement to terrorism only if it "directly encourages the commission of a crime, is intended to result in criminal action, and is likely to result in criminal action" in order for states to comply with the international protection of freedoms of expression.[346] Moreover, they appear to incorporate the imminence (i.e., directed to inciting imminent lawless action) and likelihood (i.e., likely to incite such action) elements of Brandenburg.

Based on the foregoing construction, the Court thus finds that speech or statements can be penalized as inciting under Section 9 only if they are: (1) direct and explicit - not merely vague, abstract, equivocal - calls to engage in terrorism; (2) made with the intent to promote terrorism; and (3) directly and causally responsible for increasing the actual likelihood of terrorist attacks. To the Court's mind, these parameters have been largely incorporated in the detailed guidelines found in Rule 4.9 of the IRR for the prosecution of incitement under Section 9, thus:

> There is incitement to commit terrorism as defined in Section 4 of the Act when a person who does not take any direct part in the commission of terrorism incites others to the commission of the same in whatever form by means of:

i. speeches;
ii. proclamations;
iii. writings;
iv. emblems;
v. banners; or
vi. other representations.

and the incitement is done under circumstances that show reasonable probability of success in inciting the commission of terrorism.

In determining the existence of reasonable probability that speeches, proclamations, writings, emblems, banners, or other representations would help ensure success in inciting the commission of terrorism, the following shall be considered:

a. Context

Analysis of the context should place the speech, proclamations, writings, emblems, banners, or other representations within the social and political context prevalent at the time the same was made and/or disseminated;

b. Speaker/actor

The position or status in the society of the speaker or actor should be considered, specifically his or her standing in the context of the audience to whom the speech or act is directed;

c. Intent

What is required is advocacy or intent that others commit terrorism, rather than the mere distribution or circulation of material;

d. Content and form

Content analysis includes the degree to which the speech or act was provocative and direct, as well as the form, style, or nature of arguments deployed in the speech, or the balance struck between the arguments deployed;

e. Extent of the speech or act

This includes such elements as the reach of the speech or act, its public nature, its magnitude, the means of dissemination used and the size of its audience; and

f. Causation

Direct causation between the speech or act and the incitement.[347] (Emphases supplied)

These guidelines are conspicuously similar to the Rabat Plan of Action which refers to an internationally-recognized high threshold tor defining restrictions on freedom of expression. The six-part threshold test takes into consideration the following factors: (1) the social and political context, (2) status of the speaker, (3) intent to incite the audience against a target group, (4) content and form of the speech, (5) extent of its dissemination and (6) likelihood of harm, including imminence.[348]

Together, the foregoing guidelines serve as an effective safeguard which ensures that not all forms of provocation or passionate advocacy or criticism against the Government shall be penalized as incitement under the law. The context, speaker, intent, content and form, and the extent of the speech or act shall all be considered to ensure that the incitement is not only grave, but may very well be imminent. For example, when a humble teacher posts on

social media that he will give fifty million pesos to the one who kills the President, he may not be punished for inciting to commit terrorism in the absence of a showing that the statements made were clearly directed to inciting an imminent act of terrorism and is likely to lead to terrorism.[349] The position of the speaker also appears not likely to influence others to commit terrorism.

Accordingly, the Court finds that, as construed, Section 9 is reasonably and narrowly drawn and is the least restrictive means to achieve the declared compelling state purpose.

Membership under Section 10 is neither unconstitutionally vague nor overbroad.

Another provision in the ATA of particular concern to the Court is Section 10, which defines and penalizes the crime of recruitment to, and membership in, a terrorist organization. The provision, in full, provides:

> Section 10. Recruitment to and Membership in a Terrorist Organization. - Any person who shall recruit another to participate in, join, commit or support terrorism or a terrorist individual or any terrorist organization, association or group of persons proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.
>
> The same penalty shall be imposed on any person who organizes or facilitates the travel of individuals to a state other than their state of residence or nationality for the purpose of recruitment which may be committed through any of the following means:
>
> (a) Recruiting another person to serve in any capacity in or with an armed force in a foreign state, whether the armed force forms part of the armed forces of the government of that foreign state or otherwise;
>
> (b) Publishing an advertisement or propaganda for the purpose of recruiting persons to serve in any capacity in or with such an armed force;
>
> (c) Publishing an advertisement or propaganda containing any information relating to the place at which or the manner in which persons may make applications to serve or obtain information relating to service in any capacity in or with such armed force or relating to the manner in which persons may travel to a foreign state for the purpose of serving in any capacity in or with such armed force; or
>
> (d) Performing any other act with the intention of facilitating or promoting the recruitment of persons to serve in any capacity in or with such armed force.
>
> Any person who shall voluntarily and knowingly join any organization, association or group of persons knowing that such organization, association or group of persons is proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of imprisonment of twelve (12) years. [Emphasis and underscoring supplied]

Petitioners argue that Section 10 should be nullified for being vague and overbroad. Petitioners point out that the term "support" in the challenged provision has no statutory definition and could thus lead to an interpretation covering a wide range of acts, from mere sympathy to actual ideological support, and even to formal armed support.[350] They also criticize Section 10 for punishing "mere membership" in an organization "organized for the purpose of engaging in terrorism." They claim that an accusation of membership is easy to fabricate and law enforcers are free to interpret what groups are "organized for the purpose of engaging in terrorism" as Section 10 does not require a prior judicial declaration for this purpose.[351] They also contend that Section 10 suffers from

overbreadth because certain words or phrases in the provision which include inter alia "in any capacity", "facilitating travel", "recruiting", "advertisement", "propaganda", and "support" may cover legitimate forms of expression.[352]

The third paragraph of Section 10 is susceptible to a facial challenge.

As previously discussed, the Court may take cognizance of a facial challenge against the constitutionality of statutes if its provisions involve or target free speech, expression, and its cognate rights, such as freedom of association. The third paragraph of Section 10, which punishes membership in a terrorist organization, is one such provision in the ATA, which the Court finds proper to delve into.

As petitioners assert, Section 10 seems to punish mere membership. Preliminarily, the Court recognizes that membership or the right to freely associate in any organization, association, or group is but one of the many ways by which persons can exercise the right to speak and the right to freely express themselves in order to advance their advocacies, beliefs, and ideas. Hence, there is a manifest link between the exercise of the rights of free expression and association which is "premised on the idea that an individual's [right to free speech and expression] 'could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed.'"[353] As further explained by the U.S. Supreme Court in Roberts v. United States Jaycees:[354]

> According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity, and in shielding dissident expression from suppression by the majority. Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. (Citations omitted; emphasis supplied)

The nexus between the freedom of speech and expression and the freedom of association has been recognized by the Court as early as 1969 in Vera v. Hon. Arca[355] (Vera). While the factual circumstances in Vera are not on all fours with this case, the Court then declared:

> x x x [W]hen there is an invasion of the preferred freedoms of belief, of expression as well as the cognate rights to freedom of assembly and association, an affirmative response to a plea for preliminary injunction would indeed be called for. The primacy of the freedom of the mind is entitled to the highest respect. [Emphasis and underscoring supplied]

This interrelation between speech and association, one of two distinct senses of the constitutionally protected freedom of association, is identified in U.S. jurisprudence as the freedom of expressive association.[356] Adapted to the Philippine context, this is the right or freedom to associate for the purpose of engaging in those activities guaranteed and protected under Section 4, Article III of the Constitution, i.e., speech, assembly, and petition for redress of grievances.

With these in mind, the Court holds that the third paragraph of Section 10 is susceptible to a facial challenge. As presented above, petitioners challenge the perceived chilling effect that Section 10 creates in the people's exercise of the right to association, which, in turn, gravely affects the exercise of the right to free speech and expression.

The prohibition to voluntarily and knowingly join proscribed and UNSC-designated organizations are permissible restrictions on the freedom of association.

To be penalized under the third paragraph of Section 10, it is required that a person shall: one, voluntarily and knowingly join an organization, association, or group; and two, have knowledge that the organization, association, or group is (a) proscribed under Section 26 of the ATA, (b) designated by the UNSC, or (c) organized for the purpose of engaging in terrorism. Based on this definition, Section 10 punishes membership under three instances: first, when a person voluntarily and knowingly joins any organization, knowing that such organization is proscribed under Section 26 of the ATA; second, when a person voluntarily and knowingly joins any organization, knowing that such organization has been designated by the UNSC as a terrorist organization; and third, when a person voluntarily and knowingly joins any organization, knowing that such organization has been organized for the purpose of engaging in terrorism.

The Court finds no impermissible vagueness in the first and second instances. The Court observes that under these two instances, persons are sufficiently given fair notice of the conduct to avoid, and law enforcers are not given unbridled discretion to determine who should be prosecuted and penalized. Under the first two instances, only those who voluntarily and knowingly join an organization, association, or group, knowing that the said organization, association, or group is a proscribed organization or has been designated by the UNSC, is in violation of Section 10. The wording of the statute is plain enough to inform individuals what conduct or act is prohibited, and what would make them criminally liable. Moreover, the publication requirement for proscription and designation ensures that the status of the organization, association, or group is readily ascertainable to the general public.

The Court also finds that penalizing membership under the first two instances are not overbroad. The restriction does not sweep unnecessarily and broadly towards protected freedoms, because to reiterate, only those who voluntarily and knowingly join an organization, association, or group despite knowing that the said organization, association, or group is a proscribed organization or has been designated by the UNSC, may be penalized. Given these parameters provided under the law, the Court is therefore not convinced that Section 10 invades the protected freedom of association, which remains sacrosanct only when its exercise is for purposes not contrary to law. Section 8, Article III of the Constitution categorically states:

> Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.[357] (Emphasis supplied)

Thus, the right to join, to associate, or to affiliate oneself with a judicially proscribed organization or an organization designated as a terrorist by the UNSC is, for all intents and purposes, not constitutionally protected considering that these organizations have already been determined, after appropriate proceedings, to be in violation of the ATA, R.A. No. 10168 or the Terrorism Financing Prevention and Suppression Act, or the relevant international instruments on terrorism - purposes that are clearly contrary to law. At the risk of repetition, it should once more be noted that proscription and UNSC designation have a publication requirement, ensuring that the status of an organization, association, or group as a terrorist is readily ascertainable.

Mere membership is not penalized under the third paragraph of Section 10.

In this light, the argument that mere membership is punished by Section 10, fails. The requirement under the provision is that a person shall voluntarily and knowingly join a judicially proscribed or a UNSC designated organization, despite knowing the status or nature of the organization or group as such. Section 10 unmistakably has a scienter element:[358] the offender who sought to join an organization, association, or group has an awareness of the status and nature of such organization, association, or group as judicially proscribed or

UNSC-designated, but he or she still knowingly and voluntarily joins anyway. Thus, the membership penalized under Section 10 must be a knowing membership, as distinguished from a nominal or per se membership.

The Senate deliberations underscored the importance of establishing the scienter element in the prosecution of the offense, as revealed in the following exchange:

> Senator Drilon. For example, I am alleged to be a member of a proscribed organization and, therefore, I am arrested and detained for 14 working days on the allegation that I am a member of an organization which is proscribed, how do we guard against abuses?
>
> Senator Lacson. That is a different matter, Mr. President. To arrest an alleged member of a proscribed organization, it is incumbent upon the government to prove that he is really a member before he can be arrested. Iyon naman pong warrantless arrest, iba naman po iyon. Hindi dahil sa mayroong reasonable ground or mayroong ground iyong police officer to arrest a person just because he is reportedly a member or allegedly a member, hindi siya pupuwedeng basta arestuhin. The government should prove that the person to be arrested is indeed a member of that proscribed organization.
>
> Senator Drilon. Not only he is a member, but he knowingly, under the measure, became a member.
>
> Senator Lacson. That is correct, Mr. President.
>
> Senator Drilon. So that unless there is proof that he knowingly became a member, knowing that it is a terrorist organization, he cannot be arrested.
>
> Senator Lacson. Yes, Mr. President.
>
> Senator Drilon. So, just for the record, it is not mere membership in the proscribe organization, but it must be shown that he knowingly and voluntarily, with full knowledge of the nature of the organization, joined it. In other words, it is not automatic that one who is a member of a proscribed organization could be arrested.
>
> Senator Lacson. Yes, Mr. President. That is correct. That is expressly provided under Section [10].[359] (Underscoring supplied)

It is clear from the quoted exchange that the challenged provision does not intend to automatically punish members of a proscribed organization. Instead, what the law seeks to criminalize is voluntarily joining an organization despite knowing it to be proscribed under Section 26 of the ATA or designated by the UNSC.

Similarly illuminating on this point, despite the change in circumstances, is the Court's ruling in the 1972 case People v. Hon. Ferrer[360] (Ferrer). In Ferrer, one of the arguments in assailing the Anti-Subversion Act is that the law punishes any person who "knowingly, willfully and by overt acts affiliates himself with, becomes or remains a member" of the Communist Party of the Philippines or of any other similar "subversive" organization, in derogation of the freedom of expression and freedom of association. The Court ruled in this wise:

> The requirement of knowing membership, as distinguished from nominal membership, has been held as a sufficient basis lor penalizing membership in a subversive organization. For, as has been stated:
> Membership in an organization renders aid and encouragement to the organization; and when membership is accepted or retained with knowledge that the organization is engaged in an unlawful purpose, the one accepting or retaining membership with such knowledge makes himself a party to the unlawful enterprise in which it is engaged. [Emphasis and underscoring supplied; citations omitted][361]

Ferrer is instructive to the extent of clarifying when membership may be penalized. Since Section 10 of the ATA similarly penalizes membership, the knowing membership requirement, as distinguished from mere nominal membership, laid down in Ferrer should also be applied.

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The requirement of a knowing membership in instances when membership in an organization is penalized by statute has also been considered and discussed in U.S. jurisprudence. In Wieman v. Updegraff[362] (Weiman) the U.S. Supreme Court declared that the "[i]ndiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power." In ruling that an Oklahoma loyalty oath law violated the First Amendment, the High Court elucidated that:

> This must be viewed as a holding that knowledge is not a factor under the Oklahoma statute. We are thus brought to the question touched on in Garner, Adler, and Gerende: whether the due process clause permits a state, in attempting to bar disloyal individuals from its employ, to exclude persons solely on the basis of organizational membership, regardless of their knowledge concerning the organizations to which they had belonged. For, under the statute before us, the fact of membership alone disqualifies. If the rule be expressed as a presumption of disloyalty, it is a conclusive one.
>
> But membership may be innocent. A state servant may have joined a proscribed organization unaware of its activities and purposes. In recent years, many completely loyal persons have severed organizational ties after learning for the first time of the character of groups to which they had belonged.
>
> "They had joined, [but] did not know what it was; they were good, fine young men and women, loyal Americans, but they had been trapped into it - because one of the great weaknesses of all Americans, whether adult or youth, is to join something."
>
> At the time of affiliation, a group itself may be innocent, only later coming under the influence of those who would turn it toward illegitimate ends. Conversely, an organization formerly subversive, and therefore designated as such, may have subsequently freed itself from the influences which originally led to its listing.
>
> There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy. x x x Yet, under the Oklahoma Act, the fact of association alone determines disloyalty and disqualification; it matters not whether association existed innocently or knowingly. To thus inhibit individual freedom of movement is to stifle the flow of democratic expression and controversy at one of its chief sources. We hold that the distinction observed between the case at bar and Garner, Adler and Gerende is decisive. Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power. The oath offends due process. (Emphases and underscoring supplied; citations omitted)[363]

Almost a decade after Wieman, the U.S. Supreme Court notably touched on the membership clause of the Federal Smith Act in Scales v. United States[364] (Scales), a ruling that was cited in Ferrer. In Scales, the assailed statute penalized membership in any society, group, or assembly of persons which teaches, advocates, or encourages the overthrow and destruction of the government by force or violence. In upholding the membership clause and finding that the statute requires active membership, the U.S. Supreme Court ratiocinated:

> We find hardly greater difficulty in interpreting the membership clause to reach only "active" members. We decline to attribute to Congress a purpose to punish nominal membership, even though accompanied by "knowledge" and "intent," not merely because of the close constitutional questions that such a purpose would raise, but also for two other reasons: it is not to be lightly inferred that Congress intended to visit upon mere passive members the heavy penalties imposed by the Smith Act. Nor can we assume that it was Congress' purpose to allow the quality of the punishable membership to be measured solely by the varying standards of that relationship as subjectively viewed by different organizations. It is more reasonable to believe that Congress contemplated an objective standard fixed by the law itself, thereby assuring an evenhanded application of the statute.
>
> x x x x
>
> In an area of the criminal law which this Court has indicated more than once demands its watchful scrutiny,

> these factors have weight and must be found to be overborne in a total constitutional assessment of the statute. We think, however, they are duly met when the statute is found to reach only "active" members having also a guilty knowledge and intent, and which therefore prevents a conviction on what otherwise might be regarded as merely an expression of sympathy with the alleged criminal enterprise, unaccompanied by any significant action in its support or any commitment to undertake such action.
>
> x x x x
>
> It was settled in Dennis that the advocacy with which we are here concerned is not constitutionally protected speech, and it was further established that a combination to promote such advocacy, albeit under the aegis of what purports to be a political party, is not such association as is protected by the First Amendment. We can discern no reason why membership, when it constitutes a purposeful form of complicity in a group engaging in this same forbidden advocacy, should receive any greater degree of protection from the guarantees of that Amendment.
>
> If it is said that the mere existence of such an enactment tends to inhibit the exercise of constitutionally protected rights, in that it engenders an unhealthy fear that one may find himself unwittingly embroiled in criminal liability, the answer surely is that the statute provides that a defendant must be proven to have knowledge of the proscribed advocacy before he may be convicted. x x x If there were a similar blanket prohibition of association with a group having both legal and illegal aims, there would indeed be a real danger that legitimate political expression or association would be impaired, but the membership clause, as here construed, does not cut deeper into the freedom of association than is necessary to deal with "the substantive evils that Congress has a right to prevent." The clause does not make criminal all association with an organization which has been shown to engage in illegal advocacy. There must be clear proof that a defendant "specifically intend[s] to accomplish [the aims of the organization] by resort to violence." Thus, the member for whom the organization is a vehicle for the advancement of legitimate aims and policies does not fall within the ban of the statute: he lacks the requisite specific intent "to bring about the overthrow of the government as speedily as circumstances would permit." Such a person may be foolish, deluded, or perhaps merely optimistic, but he is not by this statute made a criminal. [Emphases and underscoring supplied; citations omitted][365]

Interestingly, the U.S. Supreme Court in Scales declared that the membership clause of the Smith Act, as then construed, did not cut deeper into the freedom of association than is necessary to deal with "the substantive evils that Congress has a right to prevent." This declaration is pertinent for purposes of this discussion, because the Court, in finding that the first and second instances of membership penalized under Section 10 satisfies the strict scrutiny test, makes the same finding that the prohibitions contemplated under the first and second instances are so narrowly tailored and thus, are reasonable counterterrorism measures.

Penalizing membership under the first two instances of Section 10 is a necessary means to achieve a compelling state interest. Without doubt, the State has an inherent right of self-preservation, which was emphasized in Ferrer:

> That the Government has a right to protect itself against subversion is a proposition too plain to require elaboration. Sell-preservation is the "ultimate value" of society. It surpasses and transcends every other value, "for if a society cannot protect its very structure from armed internal attack, x x x no subordinate value can be protected". As Chief Justice Vinson so aptly said in Dennis vs. United States:
> "Whatever theoretical merit there may be to the argument that there is a 'right' to rebellion against dictatorial governments is without force where the existing structure of government provides for peaceful and orderly change. We reject any principle of governmental helplessness in the face of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the government by force and violence."[366] [Citations omitted]

Moreover, as thoroughly explained in the preceding discussions, the State, to preserve itself and protect its people

from terrorism, needs to ensure that possible terrorist activities of foreigners within the Philippine jurisdiction or against Philippine nationals abroad are forestalled.

Therefore, as a reasonable counterterrorism measure, the State is justified in preventing terrorist groups from forming and obtaining any opportunity to gain support through knowing membership. Given the restrictive nature of the membership intended to be punished under the first and second instances of membership under Section 10, the Court finds the same narrowly tailored and the least restrictive means to achieve the compelling State purpose.

Furthermore, the first instance of membership punished under Section 10, i.e., membership in a proscribed organization, association or group of persons under Section 26, recognizes that proscription involves court intervention and fair notice before an organization, association or group of persons is outlawed. Knowingly joining despite the fact that it has been outlawed by the court is precisely the evil sought to be prevented by the ATA. There is no comprehensible justification to knowingly or intentionally join or maintain membership under this instance. Thus, this is not an unreasonable restraint in the exercise of the right to association.

In the same vein, the second instance of membership punished under Section 10, i.e., membership in a designated terrorist organization, association or group of persons, is limited only to those organizations, associations or groups designated under the first mode of Section 25, through the automatic adoption of the designation or listing made by the UNSC. When the third paragraph of Section 10 is taken together with the Court's analysis on Section 25, which will be explained in full in later discussions, it is clear that the law seeks to punish the reprehensible act of knowingly joining an internationally-recognized terrorist organization or association. This is also a permissible restriction on the exercise of the right to association.

The requirement of knowing membership, to emphasize, is evident in the Senate deliberations, Philippine jurisprudence, and even U.S. jurisprudence. The Court stresses once again that the determination of the status of an organization of which the offender is allegedly a member is readily ascertainable in view of the publication requirement in proscription and designation. Hence, the only thing to be determined under the first two instances is whether the offender actually and consciously knew that the organization, association, or group he or she is joining has been proscribed or has been designated by the UNSC as a terrorist, which in turn can be ascertained from the circumstances surrounding the membership of the offender as well as the declaration of the status of an organization as a terrorist.

In all, the Court sees no reason to declare as unconstitutional the first and second instances of membership penalized under the third paragraph of Section 10.

With a vote of 6-9, the succeeding discussion in the ponencia on the issue of the constitutionality of the phrase "organized for the purpose of engaging in terrorism" in Section 10 had been overturned and is not reflective of the opinion of the majority of the members of the Court. On this issue, the majority declared the subject phrase not unconstitutional. Readers are cautioned to read this portion of the ponencia as it holds the opinion of only six (6) members of the Court and not the controlling resolution on the issue. The controlling opinion on this issue is found in the opinion of Chief Justice Gesmundo.[367]

The phrase "organized for the purpose of engaging in terrorism" must be struck down for being vague, overbroad, and for failing to meet the strict scrutiny test.

The Court rules differently as regards the third instance of membership penalized under Section 10, i.e., voluntarily and knowingly joining any organization, knowing that such organization has been organized for the

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purpose of engaging in terrorism. The latter phrase "organized for the purpose of engaging in terrorism" primarily renders the same unconstitutional.

To expound, the phrase "organized for the purpose of engaging in terrorism" under the third instance is iinpermissibly vague. In the context of penalizing a person's alleged membership in a terrorist organization, association, or group, there is nothing in the law which provides rules or guidelines to determine and verify the nature of said organization, association, or group as one "organized for the purpose of engaging in terrorism". Even the Senate deliberations on the provision fail to provide guidance or standards for this purpose. Without any sufficient or discernible parameters, the third instance of membership penalized under Section 10 would necessarily fail to accord persons fair notice of what conduct they should avoid, and would give law enforcers unrestrained discretion in ascertaining that an organization, association, or group was organized for the purpose of engaging in terrorism. The Court agrees with petitioners that charges under this instance would be very easy to fabricate, since the lack of standards may give law enforcers free rein in determining which groups are so-called "organized for the purpose of engaging in terrorism". This appears to be in stark contrast to the first and second instances, as discussed above (i.e., proscribed or designated terrorist groups), in which information on the status and nature of an organization, association, or group, whether judicially proscribed or designated by the UNSC, is readily ascertainable and available.

Furthermore, while the State remains to have a compelling interest in punishing membership in groups organized for the purpose of engaging in terrorism, the Court finds that the assailed phrase would unnecessarily overreach into innocent and protected membership. Since the determination of the presence of the second element of the violation - the alleged member's knowledge about the organization's status as a terrorist, i.e., that it was organized for the purpose of engaging in terrorism - rests on undetermined and unprescribed parameters, it is not far-fetched that a determination under the third instance will lead to an arbitrary finding of membership. To be sure, there may be instances when the determination of the status or nature can be easily had if in fact, the organization, association, or group has actually committed or has overtly attempted to commit terrorism. But these instances do not rectify the apparent flaw in the provision which permits its unnecessary application and overreach into protected associations. This may certainly, and unreasonably, restrain and chill the people's exercise of the innocent exercise of the freedom of association in order to avoid being charged under Section 10.

The Court, by the same token, finds that the phrase "organized for the purpose of engaging in terrorism" does not meet the second requisite of the strict scrutiny test. To the Court's mind, the phrase is not narrowly tailored and fails to employ the least restrictive means to accomplish the interest of preventing membership in terrorist organizations, associations or groups. Similar to what has been stated above, there are no apparent standards or parameters provided in the law to determine whether the organization, association, or group is indeed organized for the purpose of engaging in terrorism. Without such standards or parameters, the public is left to guess what degree or variant of membership may be punished, which can unjustifiably include within its scope innocent and protected associations.

All told, the phrase "organized for the purpose of engaging in terrorism" in Section 10 should be struck down for violating the freedom of association.

Section 12 of the ATA, insofar as it penalizes the provision of "training" and "expert advice" as material support, is neither unconstitutionally vague nor overbroad.

Section 12 of the ATA provides:

> Section 12. Providing Material Support to Terrorists. - Any person who provides material support to any terrorist individual or terrorist organization, association or group of persons committing any of the acts punishable under Section 4 hereof, knowing that such individual or organization, association, or group of persons is committing or planning to commit such acts, shall be liable as principal to any and all terrorist activities committed by said individuals or organizations, in addition to other criminal liabilities he/she or they may have incurred in relation thereto.

Meanwhile, Section 3(e) of the ATA considers "training" as "material support," viz.:

> (e) Material Support shall refer to any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation; (Emphasis supplied)

Again, "training" is defined in Section 3(k) of the ATA as follows:

> (k) Training shall refer to the giving of instruction or teaching designed to impart a specific skill in relation to terrorism as defined hereunder, as opposed to general knowledge;

Consistent with the discussion on Section 6 of the ATA, the Court finds that Section 12 may be subject to a facial challenge only insofar as it regulates certain speech acts. The Court finds that Section 12 implicates freedom of speech only insofar as it regulates the provision of "expert advice or assistance" and "training" as material support. Accordingly, the Court withholds judgment on the constitutionality of providing other types of material support as defined in Section 3(e), without prejudice to future challenges when the proper facts arise.

Petitioners argue that Section 12 is overbroad because it does not specify whether the material support should be given purposely to aid in the commission of terrorism.[368]

The Court is not convinced.

Per the discussion on Section 3(k) in relation to Section 6, the Court construes "training" under Section 12 as referring only to that which is directed to produce the commission of terrorism and is likely to produce such action. Concurrently, this interpretation should be made to apply to "expert advice or assistance." Consistent with our interpretation of "training" under Section 6, the terms "training" and "expert advice or assistance" under Section 12 requires knowledge on the part of the provider that the individual or organization, association, or group of persons to which he provided such material support is committing or planning to commit an act of terrorism. Without such knowledge, prosecution under Section 12 must necessarily fail. Furthermore, in the interpretation and application of the provisions of Section 12 in relation to training and expert advice or assistance as modes of providing material support, the Brandenburg standard is deemed incorporated. Thus, training and expert advice or assistance can only be penalized as material support within the ambit of Section 12 when they are: (1) directed to producing imminent terrorism; and (2) is likely to produce such action. As construed, this Court does not find Section 12 impermissibly vague or overbroad so as to violate petitioners' freedom of speech and academic freedom.

Designation and Proscription

At first glance, terrorism may appear to share features with crimes against national security and other political crimes already defined under the RPC, e.g., treason, rebellion, sedition, and the like. In the book Fresh Perspectives on the 'War on Terror,' terrorism was described as:

> x x x [A]n attack on the state and its exclusive right to the legitimate use of violence. Unlike a murderer or

> robber, the terrorist or assassin does not just kill: he claims a legitimacy, even a lawfulness, in doing so. Such acts do not break the law, but seek to impose a new or higher law.[369] (Emphases supplied)

Thus, acts of terrorism are not only pursued to cause injury to people and property, but are motivated by an underlying political objective that distinguishes it from the felonies and other offenses already punished by law. Though objectives of terrorism may have changed over time, certain purposes have remained constant: regime change, territorial change, policy change, social control, and status quo maintenance.[370]

However, in recent times, acts of terrorism have been perpetrated not only by certain individuals, but increasingly more, they have also been planned and executed by groups or networks of terrorist groups. In response, there has been a need to develop special measures specifically designed to prevent terrorism committed by groups, two of which are designation and proscription.

Designation under the ATA is provided for under Section 25, which states:

> Section 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. - Pursuant to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, groups of persons, organizations, or associations designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group.
>
> Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373.
>
> The ATC may designate an individual, group of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, group of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act.
>
> The assets of the designated individual, group of persons, organization or association above-mentioned shall be subject to the authority of the Anti-Money Laundering Council (AMLC) to freeze pursuant to Section 11 of Republic Act No. 10168.
>
> The designation shall be without prejudice to the proscription of terrorist organizations, associations, or groups of persons under Section 26 of this Act.

Section 25 bestows on the ATC - an administrative body - the power to designate a person or an organization as a terrorist, making the power and the process executive in nature. It has three modes: first, through the automatic adoption by the ATC of the designation or listing made by the UNSC; second, through the ATC's approval of requests made by other jurisdictions or supranational jurisdictions to designate individuals or entities that meet the criteria under UNSC Resolution No. 1373; and third, designation by the ATC itself, upon its own finding of probable cause that the person or organization commits, or is attempting to commit, or conspired in the commission of, the acts defined and penalized under Sections 4 to 12 of the ATA.

In addition to designation, Section 26 of the ATA reintroduced proscription, a function and process that was previously present under Section 17 of the HSA.[371] In contrast to designation which is executive in nature, the process of proscription under the ATA remains judicial in nature, by requiring its application to be filed, this time, with the Court of Appeals (CA), thus:

> Section 26. Proscription of Terrorist Organizations, Associations, or Group of Persons. - Any group of persons, organization, or association, which commits any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, or organized for the purpose of engaging in terrorism shall, upon application of the DOJ before the authorizing division of the Court of Appeals with due notice and opportunity to be heard given

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> to the group of persons, organization or association, be declared as a terrorist and outlawed group of persons, organization or association, by the said Court.
>
> The application shall be filed with an urgent prayer for the issuance of a preliminary order of proscription. No application for proscription shall be filed without the authority of the ATC upon the recommendation of the National Intelligence Coordinating Agency (NICA).

Unlike the HSA, however, the ATA augmented the proscription process by empowering the CA to issue a preliminary order of proscription under Section 27, if probable cause exists that its issuance is necessary to prevent the commission of terrorism. The ATA, in addition, also authorized the consideration of requests to proscribe from foreign and supranational jurisdictions, under Section 28. These two provisions state:

> Section 27. Preliminary Order of Proscription. - Where the Court has determined that probable cause exists on the basis of the verified application which is sufficient in form and substance, that the issuance of an order of proscription is necessary to prevent the commission of terrorism, he/she shall, within seventy-two (72) hours from the filing of the application, issue a preliminary order of proscription declaring that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26 of this Act.
>
> The court shall immediately commence and conduct continuous hearings, which should be completed within six (6) months from the time the application has been filed, to determine whether:
> (a) The preliminary order of proscription should be made permanent;
>
> (b) A permanent order of proscription should be issued in case no preliminary order was issued; or
>
> (c) A preliminary order of proscription should be lifted. It shall be the burden of the applicant to prove that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26 of this Act before the court issues an order of proscription whether preliminary or permanent.
>
> The permanent order of proscription herein granted shall be published in a newspaper of general circulation. It shall be valid for a period of three (3) years after which, a review of such order shall be made and if circumstances warrant, the same shall be lifted.

Section 28. Request to Proscribe from Foreign Jurisdictions and Supranational Jurisdictions. - Consistent with the national interest, all requests for proscription made by another jurisdiction or supranational jurisdiction shall be referred by the Department of Foreign Affairs (DFA) to the ATC to determine, with the assistance of the NICA, if proscription under Section 26 of this Act is warranted. If the request for proscription is granted, the ATC shall correspondingly commence proscription proceedings through DOJ.

Notably, a reading of Sections 25 to 28, in relation to the other provisions of the ATA, shows that despite the differentiation - designation being an executive function and process and proscription a judicial one - both seem to have the same primary effects: first, an application for surveillance of "a judicially declared and outlawed terrorist organization as provided in Section 26" and between members of a designated person as defined in Section 3(e) of R.A. No. 10168[372] may already be filed with the CA by law enforcement agents or military personnel under Section 16; second, the examination of records with banking and other financial institutions and the ex parte freezing of assets may be done by the AMLC under Sections 35 and 36, on its own initiative or at the request of the ATC, upon the issuance of a preliminary order of proscription or in case of designation; and third, there is criminal liability under Section 10 for those who recruit others to participate in, join, or support, or for those who become members of, organizations, associations, or groups proscribed under Section 26 or those designated by the UNSC.

The interplay between Sections 25 to 28 with the other provisions of the ATA, together with its consequent effects, forms the substantive arguments raised against designation and proscription. Specifically, petitioners seek

to nullify Sections 25, 26, and 27 for their supposed chilling effect[373] on the freedoms of speech, expression, assembly, association, and other allied rights.[374] They argue that a designation or proscription order operates as a prima facie finding that terrorist acts had been committed, and that the designated or proscribed persons are likely guilty thereof. This chilling effect on the exercise of freedom of expression, association, and other allied rights is allegedly aggravated by the fact that both designation and proscription require publication in a newspaper of general circulation, thereby causing irreparable damage and stigma. Petitioners further assert that the threat of being designated and proscribed as a terrorist or a terrorist organization, association, or group - when taken together with its consequences and the publication of the declaration or order in a newspaper of a general circulation - would cow even the staunchest critics of any administration.[375] This threat or fear is allegedly compounded by the absence of any remedy or relief available for a wrongful designation, the likelihood of which is very high. It is argued that these consequences pose a lethal prior restraint on their exercise of freedom of expression and the right of association.[376]

Similar processes adopted in other jurisdictions show that designation and proscription are accepted preventive and extraordinary forms of counterterrorism measures.

At the outset, the Court notes that the challenged measures are not entirely novel and even, hardly recent. The designation, proscription, listing, blacklisting, outlawing, banning, exclusion, or sanction of individuals or organizations, and such other equivalent terminologies[377] that broadly refer to the set or series of legal instruments or powers which permit a government agent to prohibit the presence of, or support for, an identified terrorist or terrorist organization within its jurisdiction[378] have already existed before the enactment of the ATA, and have been adopted and operationalized in many other countries. The succeeding discussion will briefly explore parallel processes adopted in other jurisdictions, which reinforces the intent of the ATA to establish the nature of designation and proscription as preventive and extraordinary counterterrorism measures.

The concept of designation may be traced to the U.S. as early as 1952 in the Immigration & Nationality Act (INA), which was later amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)[379] and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act). In 1977, the U.S. also enacted the International Emergency Powers Act (IEEPA),[380] which authorized the U.S. President to designate terrorists in times of armed hostilities, or when the U.S. is under attack by a foreign country or by foreign nationals, or when there is an "unusual and extraordinary threat." In its amended version, the IEEPA permits the President to block an entity's assets during the pendency of an investigation. The authority in the IEEPA, in particular, was invoked by US President George W. Bush when he issued Executive Order (E.O.) No. 13224 on September 23, 2001, in which he authorized the designation of 27 foreign individuals and organizations as terrorists and ordered the Secretary of the Treasury to immediately block their assets.

The concept of designation as a counterterrorism measure was reinforced following two significant terrorist events during the 1990s: (1) the satin gas attack in the Tokyo subway system by the terrorist group Aum Shinrikyo in March 1995; and (2) the detonation of a truck filled with explosives near the Edward A. Murrah Building in Oklahoma City by Timothy McVeigh in April 1995. Prior to the September 11 attacks or 9/11, the attack in Oklahoma City was considered the most destructive terrorist attack in the US as it resulted in the death of 168 people and injured several hundred more. Following these incidents, the US Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA),[381] which now provides the mechanism and procedure to be observed in designating foreign terrorists.[382] Under this law, the requisites of designation are as

follows:

> Section 219. DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.
>
> (a) DESIGNATION. -
>
> (1) IN GENERAL. - The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that -
> (A) the organization is a foreign organization;
>
> (B) the organization engages in terrorist activity (as defined in section 212(a)(3)(B)); and
>
> (C) the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States. [Emphasis supplied]

The State Department, through the Secretary of State, was given the power, in coordination with the Attorney General and the Treasury Department, to designate groups as "foreign terrorist organizations" (FTOs).

Once a designation is made, the AEDPA provides mechanisms for review. Among others, it establishes judicial review, as provided in Section 219 (b) of the AEDPA, which allows a designated FTO to assail the same with the U.S. Court of Appeals for the District of Columbia Circuit not later than 30 days after publication of the designation. Thus, while it is the Secretary of State who begins the process of designation of a purported FTO, courts are not prevented from exercising the power of judicial review to determine the propriety of the subject designation. Section 219 (b) of the AEDPA reads:

> (b) JUDICIAL REVIEW OF DESIGNATION. -
>
> (1) IN GENERAL. - Not later than 30 days after publication of the designation in the Federal Register, an organization designated as a foreign terrorist organization may seek judicial review of the designation in the United States Court of Appeals for the District of Columbia Circuit.
>
> (2) BASIS OF REVIEW. - Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation.
>
> (3) SCOPE OF REVIEW. - The Court shall hold unlawful and set aside a designation the court finds to be -
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (B) contrary to constitutional right, power, privilege, or immunity; or
>
> (C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

The IEEPA, on the other hand, does not provide an explicit standard for judicial review, but safeguards are put in place to ensure proper checks and balances. In the exercise of the powers granted to the U.S. President in the IEEPA, he shall immediately transmit to the Congress a report specifying the following: (1) the circumstances which necessitate such exercise of authority; (2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States; (3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances; (4) why the President believes such actions are necessary to deal with those circumstances; and (5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries. Periodic follow-up reports to the Congress are also required by the IEEPA at least once every six months.

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On the other hand, proscription as a counterterrorism measure can be seen as early as the 1970s in the U.K.'s Prevention of Terrorism Act 1974[383] which was enacted to address the terrorist incidents committed during the Northern Ireland conflict.[384] The Act was originally meant to be effective for only six months as it was supposedly a temporary emergency legislation; however, it was renewed annually by the U.K. Parliament up until 1989.[385] Under this Act, the government is allowed to "proscribe organizations concerned in terrorism," as well to exercise the "power to exclude certain persons from x x x the U.K. in order to prevent acts of terrorism."[386]

The current legal basis for proscription in the U.K. is now found in Part II of its Terrorism Act 2000. To note, several of those proscribed under the former law remain listed as proscribed organizations under Schedule 2 of the U.K. Terrorism Act 2000.[387] Under Sections 3 (3) and 3 (6) of thereof, the power to proscribe is exercised by the Secretary of State for the Home Department by the issuance of an order, if he or she believes that an organization is "concerned in terrorism", or should be treated as one already proscribed:[388]

> 3. Proscription.
>
> (1) For the purposes of this Act an organisation is proscribed if -
> (a) it is listed in Schedule 2, or
>
> (b) it operates under the same name as an organisation listed in that Schedule.

(2) Subsection (1)(b) shall not apply in relation to an organisation listed in Schedule 2 if its entry is the subject of a note in that Schedule.

(3) The Secretary of State may by order -

> (a) add an organisation to Schedule 2;
>
> (b) remove an organisation from that Schedule;
>
> (c) amend that Schedule in some other way.

(4) The Secretary of State may exercise his power under subsection (3)(a) in respect of an organisation only if he believes that it is concerned in terrorism.

x x x x

(6) Where the Secretary of State believes -

> (a) that an organisation listed in Schedule 2 is operating wholly or partly under a name that is not specified in that Schedule (whether as well as or instead of under the specified name), or (b) that an organisation that is operating under a name that is not so specified is otherwise for all practical purposes the same as an organisation so listed, he may, by order, provide that the name that is not specified in that Schedule is to be treated as another name for the listed organisation.

(7) Where an order under subsection (6) provides for a name to be treated as another name for an organisation, this Act shall have effect in relation to acts occurring while -

> (a) the order is in force, and (b) the organisation continues to be listed in Schedule 2, as if the organisation were listed in that Schedule under the other name, as well as under the name specified in the Schedule.

(8) The Secretary of State may at any time by order revoke an order under subsection (6) or otherwise provide for a name specified in such an order to cease to be treated as a name for a particular organisation.

An organization is considered "concerned in terrorism" if it commits or participates in acts of terrorism, prepares for terrorism, promotes or encourages terrorism, or is otherwise concerned in terrorism,[389] to wit:

(5) For the purposes of subsection (4) an organisation is concerned in terrorism if it -
(a) commits or participates in acts of terrorism,

(b) prepares for terrorism,

(c) promotes or encourages terrorism, or

(d) is otherwise concerned in terrorism.

(5A) The cases in which an organisation promotes or encourages terrorism for the purposes of subsection (5)(c) include any case in which activities of the organisation -

(a)

include the unlawful glorification of the commission or preparation (whether in the past, in the future or generally) of acts of terrorism; or

(b)

are carried out in a manner that ensures that the organisation is associated with statements containing any such glorification.

(5B) The glorification of any conduct is unlawful for the purposes of subsection (5A) if there are persons who may become aware of it who could reasonably be expected to inter that what is being glorified, is being glorified as -

(a)

conduct that should be emulated in existing circumstances, or

(b)

conduct that is illustrative of a type of conduct that should be so emulated.

(5C) In this section -

"glorification" includes any form of praise or celebration, and cognate expressions are to be construed accordingly;

"statement" includes a communication without words consisting of sounds or images or both.

Similar to a designation made in the U.S. under the AEDPA, the U.K. Terrorism Act 2000 provides for a review mechanism which allows the proscribed organization or a person affected by the organization's proscription to file an application for "deproscription" with the Secretary of State for the Home Department,[390] and a refusal thereof may be appealed to the three-member panel called the Proscribed Organisations Appeal (POA) Commission.[391] A further appeal on questions of law may be brought to the courts, subject to the permission of the POA Commission or the discretion of the court to which the appeal will be brought, if permission is refused.[392]
In Southeast Asia, Singapore mostly takes the lead on proscription from the UN,[393] as it seems to adopt in toto[394] the sanctions list of individuals and entities belonging to, or associated with, the Taliban, ISIL (Da'esh), and Al-Qaeda, as maintained by the established committees in accordance with UNSC Resolution No. 1267[395] and UNSC Resolution No. 1988.[396] The basis for the adoption, and hence proscription in Singapore, is its United Nations Act of 2000,[397] which was enacted to enable it to fulfill its obligations respecting Article 41 of the UN Charter.[398] The UNSC Resolutions 1267 and 1988 sanctions lists, in turn, are expressly referenced and incorporated in Schedule 1 of Singapore's Terrorism (Suppression of Financing) Act of 2003.[399] While a study

has observed that there appears to be no statute in Singapore that specifically provides for domestic listing or one that outlines a listing mechanism,[400] Section 38(a) of the Terrorism (Suppression of Financing) Act empowers the Minister for Home Affairs of Singapore to amend, add to, or vary Schedule 1 by the issuance of an order to be published in their Gazette,[401] including the power to specify what other criminal acts should be considered as a terrorist act -

> Amendment of Schedules
>
> 38. The Minister may, by order published in the Gazette -
> (a) amend, add to or vary the First Schedule; and
>
> (b) amend the Second Schedule to specify any act or omission that is punishable under any law that implements any treaty, convention or other international agreement to which Singapore is a party as a terrorist act.

which means an act akin to proscription may be exercised by the Minister for Home Affairs, an executive officer, without need to refer the matter to, or to seek the approval by, Singapore's Parliament.[402]

From the foregoing, the Court observes that the nature of the designation and/or proscription measures as understood in other jurisdictions bears strong similarities with the designation and proscription measures instituted in the ATA. Firstly, the purpose animating these measures are unambiguously directed towards the prevention or suppression of terrorism, which Section 2 of the ATA has characterized as inimical and dangerous to the national security of the country and to the welfare of the people. Secondly, despite having strong and vibrant democracies, the legal frameworks of these three countries still found it necessary to accommodate such extraordinary measures, owing to the continuously evolving nature of terrorism.

Relative thereto, the Court observes that the key powers, functions, or processes in these statutes were all given to, and exercised by, an executive officer of these governments. Pertinently in this regard, one study has mentioned that "[t]here is a clear consensus across Australia, the U.K., Canada, New Zealand[,] and the U.S. that the executive is the most appropriate body to decide whether an organization satisfies the definition of a terrorist organization" and thus, should be proscribed.[403]

While Congress has seen it wise for the ATA to delineate and distinguish the executive function and process of designation from the judicial function and process of proscription, it is clear to the Court that despite this ostensible distinction, both are preventive and extraordinary counterterrorism measures in the same mold as that contemplated in the functions and processes of the measures adopted in the U.S., U.K., and Singapore. The nature and effects of both measures, like their foreign counterparts, are borne of public necessity, and spring from the same resolve to preserve national security and to protect the public and general welfare from acts of terrorism.

Designation and proscription in the ATA are preventive measures enacted in the exercise of the police power of the State.

The Court is mindful that terrorism has a global reach and is not confined to national borders. It is not restricted as to the time and place of actual hostilities nor does it automatically conclude when acts of violence end. The Court is aware that the threat of terrorism today is unprecedented and the use of modern weapons capable of mass destruction has made it impossible to measure the extent of harm that may be caused. Hence, the government has recognized the necessity to constantly develop counterterrorism measures that are responsive to changing times

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and the developments in technology exploited by terrorists to advance their ideologies and to sow terror. Consideration in forming policies is no longer limited to addressing immediate threats to national security but now necessarily includes anticipating future risks or catastrophes.

With the foregoing in mind, and in consideration of the context upon which other countries' understanding of designation and proscription supported the intent of the ATA to make these processes preventive and extraordinary counterterrorism measures, this Court finds that the adoption or institution of both designation and proscription in the ATA must be viewed as an exercise of poliec power by the State.

The exercise of police power is primarily vested in the legislature through its authority to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, cither with penalties or without, as they shall judge to be for the good and welfare of the country and of the people.[404] It has been described as the most essential, insistent, and the least limitable of the three great governmental powers, extending as it does to all the great public needs.[405] The very purpose of the State will be destroyed if it will be deprived, or will allow itself to be deprived, of its competence to promote public safety and the general welfare.[406] Put another way, police power is that inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety, and welfare of society.[407]

Earlier cases refer to police power as the power to promote the general welfare and public interest, or the power to enact such laws in relation to persons and property as may promote public health, public morals, public safety, and the general welfare of each inhabitant.[408] It has also been said to be the power to preserve public order and to prevent offenses against the State, as well as the power to establish for the intercourse of citizen with citizen those rules of good manners and good neighborhood calculated to prevent conflict of rights. All these depictions of police power underscore its comprehensiveness to meet all exigencies and to provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits.[409]

Based on these characterizations, it cannot be denied that the institution of designation and proscription in the ATA is an exercise of police power. Designation and proscription, as preventive counterterrorism measures, are made necessary because of the pernicious and widespread effects of even one single terrorist act, which can happen anytime, anywhere. As the Court has discussed before in as many words, terrorism is never just an ordinary crime and a terrorist is never just an ordinary criminal - terrorism, very simply, is sui generis, and its extraordinary nature demands extraordinary measures.

Having stemmed from the exercise of police power, the validity of executive designation and judicial proscription must be judged on the basis of the due process clause, particularly substantive due process, which requires the concurrence of a lawful subject or purpose and a lawful means or method.[410] There is a lawful purpose when the interests of the public generally, as distinguished from those of a particular class, require the exercise of police power.[411] On the other hand, the means are said to be lawful when the methods employed are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.[412] Only when these two requisites concur may the State be considered to have properly exercised police power.[413] However, considering that the exercise of police power was assailed in the context of a free speech challenge, the Court shall analyze the validity of the provisions on designation and proscription, more specifically under strict scrutiny and overbreadth standards.

The provisions on designation and proscription are susceptible to a facial challenge.

As petitioners allege, the results or the outcomes of being designated under Section 25 or proscribed under Sections 26 to 28, when implemented in conjunction with the other provisions of the ATA, have a significant impact on free speech and expression, and present outright freedom of speech and expression restrictions. Though these are not exclusively speech provisions per se, they claim that the chilling effect created by the counterterrorism measures introduced in the challenged provisions intimidates individuals or groups and causes an atmosphere detrimental to the exercise of the freedom of expression.

In this accord, petitioners have thus laid a prima facie basis for the Court to treat Sections 25 to 28 on designation and proscription as appropriate subjects of a facial challenge relative to the context of the actual facts presented in this case. These two extraordinary and preventive measures, when implemented, affect the ability of individuals to speak and to express themselves, as it is alleged that these measures can be wielded in a manner as to invoke fear of state action. Verily, the Court perceives that a looming threat of a potential designation or proscription may indeed effectively chill the exercise of free speech, expression, and their cognate rights under the Constitution. It is also discernible that the prospect of being a victim of an erroneous designation contributes to a pernicious chilling effect. The claim that the ATC under the current formulation of Section 25 can designate whosoever it deems has given reason to be designated tends to intimidate everyone in their free exercise of constitutional rights.

Since the implementation or effects of designation and proscription have implications on the exercise of free speech, expression, and their cognate rights, the Court shall determine the validity of Sections 25 to 28 under a facial analysis lens. In doing so, however, the Court will only utilize two of the three analytical tools (i.e., overbreadth and strict scrutiny, and not void for vagueness) which, according to Romualdez v. Sandiganbayan and Spouses Romualdez v. Commission on Elections as above-discussed, were developed for testing, on their faces, statutes involving free speech and expression. This is because, with respect to void for vagueness, the Court has found that none of petitioners squarely raised any issue as to the ambiguity in the language or terminology in Sections 25 to 28. There being no claim that the wording of Sections 25 to 28 fails to provide fair warning and notice to the public of what is prohibited or required so that one may act accordingly, then perforce the only tests that the Court will employ are the overbreadth and strict scrutiny doctrines.

As have already been discussed, a law may be struck down as unconstitutional under the overbreadth doctrine if it achieves a governmental purpose by means that are unnecessarily broad and thereby invade the area of protected freedoms. Meanwhile, the strict scrutiny standard is a two-part test under which a law or government act passes constitutional muster only if it is necessary to achieve a compelling state interest, and that it is the least restrictive means to protect such interest or narrowly tailored to accomplish said interest. To note, a perfunctory look at these two tests shows that the sweeping facet of the overbreadth doctrine is substantially the same as the second requisite of strict scrutiny. The two are practically of the same essence and import. Therefore, in order to determine whether Sections 25 to 28 sweeps unnecessarily and broadly, and thereby invade the area of protected freedoms, the Court will use strict scrutiny in relation to the overbreadth doctrine to ascertain if the means chosen by the State are narrowly tailored to accomplish its compelling interest. It is within these interrelated analytical tools and the facial analysis framework as herein delimited that the Court shall now proceed to resolve the challenge on these provisions.

The first mode of designation is a constitutionally acceptable counterterrorism measure under Section 25.

The first paragraph of Section 25, which contains the first mode of designation, states:

> Section 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. - Pursuant

> to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, groups of persons, organizations, or associations designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group. x x x

Using the tests identified in the immediately preceding discussion, the Court finds that the first mode of designation as provided under the first paragraph of Section 25 is a legitimate exercise of the State's police power.

Compelling state interest exists in enacting the first mode of designation under Section 25.

There exists a compelling state interest in authorizing the automatic adoption of the UNSC Consolidated List. The challenged provision is intended: (1) to forestall possible terrorist activities of foreigners within the Philippine jurisdiction or against Philippine nationals abroad; (2) to cooperate with global efforts against terrorist groups who are known to operate across territorial borders; and (3) to comply with our international obligations under UNSC Resolution No. 1373. Undeniably, law enforcement, national security, and public safety are all compelling state interests As the Court earlier stated, acts of terrorism are not confined to national borders but rather, have a global reach. National security is a compelling state interest, for as Former Chief Justice Reynato S. Puno has declared with commendable foresight in his dissent in Secretary of Justice v. Hon. Lantion:[414]

> The increasing incidence of international and transnational crimes, the development of new technologies of death, and the speed and scale of improvement of communication are factors which have virtually annihilated time and distance. They make more compelling the vindication of our national interest to insure that the punishment of criminals should not be frustrated by the frontiers of territorial sovereignty. This overriding national interest must be upheld as against x x x weak constitutional claims x x x. (Emphasis in the original)

The first mode of designation is but an implementation of the country's standing obligation under international law to enforce anti-terrorism and related measures, and the Court is not convinced that the automatic adoption by the ATC of the designation or listing made by the UNSC is violative of the due process clause or an encroachment of judicial power. Further, the adoption of the Consolidated List is in accord with the doctrine of incorporation, as expressed in Section 2, Article II of the Constitution, whereby the Philippines adopts the generally accepted principles of international law and international jurisprudence as part of the law of the land and adheres to the policy of peace, cooperation, and amity with all nations.[415] In this regard, it is important to remember that UNSCR No. 1373 was issued by the UNSC as an act under Chapter VII of the UN Charter and in response to "threats to international peace and security caused by terrorist acts." Under the doctrine of incorporation, the Philippines has committed to the preservation of international peace. As such, the adoption of the UNSCR No. 1373 finds basis in the Constitution.

While the ATA mentions only the country's obligations under UNSCR No. 1373, this reference should be understood as reflecting the country's commitments under the UN Charter, particularly under Articles 24 (1) and 25, Chapter V and Articles 48 and 49, Chapter VII thereof, which provide:

> Article 24
>
> 1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council the primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf;
>
> x x x x

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> Article 25
>
> The Members of the United Nations agree to accept and carry out decisions of the Security Council in accordance with the present Charter.
>
> x x x x
>
> Article 48
>
> 1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall he taken by all the Members of the United Nations or by some of them, as the Security Council may determine.
>
> 2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.
>
> Article 49
>
> The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council. (Emphases and underscoring supplied]

For the Court, these commitments lay down sufficient bases in construing that the measures adopted in UNSCR No. 1373, and other supplemental UNSCRs, are generally binding on all member states.

Additionally, UNSCR No. 1373 specifically cites two issuances that buttress its generally binding nature. One is General Assembly Resolution No. 2625 (XXV), adopted on October 24, 1970, and the other is UNSCR No. 1189, adopted by the UNSC on August 13, 1998.

General Assembly Resolution No. 2625 (XXV), or the "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations" (Declaration),[416] affirmed the importance of the progressive development and codification of the principles of international law concerning friendly relations and cooperation among States. The Declaration likewise emphasized that its adoption "would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among nations, and particularly in the universal application of the principles embodied in the UN Charter."[417] In addition to the principle stated in UNSCR No. 1373 that "every State has the duty to refrain from organizing, instigating, assisting, or participating in terrorist acts in another state, or acquiescing in organized activities within its territory directed towards the commission of such acts," the Declaration likewise adopted the principle that States have the duty to cooperate with one another in accordance with the UN Charter.[418]

The principles declared in United Nations General Assembly Resolution No. 2625 were reiterated in UNSCR No. 1189 (1998), which reaffirmed "the determination of the international community to eliminate international terrorism in all its forms and manifestations", and stressed the need to strengthen "international cooperation between States in order to adopt practical and effective measures to prevent, combat, and eliminate all forms of terrorism affecting the international community as a whole."[419] UNSCR No. 1189 thereby called upon states "to adopt, in accordance with international law and as a matter of priority, effective and practical measures for security cooperation, for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators."[420]

The foregoing principles are, not surprisingly, repeated in UNSCR No. 1373 as follows:

> 3. Calls upon all States to:

> (a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
>
> (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
>
> (c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
>
> (d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;
>
> (e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);
>
> (f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;
>
> (g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists[.][421] (Emphases and underscoring supplied)

While the Court is not prepared to state here that the practice and process of designation as a counterterrorism measure has ripened to the status of customary international law, it is very obvious from the foregoing and from other issuances emanating from the UN and its organs[422] that there is an underlying acknowledgment, first, of the need to prevent, and the duty of member States to prevent, terrorism; second, that cooperation between States is necessary to suppress terrorism; and third, that member States should adopt effective and practical measures to prevent its commission. It is not lost on the Court that UNSCR No. 1373 uses such language to the effect that the UNSC has decided that all States shall carry out the actions and implement the policies enumerated therein, which is highly indicative of the generally binding nature of the issuance.

The Court would also venture to say here that the automatic adoption by the ATC of the UNSC Consolidated List is surely not an exercise of either judicial or quasi-judicial power, as it only affirms the applicability of the sanctions under the relevant UNSC resolutions within Philippine jurisdiction, as existing under Philippine law. In automatically adopting the designation pursuant to UNSCR No. 1373, the ATC does not exercise any discretion to accept or deny the listing, and it will not wield any power nor authority to determine the corresponding rights and obligations[423] of the designee. Instead, it merely confirms a finding already made at the level of the UNSC, and affirms the applicability of sanctions existing in present laws. It is thus in this perspective that the Court finds that the Congress, in enacting the first mode of designation as an acceptable counterterrorism measure, has a compelling state interest to achieve and only implements the obligations the country has assumed as a member of the international community.

The first mode of designation is narrowly tailored and the least restrictive means to achieve the objective of the State. There are adequate guidelines in UNSCR No. 1373.

Even if a compelling state interest exists, a governmental action would not pass the strict scrutiny test if the interest could be achieved in an alternative way that is equally effective yet without violating the freedom of expression and its allied rights. Here, it was not shown that there is a less restrictive alternative to comply with the Suite's international responsibility pursuant to UNSCR No. 1373 and related instruments to play an active role in preventing the spread of the influence of terrorists included in the Consolidated List. Neither was it proven that the first mode of designation imposes burdens more than necessary to achieve the State's articulated interest.

The mechanism of automatic adoption of the UNSC Consolidated List is reasonable relative to the underlying purpose of complying with the country's international obligations to cooperate in the efforts to prevent terrorism. To reiterate, the first mode of designation is effectively made not just by a domestic body but by the UNSC itself. Hence, it is necessary and reasonable in light of the country's international obligations.

Furthermore, there are adequate standards and rigorous procedures for listing under UNSCR Nos. 1373, 1989, and 2368, as well as under the guidelines of the Sanctions Committee which require inter alia multilateral acceptance among member states for listing. Together, they provide a sufficient framework in the implementation and execution of the designation process in the UN prior to the automatic adoption of the same by the ATC. Consistent with this finding, the Court does not subscribe to the argument that the due process clause of the Constitution is violated because UNSCR No. 1373 does not provide parameters for designation. Instead, the Court finds that the first mode of designation satisfies the requirement that it must be narrowly tailored and least restrictive.

To expound, a close reading of UNSCR No. 1373 shows that it does provide exhaustive factors for designation or listing, as it states the following:

> 1. Decides that all States shall:
>
> (a) Prevent and suppress the financing of terrorist acts;
>
> (b) Criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
>
> (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
>
> (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;
>
> 2. Decides also that all States shall:
>
> (a) Retrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
>
> (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

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(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents[.] (Emphases supplied)

The foregoing criteria are not as express or clear-cut as those provided for in UNSCR Nos. 1989 (2011)[424] and 2368 (2017),[425] both of which explicitly enumerate the listing criteria which the UNSC uses for its consolidated sanctions list, to wit:

Listing Criteria: Decides that acts or activities indicating that an individual, group, undertaking or entity is associated with ISIL or Al-Qaida and therefore eligible for inclusion in the ISIL (Da'esh) & Al-Qaida Sanctions List include:

(a) Participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of;

(b) Supplying, selling or transferring arms and related material to;

(c) Recruiting for; or otherwise supporting acts or activities of Al-Qaida, ISIL, or any cell, affiliate, splinter group or derivative thereof[.][426]

Nonetheless, this will not render the reference to only UNSCR No. 1373 in Section 25, or the basis of designation under the same, as invalid. It can easily be seen that the specific listing criteria in UNSCR Nos. 1989 (2011) and 2368 (2017) merely summarized the exhaustive factors given by UNSCR No. 1373.

It should even be emphasized at this point that the process adopted by the UNSC, prior to the automatic adoption of the Consolidated List by the ATC, is a multilateral one, as it requires the acceptance of all members of the Security Council ISIL (Da'esh) and Al-Qaida Sanctions Committee (Sanctions Committee).[427] In the Guidelines of the Committee for the Conduct of its Work dated 05 September 2018 (Sanctions Committee Guidelines), the procedure for the decision-making of the Sanctions Committee requires that:

(a) The Committee shall make decisions by consensus of its Members. If consensus cannot be reached on a particular issue, including listing and delisting, the Chair should undertake such further consultations as may facilitate agreement. If after these consultations consensus still cannot be reached the matter may be submitted to the Security Council by the Member concerned. The provisions of this paragraph are without prejudice to the special procedures stipulated in paragraphs 62 and 69 of resolution 2368 (2017).

(b) Decisions will be taken by a written procedure. In such cases, the Chair will circulate to all Members of the Committee the proposed decision of the Committee, and will request Members of the Committee to indicate any objection they may have to the proposed decision within five full working days except as otherwise provided for in the Guidelines or a relevant resolution, or, in urgent situations, such shorter period as the Chair

shall determine.

Notably, the procedure for designation or listing under the Sanctions Committee Guidelines provides:

6. Listing

x x x x

(g) When proposing names for inclusion on the ISIL (Da'esh) and Al-Qaida Sanctions List, Member States should use the standard forms for listing available in all official languages on the Committee's website and shall include as much relevant and specific information as possible on a proposed name, in particular sufficient identifying information to allow for the accurate and positive identification of the individual, group, undertaking or entity concerned by competent authorities, and to the extent possible, information required by INTERPOL to issue a Special Notice, including:
(i) For individuals: family name/surname, given names, other relevant names, date of birth, place of birth, nationality/citizenship, gender, aliases, employment/occupation, State(s) of residence, passport or travel document and national identification number, current and previous addresses, current status before law enforcement authorities (e.g. wanted, detained, convicted), location, photographs and other biometric data (where available and in accordance with their national legislation);

(ii) For groups, undertakings or entities: name, registered name, short namc(s)/acronyms, and other names by which it is known or was formerly known, address, headquarters, branches/subsidiaries, organizational linkages, parent company, nature of business or activity, State(s) of main activity, leadership/management, registration (incorporation) or other identification number, status (e.g. in liquidation, terminated), website addresses.

The Monitoring Team shall be prepared to assist Member States in this regard.

(h) Member States shall provide a detailed statement of case in support of the proposed listing that forms the basis or justification for the listing in accordance with the relevant resolutions, including paragraph 51 of resolution 2368 (2017). The statement of case should provide as much detail as possible on the basis(es) for listing, including but not limited to:

(1) specific information demonstrating that the individual/entity meets the criteria for listing set out in paragraphs 2 and 4 of resolution 2368 (2017);

(2) details of any connection with a currently listed individual or entity;

(3) information about any other relevant acts or activities of the individual/entity;

(4) the nature of the supporting evidence (e.g. intelligence, law enforcement, judicial, open source information, admissions by subject, etc.);

(5) additional information or documents supporting the submission as well as information about relevant court cases and proceedings. The statement of case shall be rclcasable, upon request, except for the parts the designating State identifies as being confidential to the Committee, and may be used to develop the narrative summary of reasons for listing described in section 9 below.

x x x x

(p) Upon request of a Committee Member, listing requests may be placed on the Committee's agenda for more detailed consideration. If deemed necessary, the Committee may request additional background information from the Monitoring Team and/or the designating State(s).

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Following consideration by (he Committee, the Chair shall circulate the listing request under the written decision-making procedure as described in Sections 4 paragraph (b) and section 6 paragraph (n) above.

x x x x

9. Narrative Summaries of Reasons for Listing

x x x x

(b) When a new name is proposed for listing, the Monitoring Team shall immediately prepare, in coordination with the relevant designating State(s), a draft narrative summary for the Committee's consideration which shall be circulated together with the corresponding listing request. The narrative summary shall be made accessible on the Committee's website on the same day a name is added to the ISIL (Da'esh) and Al-Qaida Sanctions List.

(c) Draft narrative summaries should be based on information provided by the designating State(s), Committee members or the Monitoring Team, including the statement of case, the standard form for listing, any other official information provided to the Committee or any other relevant information publicly available from official sources.

(d) The narrative summary should include: the dale of listing; the basis(es) for listing according to the relevant resolutions adopted by the Security Council, i.e. specific information demonstrating that the individual or entity meets the criteria for listing set out in the relevant resolutions; information about any acts or activities of the individual/entity indicating an association with ISIL (Da'esh) and Al-Qaida, pursuant to paragraphs 2 and 4 of resolution 2368 (2017); the names and permanent reference numbers of other entries on the List associated with the listed party; any other relevant information available at the date or after the date of listing such as relevant court decisions and proceedings as provided by the designating State(s) or other Member States concerned; the date(s) when the narrative summary was first made accessible on the Committee's website and when it was reviewed or updated. (Underscoring in the original; citation omitted)

Based on the foregoing, it is evident that the procedure for listing or designation pursuant to UNSCR No. 1373 involves multilateral acceptance among member states. A decision to designate or list a person or entity needs the consensus of the Sanctions Committee members. Further consultation may be had to facilitate an agreement if no consensus can be reached, and there is a possibility that the decision can be elevated to the Security Council proper. More importantly, it also indicates that there must be an agreement as to whether the criteria for designation or listing have been observed or complied with - criteria which are easily discernible from UNSCR No. 1373 and its supplemental resolutions, and which are easily obtainable as all these information are accessible to the general public. All things considered, any determination to be made even before the ATC automatically adopts the designation is not taken lightly.

Finally, the UNSC provides for a delisting process, the procedure for which is detailed in the supplementing resolutions of UNSCR No. 1373. Significantly, Rule 6.9 of the ATA IRR acknowledges that delisting under the first mode of designation can be availed of in two ways: (1) either through the government, the Philippines being a member State, via a delisting request submitted to the Sanctions Committee; or (2) by the designees themselves, via a delisting request submitted to the Office of the Ombudsperson.[428]

At this point, and relative to the requisite of employing the least restrictive means, the Court notes that petitioners lambast the supposed lack of prior notice and hearing that attends the process of designation. Suffice it to say at this point, however, that this supposed lack of prior notice and hearing is understandably justified by the exigent nature of terrorism, which is a relatively new global phenomenon that must be met with commensurate effective responses by nation-States. It is not farfetched to see that the imposition of the notice and hearing requirement prior to a designation will most likely eliminate a valuable opportunity for law enforcement to prevent an evil that

both the ATA and the country's international obligations seek to avoid, in the guise of due process. Verily, this will ultimately frustrate the objectives of the State and compromise its intelligence operations. The Court thus finds that this is a permissible accommodation under the constitutional framework, for not only is it a realistic approach, it also recognizes the inherent and compelling interest to protect its existence and promote the public welfare.[429] As aptly pointed out by Associate Justice Amy C. Lazaro-Javier in her dissent in People v. Sapla[430] (Sapla):

> [e]ffective law enforcement is a legitimate interest that is not less favored by the law.[431] (Emphasis in the original)

In any event, the due process requirement is satisfied by an opportunity to be heard - designees will be subsequently notified of their designation in accordance with Rule 6.5 of the IRR. Petitioners ought to be reminded that this will not be the first time where the Court has upheld the satisfaction of due process requirements through subsequent notice and hearing - a case in point is the "Close Now, Hear Later Scheme" under Section 29 of R.A. No. 265, which the Court upheld in Central Bank v. Court of Appeals.[432] From this ruling, the Court has recognized that there are very exceptional situations wherein public interest can take precedence over the usual procedural due process rights of an individual, in line with the police power of the State.

All told, the Court does not subscribe to petitioners' argument that the first mode of designation is unconstitutional. Instead, the Court finds that the this mode of designation satisfies the requirement that the means employed be narrowly tailored and are the least restrictive. In this accord, it also satisfies the overbreadth doctrine, which "decrees that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[433]

The second and third modes of designation are constitutionally problematic, and must be struck down.

In contrast to the first mode, the second and third modes of designation, as provided under the second and third paragraphs of Section 25, are constitutionally problematic.

While the State has established a compelling interest, the means employed under the second mode of designation is not the least restrictive means to achieve such purpose.

The second mode of designation under Section 25 states:

> Section 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. - x x x
>
> Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373. (Emphasis and underscoring supplied)

The foregoing mode of designation does not pass the strict scrutiny test and is equally overbroad.

Same as the first mode, there are underlying compelling State interests and purposes for legislating the second mode of designation. These are: (1) to forestall possible terrorist activities of foreigners within the Philippine

jurisdiction or against Philippine nationals abroad to prevent foreign terrorism, particularly against individuals not listed by the UNSC; and (2) to foster inter-State reciprocity for the purpose of facilitating mutual assistance in the prevention of terrorist activities.

However, the means employed are not the least restrictive nor narrowly tailored to achieve the State's compelling interest. Under this second mode of designation, unbridled discretion is given to the ATC in granting requests for designation based on its own determination. Likewise, there appears to be no sufficient standard that should be observed in granting or denying such requests. The ATC is left to make its own determination based loosely on "the criteria for designation of UNSCR No. 1373," without any further sufficient parameters for its guidance. This may therefore lead to a quid pro quo designation with the requesting jurisdiction at the expense of the rights of a prospective designee.

Further, there are no proper procedural safeguards and remedies for an erroneous designation in this respect. To compare, the first mode of designation with the UNSC has a process for delisting, the procedure for which is detailed in the supplementing resolutions of UNSCR No. 1373. As mentioned, Rule 6.9 of the ATA IRR acknowledges that delisting under the first mode of designation can be availed of in two ways. Moreover, there is no automatic review provision applicable to designations made under the second mode similar to that provided for under Section 26 (on proscription). In fact, the absence of a remedy is even more glaring when the Court takes into consideration similar counterterrorism measures of other countries, as mentioned above. This, despite the fact that proponents of the law have repeatedly invoked the need to be at par with the rest of the international community in combating terrorism and fulfilling the country's duties under UNSCR No. 1373. They even mentioned the similarities in the language used and the counterterrorism concepts introduced in foreign legislation to support this narrative.

Again, in the U.S., there is an immediate relief or remedy available to designated individuals or entities, since the AEDPA provides two mechanisms for review of a designation. The first is judicial review, as provided in Section 219 (b) as above-cited. While it is the Secretary of State who begins the process of designation of a purported foreign terrorist organization therein, courts are not prevented from exercising the power of judicial review to determine the propriety of the subject designation. The second is through the intervention of the U.S. Congress under Section 219 (a) (5) of the AEDPA, which allows the latter to revoke a designation made by the State Department:

> (5) REVOCATION BY ACT OF CONGRESS. - The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

Accordingly, the designation procedure of Foreign Terrorist Organizations (FTOs) in the United States under the AEDPA has features that permit the involvement of other branches of government to afford remedies in case of erroneous or wrongful designations and uphold the principle of checks and balances. Although the Court notes that as of September 2020, neither the U.S. Congress nor its courts have removed groups from the FTO list, these remedies exist under the main law. These two avenues for review are integral components of the U.S. law that sets it apart from the second as well as the third (as will be discussed below) modes of designation introduced in the ATA. The review and revocation mechanisms therefore compel the State Department to observe a higher standard given that the evidence against the subject or designee must hold in court.

Also, it deserves reiteration that there are appeal procedures existing in the U.K. against a proscription order issued by the Secretary of State for the Home Department, which go up to the courts after two levels of appeal. Markedly, the second level of appeal is a Commission established and dedicated for the purpose:

> 4 Deproscription: application.

(1) An application may be made to the Secretary of State For an order under section 3(3) or (8) -
(a) removing an organisation from Schedule 2, or

(b) providing for a name to cease to be treated as a name for an organisation listed in that Schedule.

(2) An application may be made by -

(a) the organisation, or

(b) any person affected by the organisation's proscription or by the treatment of the name as a name for the organisation.

(3) The Secretary of State shall make regulations prescribing the procedure for applications under this section.

(4) The regulations shall, in particular -

(a) require the Secretary of State to determine an application within a specified period of time, and

(b) require an application to state the grounds on which it is made.

x x x x

6 Further appeal.

(1) A party to an appeal under section 5 which the Proscribed Organisations Appeal Commission has determined may bring a further appeal on a question of law to -

(a) the Court of Appeal, if the first appeal was heard in England and Wales,

(b) the Court of Session, if the first appeal was heard in Scotland, or

(c) the Court of Appeal in Northern Ireland, if the first appeal was heard in Northern Ireland.

(2) An appeal under subsection (1) may be brought only with the permission -

(a) of the Commission, or

(b) where the Commission refuses permission, of the court to which the appeal would be brought.

(3) An order under section 5(4) shall not require the Secretary of State to take any action until the final determination or disposal of an appeal under this section (including any appeal to the Supreme Court).

Considering all these existing procedures from other countries which the ATA may draw inspiration from, any form of intervention, judicial or otherwise, is still not explicitly provided therein. The Senate, the House of Representatives, or the Joint Congressional Oversight Committee constituted under Section 50 of the ATA cannot revoke a designation made by the ATC. The utter lack of procedural safeguards and remedies for erroneous designation in the second mode as well as in the third mode, which will be further discussed below, taints such measures with arbitrariness relative to the State purpose sought to be achieved and is thus, problematic.

The lack of a remedy aside, there exists other suitable alternatives which are far less intrusive and potentially injurious to protected rights. These include the adoption of an internal watchlist by law enforcement agencies or the maintenance of a database to monitor potential threats, and judicial proscription under Section 26. As had been pointed out above and as will be further dealt with below, the effects of designation are practically the same as proscription. Since this measure has the effect of impermissibly chilling free speech and its cognate rights, it should not be made through an executive body's determination that lacks proper standards and safeguards.

In fine, for the reasons stated, the second mode of designation fails to pass strict scrutiny and overbreadth and

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hence, is unconstitutional.

With a vote of 7-8, the succeeding discussion in the ponencia on the issue of the constitutionality of the third mode of designation found in the third paragraph of Section 25 had been overturned and is not reflective of the opinion of the majority of the members of the Court. On this issue, the majority declared the subject phrase not unconstitutional. Readers are cautioned to read this portion of the ponencia as it holds the opinion of only seven (7) members of the Court and not the controlling resolution on the issue. The controlling opinion on this issue is found in the opinion of Chief Justice Gesmundo.[434]

The third mode of designation also fails to meet the strict scrutiny test and is overly broad.

The process for the third mode of designation is as follows:

> Section 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. —
>
> x x x x
>
> The ATC may designate an individual, group of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, group of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act. x x x (Emphases and underscoring supplied)

This process is highlighted in Rule 6.3 of the ATA's IRR which reads:

> Rule 6.3. Domestic Designation by the ATC through a Determination of Probable Cause. - Upon a finding of probable cause, the ATC may designate:
>
> - an individual, group of persons, entity, organization, or association, whether domestic or foreign, who commit, or attempt to commit, or conspire or who participate in or facilitate the commission of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act;
>
> - an entity owned or controlled directly or indirectly by such individual, group of persons, entity, organization, or association under paragraph (a) of this Rule; and
>
> - a person or entity acting on behalf of, or at the direction of, the individual, group of persons, entity, organization, or association under paragraph (a) of this Rule.
>
> For purposes of designation under Rule 6.2 and Rule 6.3 and for proposals for designation under Rule 6.8, probable cause shall refer to a reasonable ground of suspicion supported by circumstances warranting a cautious person to believe that the proposed designce meets the requirements for designation.
>
> The ATC shall adopt mechanisms to collect or solicit information from relevant government agencies and other sources in order to identity individuals, groups of persons, organizations, or associations that, on the basis of probable cause, meet the criteria for designation under this Rule. (Emphases and underscoring supplied)

Similar to the two previous modes of designation, there is a compelling state interest in introducing the third mode of designation - that is, to aid the State in combating domestic terrorism. However, same as the second mode of designation, the means employed by the State are not narrowly drawn to meet such interest.

To explain, under the third mode, it is the ATC that makes an executive determination of probable cause, and not a judicial court. Same as in the second mode of designation, however, there are no proper procedural safeguards and remedies for an erroneous designation under the third mode, thereby creating a chilling effect on speech and

its cognate rights and unduly exposes innocent persons to erroneous designation with all its adverse consequences. The finding in the discussion on the second mode that there exist other suitable alternatives which are far less intrusive and potentially injurious to protected rights, such as the adoption of an internal watchlist by law enforcement agencies and judicial proscription under Section 26, similarly apply to the third mode of designation.

As argued by petitioners, another cause of concern in allowing this mode of designation is the lack of discernible criteria in the statute by which the ATC may determine "probable cause to designate". Note should be taken in this regard that the Court has differentiated two kinds of determination of probable cause in Mendoza v. People of the Philippines[435] under the current legal framework as follows:

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
>
> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.
>
> The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued. (Emphases supplied; citations omitted)

The designation by the ATC per se does not lead to either of the "recognized" determinations of probable cause. It does not result to the filing of an information in court (i.e., the main function of executive determination of probable cause), nor does it give rise to the issuance of a warrant of arrest (i.e., the main function of judicial determination of probable cause). Designation is a peculiar and an extraordinary executive function not akin to these two traditional determinations. As such, easily discernible standards for its implementation, similar to that for the first mode, should have been put in place, but there are none. Accordingly, there is just reason to believe that the third mode confers carte blanche license on the ATC to designate just about anyone that it deems to have met the requirements for designation, dependent as it is on the ATC's own determination of what it deems as sufficient probable cause. In this regard, it is fairly apparent how this third mode of designation may cause a chilling effect on free speech as claimed by petitioners, consistent with the present delimited facial analysis conducted by the Court in this case. As such, the third mode of designation equally fails the strict scrutiny and overbreadth tests and, similar to the second mode, is unconstitutional itself.

Designation and Claimed Violation of the Principle of Separation of Powers

Notably, aside from its primarily chilling effect on speech for the reasons above explained, there are also concerns raised by petitioners based on principle of separation of powers. As earlier stated, despite designation being an executive function and process and proscription being a judicial one, petitioners point out that the same effects are triggered upon a finding by either the ATC or the courts of probable cause: surveillance under Section 16 can then be applied for, and the examination of records with banking and other financial institutions and the freezing of

assets under Sections 35 and 36 may already be done by the AMLC. Thus, petitioners decry how, in this sense, designation runs afoul of the separation of powers principle.

However, it must be emphasized that a facial challenge under current jurisprudence is limited to constitutional challenges premised on the freedom of speech, expression, and cognate rights, and has yet to be particularly fleshed out to tackle separation of powers claims. Thus, at this point, the Court is hard-pressed to delve into the same.

This observation notwithstanding, the Court is impelled to point out that the argument of petitioners on separation of powers appears will not affect the declared constitutionality of the first mode because, as exhaustively discussed above, in this mode, the ATC will be merely adopting the UNSC Consolidated List. Thus, the ATC does not exercise any form of legislative or judicial power in such instance as the determination of designated persons or groups will be done by the UNSC, a premier international body, itself, in conjunction with the Philippines' own international commitments. In contrast, designation under the second and third modes, are to be determined purely by the ATC, a national executive agency. As petitioners posit, the consequences of designation overlap with proscription, which for its part must be based on a judicial determination of probable cause in accordance with the Constitution. Hence, petitioners' claim of separation of powers are only relevant to the second and third modes, which, to be properly resolved, must be threshed out in the proper case. Practically speaking, however, it is discerned that petitioners need not wait for this proper case to achieve the result they desire since the second and third modes should already be struck down for its abridgement of free speech rights due to its impermissible chilling effect. As such, the issue on the constitutionality of these second and third modes under a separation of powers argument would have been rendered moot and academic by the time that the actual case concerning separation of powers is elevated.

Clarification on Effects of Designation (First Mode)

Considering that designation under the first mode is a valid counterterrorism measure and hence, constitutional, the Court finds it prudent, for the guidance of the bench, bar, and public, to clarify the effects that such designation should have once a listing made by the UNSC and its Sanctions Committee is automatically adopted by the ATC.

The Court has noticed that that the OSG has persistently asserted that designation is only a preliminary step to the freezing of the assets of a designee - which is a matter to be determined in a separate proceeding with the AMLC at the helm.[436] During the oral arguments, the OSG assured that the only consequence of designation is the freezing of accounts, as revealed in the following exchange:

> ASSISTANT SOLICITOR GENERAL GALANDINES:
>
> Under Section 25, Your Honor, the designation would trigger the power of the AMLC to freeze the assets of the person or the organization designated as a terrorist group, Your Honor.
>
> ASSOCIATE JUSTICE CARANDNG:
>
> That's the only consequence?
>
> ASSISTANT SOLICITOR GENERAL GALANDINES:
>
> Yes, Your Honor.

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ASSOCIATE JUSTICE CARANDANG:

There is no other consequence arising from the designation? Are you sure of that?

ASSISTANT SOLICITOR GENERAL GALANDINES:

Yes, Your Honor, the designation.

ASSOCIATE JUSTICE CARANDANG:

We're not talking of how a person or an organization is designated as a terrorist, I just want to know the effects of designation, And you said, it is only freezing of assets. No other consequences arising from the designation?

ASSISTANT SOLICITOR GENERAL GALANDINES:

It is without prejudice to the eventual filing of an action for proscription.[437]

However, the Court finds the argument of the OSG on this point, inaccurate. It is clearly apparent that when Section 25 is taken together with the other provisions of the ATA, designation does not only give rise to freezing of assets under Section 36 of the ATA. It may also lead to surveillance under Section 16 and the examination of records with banking and other financial institutions under Section 35. A further discussion on surveillance and examination is perforce instructive.

Surveillance Order

As already mentioned, a careful analysis of the provisions of the ATA would show that designation may trigger the ex parte application for a surveillance order to be issued by the CA under Section 16. When granted, the surveillance order may authorize law enforcement agents or military personnel to:

x x x x

secretly wiretap, overhear and listen to, intercept, screen, read, surveil, record or collect, with the use of any mode, form, kind or type of electronic, mechanical or other equipment or device or technology now known or may hereafter be known to science or with the use of any other suitable ways and means for the above purposes, any private communications, conversation, discussion/s, data, information, messages in whatever form, kind or nature, spoken or written words (a) between members of a judicially declared and outlawed terrorist organization, as provided in Section 26 of this Act; (b) between members of a designated person as defined in Section 3 (c) of Republic Act No. 10168; or (c) any person charged with or suspected of committing any of the crimes defined and penalized under the provisions of this Act

x x x x (Emphases supplied)

The surveillance order may also be issued against: (1) members of judicially proscribed organizations or associations; (2) those designated under Section 3(e) of R.A. No. 10168; and (3) any person who is "suspected of committing any of the crimes defined and penalized under the" ATA. The Court notes that under the first category, individuals of judicially proscribed organizations or associations are indirectly designated due to their membership in those outlawed terrorist organizations, and thus become potential subjects of an ex parte application for surveillance order. Meanwhile, those designated pursuant to the ATC's automatic adoption of the UNSC Consolidated List under Section 25 of the ATA, considering that it is the only surviving provision herein declared as constitutional, can be, by process of logical elimination with the other two categories, considered included in the third category.

AMLC Bank Inquiry, Investigation, and Freeze Order

Designation also prompts the AMLC's inquiry and investigation authority. Section 35 of the ATA states:

> Section 35. Anti-Money Laundering Council Authority to Investigate, Inquire into and Examine Dank Deposits. - Upon the issuance by the court of a preliminary order of proscription or in case of designation under Section 25 of this Act, the AMLC, either upon its own initiative or at the request of the ATC, is hereby authorized to investigate: (a) any property or funds that are in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or violation of Sections 4, 6, 7, 10, 11 or 12 of this Act; and (b) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of the aforementioned sections of this Act. x x x (Emphasis supplied; italics in the original)

After designation under Section 25 or the issuance of a preliminary order of proscription under Section 27, any property or funds that may be related to the financing of terrorism under the penalized acts in R.A. No. 10168 may be subject to investigation, upon the initiative of the AMLC or at the request of the ATC.

Moreover, as conceded by the OSG, designation also causes the issuance by the AMLC of a preventive freeze order in the first paragraph of Section 36, and freeze orders under the third paragraph of the same section. The relevant paragraphs of Sections 25 and 36 of the ATA state:

> Section 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. -
>
> x x x x
>
> The assets of the designated individual, group of persons, organization or association above-mentioned shall be subject to the authority of the Anti-Money Laundering Council (AMLC) to freeze pursuant to Section 11 of Republic Act No. 10168.
>
> x x x x
>
> Section 36. Authority to Freeze. - Upon the issuance by the court of a preliminary order of proscription or in case of designation under Section 25 of this Act, the AMLC, either upon its own initiative or request of the ATC, is hereby authorized to issue an ex parte order to freeze without delay: (a) any property or funds that are in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or any violation of Sections 4, 5, 6, 7, 8, 9, 10, 11 or 12 of this Act; and (b) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of the aforementioned sections of this Act.
>
> x x x x
>
> Notwithstanding the preceding paragraphs, the AMLC, consistent with the Philippines' international obligations, shall be authorized to issue a freeze order with respect to property or funds of a designated organization, association, group or any individual to comply with binding terrorism-related resolutions, including UNSCR No. 1373 pursuant to Article 41 of the charter of the UN. Said freeze order shall be effective until the basis for the issuance thereof shall have been lifted.

Section 36 authorizes the AMLC, upon its own initiative or at the request of the ATC, to issue ex parte a freeze order on: (1) any property or funds related to financing of terrorism under R.A. No. 10168 or any violation of the punishable acts in the ATA; or (2) property or funds of any person or persons in relation to whom there is probable cause to believe is committing or attempting or conspiring to commit, or participating in or facilitating the finance of the punishable acts in the ATA. The freeze order is effective for a period not to exceed 20 days and may be extended for a period not to exceed six months upon order of the CA.

Bank Secrecy in Relation to Bank Inquiry and Freeze Orders Issued by the AMLC

In Republic v. Eugenio,[438] the Court recognized that there is a right to privacy governing bank accounts in the Philippines. In this case, it was explained that such right is statutory since it is by virtue only of the Bank Secrecy Act of 1955.[439] Be that as it may, the Court expressed that there is a disfavor towards construing statutory exceptions in such a manner that would authorize unbridled discretion on the part of the government or of anyone seeking to inquire into bank deposits by virtue of such exceptions. The Court stated that:

> If there are doubts in upholding the absolutely confidential nature of bank deposits against affirming the authority to inquire into such accounts, then such doubts must be resolved in favor of the former.[440]

In Eugenio, the Court also differentiated the purpose of a bank inquiry and a freeze order issued by the AMLC:

> A freeze order under Section 10 on the one hand is aimed at preserving monetary instruments or property in any way deemed related to unlawful activities as defined in Section 3 (i) of the AMLA. The owner of such monetary instruments or property would thus be inhibited from utilizing the same for the duration of the freeze order. To make such freeze order anteceded by a judicial proceeding with notice to the account holder would allow for or lead to the dissipation of such funds even before the order could be issued.
>
> On the other hand, a bank inquiry order under Section 11 does not necessitate any form of physical seizure of property of the account holder. What the bank inquiry order authorizes is the examination of the particular deposits or investments in banking institutions or non-bank financial institutions. The monetary instruments or property deposited with such banks or financial institutions are not seized in a physical sense, but are examined on particular details such as the account holder's record of deposits and transactions. Unlike the assets subject of the freeze order, the records to be inspected under a bank inquiry order cannot be physically seized or hidden by the account holder. Said records are in the possession of the bank and therefore cannot be destroyed at the instance of the account holder alone as that would require the extraordinary cooperation and devotion of the bank.[441]

Terrorism and Terrorism Financing as Exceptions to the Secrecy of Bank Deposits

Despite a recognition that the secrecy of bank deposits remains as the general rule, it can be seen that for years, the legislature has carved out certain exceptions for the crime of terrorism.

As early as 2003, the Anti-Money Laundering Act, as amended by R.A. No. 9194[442] already gave the AMLC the power to issue bank inquiry orders, without the need for prior issuance of a court order, in relation to the crimes enumerated under Section 3(i)(1), (2), and (12) of the law, i.e. kidnapping for ransom; acts punished under the Comprehensive Dangerous Drugs Act of 2002; hijacking and other violations under R.A. No. 6235, destructive arson and murder, as defined by the Revised Penal Codes, as amended, including those perpetrated by terrorists against non-combatant persons and similar targets. Interestingly, this provision already recognized terrorists acts as an exception to the secrecy of bank deposits even before the passage of the HSA - the country's first anti-terrorism statute - four years later.

By 2012, the Anti-Money Laundering Act, as amended by R.A. No. 10167[443] has explicitly added terrorism and conspiracy to commit terrorism as defined under the HSA to the crimes where no court order is required for bank inquiries. More importantly, in the same year, Congress passed R.A. No. 10168, or the "Terrorism Financing Prevention and Suppression Act of 2012"[444] which contains provisions almost identical to Sections 35 and 36

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of the ATA.

Even in the latest amendment to the Anti-Money Laundering Act of 2001 - R.A. No. 11521 passed on January 29, 2021 - terrorism as an exception to the rule on bank secrecy remains unchanged.

From the genealogy of the AMLC's powers, the legislative intent to make terrorism an exception to the general rule on bank secrecy is clear. Therefore, it behooves the Court to respect the legislature's decision, especially since the rule on secrecy of bank deposits is statutory.

As to freeze orders, the Court reiterates the points under Section 25 and rule that the freezing of assets ex parte is a necessary implication of preventing the financing of terrorist acts. Even as recognized in Republic v. Eugenio:[445]

> To make such freeze order anteceded by a judicial proceeding with notice to the account holder would allow for or lead to the dissipation of such funds even before the order could be issued.[446]

The ex parte freeze order is a preventive measure because it arises from the ATC's order of designation or the CA's preliminary order of proscription. Section 36 itself provides that the ex parte freeze order shall only be effective for 20 days and this period may only be extended for up to six months upon order of the Court of Appeals.[447] It is also worth pointing out that in the 2019 MER Report, the APG stated that the lack of UNSC Resolution No. 1373 designations, along with a low number of assets and instrumentalities frozen, is not in line with the high risk of terrorism financing in the Philippines.[448] Notably, due process is satisfied through subsequent notice and hearing to be conducted when a person seeks judicial protection from the Court of Appeals, as explicitly provided under Section 36.

Other Consequences of Designation

It can also be observed that a designation made under Section 25 may potentially affect third persons. First, it can lead to the prosecution of the donors or supporters of the designated individual or organization, association, or groups of persons under Section 12 of the ATA for providing material support or for giving material aid to a designated terrorist even if the determination was only made by the ATC.[449] Second, it can make bank officials and bank employees liable for refusing to allow the examination of bank records of designated persons, groups, or organizations under Section 39.[450]

Considering the consequences of designation, the Court emphasizes that any power or authority the ATC may exercise under Section 25 should thus be limited to confirming the designation or listing made by the UNSC and its Sanctions Committee, as well as affirming the applicability of the above-discussed sanctions under the ATA to the designee. Further, the sanctions are to be understood as merely preventive in nature, and should not have penal or criminal consequences. The ATC's function is thus narrowly interpreted to mean that the designation ends with the declaration that a person or group is a terrorist, and no other sanction or consequence may be imposed as a result of the exercise of this function. In this regard, the Court holds that once an automatic adoption is duly made, any consequence of that designation should, as it must, be reposed to the processes and implementation of other agencies - the AMLC with regard to the propriety of the ex parte order for bank inquiry and/or freeze order; the CA with regard to the surveillance and proscription; and the proper courts with regard to the punishment for violations of the pertinent provisions of the law.

Proscription under Sections 26, 27, and 28 of the ATA is a valid exercise of police power and passes the strict scrutiny test.

Sections 26, 27, & 28 of the ATA state:

> Section 26. Proscription of Terrorist Organizations, Associations, or Group of Persons. - Any group of persons, organization, or association, which commits any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, or organized for the purpose of engaging in terrorism shall, upon application of the DOJ before the authorizing division of the Court of Appeals with due notice and opportunity to be heard given to the group of persons, organization or association, be declared as a terrorist and outlawed group of persons, organization or association, by the said Court.
>
> The application shall be filed with an urgent prayer for the issuance of a preliminary order of proscription. No application for proscription shall be filed without the authority of the ATC upon the recommendation of the National Intelligence Coordinating Agency (NICA).
>
> Section 27. Preliminary Order of Proscription. - Where the Court has determined that probable cause exists on the basis of the verified application which is sufficient in form and substance, that the issuance of an order of proscription is necessary to prevent the commission of terrorism, he/she shall, within seventy-two (72) hours from the filing of the application, issue a preliminary order of proscription declaring that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26 of this Act.
>
> The court shall immediately commence and conduct continuous hearings, which should be completed within six (6) months from the time the application has been filed, to determine whether:
> (a) The preliminary order of proscription should be made permanent;
>
> (b) A permanent order of proscription should be issued in case no preliminary order was issued; or
>
> (c) A preliminary order of proscription should be lifted. It shall be the burden of the applicant to prove that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26 of this Act before the court issues an order of proscription whether preliminary or permanent.
>
> The permanent order of proscription herein granted shall be published in a newspaper of general circulation. It shall be valid for a period of three (3) years after which, a review of such order shall be made and if circumstances warrant, the same shall be lifted.

Section 28. Request to Proscribe from Foreign Jurisdictions and Supranational Jurisdictions. - Consistent with the national interest, all requests for proscription made by another jurisdiction or supranational jurisdiction shall be referred by the Department of Foreign Affairs (DFA) to the ATC to determine, with the assistance of the NICA, if proscription under Section 26 of this Act is warranted. If the request for proscription is granted, the ATC shall correspondingly commence proscription proceedings through DOJ.

Petitioners argue that although judicial proscription in Section 26 involves a court suit, its punitive sanctions turn it into a criminal action that requires compliance with the strict requirements of chie process. They contend that the provisional declaration of respondent as a proscribed entity under a preliminary order of proscription places a presumption of guilt against respondent, easing the DOJ's burden of proof under paragraph (c) of Section 27. They also point out that Sections 26 and 27 permit the issuance of a preliminary order of proscription though respondent has yet to be informed of the application for proscription.[451] In the context of a facial analysis, petitioners urge the Court to nullify the assailed provisions due to the chilling effect of judicial proscription and the probable consequences it creates on the exercise of freedom of speech and its cognate rights.

To reiterate, the counterterrorism measure of proscription was enacted in line with the State's efforts to address the complex issue of terrorism in the country, especially since the most egregious terrorist attacks recently made have been planned and carried out by groups. In certain cases, several groups may even form a network where information and resources are shared across jurisdictions. An attack carried out in the Philippines may have been

planned by a foreign group. Conversely, an attack to be carried out in a foreign state may be planned here by a domestically grown group. On that basis, the state has as much a reason to impose limits on the freedoms of a group as on the freedoms of an individual, even to the point of outlawing that group altogether. There is, therefore, no question that there is a compelling State interest or lawful purpose behind proscription. Likewise, in satisfaction of strict scrutiny and overbreadth, proscription under Sections 26, 27, and 28 constitutes as a lawful means of achieving the lawful State purpose considering that it provides for the least restrictive means by which the freedom of association is regulated, as will be herein explained.

The procedure of proscription instituted under the ATA is a judicial process and is done based on a determination of probable cause by the CA.

In the application for proscription, procedural due process is observed: the group of persons, organization, or association intended to be judicially declared a terrorist is afforded fair notice, as well as an open hearing. The CA's decision on the DOJ's verified petition for proscription is likewise published in a newspaper of general circulation.

But even before a petition for proscription is brought before the CA, there are proper procedural safeguards that the DOJ is required to observe to avoid an erroneous proscription. Based on the language of Section 26, the DOJ, on its own, cannot apply for the proscription of a group of persons, organization, or association. Section 26 specifically requires that the application for proscription shall be with "the authority of the ATC upon the recommendation of the National Intelligence Coordinating Agency (NICA)." Thus, even before an application is filed with the CA, the matter has already passed through three levels of investigation: first, when the DOJ asks for authority from the ATC to file the application; second, when the ATC asks the NICA to give its recommendation to the request made by the DOJ; and finally, the necessary executive determination to be made by the ATC before it gives its imprimatur to the DOJ to file the application.

It is only after compliance with the foregoing steps that judicial intervention will come in. Together, these steps provide layers of protection that may help prevent any arbitrary and erroneous proscription of groups of persons, associations, or organizations as terrorists. In this regard, these layers of protection ensure that the proscription mechanism under the ATA is narrowly tailored and constitutes the least restrictive means to achieve the compelling State interest.

Preliminary prescription orders are not unconstitutional.

Noticeably, the preliminary order of proscription is a feature not previously found in the HSA. Section 27 provides that the CA shall issue a preliminary order of proscription within 72 hours from the filing of the application, upon a finding of probable cause based solely on the application of the DOJ to prevent the commission of terrorism. The Court finds that allowing the issuance of a preliminary order of proscription would not cause the premature classification of a group as a terrorist without the benefit of a judicial trial in violation of the prohibition on the enactment of bills of attainder.

It is critical in resolving this issue to determine the nature and objective of a preliminary order of proscription. Section 27 explicitly states that the order is to be issued by the CA and is meant to prevent the commission of terrorism. In this context, it entails a judicial process that recognizes the necessity for effective counterterrorism

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measures. As discussed above, the consequences of the issuance of a preliminary order of proscription are, as expressly provided, the freezing of assets and/or bank inquiry or investigation by the AMLC pursuant to Sections 35 and 36 of the ATA. Considering the preliminary nature of the order of proscription under Section 27, the consequences of this Order must be necessarily limited to these two. Any other consequence should be subject to the more intricate processes and implementation of the relevant government agencies and bodies.

Furthermore, it is well to note that the procedure for the issuance of a preliminary order of proscription is subsumed in the application for proscription, for which the subject has already been notified. In other words, an application for a preliminary order of proscription under Section 27 is not a separate process from the application referred to in Section 26. This judicial process with the CA will ensure temperance of abuse, as the ATA itself guarantees that subjects of proscription should be given the opportunity to be heard.

The Court finds nothing constitutionally offensive insofar as a textual examination of the provisions on proscription is concerned. The language of Section 26 implies that notice and hearing are afforded to those who may be proscribed under the ATA, and the process is undoubtedly judicial in nature As such, the challenged provision appears to be reasonably circumscribed to prevent an unnecessary encroachment of protected freedoms.

Needless to say, the Court's present ruling on the issues raised against the validity of Sections 26 to 28 under the delimited facial analysis should not foreclose future challenges against judicial proscription where actual cases with extant facts are present. Indeed, judicial proscription is such a powerful counterterrorism tool that the safeguards included therein may not absolutely forestall abuse or misapplication. The courts should, therefore, not be precluded from resolving issues affecting the actual and practical operation of these provisions where the Court can intelligently adjudicate the issues.[452]
On this score, the Court acknowledges that existing procedural rules may not be satisfactorily appropriate for the process of proscription, if and when an application is filed therefor. Hence, the Court considers it an opportune time to formulate some guidelines to be observed in applying for a proscription order under Section 26 to guide the bench, bar, and public. This is consistent with the rule-making authority of the Court under Section 5 (5), Article VIII of the 1987 Constitution, which states:

> Section 5. The Supreme Court shall have the following powers:
>
> x x x x
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.[453] (Emphasis supplied)

Considering that proscription is a judicial process, the Court, in the exercise of its rule-making power, may promulgate the necessary procedural rules to govern such proceedings in the future.

To summarize the foregoing discussion, the following principles shall be observed:

- After an application for proscription is filed by the DOJ, the authorizing Division of the CA shall, within 24 hours, determine whether said application is sufficient in form and substance.

An application shall be sufficient in form if it complies with the following requisites:

a)

it is verified or made under oath;

b)

it is accompanied by the recommendation of the NICA and the authorization of the ATC;

c)

it shows proof of service of the application to the group of persons, organization, or association sought to be proscribed.

Meanwhile, an application shall be sufficient in substance if:

a)

it specifically identifies the group of persons, organization, or association sought to be proscribed, including the names and addresses of every member so known at the time the application was made and the inclusive dates of their membership;

b)

it provides a detailed specification of the reasons or grounds relied upon that show the necessity for proscription; and

c)

it states the commitment of the applicant to have the permanent order of proscription, if granted, reviewed within six months prior to the expiration thereof.

Failure to comply with these requisites shall be sufficient cause for the outright dismissal of the application.

- If the CA is satisfied that the application is sufficient in form and substance, it shall immediately commence and conduct continuous hearings, which should be completed within six months from the time the application was filed. Simultaneous with the commencement and the conduct of the continuous hearings, the CA shall also determine whether there is probable cause to issue a preliminary order of proscription, which should be made within 72 hours from the filing of the application. If it decides to issue the same, the preliminary order of proscription shall emphasize that only the AMLC's authority to freeze assets and to initiate a bank inquiry or investigation pursuant to Sections 35 and 36 of the ATA shall result from its issuance.

- Non-appearance of respondent group of persons, organization, or association, as long as there is compliance with the publication of the preliminary order of proscription requirement upon directive of the CA, shall not prevent the CA from proceeding with the proscription hearings.

- In-camera proceedings shall be adopted to ensure that sensitive and confidential information affecting national security will not be compromised without sacrificing the right to due process of those subjected to judicial proscription proceedings.

- During the hearing, the CA shall determine whether: (a) a preliminary order of proscription should be made permanent; (b) whether a permanent order or proscription should be issued, if no preliminary order of proscription was issued; or (c) whether a preliminary order of proscription should be lifted. The applicant has the burden to show by clear and convincing evidence that a permanent order of proscription should issue.

- From the issuance of a permanent order of proscription, the party aggrieved may appeal to the Court by petition for review on certiorari under Rule 45 of the Rules of Court, raising in the appeal all pertinent questions of law and issues. The appeal shall not stay the order of proscription unless the Court orders otherwise.

- If the application is denied by the CA, no application shall be filed against the same group of persons, organization, or association within six months from the date of the denial. A subsequent application must be grounded on new evidence that the applicant could not have presented even in the exercise of due diligence or on substantially new circumstances.[454]

Similar to the Court's instruction in Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals,[455] the Court directs the CA once again to draft the factual procedural rules based on the foregoing guidelines for submission to the Committee on the Revision of the Rules of Court and eventual approval and promulgation of the Court En Banc.

Detention without Judicial Warrant of Arrest under Section 29

Another contentious provision of the ATA is Section 29. The assailed provision states:

> Section 29. Detention without Judicial Warrant of Arrest. - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period of ten (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.
>
> Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.
>
> The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities.
>
> The penalty of imprisonment of ten (10) years shall be imposed upon the police or law enforcement agent or military personnel who fails to notify any judge as provided in the preceding paragraph. (Emphases and underscoring supplied)

Section 29 is implemented by the following pertinent provisions in Rule IX of the ATA IRR:

> RULE 9.1. Authority from ATC in relation to Article 125 of the Revised Penal Code
>
> Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (e) of Rule 9.2, has taken custody of a person

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suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period of ten (10) calendar days if it is established that (a) further detention of the person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.

The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.

If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply.

RULE 9.2. Detention of a suspected person without warrant of arrest

A law enforcement officer or military personnel may, without a warrant, arrest:

a.

a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;

b.

a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which has just been committed; and

c.

a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while bring transferred from one confinement to another.

RULE 9.3. Immediate notification to the nearest court

Immediately after taking custody of the suspected person, the law enforcement agent or military personnel shall, through personal service, notify in writing the judge of the trial court nearest the place of apprehension or arrest of the following facts:

- the time, date, and manner of arrest;

- the exact location of the detained suspect; and

- the physical and mental condition of the detained suspect.

For purposes of this rule, immediate notification shall mean a period not exceeding forty-eight (48) hours from the time of the apprehension or arrest of the suspected person.

x x x x

RULE 9.5. Notification to the ATC and CHR

The law enforcement agent or military personnel shall furnish the ATC and the Commission on Human Rights (CHR) copies of the written notification given to the judge in such manner as shall ensure receipt thereof within forty-eight (48) hours from the time of apprehension or arrest of the suspected person.

The primary and substantive arguments raised by petitioners against Section 29 revolve around its supposed violation of the principle of separation of powers and how it permits the ATC to infringe on the exclusive powers of the judiciary by authorizing the issuance of warrants other than by the courts.[456] Petitioners maintain that the provision carves out an additional exception to Section 5, Rule 113 of the Rules of Court, thereby expanding its scope and encroaching on the Court's exclusive prerogative.[457] They likewise assert that the assailed provision does not actually contemplate a valid warrantless arrest,[458] because the wording of the provision requires the prior issuance of a written authority from the ATC to effect a warrantless arrest under Section 5, Rule 113. For petitioners, the requirement for the ATC to issue a written authority defeats the purpose of a warrantless arrest, which applies where the offender is caught in flagrante delicto or after a hot pursuit and where time is of the essence.[459] Relative to these claims, petitioners also challenge Section 29 for allegedly empowering the ATC to issue arrest orders upon mere "suspicion", thus substituting to a lower legislatively-prescribed yardstick the strict standard of probable cause.[460]

Petitioners also assail the validity of the supposed inordinately long detention period under Section 29. They insist that there is no factual justification to impose the 14- to 24-day period of detention, as its only basis was simply a conjecture by police officers when asked how long a period is needed to prepare a strong case.[461] For them, the supposed intent to provide law enforcers additional time to prepare a "strong case" is not a valid reason to delay the delivery of an accused to judicial authorities.[462] Further, petitioners contend that the 14- to 24-day period violates the 3-day limit for detentions without judicial charge under Section 18, Article VII of the Constitution.[463]

Section 29 is susceptible to a facial challenge.

At this juncture, however, it should be stressed that the arguments against Section 29 shall be passed upon by the Court insofar as they become relevant in determining whether or not the said provision restrains or chills the exercise of the freedom of speech, expression, and their cognate rights, consistent with the overall framework of a facial analysis as earlier exhaustively discussed, and as petitioners themselves duly assert. To be sure, within the context of a facial challenge, the Court gives particular attention to petitioners' claim that the ATA, in authorizing the arbitrary arrest of mere suspects and their prolonged detention without judicial warrant or intervention, infringes on the freedoms of expression, assembly, and association among other constitutional rights.[464] Petitioners contend in this regard that the ATA suffers a heavy presumption against its constitutional validity for being a prior restraint to protected speech,[465] in that "the threat of arrest without a judicial warrant and prolonged detention would be more than chilling enough to stifle, suppress, if not totally snuff out, any fire, flame, or even flicker, of indignation or protest against government corruption, oppression, and abuse."[466] Petitioners also submit that the danger of being arrested without a judicial warrant and the resulting prolonged detention has caused fear among staunch critics of the government that their impassioned activism may result to being subjected to the consequences of Section 29. To put it simply, petitioners aver that the threat of arrest creates a "chilling effect" on speech, expression, and its cognate rights.

The Court, from the immediately preceding arguments, finds sufficient basis to proceed to a facial analysis of Section 29. Similar to the finding on the effects of designation and proscription, petitioners have demonstrated a prima facie case as to the possible restraint and chilling effect that a warrantless arrest to be made under Section 29 may have on speech and expression. Again, although Section 29 is not exclusively a speech provision per se, its implementation - as petitioners themselves allege - has a significant impact in the exercise of the freedom of speech and expression in that it intimidates individuals and groups in the exercise of such rights. The belief of petitioners that the threat of an arrest without a judicial warrant and that the resulting prolonged detention causes undue fear and disquiet even as to those legitimately exercising their right to speak and express is seemingly sensible. The fear of possible physical harm upon arrest and possible duress during prolonged detention may indeed create an unwarranted and unjustified atmosphere that leads to a chilling of speech and expression, if not duly passed upon by the Court.

Since the implementation and effects of Section 29 have grave implications on the exercise of free speech and expression, it is therefore a proper subject of a facial analysis using, once again, the overbreadth doctrine and the strict scrutiny test. To reiterate, these two analytical tools were developed for testing, on their faces, statutes involving free speech and expression according to Romualdez v. Sandiganbayan[467] and Spouses Romualdez v. Commission on Elections.[468] The third analytical tool, the void for vagueness doctrine, will not be utilized to test the validity of Section 29 because petitioners have not sufficiently presented any demonstrable claim that the wording or text of the assailed provision is ambiguous, or that it fails to specify what is prohibited or required to be done so that one may act accordingly.

Warrants of Arrest and Warrantless Arrests Under the Current Legal Framework

Before the Court proceeds to analyze the validity of Section 29, it is inclined, firstly, to provide a brief overview of the doctrines and rules that have developed relating to the authority of judges to issue warrants of arrest; and secondly, to discuss the conceptual underpinnings of the recognized instances of valid warrantless arrests. The Court believes that both these discussions are essential in order to properly frame the facial analysis of Section 29, as well as to provide a theoretical demarcation point between the existing legal framework and the nature of the arrest and detention envisioned as a counterterrorism measure under Section 29.

Warrants of Arrest

Section 2, Article III of the Constitution protects the right of the people against unreasonable searches and seizures:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The right protected in Section 2, Article III is guaranteed by the well-established rule, also stated in the said provision, that only judges can issue warrants of arrest after a personal determination that there is probable cause to arrest an individual. The rationale behind this rule is the recognition that the Constitution protects the privacy and sanctity of the person, and the right serves as an assurance against unlawful arrests and other illegal forms of restraint on a person's physical liberty.[469]

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An examination of the history of the Constitution's phraseology of the right protected under Section 2, Article III would show a clear intention to limit the authority of issuing warrants of arrests to the courts. Section 1 (3), Article III of the 1935 Constitution categorically stated that only judges can issue warrants of arrest:

> Section 1. x x x
>
> x x x x
>
> (3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized. (Emphasis and underscoring supplied)

A significant shift in this policy was introduced in the 1973 Constitution, wherein "such other responsible officer[s]" were also authorized to issue warrants of arrest:

> Section 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized. (Emphasis and underscoring supplied)

When asked which officers were authorized by law to issue warrants, Delegate Rodolfo A. Ortiz answered "that the provision contemplated the 'situation where the law may authorize the fiscals to issue search warrants or warrants of arrest.'"[470] It was not until the most notable use of this provision, however, did the danger of allowing other officers authorized by law was realized; for, this provision became the basis for the issuance of the notorious and the much-abused Arrest, Search and Seizure Orders (ASSOs) by the Secretary of National Defense during Martial Law.

More aware of the dangers of extending the power to issue warrants of arrest to executive officials, and having traumatically experienced its grievous implementation to the detriment of fundamental rights, the framers of the 1987 Constitution decided to discard the phrase "or such other responsible officer as may be authorized by law" from the provision to be adopted under the new Constitution. As remarked by former Associate Justice and Chairperson of the Constitutional Commission Cecilia Muñoz-Palma:

> x x x x
>
> The Marcos provision that search warrants or warrants of arrest may be issued not only by a judge but by any responsible officer authorized by law is discarded. Never again will the Filipino people be victims of the much-condemned presidential detention action or PDA or presidential commitment orders, the PCOs, which desecrate the rights to life and liberty, for under the new provision a search warrant or warrant of arrest may be issued only by a judge.[471]

Eminent constitutionalist Fr. Joaquin Bernas, S.J. explained the intent to limit the authority to issue search and arrest warrants to judges only during the deliberations for the 1987 Constitution, to wit:

> The provision on Section 3 [now Section 2] reverts to the 1935 formula by eliminating the 1973 phrase "or such other responsible officer as may be authorized by law," and also adds the word PERSONALLY on line 18. In other words, warrants under this proposal can be issued only by judges.[472]

That the Constitution only permits a judge to issue warrants of arrest - not an officer of the legislative or the

executive department - is not an accident. It is corollary to the separation of powers and the mandate under Section 1, Article III of the Constitution that no person should be deprived of his property or liberty without due process of law. The Fourth Amendment of the U.S. Constitution, on which Section 2, Article III of our Constitution is based, was borne out of colonial America's experience with "writs of assistance" issued by the British authorities in favor of revenue officers, empowering them to search suspected places of smuggled goods based only on their discretion. It has been described as "the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an English law book" since they placed "the liberty of every man in the hands of every petty officer."[473] It is because of this that the Court vigilantly guards against any attempt to remove or reallocate the judiciary's exclusive power to issue warrants of arrest.

Jurisprudence under the 1935 and 1987 Constitutions has time and again affirmed the rule that only judges may issue search or arrest warrants. In Salazar v. Achacoso,[474] the Court declared paragraph (c), Article 38 of the Labor Code unconstitutional. The Court reiterated that the Secretary of Labor, not being a judge, may not issue search or arrest warrants.[475] The Court reaffirmed the following principles:

> 1. Under Article III, Section 2, of the 1987 Constitution, it is only judges, and no other, who may issue warrants of arrest and search;
>
> 2. The exception is in cases of deportation of illegal and undesirable aliens, whom the President or the Commissioner of Immigration may order arrested, following a final order of deportation, for the purpose of deportation.[476]

Likewise, in Ponsica v. Ignalaga[477] the Court emphatically declared that:

> No longer does the mayor have at this time the power to conduct preliminary investigations, much less issue orders of arrest. Section 143 of the Local Government Code, conferring this power on the mayor has been abrogated, rendered functus officio by the 1987 Constitution which took effect on February 2, 1987, the date of its ratification by the Filipino people. x x x[478]

Similarly, in the case Presidential Anti-Dollar Salting Task Force v. Court of Appeals[479] the Court ruled that a prosecutor has no power to order an arrest under the Constitution. The Court explained that:

> x x x [T]he Presidential Anti-Dollar Salting Task Force exercises, or was meant to exercise, prosecutorial powers, and on that ground, it cannot be said to be a neutral and detached "judge" to determine the existence of probable cause for purposes of arrest or search. Unlike a magistrate, a prosecutor is naturally interested in the success of his case. Although his office "is to see that justice is done and not necessarily to secure the conviction of the person accused," he stands, invariably, as the accused's adversary and his accuser. To permit him to issue search warrants and indeed, warrants of arrest, is to make him both judge and jury in his own right, when lie is neither. That makes, to our mind and to that extent, Presidential Decree No. 1936 as amended by Presidential Decree No. 2002, unconstitutional.[480] (Citation omitted)

Warrantless Arrests

As explained above, the general rule is that no arrest can be made without a valid warrant issued by a competent judicial authority.[481] Warrantless arrests, however, have long been allowed in certain instances as an exception to this rule. Section 5, Rule 113 of the Rules these recognized instances:

> Section 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

While these are not the only instances under the Rules which allow valid warrantless arrests,[482] the enumeration in Section 5, Rule 113 is of particular interest because the enumeration is substantially mirrored under Rule 9.2 of the IRR. More specifically, the warrantless arrests allowed under Section 5(a), or arrests in flagrante delicto, and under Section 5(b), or arrests in hot pursuit, are considered mainly in this case, in view of the peculiar mechanics in the implementation of Section 29 of the ATA, as well as the allegations raised against the said provision.

For Section 5(a) of Rule 113 to operate, two elements must concur: first, the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime, and second, such overt act is done in the presence or within the view of the arresting officer.[483] The Court follows in this regard the long-standing rule that reliable information alone is not sufficient to justify a warrantless arrest under this mode.[484]

On the other hand, the application of Section 5(b) requires two elements: first, that at the time of the arrest, a crime or an offense had in fact just been committed; and second, the arresting officer has probable cause to believe, based on his or her personal knowledge of facts or circumstances, that the person to be arrested had committed the crime or offense.[485] For this mode of warrantless arrest, the Court has emphasized that it is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime - a crime must in fact or actually have been committed first. That a crime has actually been committed is an essential precondition, and it is not enough to suspect that a crime may have been committed.[486] There is also a time element of "immediacy" required under Section 5(b), as explained by the Court in Veridiano v. People[487]:

> Rule 113, Section 5 (b) of the Rules of Court pertains to a hot pursuit arrest. The rule requires that an offense has just been committed. It connotes "immediacy in point of time." That a crime was in fact committed does not automatically bring the case under this rule. An arrest under Rule 113, Section 5 (b) of the Rules of Court entails a time element from the moment the crime is committed up to the point of arrest.
>
> Law enforcers need not personally witness the commission of a crime. However, they must have personal knowledge of facts and circumstances indicating that the person sought to be arrested committed it.[488]

Note that in both instances, the officer's personal knowledge of the fact of the commission of an offense is absolutely required, the difference being that under paragraph (a), the officer himself or herself witnesses the crime, while under paragraph (b), he or she knows for a fact that a crime has just been committed.[489]

The personal knowledge required under Section 5 (b) goes into determining whether probable cause exists for the warrantless arrest. As explained by the Court in Pestilos v. Generoso[490] (Pestilos):

> x x x x
>
> x x x [T]he arresting officer's determination of probable cause under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure is based on his personal knowledge of feels or circumstances that the person

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> sought to be arrested has committed the crime. 'These facts or circumstances pertain to actual facts or raw evidence, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.
>
> The probable cause to justify warrantless arrest ordinarily signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged, or an actual belief or reasonable ground of suspicion, based on actual facts. (Emphases and citations omitted)

The probable cause requirement for warrantless arrests under the second mode had been clarified and highlighted in Sapla.[491] Similar to the long-standing rule under the first mode that reliable information alone is not sufficient to justify a warrantless arrest, Sapla instructed that law enforcers cannot act solely on the basis of confidential or tipped information, since a tip is still hearsay no matter how reliable it may be. Sapla stressed that a tip, no matter how reliable, is not sufficient to constitute probable cause in the absence of any other circumstances that will arouse suspicion. The Court further explained that exclusive reliance on information tipped by informants goes against the nature of probable cause, for a single hint hardly amounts to the existence of such facts and circumstances which would lead a reasonable man to believe that an offense has been committed. Associate Justice Alfredo Benjamin S. Caguioa's ponencia ratiocinated that:

> Adopting a contrary rule would set an extremely dangerous and perilous precedent wherein, on the sheer basis of an unverified information passed along by an alleged informant, the authorities are given the unbridled license to [effect warrantless arrests], even in the absence of any overt circumstance that engenders a reasonable belief that an illegal activity is afoot.
>
> This fear was eloquently expressed by former Chief Justice Artemio V. Panganiban in his Concurring and Dissenting Opinion in People v. Montilla. In holding that law and jurisprudence require stricter grounds for valid arrests and searches, former Chief Justice Panganiban explained that allowing warrantless searches and seizures based on tipped information alone places the sacred constitutional right against unreasonable searches and seizures in great jeopardy:
> x x x Everyone would be practically at the mercy of so-called informants, reminiscent of the Makapilis during the Japanese occupation. Any one whom they point out to a police officer as a possible violator of the law could then be subject to search and possible arrest. This is placing limitless power upon informants who will no longer be required to affirm under oath their accusations, for they can always delay their giving of tips in order to justify warrantless arrests and searches. Even law enforcers can use this as an oppressive tool to conduct searches without warrants, for they can always claim that they received raw intelligence information only on the day or afternoon before. This would clearly be a circumvention of the legal requisites for validly effecting an arrest or conducting a search and seizure. Indeed, the majority's ruling would open loopholes that would allow unreasonable arrests, searches and seizures.

It is not hard to imagine the horrid scenarios if the Court were to allow intrusive warrantless searches and seizures on the solitary basis of unverified, anonymous tips.

Any person can easily hide in a shroud of anonymity and simply send false and fabricated information to the police. Unscrupulous persons can effortlessly take advantage of this and easily harass and intimidate another by simply giving false information to the police, allowing the latter to invasively search the vehicle or premises of such person on the sole basis of a bogus tip.

On the side of the authorities, unscrupulous law enforcement agents can easily justify the infiltration of a citizen's vehicle or residence, violating his or her right to privacy, by merely claiming that raw intelligence was received, even if there really was no such information received or if the information received was fabricated.

Simply stated, the citizen's sanctified and heavily-protected right against unreasonable search and seizure will be at the mercy of phony tips. The right against unreasonable searches and seizures will be rendered hollow and meaningless. The Court cannot sanction such erosion of the Bill of Rights.[492] (Emphasis, italics, and underscoring supplied; citations omitted)

Once a person is validly arrested without a warrant, Article 125 of the RPC will apply and his or her detention should not exceed the periods indicated therein, as follows:

> Article 125. Delay in the delivery of detained persons to the proper judicial authorities. - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall tail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.
>
> In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by EO No. 272, July 25, 1987. This EO No. 272 shall take effect thirty (30) days following its publication in the Official Gazette).

So as to prevent any undue curtailment of an apprehended suspect's liberty, Article 125 of the RPC renders the detaining officer criminally liable if he does not deliver the detainee to the proper judicial authorities within the given period.

Section 29, properly construed, does not provide for an "executive warrant of arrest" nor warrantless arrest on mere suspicion.

Guided by the above discussion, there is an apparent need to clarify the meaning of Section 29 insofar as the parties insist on varying interpretations. On this point, the Court abides by the principle that if a statute can be interpreted in two ways, one of which is constitutional and the other is not, then the Court shall choose the constitutional interpretation. As long held by the Court:

> Every intendment of the law should lean towards its validity, not its invalidity. The judiciary, as noted by Justice Douglas, should favor that interpretation of legislation which gives it the greater chance of surviving the test of constitutionality.[493]

Notably, it has also been stated that "laws are presumed to be passed with deliberation [and] with full knowledge of all existing ones on the subject";[494] therefore, as much as possible, the Constitution, existing rules and jurisprudence, should he read into every law to harmonize them within the bounds of proper construction.

Accordingly, with these in mind, the Court's construction is that under Section 29, a person may be arrested without a warrant by law enforcement officers or military personnel for acts defined or penalized under Sections 4 to 12 of the ATA but only under any of the instances contemplated in Rule 9.2, i.e., arrest in flagrante delicto, arrest in hot pursuit, and arrest of escapees, which mirrors Section 5, Rule 113 of the Rules of Court. Once arrested without a warrant under those instances, a person may be detained for up to 14 days, provided that the ATC issues a written authority in favor of the arresting officer pursuant to Rule 9.1, upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism and the relevant circumstances as basis for taking custody of said person. If the ATC does not issue the written authority, then the

arresting officer shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the RPC - the prevailing general rule. The extended detention period - which, as will be explained in the ensuing discussions, is the crux of Section 29 - is therefore deemed as an exception to Article 125 of the RPC based on Congress' own wisdom and policy determination relative to the exigent and peculiar nature of terrorism and hence, requires, as a safeguard, the written authorization of the ATC, an executive agency comprised of high-ranking national security officials.

In fact, it is palpable that the subject matter of Section 29 is really the extended detention period, and not the grounds for warrantless arrest, which remains as those instances provided by Section 5, Rule 113. A keen scrutiny of the wording of Section 29 would show that the provision centers on Article 125 of the RPC, which pertains to the period of detention. Consequently, Section 29 primarily evokes the exception to Article 125 by stating that the apprehending/detaining officer does not incur criminal liability for "delay in the delivery of detained persons to the proper judicial authorities", provided that the written authorization of the ATC for the purpose is first secured, which henceforth, allows such delivery within the extended period of 14 calendar days. Again, for ready reference, Section 29 reads:

> The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. x x x

As a further safeguard, Section 29 provides that the arresting officer is likewise duty-bound under Rule 9.3 to immediately notify in writing, within a period not exceeding 48 hours, the judge of the court nearest the place of apprehension of the details of such arrest. The ATC and CHR must be furnished copies of the written notification given to the judge, which should be received by the said agencies within the same 48-hour period, as provided in Rule 9.5. Section 29, as reflected in Rule 9.1, allows the extension of the detention period to a maximum period of 10 calendar days if the grounds to allow the extension are established.

The written authorization of the ATC under Section 29 is not an executive warrant of arrest.

Based on the considerations stated above, it is therefore clear that the arrest and detention contemplated in Section 29 does not divert from the rule that only a judge may issue a warrant of arrest. This is confirmed by Rule 9.2 of the ATA IRR which, again as observed above, replicates the enumeration in Section 5, Rule 113 relative to the crimes defined under the ATA. Without a doubt, when the circumstances for a warrantless arrest under Section 5, Rule 113 or Rule 9.2 are not present, the government must apply for a warrant of arrest with the proper court.

Therefore, contrary to the claim of petitioners, the written authorization contemplated in Section 29 does not substitute a warrant of arrest that only the courts may issue. On this score, the OSG has stressed during the oral arguments that the written authorization in Section 29 is not a judicial warrant, as revealed in the explanation of the government during the oral arguments:

> ASSISTANT SOLICITOR GENERAL GALANDINES:
>
> Your Honor, please, may we respectfully disagree. The law enforcers can arrest following...by virtue of a valid warrantless arrest. The ATC will not have a...would have no participation in the arrest. The participation of the

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> ATC would conic after the arrest, the valid warrantless arrest has already been effected and then the ATC would now participate by allowing the detention for more than three (3) days. Your Honor. Pero sa pag-aresto po, wala pong kukunin from the ATC.[495] (Underscoring and italics in the original)

The OSG's position is consistent with Section 45 of the ATA, which categorically states that the ATC has not been granted any judicial or quasi-judicial power or authority. A textual reading of Section 29 in relation to Rule 9.1 of the IRR also supports this conclusion. The two provisions, taken together, show that the ATC issues a written authorization to law enforcement agents only to permit the extended detention of a person arrested after a valid warrantless arrest is made under Rule 9.2.

To reiterate, the written authorization of the ATC is for the purpose of "deliver[ing] said suspected person to the judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody x x x". Thus, it can only be issued in favor of an officer who had already validly arrested a person with probable cause to believe that Sections 4 to 12 of the ATA was violated. On a practical level, the ATC's written authorization is what determines whether it is the periods of detention under Article 125 or Section 29 that are to be followed. This is because the arresting officer may not have all the information to make that determination at that time. On the ground, the arresting officer may lack the necessary information (such as confidential intelligence reports) to actually determine that Sections 4 to 12 of the ATA was violated at the time of the warrantless arrest. In Pestilos,[496] the Court recognized that in a warrantless arrest, the arresting officer, public prosecutor, and the judge are all mandated to make their respective determination of probable cause within the spheres of their respective functions, "its existence is influenced heavily by the available facts and circumstances within their possession." While they observe "the same standard of a reasonable man, they possess dissimilar quantity of facts or circumstances, as set by the rules, upon which they must determine probable cause." The foundation for their respective determination of probable cause will vary because:

> x x x [T]he arresting officer should base his determination of probable cause on his personal knowledge of facts and circumstances that the person sought to be arrested has committed the crime; the public prosecutor and the judge must base their determination on the evidence submitted by the parties.
>
> In other words, the arresting officer operates on the basis of more limited facts, evidence or available information that he must personally gather within a limited time frame.[497] (Emphasis supplied)

Section 5, Rule 113 nonetheless gives the officer license to already arrest the offender, since the said provision allows warrantless arrests when an offense was committed or being committed in his presence or that he has probable cause to believe that an offense has just been committed, and that the person to be arrested has committed it based on the arresting officer's personal knowledge of facts or circumstances. If, however, there is probable cause to believe that the crime committed was no ordinary crime, but rather a terrorist act under Sections 4 to 12 of the ATA, a written authorization may be issued by the ATC in order to detain the suspect for a period longer than that which is allowed under Article 125 of the RPC. Without such written authorization duly issued by the ATC itself, the general rule under Article 125 of the RPC operates. On this understanding, which the Court holds is the correct one, the ATC's written authorization does not operate as a warrant of arrest.

To stress, when Section 29 is harmonized with the provisions of the 1RR, it is clear that the contested written authority to be issued by the ATC is not in any way akin to a warrant of arrest. To be operative, there must have been a prior valid warrantless arrest of an alleged terrorist that was effected pursuant to Section 5, Rule 113 of the Rules of Court by the arresting officer applying for the written authority under Section 29. This conclusion is apparent from the substantial similarity between Rule 9.2 and Section 5, Rule 113, though the former may be narrower in scope as it applies only to offenses under the ATA. As discussed, Section 5, Rule 113 enumerates the

long-recognized exceptions to the constitutional mandate requiring the issuance of a judicial warrant for the arrest of individuals.

Under Section 29 and Rule 9.2, a person arrested without a warrant may be detained for up to 14 days if the ATC issues a written authorization in favor of the law enforcement officer or military personnel after the arrest is made. The issuance of the authorization after the arrest is implied by the requirement under Rule 9.1 of the IRR for the arresting officer to submit a sworn statement stating the details of the person suspected of committing acts of terrorism and the relevant circumstances as basis for taking custody of the said person without a judicial warrant. If the ATC does not issue any written authorization, then the person arrested should be delivered to the proper judicial authority within 36 hours as provided under Article 125, considering that Sections 4 to 12 of the ATA are "crimes, or offenses punishable by afflictive or capital penalties, or their equivalent". Thus, there is no reason to believe that the "written authorization" that the ATC can issue under Section 29 is equivalent to a warrant of arrest that transgresses a function solely vested with the judiciary and may be abused by the executive to chill free speech. The power to issue warrants of arrest remains with the courts, pursuant to Article III, Section 2 of the Constitution.

The written authorization also cannot be likened to the feared ASSO that was used and abused during the Martial Law era. There are marked differences between the written authorization of the ATC under Section 29 and the ASSO that framers of the Constitution intended to eradicate.

The notorious ASSO originated from General Order No. 2, s. 1972 wherein former President Ferdinand Marcos ordered the Secretary of National Defense to "arrest or cause the arrest and take into x x x custody x x x individuals named in the attached list and to hold them until otherwise so ordered by me [the President] or by my duly designated representative." Me also instructed the arrest of such "persons as may have committed crimes and offenses in furtherance or on the occasion of or incident to or in connection with the crimes or insurrection or rebellion, as well as persons who have committed crimes against national security and the law of nations, crimes against public order, crimes involving usurpation of authority, title, improper use of name, uniform and insignia, including persons guilty of crimes as public officers, as well as those persons who may have violated any decree or order promulgated by me [the President] personally or promulgated upon my direction."[498] This issuance was later amended by General Order No. 60, s. 1977 and General Order No. 62, s. 1977, and was incorporated in Presidential Decree (P.D.) No. 1836.

In contrast, as explained, the written authority under Section 29 is not an authority to arrest a person suspected of committing acts in violation of the ATA. Instead, there must first be a valid warrantless arrest under Section 5, Rule 113 of the Rules. Therefore, unlike the ASSO, the written authorization does not replace any warrant of arrest that only the courts may issue.

Furthermore, a careful analysis of the purpose of the written authorization in Section 29 reveals that it actually serves as a safeguard to ensure that only individuals who are probably guilty of committing acts punishable under the ATA may be subjected to prolonged detention under Section 29. The pre-requisite of the ATC's written authorization for such prolonged detention serves to spare individuals who may have committed felonies defined under the RPC or offenses made punishable by special penal laws from prolonged detention. As stressed by the OSG, Section 29 provides protection to the detained person because the arresting officer must show proof that facts exist showing the propriety of the 14-day or extended 10-day detention before it may be given effect.[499]

Section 29 does not allow warrantless arrests based on mere suspicion; probable cause must be observed.

Since Section 29 applies to warrantless arrests, the processes, requisites, and rigorous standards applicable to such kind of arrests, as developed by rules and jurisprudence also apply to Section 29. Among other things, these include the requirement of personal knowledge and the existence of probable cause. Thus, it is important to clarify that, contrary to the concerns of petitioners, Section 29 does not allow warrantless arrests for violations of the relevant provisions of ATA based on mere suspicion. Once more, it is settled doctrine that in construing a statute, the Constitution and existing laws and rules are harmonized rather than having one considered repealed in favor of the other. Every statute must be so interpreted and brought in accord with other statutes to form a uniform system of jurisprudence - interpretere et concordare legibus est optimus interpretendi. If diverse statutes relate to the same thing, they ought to be taken into consideration in construing any one of them, as it is an established rule of law that all acts in pan materia are to be taken together, as if they were one law.[500] Here, the conclusion that the standard to be observed in warrantless arrest under Section 29 remains to be probable cause and not mere suspicion is made clear by Rule 9.2 of the IRR which is patterned after Section 5(a) and (b) of Rule 113 of the Rules. At a glance, Rule 9.2 of the IRR and Section 5, Rule 113 appear almost identical in the sense that they both utilize similar language in introducing the concepts of in flagrante delicto, hot pursuit, and arrest of escapees.

Noticeably, the person to be arrested in Section 5, Rule 113 is referred to as a "person," while in Rule 9.2 of the IRR the individual to be arrested is referred to as a "suspect." However, it does not follow that the two provisions are already different from each other. The use of the word "suspect" in Section 29 cannot be taken to mean that the gauge of evidence has been downgraded from probable cause to mere suspicion. The Court construes the use of the word "suspect" in Section 29 as merely a description of the person who was arrested, and does not alter the probable cause and personal knowledge requirements that must be complied with in carrying out the warrantless arrest. This is consistent with the argument of the OSG[501] - that is, that the use of the term "suspected" in this case is merely a description of one who has been arrested and detained after a valid warrantless arrest, and who is simply not yet been "charged with" a violation of the ATA before the courts. Simply put, a "suspect" refers to one who has yet to be charged in court, whereas one who is charged is called an "accused". This is the only significance of the word "suspected," which describes the person validly arrested without judicial warrant but who is not yet charged in court, as in fact, Section 29 contemplates an extended detention period within which the person is still bound to be delivered to the proper judicial authority.

Accordingly, any argument relating to the possibility of a "chilling effect" upon protected speech purportedly created by Section 29's use of the term "suspected" is without merit. Section 29 and Rule 9.2 of the IRR does not modify the prevailing standards for warrantless arrests and does not authorize the ATC to issue arrest warrants.

The Court further clarifies that Section 29 must be construed in harmony with prevailing standards for a warrantless arrest. Thus, in making the arrest, no violence or unnecessary force shall be used, and any person to be arrested shall not be subject to a greater restraint than is necessary, as provided under Section 2, Rule 113 of the Rules. The arresting officer must also keep in mind the importance of Section 12(1), Article III[502] of the Constitution, as the provision guarantees that persons to be arrested have the right to be informed of their right to remain silent, their right to have competent and independent counsel of their choice, and their right to be provided with counsel if they cannot afford the services of one. These Miranda rights, which originated from the landmark ruling of the U.S. Supreme Court in Miranda v. Arizona,[503] were further elucidated in People v. Mahinay[504] as follows:

> It is high-time to educate our law-enforcement agencies who neglect either by ignorance or indifference the so-called Miranda rights which had become insufficient and which the Court must update in the light of new legal developments:
>
> 1. The person arrested, detained, invited or under custodial investigation must be informed in a language

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known to and understood by him of the reason for the arrest and he must be shown the warrant of arrest, if any; [e]very other warnings, information or communication must be in a language known to and understood by said person;

2. He must be warned that he has a right to remain silent and that any statement he makes may be used as evidence against him;

3. He must be informed that he has the right to be assisted at all times and have the presence of an independent and competent lawyer, preferably of his own choice;

4. He must be informed that if he has no lawyer or cannot afford the services of a lawyer, one will be provided for him; and that a lawyer may also be engaged by any person in his behalf, or may be appointed by the court upon petition of the person arrested or one acting in his behalf;

5. That whether or not the person arrested has a lawyer, he must be informed that no custodial investigation in any form shall be conducted except in the presence of his counsel or after a valid waiver has been made;

6. The person arrested must be informed that, at any time, he has the right to communicate or confer by the most expedient means [either by] telephone, radio, letter or messenger with his lawyer (either retained or appointed), any member of his immediate family, or any medical doctor, priest or minister chosen by him or by any one from his immediate family or by his counsel, or be visited by/confer with duly accredited national or international non-government organization [and] [i]t shall be the responsibility of the officer to ensure that this is accomplished;

7. He must be informed that he has the right to waive any of said rights provided it is made voluntarily, knowingly and intelligently and ensure[d] that he understood the same;

8. In addition, if the person arrested waives his right to a lawyer, he must be informed that it must be done in writing AND in the presence of counsel, otherwise, he must be warned that the waiver is void even if he insist[s] on his waiver and chooses to speak;

9. That the person arrested must be informed that he may indicate in any manner at any time or stage ol the process that he does not wish to be questioned with warning that once he makes such indication, the police may not interrogate him if the same had not yet commenced, or the interrogation must ceased if it has already begun;

10. The person arrested must be informed that his initial waiver of his right to remain silent, the right to counsel or any of his rights does not bar him from invoking it at any time during the process, regardless of whether he may have answered some questions or volunteered some statements;

11. He must also be informed that any statement or evidence, as the case may be, obtained in violation of any of the foregoing, whether inculpatory or exculpatory, in whole or in part, shall be inadmissible in evidence.[505]

The Court notes that the enumeration in Mahinay already covers, under numbers 1 and 6 thereof, Sections 8, Rule 113 of the Rules of court on the method of arrest to be followed by an officer without a warrant,[506] as well as Section 14, Rule 113 on the right of an attorney or relative to visit the person arrested.[507] Additionally, Rule 3, Section 113[508] also makes it the duty of an officer making the arrest, and hence a right on the part of the person arrested, to deliver the person arrested to the nearest police station or jail without unnecessary delay.

Section 29 supplements Article 125 of the RPC and is the specific rule applicable for offenses penalized under the ATA.

Section 29 does not amend Article 125 of the RPC, but supplements it by providing an exceptional rule with specific application only in cases where: (1) there is probable cause to believe that the crime committed is that which is punished under Sections 4 to 12 of the ATA; and (2) a written authorization from the ATC is secured for the purpose. As explained above, both requisites must be complied with; otherwise, the arresting officer must observe the periods provided under Article 125, RPC.

As correctly argued by the government, Section 29 does not repeal nor overhaul Article 125 of the RPC. These provisions are not irreconcilably inconsistent and repugnant with each other.[509] Rather, the proper construction is to consider Article 125 as the general rule that also applies to ATA-related offenses when the conditions under Section 29 are not met. The periods under Section 29 will only become operative once the arresting officer has secured a written authorization from the ATC, in compliance with the requirements of Section 29.[510]

The foregoing interpretation also finds support when the Court detaches from the first paragraph of Section 29 any reference to the authorization to be issued by the ATC and its only intended consequence, to wit:

> The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. x x x (Emphases and underscoring supplied)

Since Section 29 applies exclusively to persons validly arrested without a warrant for terrorism and its related crimes under the ATA and written authorization is secured from the ATC, the 14-day detention period under it should then be read as supplementing the periods provided under Article 125 of the RPC. The Court holds that this is the proper interpretation of Section 29. As Section 29 itself declares, the 14-day detention period is applicable, Article 125 to the contrary notwithstanding, provided that the above-stated requisites attend.

On this note, the argument raised that Section 29 is inconsistent with Article 125 of the RPC is hence, unmeritorious. The fact that Article 125 preceded Section 29 by a significant number of years is not a reason to view the validity or invalidity of Section 29 through the lens of Article 125, in the manner that the validity or invalidity of all statutes should be viewed through the lens of the Constitution. Both Article 125 of the RPC and Section 29 of the ATA are penal statutes which may be amended, modified, superseded, or supplemented by subsequent statutes; and if there be any inconsistency between the two, it is well-settled that it is the duty of the courts to harmonize them when the occasion calls. The Court finds no inconsistency in this case.

Section 29 of the ATA passes strict scrutiny and is not overly broad.

Considering that Section 29 was introduced in the exercise of police power, its validity must be determined within the context of the substantive due process clause, as have been discussed earlier. This requires the concurrence of lawful purpose and lawful means. Further, in the facial analysis of Section 29, the Court is guided by the parameters similarly observed in resolving the challenges in other provisions of the ATA. As with the Court's discussion on designation and proscription, the Court will test the validity of Section 29 through the doctrines of overbreadth and strict scrutiny. As aforementioned, a law may be struck down as unconstitutional under the overbreadth doctrine if it achieves a governmental purpose by means that are unnecessarily broad and thereby

invade the area of protected freedoms, while the strict scrutiny standard is a two-part test under which a law or government act passes constitutional muster only if it is necessary to achieve a compelling state interest, and that it is the least restrictive means to protect such interest or narrowly tailored to accomplish said interest.

The Court finds that Section 29 passes the strict scrutiny standard. It is clear that the state has a compelling interest to detain individuals suspected of having committed terrorism. While Article 125 of the RPC has general application, Congress did not think that it could be effectively applied in cases of terrorism. This is implicit in the fact that even the HSA had provided for a 3-day maximum period in cases of terrorism instead of those set in Article 125 of the RPC. But as can be gleaned from the Senate deliberations, Congress thought that the 3-day maximum period under the HSA was insufficient for purposes of: (1) gathering admissible evidence for a prospective criminal action against the detainee;[511] (2) disrupting the transnational nature of terrorist operations, with Senator Dela Rosa citing his experiences with Muhammad Reza, who was captured, released for lack of evidence, and then went on to join ISIS in Iraq;[512] (3) preventing the Philippines from becoming an "experiment lab" or "safe haven" for terrorists;[513] and (4) putting Philippine anti-terrorism legislation at par with those of neighboring countries whose laws allow for pre-charge detention between 14 to 730 days, extendible, in some cases, for an indefinite period of time.[514]

There is no question that indefinite detention without a judicial warrant would raise a serious constitutional problem. "Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty that the [Due Process Clause] protects."[515] Section 29 of the ATA, however, does not allow for indefinite detention. It clearly states that the initial detention is only up to a maximum of 14 days and only when the crime involved is that which falls under Sections 4, 5, 7, 6, 7, 8, 9, 10, 11 and 12 of the ATA. This can only be extended for a maximum of 10 days and cannot be repeated. In other words, the absolute maximum that a person may be detained under Section 29 is 24 days. The question then is whether Congress is constitutionally prohibited by the Due Process Clause, in relation to Section 2, Article III, to legislate a period of detention longer than that which is set by Article 125 of the RPC in cases of terrorism. The Court holds that it is not.

It may be noted that the periods in Article 125 have undergone several revisions over time. Article 202 of the Old Penal Code, on which Article 125 of the RPC is based, provided for a maximum detention of 24 hours.[516] Article 125 initially fixed the maximum period to six hours. It then underwent a series of revisions during the Martial Law period under former President Marcos. On the supposition that "the periods within which arrested persons shall be delivered to the judicial authorities as provided in Article 125 of the Revised Penal Code, as amended, are on occasions inadequate to enable the government to file within the said periods the criminal information against persons arrested for certain crimes against national security and public order", he issued P.D. No. 1404, which set the periods as 'six hours, for crimes or offenses punishable by light penalties, or their equivalent; nine hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent', but allowing up to 30 days for crimes against national security and public order. Then came P.D. No. 1836 which allowed indefinite detention until the President or his authorized representative orders release. Two years after the formal lifting of Martial Law came P.D No. 1877, amended by P.D. No. 1877-A, which allowed a "preventive detention action" for up to one year for "cases involving the crimes of insurrection, rebellion, subversion, conspiracy or proposal to commit such crimes, sedition, conspiracy to commit sedition, inciting to sedition, and all other crimes or offenses committed in furtherance thereof."

P.D. Nos. 1404, 1836, and 1877 were then repealed by President Corazon Aquino by virtue of E.O. No. 59, Series of 1986 (dated November 7, 1986), effectively causing a return to the original provision of Article 125. Less than

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a year later, she issued E.O. No. 272, Series of 1987 (dated July 25, 1987) in the interest of public safety and order, amending Article 125 into its present form as above-cited.

More recently, under Section 18 of the HSA, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism had up to three days to deliver the latter to the proper judicial authority without incurring criminal liability under Article 125 of the RPC. Clearly, it is within the legislature's discretion to adjust the pre-charge detention periods based on perceived threats to national security and/or public order at any given time in our country's history.

Petitioners maintain that the detention periods in Section 29 have no constitutional justification.[517] However, the Constitution is silent as to the exact maximum number of hours that an arresting officer can detain an individual before he is compelled by law to deliver him to the courts.[518] The three-day period in the last paragraph of Section 18, Article VII of the Constitution is irrelevant to terrorism because it is applicable only in cases of invasion or rebellion when the public safety requires it. The fifth paragraph of Section 18 reiterates this by stating that the suspension of the privilege of the writ of habeas corpus shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with, invasion. To add terrorism is not permitted by the text of the Constitution and would indirectly extend the President's powers to call out the armed forces and suspend the privilege of the writ of habeas corpus.

Petitioners have not made out a case that terrorism is conceptually in the same class as rebellion or invasion, which are scenarios of "open war". This is not unexpected, since terrorism - a relatively modern global phenomenon - then may not have been as prevalent and widespread at the time the 1987 Constitution was framed as compared to now. It must be remembered that "rebellion" has an exact definition under Article 134 of the RPC as the act of rising publicly and taking arms against the Government for the purpose of, among others, removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof. The intent of rebellion is categorically different from that provided for under Section 4 of the ATA. Thus, a person may be in rebellion while not committing terrorism and vice versa.

Petitioners, however, argue that giving law enforcement officers 14 or 24 days to detain a person without a judicial warrant for purposes of gathering evidence is absurd because they ought to have had probable cause when they made the arrest.[519] Further, they argue that the prosecution is not precluded from requesting the trial court a reasonable continuance to prepare its case while the accused remains in detention.[520] Again, petitioners' argument fails because it assumes that case building in terrorism cases is comparable to case building in ordinary crimes. Based on Congress' finding[521] and the experience in other jurisdictions, case building in terrorism cases is fraught with unique difficulties. In the UK, for example, the Metropolitan Police Service - Anti-Terrorist Branch (now the Counter Terrorism Command), justified a three-month pre-charge detention on the difficulties unique to case building in terrorism cases. These include the necessity of: making inquiries in other jurisdiction in cases of global terrorism; establishing the true identity of terrorists, who usually use fake or stolen identities; decrypting and analyzing data or communications; securing the services of translators to assist with the interview process in cases of global terrorism; intensive forensic investigations where there is chemical, biological, radiological or nuclear hazards; and obtaining data from data service providers to show linkage between suspects and their location at key times.[522]

That said, it is worth remembering that the prolonged detention period under Section 29 is not only for gathering the necessary evidence. Congress also intended it to be a practical tool for law enforcement to disrupt terrorism.[523] In this day and age, terrorists have become more clandestine and sophisticated in executing their attacks and the government is expected to develop preventive approaches to adapt to, and to counter these threats.

It must be emphasized that the ATA was enacted with preventive intent. Section 2 of the ATA declared the State policy of protecting life, liberty, and property from terrorism, and recognized that the fight against terrorism requires a comprehensive approach that also encompasses political, economic, and diplomatic measures alongside traditional military and legal methods of combating the same. Consistent therefore with the other enforcement provisions of the ATA like designation and proscription, Section 29 is a counterterrorism measure enacted as a response to the ever-evolving problem of terrorism and should be seen as a measure that aims to prevent and disrupt future terrorist acts. As explained by Senator Panfilo M. Lacson during the Senate deliberations on the ATA:

> SENATOR LACSON. Hindi na rin po natin pinapalitan iyong provision sa citizen's arrest in this case. Kaya lamang, ang in-expand natin ay iyong period. In ordinary crimes, hindi puwede iyong nasa planning stage, hindi naman niya ginawa, hindi naman siya nag-commit ng crime. Pero dahil iyong tinatawag nating inchoate offense, hindi pa nangyari, nasa simula pa lamang, puwede na nating arestuhin because we want to be proactive because this is a new phenomenon, Mr. President, which is global in nature, and we are trying to avoid for this phenomenon to become a new normal. Kaya gusto nating bigyan ng special treatment dito sa batas iyong ngipin ng law enforcement agencies natin to really implement the law on terrorism.[524] (Emphasis and underscoring supplied)

Section 29 is one of many provisions in the ATA that recognizes, as some scholars observed, the need for effective strategies in counter-terrorism frameworks that aim to identify threats and make interventions to prevent the devastating consequences of terrorism from actually taking place.[525] At its core, the Court finds that Section 29, in allowing prolonged detention after a valid and lawful warrantless arrest, as herein construed, contributes to the disruption and restriction of terrorist operations, and the eventual incapacitation of high-risk individuals, which ultimately facilitates the fair and proper response of the State to the magnitude attendant to the crime of terrorism. Therefore, it cannot be denied that Section 29 has been enacted in the exercise of police power by the State, or that inherent and plenary power which enables the State to prohibit all that is hurtful to the comfort, safety, and welfare of society.[526]

In light of the above, it is clear to the Court that Section 29 satisfies the the compelling state interest requirement under the strict scrutiny standard. Moreover, the Court finds that the second prong of strict scrutiny, i.e. least restrictive means, has also been complied with by Section 29, if read in conjunction with Sections 30, 31, 32, and 33 of the ATA, because: (1) it only operates when the ATC issues a written authorization; (2) the detaining officer incurs criminal liability if he violates the detainee's rights; and (3) the custodial unit must diligently record the circumstances of the detention.

To recapitulate, detention for up to 14 days cannot be done by the arresting officer without the written authorization of the ATC. In effect, the ATC's written authorization is what narrows the application of Section 29. This must be so because it is the ATC's function under Section 46 (d) to "monitor the progress of the investigation and prosecution of all persons accused and/or detained for any crime defined and penalized under the [ATA]." Moreover, the ATC is expected to be more knowledgeable of terrorist activities than the ordinary law enforcer because under Section 46 (e), it must "establish and maintain comprehensive database information systems on terrorism, terrorist activities, and counter terrorism operations." Had Congress not required the ATC's written authorization, it would be up to any law enforcement officer from any local precinct or any military personnel to decide for himself that a detention of up to 14 or 24 days is necessary. It is not farfetched to see how this power, when merely localized, may be abused to serve personal or parochial interests. Worse, it could result in inordinate detention for crimes not punished under the ATA. Consequently, without the involvement of the ATC - which again is an executive agency comprised of high-ranking national security officials -Section 29 would have a broader scope and may result in inconsistent, if not, abusive application.

After an arrest has been made and the written authorization of the ATC is secured under Section 29, there are safeguards that must be observed during the detention of suspected terrorists. The Court is mindful that a detainee is practically under the mercy of the government. Such a great imbalance between the power of the State and the individual is often the breeding ground for abuses. In 2014, the UN Counter-Terrorism Task Force, under the auspices of the UN Secretary General, published "Guiding Principles and Guidelines"[527] relating to detention in the context of countering terrorism. It recognized that "[t]he implementation of counter-terrorism measures through the detention of persons leads to interference with individuals' full enjoyment of a wide range of civil, political, economic, social and cultural rights."[528] In particular, detention may potentially violate, amongst others, the right to personal liberty and the right to personal security and integrity.[529] For these reasons, the UN guidelines provide that:

1)

In the implementation of counter-terrorism measures, no one shall be subject to unlawful or arbitrary deprivation of liberty;

2)

Persons detained or arrested on terrorism charges must be informed of the reasons for arrest;

3)

The circumstances of the arrest and detention must be recorded and communicated;

4)

The detainee must have effective access to legal counsel.

5)

Detention awaiting trial should be an exception and should be as short as possible;

6)

Detainees are entitled to the enjoyment of all human rights, subject to restriction that are unavoidable in a closed environment; they must be treated with dignity and respect and not subjected to torture or other forms of ill-treatment or punishment;

7)

Secret and incommunicado detention may never be used;

8)

The detention must be subject to effective oversight and control by the judiciary and the detainee must have access to independent complaints mechanism and to challenge the legality of their detention, including by way of habeas corpus;

9)

Detention for reasons of national security must in accordance with law and not arbitrary; and

10)

Information obtained using torture shall be inadmissible as evidence. The detainee shall have a right to claim

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remedies and reparation, including compensation, for the period unlawfully or arbitrarily detained.[530]

It is worth emphasizing that while these are expressed as guidelines, they essentially summarize what the due process clause would minimally require in the prolonged detention of terrorist suspects. On this point, Sections 30, 31, 32, and 33 of the ATA textually provide for safeguards to shield the detainee from possible abuses while he is deprived of his liberty. Section 30 reiterates the rights of a person under custody, which among others, include the right to have competent and independent counsel, preferably of his own choice, and who must have constant access to his client. Section 31 imposes criminal liability on any law enforcement agent or military personnel who violates the rights of the person under custody. Section 32 requires the maintenance of a logbook which records the circumstances of detention, such records being a public document and made available to the detainee's lawyer and his family or relative by consanguinity or affinity up to fourth civil degree. Meanwhile, Section 33 reiterates the prohibition against coercion and torture in investigation and interrogation and imposes the penalties provided for in R.A. 9745. It also provides that any evidence obtained from the detainee through coercion or torture would be inadmissible in evidence.

The Court also clarifies that the writ of habeas corpus is available to a detainee under Section 29 and that the judiciary must be kept abreast with the details of the detention. This is implied by the requirement in Section 29 that the law enforcement agent or military personnel notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. And while the ATA removed the entitlement under Section 50 of the HSA to the payment of P500,000.00 of damages for each day of wrongful detention, the right of action of the detainee under Article 32(4) of the New Civil Code[531] remains.

In sum, the ATA requires that certain conditions be complied with both prior to, during, and after the detention of a suspected terrorist under Section 29. To the mind of the Court, these conditions narrowly tailor the application of Section 29 in accordance with the "least restrictive" prong of strict scrutiny. In this regard, it may thus be said that Section 29 is not overbroad as well, as this government measure does not sweep unnecessarily and broadly and thereby invade the area of protected freedom of speech.

On this latter point, the Court finally finds that Section 29 does not constitute a prior restraint or subsequent punishment on the exercise of the freedom of speech, expression, and their cognate rights. Again, it only operates when a person has been lawfully arrested without a judicial warrant for violating Sections 4 to 12 of the ATA. The Court's discussion on Section 4 above made it clear that protests, advocacies, dissents, and other exercises of political and civil rights are not terroristic conduct. The proper construction of Section 5, 6, 8, 10 and 12 has also been clarified. The operation of Section 29 in relation to such provisions does not result in an impermissible chilling effect. Concurrently, this Court is convinced that Section 29 is not overly broad.

Perforce, under the auspices of this case and the reasoned constructions made by the Court herein, Section 29 should not be struck down as invalid.

Extraterritorial Application of the ATA under Section 49, Implementing
Rules and Regulations under Section 54, and the Procedure Adopted in
Approving HB No. 6875

While this Court has earlier delimited the issues to be resolved under a facial analysis framework, it recognizes other miscellaneous issues that - albeit not exclusively related to free speech per se - nevertheless go into the intrinsic validity and operability of the entire ATA as a whole. Due to such significant relation and if only to placate any doubts on the ATA's implementation, the Court finds it prudent, at this final juncture, to address the same but only within the context of the facts presented in this case. In particular, these miscellaneous issues are:

(1) the allegations raised against the extraterritorial application of the ATA under Section 49; (2) the power of the ATC and the DOJ to promulgate rules and regulations under Section 54; and (3) the claims involving non-observance of the constitutional procedure in the enactment of ATA, i.e., the act of the Executive certifying to the urgency of and the subsequent act of the Legislative in passing the ATA into law. These three subjects will be treated below, in seriatim.

Extraterritorial Application of the ATA under Section 49

Petitioners make much ado about the seeming effect of the extraterritorial application of the ATA under Section 49 on their right to freely associate under Section 8, Article III of the Constitution.[532] They maintain that Section 49 makes no distinction and expands the reach of the ATA to any Filipino who commits acts penalized under the law outside of the territorial jurisdiction of the Philippines, specifically citing as an example those who may be prosecuted by mere membership, affiliation, or association with a certain designated group, absent any overt criminal act and regardless when the act was committed or when the membership commenced.[533] Petitioners further claim that the extraterritorial application of the ATA punishes people abroad for acts that may not even be illegal in their respective countries.[534] Relative thereto, petitioners contend that there is a "chilling effect" on the right to association because it would effectively deter individuals from joining organizations so as to avoid later being deemed a terrorist if the organization is designated.[535]

Section 49 of the ATA provides:

> Section 49. Extraterritorial Application. - Subject to the provision of any treaty of which the Philippines is a signatory and to any contrary provision of any law of preferential application, the provisions of this Act shall apply:
>
> (a) To a Filipino citizen or national who commits any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act outside the territorial jurisdiction of the Philippines;
>
> (b) To individual persons who, although physically outside the territorial limits of the Philippines, commit any of the crimes mentioned in Paragraph (a) hereof inside the territorial limits of the Philippines;
>
> (c) To individual persons who, although physically outside the territorial limits of the Philippines, commit any of the said crimes mentioned in Paragraph (a) hereof on board Philippine ship or Philippine airship;
>
> (d) To individual persons who commit any of said crimes mentioned in Paragraph (a) hereof within any embassy, consulate, or diplomatic premises belonging to or occupied by the Philippine government in an official capacity;
>
> (e) To individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes mentioned in Paragraph (a) hereof against Philippine citizens or persons of Philippine descent, where their citizenship or ethnicity was a factor in the commission of the crime; and
>
> (f) To individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes directly against the Philippine government.
>
> In case of an individual who is neither a citizen or a national of the Philippines who commits any of the crimes mentioned in Paragraph (a) hereof outside the territorial limits of the Philippines, the Philippines shall exercise jurisdiction only when such individual enters or is inside the territory of the Philippines: Provided, That, in the absence of any request for extradition from the state where the crime was committed or the state where the individual is a citizen or national, or the denial thereof, the ATC shall refer the case to the BI for deportation or

> to the DOJ lor prosecution in the same manner as if the act constituting the offense had been committed in the Philippines.

The Court holds, however, that the constitutional challenge against Section 49 is not ripe for adjudication. As stated in the beginning of this discourse, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it and thus, petitioners must show that they have sustained or are immediately in danger of sustaining some direct injury as a result of the act complained of. In this case, the Court sees that the only bases for the supposed unconstitutionality of Section 49 are mere theoretical abstractions of what may happen after a group or organization has been designated or charged under the ATA. However, none of petitioners claim that their constitutional rights have been under any credible or imminent threat of being violated because of the extraterritorial application of the ATA. In fact, none of petitioners allege that they are foreigners, permanent residents abroad, or are in any demonstrable situation that renders them susceptible to any adverse effects by virtue of the extraterritorial application of the ATA. Also, the Court has not been made aware of any pending criminal prosecution based on Section 49 in relation to designation under Section 25.

In any event, the supposed "chilling effect" of Section 49 is more apparent than real. A plain reading of Section 49 shows that it merely provides rules on how jurisdiction over the offense of terrorism is acquired. It is noteworthy, in this regard, that the ATA having extraterritorial application is not peculiar. Section 49 is not the first time the country would extend the application of a penal law to Filipino citizens, even for acts committed outside the country. The enumeration in Article 2 of the RPC is a prime example where the application of a penal law is made to extend outside the territorial limits of the country's jurisdiction. Another - more closely worded to Section 49 - is Section 21 of R.A. No. 10175 or the Cybercrime Prevention Act, which extends the jurisdiction of the courts to any violation committed by a Filipino national regardless of the place of commission.

It must as well be pointed out that Section 49 appears to simply reflect or embody the five traditional bases of jurisdiction over extraterritorial crimes recognized in international law,[536] i.e., territorial, national, protective, universal, and passive personal. These are, in fact, recognized doctrines in the realm of private international law, more commonly known as "conflict of laws". To expound, the first three, which confers jurisdiction based on the place where the offense is committed, based on the nationality of the offender, and based on whether the national interest is injured, are generally supported in customary law[537] and are already being applied in various Philippine statutes. Universal jurisdiction, which confers authority unto the forum that obtains physical custody of the perpetrator of certain offenses considered particularly heinous and harmful to humanity, and passive personality jurisdiction, which is based on the nationality of the victim, have been accepted in international law, but apply only in special circumstances (universal jurisdiction)[538] or in limited incidents (passive personality jurisdiction). Notably, the Philippines adopts both under Section 17 of R.A. No. 9851 or the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity. It is pertinent to state in this regard that Section 2 of the ATA considers terrorism as not only a crime against the Filipino people, but also a crime against humanity and the Law of Nations.

On this note, the Court further agrees with the OSG that Section 49 is a proactive measure.[539] Surely, no one can deny that the country has a broad interest to protect its citizens and its vessels, wherever they may be, as well as its government and its embassies, in the same way it has an interest to protect itself and its territory from terrorism even against someone who is physically outside the territorial jurisdiction of the country. This Court recognizes that these principles flow from the overarching interest of the State to ensure that crimes do not remain unpunished - interest reipublicae ne maleficia remaneant impunita. Any act which has a deleterious effect on the national security and public safety of the country should be penalized, wherever the malefactor may be located. This notwithstanding, and consistent with the preliminary consideration on ripeness as stated above, it should

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remain that the constitutional validity or invalidity in the application of these principles remain to be tested in the proper case that is ripe for adjudication.

The ATC and the DOJ's Power to Promulgate Implementing Rules and Regulations under Section 54

Petitioners argue that the ATC and the DOJ has been unduly delegated with legislative power by allowing it to promulgate rules and regulations to address the incompleteness of the ATA's terms and insufficiency of its standards.[540] Meanwhile, the OSG counters that the Constitution recognizes exceptions to the rule on non-delegation of legislative power including delegation to administrative bodies and that Section 54 constitutes a permissible delegation.[541]

Section 54 provides:

> Section 54. Implementing Rules and Regulations. - The ATC and the DOJ, with the active participation of police and military institutions, shall promulgate the rules and regulations for the effective implementation of this Act within ninety (90) days after its effectivity. They shall also ensure the full dissemination of such rules and regulations to both Houses of Congress, and all officers and members of various law enforcement agencies.[542] (Citations omitted)

At the onset, petitioners' apprehensions on the incompleteness of the ATA's terms and insufficiency of its standards should already be addressed by the Court's extensive judicial construction of the significant provisions of the ATA, which consequently delineates the extent of the rule-making power that the DOJ and ATC may exercise. As case law instructs:

> Administrative agencies possess quasi-legislative or rule-making powers and quasi-judicial or administrative adjudicatory powers. Quasi-legislative or rule-making power is the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers.
>
> The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute. In case of conflict between a statute and an administrative order, the former must prevail.[543]

Accordingly, the DOJ and ATC must ensure that the implementing rules and regulations conform with the spirt of the law, as herein divined by the Court through its judicial construction. To reiterate, administrative agencies "may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute. In case of conflict between a statute and [the IRR], the former must prevail."

Ultimately, however, it should be pointed out that the facial challenge in this case was directed against the ATA's statutory provisions, and not the rules found in the IRR itself. As such, the Court deems it prudent to refrain from

passing judgment on the issue of undue delegation that may be appropriately addressed through an actual case or controversy sharply demonstrating how the ATC and DOJ have broadly construed the provisions of the ATA so as to showcase the alleged incompleteness of the law and its kick of sufficient standards.

Procedure in Approving HB No. 6875

Petitioners maintain that the House of Representatives transgressed the requirements under paragraph 2, Section 26, Article VI of the Constitution in enacting the ATA, specifically that the bill did not undergo three readings on separate days, and that no printed copies of the House Bill in its final form were distributed to the members of the House three days before its passage. They also argue that the certification for the immediate enactment of the law did not meet the "public calamity or emergency" exception. Finally, they question the lack of quorum during the session and voting on HB No. 6875 because some members attended through virtual platforms, in contravention of the physical attendance requirement.[544]

Meanwhile, the government insists that the Congress observed the requirements prescribed by the Constitution in enacting the ATA and that it was not "railroaded".[545] It argues that the President's certification of the bill as urgent under the "public calamity or emergency" exception dispenses with the requirements of printing, distribution, and going through three readings on separate days.[546] There was also no clear showing that the members of the House of Representatives were deprived of the opportunity to study the bill or that their votes were erroneously counted.[547]

The President's certification of the bill as urgent justifies non-compliance with the general procedure for enacting laws.

Article VI, Section 26 of the Constitution states:

> x x x x
>
> (2) No bill passed by either Mouse shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal.[548] (Emphasis supplied)

The foregoing provision lays down the general procedure to be observed in enacting laws. This general procedure requiring that the readings be made on three separate days and that the bill be printed in its final form and distributed three days before the third reading may, however, be dispensed with when the President certifies a bill as urgent to meet a public calamity or emergency.[549]

In Tolentino v. Secretary of Finance[550] (Tolentino), the Court held that:

> The sufficiency of the factual basis of the suspension of the writ of habeas corpus or declaration of martial law Art. VII, Section 18, or the existence of a national emergency justifying the delegation of extraordinary powers to the President under Art. VI, Section 23(2) is subject to judicial review because basic rights of individuals may be of hazard. But the factual basis of presidential certification of bills, which involves doing away with procedural requirements designed to insure that bills are duly considered by members of Congress, certainly

should elicit a different standard of review.[551]

Based on the foregoing, it can be surmised that the President's determination of the existence of an "emergency" or "public calamity" is fundamentally dependent on the exigencies of each circumstance.

In Abas Kida v. Senate of the Philippines,[552] the Court upheld the certification of the President for the immediate enactment of R.A. No. 10153, a law synchronizing the ARMM elections with the national and local elections. In justifying the certification of the urgency of the bill, the Court explained inter alia that:

> x x x [W]hile the judicial department and this Court are not bound by the acceptance of the President's certification by both the House of Representatives and the Senate, prudent exercise of our powers and respect due our co-equal branches of government in matters committed to them by the Constitution, caution a stay of the judicial hand.[553] (Citation omitted)

Therefore, the President's exercise of the power to issue such certification is one that should be accorded with due deference. As such, the Court must refrain from intruding into such matter through the exercise of its judicial power in the absence of grave abuse of discretion, considering that the passage of laws is essentially an affair that falls within the purview of the political branches of government.

In this case, President Rodrigo R. Duterte, through a letter dated June 1, 2020, certified the necessity for the immediate enactment of HB No. 6875 "to address the urgent need to strengthen the law on anti-terrorism and effectively contain the menace of terrorist acts for the preservation of national security and the promotion of general welfare."[554]

As the Court sees it, there is no grave abuse in deeming that the passage of a law to sufficiently address terrorism in the country falls within the public emergency exception. As already emphasized, the constant threat of terrorism, as one of the biggest menaces to national security, definitely constitutes as an emergency which the State needs to address immediately. Terrorism is not only an ever-present threat but one which brings about potential devastating consequences that should be urgently attended to. Despite the HSA, it is undisputed that the political branches of government both deemed, in their wisdom and expertise, that the former law was not enough to adequately respond to the problem of terrorism. Indeed, every passing day without an adequate counterterrorism framework is an opportunity for a terror act. The potential extensive damage to the country and the prospect of a wide-scale loss of life upon a terror act is indeed a matter of public safety and security which is time-sensitive. The experience of law enforcers reveals the necessity of adopting urgent measures to fill the gaps in the HSA. To demonstrate the gap in the HSA which lawmakers perceive to be a hindrance to the effective and timely apprehension and prosecution of terrorists, the Court notes the experience of a lawmaker when he was still in the police force wherein a known ISIS terrorist was arrested in Davao City but had to be released within 36 hours as the authorities did not have enough evidence to hold him further. Months later, the same terrorist was caught in a video beheading hostages in Raqqa, Iraq.[555]

In the absence of any grave abuse of discretion, the determination of the President that terrorism is an emergency in order to certify a bill as urgent, which Congress has not seen fit to controvert and has, in fact, accepted such certification as valid similar to the finding in Tolentino, is something which the Court should not disturb. Additionally, the Court recognizes the pressing need for the country to enact more effective counter-measures against terrorism and terrorism financing, the lack of which has been repeatedly flagged by international evaluation groups to which the Philippines belong.

Perceived Irregularities in the Implementation of the Internal Rules of the House of Representatives.

The Constitution affords Congress due discretion in determining the appropriate rules in conducting its proceedings. This authority is found in paragraph 3, Section 16, Article of VI of the Constitution which states:

> Section 16.
>
> x x x x
>
> (3) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days.
>
> x x x x

In line with the foregoing authority granted to the House of Representatives, it has promulgated its own internal rules. Among others, Sections 89 and 90 of the Rules of the House of Representatives (18[th] Congress) states:

> Section 89. Conduct of Sessions through Electronic Platforms. - In cases when the attendance of Members in sessions becomes extremely difficult or impossible - such as on occasions of natural calamities, pandemics, strikes, riots, and civil disturbances, whether fortuitous or not - and there is urgent necessity to act on any measure, the Speaker, in consultation with the Majority and Minority Leaders, may authorize the conduct of sessions through electronic platforms like video conference, telecommunications and other computer online technologies.
>
> Section 90. Attendance. - Notwithstanding the provisions of Section 74 hereof, Members shall, as far as practicable, register their attendance by joining the virtual conference. This shall be verified and authenticated by the Secretary General.
>
> Members who are unable to join the virtual conference due to technical reasons or those who are performing official tasks as authorized by the Speaker and subject to Section 71 hereof, may register their attendance through mobile phones or other electronic accounts previously registered with and verified by the Secretary General.

As aptly pointed out by the government, while voting on and approving bills through virtual platforms may be unconventional, this is not prohibited by the internal rules of the House of Representatives.[556]

Absent any palpable grave abuse of discretion, it is beyond the scope of the Court's jurisdiction to scrutinize the internal procedures of Congress. This is consistent with the Court's ruling in ABAKADA Guro Party List v. Ermita[557] wherein it was declared that:

> x x x [O]ne of the most basic and inherent power of the legislature is the power to formulate rules for its proceedings and the discipline of its members. Congress is the best judge of how it should conduct its own business expeditiously and in the most orderly manner. It is also the sole concern of Congress to instill discipline among the members of its conference committee if it believes that said members violated any of its rules of proceedings. Even the expanded jurisdiction of this Court cannot apply to questions regarding only the internal operation of Congress, thus, the Court is wont to deny a review of the internal proceedings of a co-equal branch of government.[558]

Consistent with the principle of separation of powers and the Court's pronouncements in ABAKADA Guro Party List, the Court does not find it proper to strike down the internal rules of the Mouse of Representatives allowing virtual hearings relative to quorum. Congress must be given reasonable leeway to adapt to peculiar exigencies and employ available technological means to continue the unimpeded performance of its functions. All in all, there is no grave abuse of discretion committed on this score.

Resume of the Votes Cast and the Court's Resolution

The Court has arrived at clear conclusions on the issues of this case. However, various approaches and views were expressed during the deliberations which necessarily resulted in variance in the voting. Some members of the Court will expound on their individual opinions and elucidate the particular approach or approaches they have taken in their respective separate opinions.

The nine (9) critical questions identified as the core issues involved are the following:

- Whether to grant due course to 35 out of 37 petitions;

- Whether a facial challenge or an as applied challenge should be used in analyzing the ATA;

- Whether the "Not Intended Clause" in the proviso of Section 4 is constitutional;

- Whether the phrase "organized for the purpose of engaging in terrorism" in the third paragraph of Section 10 is constitutional;

- Whether the first mode of designation under Section 25 is constitutional;

- Whether the second mode of designation under Section 25 is constitutional;

- Whether the third mode of designation under Section 25 is constitutional;

- Whether the provisions on proscription in Sections 26 to 28 are constitutional; and

- Whether Section 29 on arrest and detention without judicial warrant is constitutional.

The votes of the members of the Court are summarized as follows:

- With a vote of 8-7, eight (8) members of the Court, namely, Senior Associate Justice Perlas-Bernabe, Justices Leonen, Caguioa, Hernando, Carandang, Lazaro-Javier, Rosario, and Dimaampao, voted in favor of granting due course to 35 out of 37 of the petitions. These include the petitions docketed as G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253124, 253242, 253252, 253254, 254191 (UDK No. 16714), and 253420. The petition docketed as G.R. No. 253118 (Balay Rehabilitation Center, Inc. v. Duterte) is dismissed outright for lack of merit while the petition docketed as UDK No. 16663 (Yerbo v. Offices of the Honorable Senate President and the Honorable Speaker of the House of Representatives) is dismissed for being fundamentally flawed both in form and substance. Seven (7) members of the Court voted to grant due course only to the petitions in G.R. No. 252585, G.R. No. 252767, G.R. No. 252768, and G.R. No. 253242, namely, Chief Justice Gcsmundo, Justices Inting, Zalameda, M. Lopez, Gaerlan, J. Lopez, and Marquez.

- As to whether a facial challenge or an as-applied challenge should be used in analyzing the ATA, eleven (11) members of the Court, namely, Senior Associate Justice Perlas-Bernabe, Justices Leonen, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Gaerlan, Rosario, J. Lopez, and Dimaampao, voted in favor of applying facial challenge but only with respect to freedom of speech, expression, and cognate rights issues. The majority agrees that this facial review does not preclude future challenges against any of the provisions on the basis of an actual and as-applied case.

Justice Caguioa separately voted to apply facial challenge to all other fundamental freedoms beyond freedom of speech. On this point, while Justice Leonen concurred with the ponencia, he is of the opinion that there can be a facial examination based on other fundamental rights if there is such imminence and [the constitutional violation] is so demonstrably and urgently egregious that it outweighs a reasonable policy of deference.

Three (3) remaining members of the Court, namely, Chief Justice Gesmundo, Justice M. Lopez, and Justice Marquez voted that the ATA cannot be subject to a facial challenge. On one hand, Chief Justice Gesmundo, joined by Justice Marquez, submits that: (a) the ATA only penalizes conducts which includes "speech integral to criminal conduct;" and (b) an as-applied challenge does not foreclose the use of void-for-vagueness and overbreadth tests as tools of judicial scrutiny. On the other hand, Justice M. Lopez submits that only an as-applied challenge against the ATA is proper, it being a penal law.

- As to Section 4 of the ATA, twelve (12) members of the Court, namely, Senior Associate Justice Perlas-Bernabe, Justices Leonen, Caguioa, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Gaerlan, Rosario, J. Lopez, and Dimaampao, voted to declare the "Not Intended" clause in the said provision as unconstitutional.

Three (3) members of the Court, namely, Chief Justice Gesmundo, Justice M. Lopez, and Justice Marquez voted that the entirety of Section 4 is not unconstitutional.

- On the issue of whether the phrase "organized for the purpose of engaging in terrorism" in the last paragraph of Section 10 should be struck down as unconstitutional, the ponencia was outvoted by a vote of 9-6 with nine (9) members of the Court, namely, Chief Justice Gesmundo, Justices Caguioa, Hernando, Inting, Zalameda, Gaerlan, M. Lopez, J. Lopez, and Marquez, agreeing that Section 10 of the ATA is not unconstitutional.

Six (6) members of the Court, namely, Senior Associate Justice Perlas-Bernabe, Justices Leonen, Carandang, Lazaro-Javier, Rosario, and Dimaampao, voted to strike down the subject phrase for being unconstitutional.

- Fourteen (14) members of the Court, namely, Chief Justice Gesmundo, Senior Associate Justice Perlas-Bernabe, Justices Caguioa, Hernando, Carandang, Lazaro-Javier, Tnting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, and Marquez, voted that automatic adoption of the United Nations Security Council Consolidated List (1st mode of designation) in the first paragraph of Section 25 is not unconstitutional, with Justice Leonen as the lone dissenter.

- Nine (9) members of the Court, namely, Senior Associate Justice Perlas-Bernabe, Justices Leonen, Caguioa, Hernando, Carandang, Lazaro-Javier, Rosario, Gaerlan, and Dimaampao, voted that requests for designation by other jurisdictions (2nd mode of designation) in the second paragraph of Section 25 is unconstitutional.

Six (6) members of the Court, namely, the Chief Justice and Justices Inting, Zalameda, M. Lopez, J. Lopez, and Marquez voted in favor of holding the provision not unconstitutional.

- On the issue of whether the designation by the ATC upon a finding of probable cause (3rd mode of designation) under Section 25 is constitutional, the ponencia was outvoted by a vote of 8-7. Eight (8) members of the Court, namely, Chief Justice Gesmundo, Justices Hernando, Inting, Zalameda, M. Lopez, Gaerlan, J. Lopez, and Marquez, voted that the third paragraph of Section 25 is not unconstitutional.

Senior Associate Justice Perlas-Bernabe, Justices Leonen, Caguioa, Carandang Lazaro-Javier, Rosario, and Dimaampao, voted to declare the third mode of designation unconstitutional.

- The Court unanimously voted that Sections 26, 27, and 28 of the ATA on judicial proscription are not unconstitutional.

- Ten (10) members of the Court, namely, Chief Justice Gesmundo, Senior Associate Justice Perlas-Bernabe, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, M. Lopez, Rosario, Marquez, voted that Section 29, as construed in the ponencia, is not unconstitutional.

Three (3) members of the Court, namely, Justices Caguioa, Gaerlan, and Diamaampao voted without qualification

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that Section 29 is unconstitutional.

Justice Leonen is of the view that even with the framework of overbreadth, the extension without warrant is unconstitutional relative to provisions which impact on freedom of expression and cognate rights. Thus, Justice Leonen voted that Section 29 is unconstitutional only in relation to Sections 5 and 8 of the ATA.

Justice J. Lopez voted that Section 29 is unconstitutional only with respect to the extended detention without warrant.

A Final Note

Terrorism is no ordinary crime. As emphasized, terrorism is not confined to a particular space and time, and is often shrouded by uncertainty and invisibility. Unlike a typical war where armed hostilities are clearly apparent, most terrorist activities, including training, financing, and other forms of preparation, involve months or even years of clandestine planning.

Terrorists have significantly improved their capabilities over time and expanded their vast resources which include, inter alia, sophisticated training and the addition of weapons of mass destruction in their arsenal. The pervasive problem of terrorism requires interventions that not only punishes an act when it is done but also anticipates risks to disrupt and pre-empt a terrorist act before irreversible harm is done, without sacrificing and undermining fundamental freedoms recognized in the Bill of Rights. As a result, there has been a noticeable shift in the approach of the government in suppressing terrorism from criminalization to preventive or precautionary. This has been seen in legislations such as the HSA, R.A. No. 10168, and more recently, in the assailed law in the present petitions.

Bearing in mind the immense responsibility of the government to protect its people and defend the State, the Court cannot simply disregard the realities on the ground and the complex problem of terrorism not only in the Philippines but also across the globe. In striking a carefully calibrated balance between what is constitutionally acceptable and what is not, the Court needed to lean on a little practical wisdom, for as Justice Aharon Barak, President of the Israeli Supreme Court puts it - the Constitution "is not a prescription for national suicide" and "human rights are not a stage for national destruction."[559] Nonetheless, this Court is ever mindful that hand in hand with its obligation to give due regard to the inevitabilities of national security and public safety, as well as the effectiveness of law enforcement, is its constitutional mandate to safeguard substantive democracy, as expressed in fundamental values and human rights,[560] and to temper the excesses of the other branches. The Court believes it has faithfully exercised this responsibility in the case.

In the present petitions, this Court painstakingly demonstrated when judicial intervention may be invoked through a facial challenge to assuage the fears of the people who feel threatened by the potential chilling effect of the enactment of a statute before an actual case is brought to the court. Taking into consideration the permissible degree of judicial intervention in a facial challenge, this Court outlined the extent of the power of the executive branch in this campaign against terrorism and has struck down the following provisions of the law that have gone beyond the boundaries set by the Constitution:

1)

The phrase in the proviso of Section 4 which states "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety";

2)

The second mode of designation found in paragraph 2 of Section 25; and

3)

As a necessary consequence, the corresponding reference/provisions relative to the foregoing items in the IRR of R.A. No. 11479.

The Court has also directed the CA to immediately formulate the rules to be observed for judicial proscription with the objective of upholding the rights of groups of persons, associations or organizations which may be subjected to the proceedings under Sections 26 and 27 of the ATA.

WHEREFORE, the petitions in G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253124, 253242, 253252, 253254, 254191 (UDK No. 16714), and 253420 are GIVEN DUE COURSE and PARTIALLY GRANTED.

The Court declares the following provisions of Republic Act No. 11479 UNCONSTITUTIONAL:

1)

The phrase in the proviso of Section 4 which states "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety;"

2)

The second mode of designation found in paragraph 2 of Section 25; and

3)

As a necessary consequence, the corresponding reference/provisions in the Implementing Rules and Regulations of Republic Act No. 11479 relative to the foregoing items.

Moreover, pursuant to the Court's rule-making power, the Court of Appeals is DIRECTED to prepare the rules that will govern judicial proscription proceedings under Sections 26 and 27 of Republic Act No. 11479 based on the foregoing discussions for submission to the Committee on the Revision of the Rules of Court and eventual approval and promulgation of the Court En Banc.

The petitions in G.R. No. 253118 (Balay Rehabilitation Center, Inc. v. Duterte) and UDK No. 16663 (Yerbo v. Offices of the Honorable Senate President and the Honorable Speaker of the House of Representatives) are DISMISSED.

SO ORDERED.

Gesmundo, C. J., Please see separate concurring and dissenting opinion.
Hernando, and Rosario, JJ., concur.
Perlas-Bernabe, J., See Concurring and Dissenting Opinion.
Leonen, J., see concurring and dissenting opinion.
Caguioa, J., See Separate Concurring and Dissenting Opinion.
Lazaro-Javier, J., See Separate Opinion.
Inting, J., See Separate Opinion.
Zalameda, J., See Separate Opinion.
M. Lopez, J., see concurring and dissenting opinion.

Gaerlan, J., See Separate Concurring and Dissenting Opinion.
J. Lopez, J., See Separate Concurring and Dissenting Opinion.
Dimaampao, J., See Separate Concurring and Dissenting Opinion.
Marquez, J., I join the Concurring and Dissenting Opinion of C. J. Gesmundo.

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[116] OSG's Memorandum (Vol. I), pp. 104-109.

[117] Id. at 110-114.

[118] Position Paper of Former Chief Justice Reynato S. Puno as amicus curiae p. 5.

[119] 646 Phil. 452 (2010).

[120] Id. at 489.

[121] Supra note 119.

[122] OSG's Memorandum (Vol. I), p. 114.

[123] Supra note 119.

[124] Id.

[125] Petitioners' Memorandum for Cluster I Issues, p. 65.

[126] TSN dated May 12, 2021, pp. 100-102.

[127] 727 Phil. 28 (2014).

[128] Id. at 121-122.

[129] Funa v. Villar, 686 Phil. 571, 586 (2012).

[130] 522 Phil. 705 (2006).

[131] Funa v. Villar, supra note 129.

[132] Id. 585.

[133] Chavez v. Gonzales, 569 Phil. 155, 193 (2008).

[134] 476 Phil. 106 (2004).

[135] Garcia v. Executive Secretary, supra note 102 at 82.

[136] Id., citing People v. Vera, 65 Phil. 56 (1937).

[137] Id., citing Romualdez v. Sandiganbayan, 479 Phil. 265 (2004).

[138] Id.

[139] Rollo (UDK 16663), pp. 7, 8.

[140] Id. at 8-9.

[141] Id. at 12.

[142] Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra note 102 at 1093, citing Saguisag v. Executive Secretary Ochoa, 777 Phil. 280 (2016).

[143] 896 Phil. 213 (2019).

[144] Id.

[145] 751 Phil. 301 (2015).

[146] Id. at 331-334.

[147] 84 Phil. 368 (1949).

[148] GIOS-SAMAR v. Department of Transportation and Communications, supra note 143 at 261.

[149] 63 Phil. 139 (1936).

[150] 433 Phil. 506 (2002).

[151] Id., as cited in GIOS-SAMAR v. Department of Transportation and Communications, supra note 143.

[152] Id. at 283-284.

[153] Alex Kreit, Making Sense of Facial and As-Applied Challenges, 18 Win. & Mary Bill Rts. J. 657 (2010), p. 657, <https://scholarship.law.wm.edu/wmborj/vol18/iss3/4> accessed on August 14, 2021, citing Tex. Workers'Comp. Comm'n v. Garcia, 893 S.W.2d 504, 518 (Tex. 1995); Michael C. Dorf, Facial Challenges to State and Federal Statutes, 46 STAN. L. REV. 236 (1994), p. 236 ("Conventional wisdom holds that a court may declare a statute unconstitutional in one of two manners: (1) the court may declare it invalid on its face, or (2) the court may find the statute unconstitutional as applied to a particular set of circumstances."); Richard II. Fallon, Jr., As-Applied and Facial Challenges and Third-Party Standing, 113 HARV. L. REV. 1321, 1321-22 (2000), p. 1321 <https://www.jstor.org/stable/1342351> accessed on August 14, 2021. Emphasis supplied.

[154] Richard H. Fallon, Jr., As-Applied and Facial Challenges and Third-Party Standing, 113 HARV. L. REV. 1321, 1321-22 (2000), p. 1321 <https://www.jstor.org/stablc/l342351> accessed on August 14, 2021.

[155] Richard H. Fallon, Fact and Fiction About Facial Challenges, 99 Calif. L. Rev. 915 (2011), pp. 953-959 <http://nrs.harvard.edu/urn-3:HUL.InstRepos:11222673> accessed on August 14, 2021.

[156] INS v. Chadha, 462 U.S. 919 (1983).

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[157] 481 U.S. 739 (1987).

[158] 421 Phil. 290, 431 (2001).

[159] Supra note 154.

[160] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 119.

[161] 226 U.S. 217 (1912), as cited in Richard H. Fallon, Fact and Fiction About Facial Challenges, supra note 152.

[162] Id., citing Hatch v. Reardon, 204 U.S. 152, 160 (1907); Lee v. New Jersey, 207 U.S. 67, 70 (1907); Southern Railway Co. v. King, 217 U.S. 524, 534 (1910); Collins v. Texas, 223 U.S. 288, 295 (1912); Standard Stock Food Co. v. Wright, 225 U.S. 540, 550 (1912).

[163] McGowan v. Maryland, 366 U.S. 420, 429-430 (1961), as cited in Broadrick v. Oklahoma, 413 U.S. 601 (1973).

[164] 310 U.S. 88 (1940).

[165] See also OVERBREADTH AND LISTENERS' RIGHTS, Harvard Law Review Vol. 123 (2010), pp. 1-22. <https://harvardlawreview.org/wp-content/uploads/pdfs/vol123_overbreadth_and_listeners_rights.pdf> accessed on July 2, 2021.

[166] Thornhill v. Alabama, supra note 161, as cited in OVERBREADTH AND LISTENERS' RIGHTS, Harvard Law Review, Vol. 123 (2010) pp 3-4.

[167] 413 U.S. 601 (1973).

[168] See also U.S. v. Salerno, as cited in Estrada v. Sandiganbayan, supra note 158.

[169] U.S. v. Salerno, supra note 154. Emphasis supplied.

[170] 576 U.S. 409 (2015).

[171] Id., citing Sorrell v. IMS Health Inc., 564 U.S. 552 (2011).

[172] Id., citing District of Columbia v. Heller, 554 U.S. 570 (2008).

[173] Id., citing Chicago v. Morales, 527 U.S. 41 (1999).

[174] Id., Kraft Gen. Foods, Inc. v. Iowa Dept. of Revenue and Finance, 505 U.S. 71 (1992).

[175] 347 U.S. 483, 492 (1954), as cited in Richard H. Fallon, Fact and Fiction About Facial Challenges, supra note 151.

[176] Meier, Luke (2010) "Facial Challenges and Separation of Powers," Indiana Law Journal: Vol. 85: Iss. 4, Article 13, accessed at <https://www.repository.law.indiana.edu/ilj/vol85/iss4/13>.

[177] 462 U.S. 919 (1983).

[178] 524 U.S. 417 (1998).

[179] 137 Phil. 471 (1969).

[180] Id., citing Thornhill v. Alabama, 310 US 88 (1940); Near v. Minnesota, 283 US 697 (1913); Lovell v. Griffin, 303 US 444 (1938); Murdoch v. Pennsylvania, 319 US 105 (1943); Saia v. New York, 334 US 558 (1948); Kunz v. New York, 340 US 290 (1951); Staub v. Boxley, 355 US 313 (1958); Smith v. California, 361 US 147 (1959); Talley v. California, 362 US 60 (1960;, Cramp v. Board of Public Instruction, 368 US 278 (1961); Baggett v. Bullitt, 377 US 360 (1964); Aptheker v. Secretary of State, 378 US 500 (1964).

[181] 400 Phil. 904 (2000).

[182] Id. at 1092.

[183] Romualdez v. Sandiganbayan, 479 Phil. 265 (2004).

[184] 401 U.S. 37, 52-53, 27 L. Ed. 2d 669, 680 (1971), per Black, J.

[185] Romualdez v. Sandiganbayan, supra note 183.

[186] 576 Phil. 357 (2008).

[187] Id. at 390, citing David v. Macapagal-Arroyo, supra note 130.

[188] Supra note 119.

[189] Imbong v. Ochoa, supra note 85.

[190] 552 U.S. 442 (2008).

[191] Id., citing Sabri v. United States, 541 U.S. 600, 609 (2004).

[192] Id., citing Ashwander v. TVA, 297 U.S. 288, 347 (1936), which cited Liverpool, New York & Philadelphia S. S. Co. v. Commissioners of Emigration, 113 U.S. 33, 39 (1885).

[193] Id., Ayotte v. Planned Parenthood of Northern New Eng., 546 U.S. 320, 329 (2006) citing Regan v. Time, Inc., 468 U.S. 641, 652 (1984).

[194] Advisory dated January 5, 2021, p. 2.

[195] Id. at 3-4.

[196] Id.

[197] See Thomas v. Chicago Park Dist., 534 U.S. 316 (2002) where the Supreme Court of the United States, on a facial challenge, upheld the Constitutionality of an ordinance passed by Chicago Park District but also ruled that, "Granting waivers to favored speakers (or, more precisely, denying them to disfavored speakers) would of course be unconstitutional, but we think that this abuse must be dealt with if and when a pattern of unlawful favoritism appears, rather than by insisting upon a degree of rigidity that is found in few legal arrangements (Emphasis supplied)." Therefore, the US Supreme Court recognized that despite the ruling on the merits on a facial challenge, an as-applied challenge may be mounted on the same law or ordinance when the proper facts arise.

[198] Rollo (G.R. No. 252736), p. 79.

[199] Petitioners' Memorandum for Cluster II Issues, p. 57.

[200] TSN dated April 27, 2021, p. 44.

[201] R.A. No. 11479, Section 55.

[202] Petitioners' Memorandum for Cluster II Issues, pp. 21-22.

[203] Id. at 25.

[204] Id. at 22-23.

[205] Id. at 24.

[206] Id.

[207] Id. at 24-25.

[208] Id. at 29.

[209] Id. at 30.

[210] Id. at 30-31.

[211] An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code.

[212] Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education, G.R. Nos. 216930217451, 217752, 218045, 218098, 218123 & 218465, October 9, 2018, citing Basco v. Philippine Amusements and Gaming Corporation (PAGCOR), 214 Phil. 323 (1991).

[213] Id., citing Basco v. Philippine Amusements and Gaming Corporation (PAGCOR), 274 Phil. 323 (1991).

[214] Id.; City of Cagayan De Oro v. Cagayan Electric Power & Light Co., Inc. (CEPALCO), G.R. No. 224825, October 17, 2018., 884 SCRA 1, 24.

[215] Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co., Inc., 151-A Phil. 656 (1973).

[216] Chavez v. Gonzales, supra note 133.

[217] In The Matter Of Petition For Declaratory Relief Re: Constitutionality Of Republic Act 4880, G.R. No. L-27833, April 18, 1969, citing Thornhill v. Alabama, 310 U.S. 88 (1940); Near v. Minnesota, 283 U.S. 697 (1913); Lovell v. Griffin, 303 U.S. 444 (1938); Murdoch v. Pennsylvania, 319 U.S. 105 (1943); Saia v. New York, 334 U.S. 558 (1948); Kunz v. New York, 340 U.S. 290 (1951); Staub v. Boxley, 355 U.S. 313 (1958); Smith v. California, 361 U.S. 147 (1959); Talley v. California, 362 U.S. 60 (1960); Cramp v. Board of Public Instruction, 368 U.S. 278 (1961); Baggett v. Bullitt, 111 U.S. 360 (1964); Aptheker v. Secretary of State, 378 U.S. 500 (1964). See also Vera v. Hon. Arca, 138 Phil. 369 (1969); People of the Philippines v. Hon. Ferrer, 180-C Phil. 551 (1972); and Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co., Inc., supra note 215.

[218] Supra note 102 at 1 158, Separate Opinion of Associate Justice Marvic Mario Victor F. Leonen.

[219] Id. (J. Leonen, concurring opinion).

[220] ABS-CBN Broadcasting Corporation v. Commission on Elections, 552 Phil. 381, 795 (2000).

[221] Chavez v. Gonzales, supra note 133.

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[222] Id.

[223] Romualdez v. Sandiganbayan, supra note 183 at 282, citing Separate Opinion of Associate Justice Vicente V. Mendoza in Estrada v. Sandiganbayan, supra note 158 at 421-450.

[224] Chavez v. Gonzales, supra note 133 at 390, citing Romualdez v. Sandiganbayan, supra note 183.

[225] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 119 at 488.

[226] See Dissenting Opinion of Associate Justice Antonio T. Carpio in Spouses Romualdez v. Commission on Elections, G.R. No. 167011, April 30, 2008, citing John E. Nowak and Ronald D. Rotunda, Constitutional Law, p. 1070, 6[th] Edition (2000).

[227] Romualdez v. Sandiganbayan, supra note 183, citing Separate Opinion of Mr. Justice Vicente V. Mendoza in Estrada v. Sandiganbayan, supra note 158 at 430, which cited NAACP v. Alabama, 371 U.S. 288, 307, 12 L. Ed. 2d 325, 338 [1958] and Shelton v. Tucker, 364 U.S. 479, 5 L. Ed. 2d 231 [1960].

[228] Id.

[229] Disini v. Secretary of Justice, supra note 127 at 121.

[230] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 119 at 488.

[231] Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra note 102 at 1116.

[232] Id. at 1119-1124, applying the Strict Scrutiny Standard to a question involving Equal Protection.

[233] Chavez v. Gonzales, supra note 133 at 204-205.

[234] Id.

[235] 395 U.S. 444

[236] Id. Emphasis supplied.

[237] <https://www.unodc.org/c4j/en/terrorism/moduIc-4/key-issues/defining-terrorism.html> accessed on July 2, 2021.

[238] Id.

[239] Senate Deliberations, TSN December 17, 2019, pp. 48-49.

[240] 552 Phil. 381, 396 (2007).

[241] Petitioners' Memorandum for Cluster II Issues, p. 22.

[242] Id.

[243] Id. at 22-25.

[244] Id. at 21.

[245] Supra note 183, citing Caltex v. Palomar, 124 Phil. 763 (1966), Estrada v. Sandiganbayan, supra note 158.

[246] Id.

[247] 124 Phil. 763 (1966).

[248] Id. at 772-773.

[249] Supra note 158; see also Romualdez v. Sandiganbayan, supra note 183.

[250] Id.

[251] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 119 at 486.

[252] Perez v. LPG Refillers Association of the Philippines, 558 Phil. 177, 180-181 (2007).

[253] Position Paper of Former Chief Justice Reynato S. Puno as amicus curiae, p. 7.

[254] Romualdez v. Sandiganbayan, supra note 183, citing People v. Nazario, 247 Phil. 276, 286 (1988).

[255] G.R. No. 127073 January 29, 1998.

[256] Id.

[257] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).

[258] As found in Section 4(a).

[259] See Black's Law Dictionary, 4[th] Ed., p. 221.

[260] As found in Section 4(b).

[261] See Black's Law Dictionary, 4[th] Ed., p. 1394.

[262] As found in the enumeration of "purposes" under Section 4.

[263] See J. Caguioa's Dissenting Opinion in Lagman v. Medialdea, G.R. No. 243522, G.R. No. 243745, and G.R. No. 243797, February 19, 2019, citing Lagman v. Medialdea, 814 Phil. 183 (2017); and Lagman v. Pimentel III, 825 Phil. 112 (2018).

[264] As found in the enumeration of "purposes" under Section 4.

[265] See also In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino v. Enrile, 15 8-A Phil. 1 (1974), in relation to the necessity of preserving or ensuring the survival of the political structure that protects the rights of citizens as a justification for the preventive detention of individuals during crisis such as invasion or domestic insurrection; and J. Kapunan's Concurring and Dissenting Opinion in Iglesia ni Cristo (INC) v. The Honorable Court of Appeals, 328 Phil. 893, 949 (1996), stating that "Democratic government acts to reinforce the generally accepted values of a given society and not merely the fundamental ones which relate to its political structure"; and J. Paras' Dissenting Opinion in Laurel v. Misa, 77 Phil. 856 (1947), which stated that allegiance to the U.S. as an essential element in the crime of treason under Article 114 of the RPC in view of its position in our political structure prior to the Philippine independence.

[266] See Occeña v. The COMELEC, 212 Phil. 368 (1984); De Castro v. Judicial and Bar Council, 629 Phil. 629 (2010, Pascual v. The Secretary of Public Works, 110 Phil. 331 (1960), and J. Hilado's Concurring Opinion in Vera v. Avelino, 77 Phil. 192, 220-239 (1946) on separation of powers and system of checks and balances; Lambino v. the COMELEC, 536 Phil. 1 (2006) on people's initiative as a means of proposing and making amendments to the Constitution; Gandionco v. The Honorable Secretary of Agriculture and Natural Resources, 218 Phil. 54 (1984) and Dimayuga v. Benedicto II, 424 Phil. 707 (2002) on reorganization; and 486 Phil. 398 (2004) on the regional autonomy of Mindanao and their right to self-determination.

[267] <https://www.justia.com/criminal/offenses/> accessed on July 2, 2021.

[268] Wibke Kristin Timmermann, Incitement in International Criminal Law, International Review of the Red Cross, Vol. 88, Number 864, December 2006, <https://international-review.icrc.org/sites/default/files/irrc_864_6_0.pdf> accessed on September 3, 2021. See also Seyed Ali Ehsankhah, Incitement in International Criminal Law, International Journal of Humanities and Cultural Studies, January 2016, p. 512, < and https://www.ijhcs.com/> and <https: lawshelf.coin="" videocoursesmoduleview="" inchoate-offenses-module-2-of-5="" > accessed on September 3, 2021.

[269] See Wibke Kristin Timmermann, Incitement in International Criminal Law, International Review of the Red Cross, Vol. 88, Number 864, December 2006, <https://international-review.icrc.org/sites/default/files/irrc_864_6_0.pdf> visited on September 3, 2021.

[270] Petitioners' Memorandum for Cluster II Issues, pp. 25-26.

[271] J.B.L. Reyes, The Revised Penal Code, Criminal Law, 18[th] Edition, Book One, p. 95, citing Albert.

[272] Id.

[273] Revised Penal Code, Article 248.

[274] Revised Penal Code, Article 267.

[275] Section 3, P.D. No. 1866, as amended by R.A. No. 9516.

[276] Section 2, P.D. No. 1613.

[277] Article 10. Offenses not subject to the provisions of this Code. - Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

[278] Communication No. 578/1994, U.N. Doc. CCPR/C/54/D/578/1994 (1995).

[279] Petitioners' Memorandum for Cluster II Issues, p. 27

[280] Id.

[281] Chavez v. Judicial and Bar Council, 691 Phil. 173, 200-201 (2012).

[282] accessed on September 3, 2021.

[283] European Union, Directive (EU) 2017/541, Title II, Art. 3, March 15, 2017.

[284] Id.

[285] These observable patterns are:

First, the definitions ("operative" definitions or definitions by implication) require:

(a) the performance or commission of offenses or acts (overt acts) generally considered as offenses under the domestic or national laws;

(b) the performance or commission of specified crimes or specified acts could rightfully be considered as crimes under domestic law or are generally considered as crimes under International Humanitarian Law; or

(c) the intentional performance of acts without lawful authority;

Second, majority of the definitions also require that the acts or offences are coupled with or qualified by any or a

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combination of the following aim, intent, or purpose:

(a) intimidating a population;

(b) compelling a government or an international organization to do or to abstain from doing any act;

(c) causing substantial damage to properly or to the environment;

(d) causing death or serious bodily injury;

(e) causing extensive destruction of such a place where such destruction results in or is likely to result in major economic loss; and

(f) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

[286] U.K., Terrorism Act 2000, Part 1, Section 1.

[287] Id.

[288] <https://sso.agc.gov.sg/Act/TSFA2002> accessed on September 4, 2021.

[289] TSN dated March 2, 2021, pp. 41-44.

[290] Jude McCulloch and Sharon Pickering, Pre-Crime and Counter-Terrorism: Imagining Future Crime in the "War on Terror," 49 BR. J. CRIMINOL 628 (2009), <http://www.jstor.com/stable/23639183> accessed on July 9, 2021.

[291] Beslan School Attack, Britannica <https://www.britannica.com/event/Beslan-school-attack> accessed on July 2, 2021.

[292] ISIS Video Shows Jordanian Pilot Being Burned to Death, CBS News <https://www.cbsnews.com/video/isis-video-shows-jordanian-pilot-being-burned-to-death/#x> accessed on July 2, 2021.

[293] Id. at 6.

[294] Ljupka Petrevska et al., Plurality of Definitions and Forms of Terrorism Through History, supra note 1.

[295] Human Rights, Terrorism and Counter-Terrorism, Office of the United Nations High Commissioner for Human Rights <https://www.ohchr.org/documents/publications/factsheet32en.pdf> accessed on July 2, 2021.

[296] R.A. No. 11479, Section 4.

[297] TSN Oral Arguments dated April 27, 2021, p. 52; See also TSN Oral Arguments dated May 11, 2011, pp. 20-21; OSG's Memorandum (Vol. II), p. 290.

[298] TSN Oral Arguments dated April 27, 2021, p. 56.

[299] G.R. No. 205728, January 21, 2015.

[300] Id., citing Joshua Waldman, Symbolic Speech and Social Meaning, 97 COLUM L. REV. 1844, 1847 (1997).

[301] Records of the Constitutional Commission, Volume 3, pp. 722-723, 731; 738-739, as cited in Simon Jr. v. Commission on Human Rights, 299 Phil. 124 (1994).

[302] Petitioners' Memoranda, Cluster II, p. 29.

[303] U.S. v. Bustos, 13 Phil. 690 (1909).

[304] Diaz v. People, 551 Phil. 192 (2007).

[305] Black's Law Dictionary, Revised 4[th] Edition. (1968), p. 75, 1387.

[306] TSN Oral Arguments dated February 2, 2021, p. 18.

[307] Rule 114. Section 7. Capital offense of an offense punishable by reclusion perpetua or life imprisonment, not bailable. - No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

[308] G.R. No. L-5932, February 27, 1912.

[309] Id. citing Proverbs 22:1

[310] 249 U.S. 47, 63 Led 470 (1919).

[311] Iglesia Ni Cristo v. Court of Appeals, G.R. No. 119673, July 26, 1996, citing Schenck v. U.S., supra note 302.

[312] 395 U.S. 444 (1969).

[313] Id.

[314] TSN Oral Arguments dated April 27, 2021, pp. 56-57.

[315] Gonzales v. Commission on Elections, 137 Phil. 471 (1969), citing Terminiello v. City of Chicago, 337 U.S. 1, 4 (1949).

[316] Chavez v. Gonzales, supra note 133.

[317] Philippine Blooming Mills Employment Organization v. Philippine Blooming Mills Co Inc., supra note 215.

[318] Id.

[319] See Watts v. U.S., 394 U.S. 705 (1969).

[320] Brandenburg v. Ohio, 395 U.S. 44 (1969).

[321] Id.

[322] Other areas with constitutionally proscribable content are obscenity and libel. See Chavez v. Gonzales, supra note 133, staling that: "Thus, all speech are not treated the same. Some types of speech may be subjected to some regulation by the State under its pervasive police power, in order that it may not be injurious to the equal right of others or those of the community or society. The difference in treatment is expected because the relevant interests of one type of speech, e.g., political speech, may vary from those of another, e.g., obscene speech. Distinctions have therefore been made in the treatment, analysis, and evaluation of the permissible scope of restrictions on various categories of speech. We have ruled, for example, that in our jurisdiction slander or libel, lewd and obscene speech, as well as "fighting words" are not entitled to constitutional protection and may be penalized."

[323] 137 Phil. 112, 119 (1969).

[324] Id.

[325] Id.

[326] 14 Phil. 450, 451-452 (1909).

[327] 599 Phil. 717 (2009).

[328] 394 U.S. 705 (1969).

[329] Id.

[330] Id.

[331] G.R. No. 99327, May 27, 1993.

[332] Rollo (G.R. No. 252580), p. 68.

[333] Id.

[334] Petitioners'Memorandum, Cluster II, p. 35.

[335] Id.

[336] Article 10, REVISED PENAL CODE:

Article 10. Offenses not subject to the provisions of this Code. - Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

[337] People v. Madrigal, 85 Phil. 651 (1950).

[338] Dennis v. United States, 71 S. Ct. 857 (1951).

[339] Id.

[340] Supra note 133.

[341] United Nations Security Council Resolution No. 1624 (2005) <http://unscr.com/en/resolutions/doc/1624> visited on August 15, 2021.

[342] Id.

[343] See Senate Deliberations dated January 22, 2020 and January 28, 2020.

[344] Senate Deliberations dated January 22, 2020 pp. 15-17.

[345] See Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-Terrorism Fact Sheet No. 32, pp. 43, citing "International mechanisms for promoting freedom of expression", joint declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression (December 21, 2005). See also UN Secretary-General's Report on The Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, UN DOc. A/63/337, paragraph 61, available at <https://unispal.un.org/UNISPAL.NSF/0/549DE4D8937F3459852574DE0052C973> accessed on July 2, 2021.

[346] See UN Secretary-General's Report on The Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, UN DOc. A/63/337, paragraph 62,

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<https://unispal.un.org/UNISPAL.NSF/0/549DE4D8937F3459852574DE0052C973> accessed on July 2, 2021.

[347] Id.

[348] United Nations Human Rights Office of the High Commissioner. Freedom of expression vs incitement to hatred: OHCHR and the Rabat Plan of Action, <https://www.ohchr.org/en/issues/freedomopinion/articles19-20/pages/index.aspx#:-:text=The%20Rabat%20Plan%20of%20Action%20on%20the%20prohibition%20of%20advocacy,Bangkok%20and%20Santiago%20de%20Chile).>
accessed on May 20, 2021.

[349] TSN dated April 27, 2021, p. 61.

[350] Petitioners Memorandum for Cluster II Issues, p 37.

[351] Id.

[352] Id. at 38.

[353] Peter G. Berris, Michael A. Foster, and Jonathan M. Gaffney, Domestic Terrorism: Overview of Federal Criminal Law and Constitutional Issues, United States Congressional Research Service, July 2, 2021, pp. 57-58, citing Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984). Available at , accessed 19 August 2021.

[354] 468 U.S. 609, 622 (1984).

[355] 138 Phil. 369 (1969). See also People v. Hon. Ferrer, 180-C Phil. 551 (1972), Ferrer cited Vera in declaring that "freedom of expression and freedom of association are so fundamental that they are thought by some to occupy a 'preferred position' in the hierarchy of constitutional values."

[356] See Roberts v. United States Jaycees, 468 U.S. 609, 618 (1984). See also National Association for the Advancement of Colored People v. Patterson, 357 U.S. 449 (1958). The freedom of expressive association can be distinguished from the second sense of the freedom of association, which is the freedom of intimate association or the freedom to enter into and maintain certain intimate human relationships (also in Roberts v. United States Jaycees, 468 U.S. 609, 617-618 (1984).

[357] Phil. Const., Article III, Section 8.

[358] Similar to the scienter requirement considered by the U.S. Supreme Court in Wieman v. Updegraff, 344 U.S. 183 (1952). Black's Law Dictionary defines scienter as the degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission, or the fact of an act having been done knowingly (Black's Law Dictionary, 9[th] ed., p. 1463). Ballentine's Law Dictionary, on the other hand, defines scienter simply as knowledge, particularly knowledge which charges with guilt or liability (Ballentine's Law Dictionary, 3[rd] ed., p. 1143).

[359] Senate Deliberations dated February 3, 2020, p. 31.

[360] 150-C Phil. 531 (1972).

[361] Id. at 577-578.

[362] 344 U.S. 183 (1952).

[363] Garner v. Board of Public Works, 341 U.S. 716 (1951); Adler v. Board of Education, 342 U.S. 485 (1952); Gerende v. Board of Supervisors, 341 U.S. 56 (1951).

[364] 367 U.S. 203 (1961).

[365] Dennis v. United States, 341 U.S. 494 (1951).

[366] People v. Hon. Ferrer, 180-C Phil. 551, 577 (1972), citing Dennis v. United States, 341 U.S. 494, 509 (1951).

[367] Chief Justice Alexander G. Gesmundo's Concurring and Dissenting Opinion.

[368] Petitioners' Memorandum, Cluster II, p. 40.

[369] Manderson, Desmond. Another Modest Proposal: In Defence of the Prohibition against Torture. Fresh Perspectives on the 'War on Terror', edited by Miriam Gani and Penelope Mathew, ANU Press, 2008, pp. 27-44. <http://www.jstor.org/stable/j.ctt24hf7j.10> accessed on July 15, 2021.

[370] Kydd, Andrew H., and Barbara F. Walter. The Strategies of Terrorism. International Security, vol. 31, no. 1 (2006), pp. 52. <http://www.jstor.org/stable/4137539> accessed on, 2021.

[371] Section 17. Proscription of Terrorist Organizations, Association, or Group of Persons. - Any organization, association, or group of persons organized Tor the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses the acts to terrorize mentioned in this Act or to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared as a terrorist and outlawed organization, association, or group of persons by the said Regional Trial Court.

[372] Section 3(e) of R.A. No. 10168 provides:

Section 3. Definition of Terms. - As used in this Act:

x x x x

(e) Designated persons refers to:

(1) any person or entity designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group under the applicable United Nations Security Council Resolution or by another jurisdiction or supranational jurisdiction;

(2) any organization, association, or group of persons proscribed pursuant to Section 17 of the Human Security Act of 2007; or

(3) any person, organization, association, or group of persons whose funds or properly, based on probable cause are subject to seizure and sequestration under Section 39 of the Human Security Act of 2007.

[373] Petitioners' Memorandum (Cluster 3), p. 41; Petitioners' Memorandum (Cluster 4), p. 24.

[374] Petitioners' Memorandum (Cluster 2), p. 46.

[375] Petition (G.R. No. 252580), p. 44; Petitioners' Memorandum (Cluster 3), p. 31.

[376] Lee Jarvis and Tim Legrand, The Proscription or Listing of Terrorist Organisations: Understanding, Assessment, and International Comparisons, Terrorism and Political Violence 30:2, 199-215 (2018), at p. 204, <https://www.tandfonline.com/doi/full/10.1080/09546553.2018.1432199> accessed September 4, 2021.

[377] Lee Jarvis and Tim Legrand, The Proscription or Listing of Terrorist Organisations: Understanding, Assessment, and International Comparisons, Terrorism and Political Violence 30:2, 199-215 (2018), p. 204, <https://www.tandfonline.com/doi/full/10.1080/09546553.2018.1432199>, accessed on September 4, 2021.

[378] Lee Jarvis and Tim Legrand, The Proscription or Listing of Terrorist Organisations: Understanding, Assessment, and International Comparisons, Terrorism and Political Violence 30:2, 199-215 (2018), p. 201, <https://www.tandfonline.com/doi/full/10.1080/09546553.2018.1432199>, accessed September 4, 2021.

[379] This was later amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), <https://www.govinfo.gov/content/pkg/PLAW-104pub1132/html/PLAW-104pub1132.htm> accessed on September 4, 2021.

[380] Enacted on October 28, 1977 (Pub. I, 95-223, 91 Stat. 1625, 50 U.S.C. 1701).

[381] <https://www.govinfo.gov/content/pkg/PLAW-104pub1132/html/PLAW-104pub1132.htm> accessed on September 4, 2021.

[382] Loertscher, Seth, et al. (2020). The Terrorist Lists: An Examination of the U.S. Government's Counterterrorism Designation Efforts, p. 5 <http://www.jstor.org/stable/resrep26666.5> accessed on July 10, 2021.

[383] <https://www.legislation.gov.uk/ukpga/2000/11/part/II> accessed 10 September 2021.

[384] Keith Syrett, The United Kingdom, in Comparative Counter-Terrorism Law Cambridge University Press (2015), p. 168.

[385] Id.

[386] Prevention of Terrorism (Temporary Provisions) Act 1974, 1974 CHAPTER 56, <https://www.legislation.gov.uk/ukpga/1974/56/enacted> accessed 10 September 2021.

[387] Keith Syrett, The United Kingdom, in Comparative Counter-Terrorism Law Cambridge University Press (2015), p. 179.

[388] and <https:/www.gov.uk/government/publications/proscribed-terror-groups-or-organisations-2/proscribed-terrorist-groups-or-organisations-accessible-version> accessed 10 September 2021.

[389] Section 3(5), U.K. Terrorism Act 2000; see <https://www.legislation.gov.uk/ukpga/2000/11/part/II> accessed on September 10, 2021.

[390] Section 4, U.K. Terrorism Act 2000; see <https://www.legislation.gov.uk/ukpga/2000/11/part/II> accessed September 10, 2021.

[391] Section 5, U.K. Terrorism Act 2000; see <https://www.legislation.gov.uk/ukpga/2000/11/part/II> accessed September 10, 2021.

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[392] Section 6, U.K. Terrorism Act 2000; see <https://www.legislation.gov.uk/ukpga/2000/11/part/II> accessed September 10, 2021.

[393] Eugene K. B. Tan, Singapore, in Comparative Counter-Terrorism Law, Cambridge University Press (2015), p. 628.

[394] Id. at 628.

[395] <http://unscr.com/en/resolutions/doc/1267> accessed on September 10, 2021.

[396] <http://unscr.com/en/resolutions/doc/1988> accessed on September 10, 2021.

[397] Eugene K. B. Tan, Singapore, in Comparative Counter-Terrorism Law, Cambridge University Press (2015), p. 628; see also <https://sso.agc.gov.sg/Act/UNA2001> accessed on September 10, 2021.

[398] <https://www.un.org/en/about-us/un-charter/full-text> accessed on September 10, 2021.

[399] <https://sso.agc.gov.sg/Act/TSFA2002> accessed on September 10, 2021.

[400] Eugene K.B. Tan, Singapore, in Comparative Counter-Terrorism Law, Cambridge University Press (2015), p. 628.

[401] Id. at 629; see also <https://sso.agc.gov.sg/Act/TSFA2002> accessed on September 10, 2021.

[402] Id. at 629.

[403] Andrew Lynch, Nicola McGarrity, and George Williams, The Proscription of Terrorist Organisations in Australia, p. 23, <http://classic.austlii.edu.au/au/journals/FedLawRw/2009/1.pdf> accessed on September 10, 2021.

[404] Carlos Superdrug Corporation v. Department of Social Welfare and Development, 552 Phil. 120, 132 (2007).

[405] Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, 127 Phil. 306, 316 (1967).

[406] Id.

[407] Id.

[408] Morfe v. Mutuc, 130 Phil. 415 (1968).

[409] Carlos Superdrug Corporation v. Department of Social Welfare and Development, supra note 404.

[410] Social Justice Society (SJS) v. Atienza, 568 Phil. 658 (2008).

[411] Id. 702.

[412] Id.

[413] Id.

[414] 379 Phil. 165, 241-242 (2000).

[415] Bayan Muna v. Romulo, 656 Phil. 246, 267-268 (2011).

[416] <https://www.un.org/ruleoflaw/files/3ddalfl04.pdf> accessed on August 12, 2021.

[417] Declaration on Principles of International Law Friendly Relations and Co-operation Among States, United Nations General Assembly Resolution No. 2625, October 24, 1970. <https://www.un.org/ruleoflaw/files/3ddalfl04.pdf> accessed on August 12, 2021.

[418] Id.

[419] UNSCR No. 1189, August 13, 1998 <http://unscr.com/en/resolutions/doc/1189> visited on August 12, 2021.

[420] Id.

[421] UNSCR No. 1373, September 28, 2001 <https://undocs.org/S/RES/1373(2001)> visited on August 12, 2021.

[422] UNSCR No. 1368 (2001), which recognized the inherent right of States to individual or collective self-defense in accordance with the UN Charter; UNSCR No. 1269 (1999), which condemned all acts of terrorism, irrespective of motive, wherever and by whomever committed; the 1999 International Convention for the Suppression of the Financing of Terrorism, which the Philippines ratified on 07 January 2004; General Assembly Resolution No. 52/164, or the International Convention for the Suppression of Terrorist Bombings, adopted on 15 December 1997 and which entered into force for the Philippines on 06 February 2004; and General Assembly Resolution No. 49/60, or the Declaration on Measures to Eliminate International Terrorism, adopted on 17 February 1995.

[423] Secretary of Justice v. Hon. Lantion, supra note 414 at 198, citing Ruperto v. Hon. Torres, G.R. No. L-8785, 100 Phil. 1098 (1957).

[424] United Nations Security Council Resolution No. 1989 (2011).

[425] United Nations Security Council Resolution No. 2368 (2017).

[426] United Nations Council Resolution No. 2253 (2015).

[427] Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011), and 2253 (2015) Concerning ISIL (Da'esh), Al-Qaeda and Associated Individuals, Groups, Undertakings and Entities.

[428] UNSCR No. 2368 (2017) and Section 7 of the Guidelines of the Committee for the Conduct of its Work (September 5, 2018).

[429] Dissenting Opinion, Justice Mario V. Lopez, People v. Sapla, G.R. No. 244045, June 16, 2020.

[430] G.R. No. 244045, June 16, 2020.

[431] Id. Dissenting Opinion, Justice Amy C. Lazaro-Javier

[432] 292-A Phil. 669, 679-771 (1993).

[433] See Southern Hemisphere v. Anti-Terrorism Council, supra note 119 at 488.

[434] Chief Justice Alexander G. Gesmundo's Concurring and Dissenting Opinion.

[435] 733 Phil. 603, 610 (2014), citing People of the Philippines v. Castillo, 607 Phil. 754 (2009).

[436] OSG's Memorandum, p. 301.

[437] TSN of the Oral Arguments dated April 27, 2021, pp. 85-86.

[438] Republic v. Eugenio, G.R. No. 174629, February 14, 2008.

[439] Id.

[440] Id.

[441] Id.

[442] R.A. No. 9194, Section 8.

[443] R.A. No. 10168, Section 2.

[444] See Sections 10 and 11 of R.A. No. 10168. The only difference of these the R.A. No. 10168, provisions with Sections 35 and 36 of the ATA is that the latter already recognize designation and proscription as the procedures which trigger the issuance of an ex parte bank inquiry and/or freeze order.

[445] G.R. No. 174629, February 14, 2008.

[446] Id.

[447] ATA, Section 36.

[448] APG, supra note 80 at 85.

[449] Section 12. Providing Material Support to Terrorists. — Any person who provides material support to any terrorist individual or terrorist organization, association or group of persons committing any of the acts punishable under Section 4 hereof, knowing that such individual or organization, association, or group of persons is committing or planning to commit such acts, shall be liable as principal to any and all terrorist activities committed by said individuals or organizations, in addition to other criminal liabilities he/she or they may have incurred in relation thereto.

[450] Section 39. Bank Officials and Employees Defying a Court Authorization. — An employee, official, or a member of the board of directors of a bank or financial institution, who after being duly served with the written order of authorization from the Court of appeals, refuses to allow the examination of the deposits, placements, trust accounts, assets, and records of a terrorist or an outlawed group of persons, organization or association, in accordance with Section 25 and 26 hereof, shall suffer the penalty of imprisonment of four (4) years (Emphasis supplied).

[451] Petitioners' Memorandum, Cluster II, p. 46.

[452] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 119 at 481.

[453] CONSTITUTION, Article VIII, Section 5(5).

[454] Rule 7.9, Implementing Rules and Regulations of the R.A. No. 11479.

[455] 802 Phil. 314, 375 (2016).

[456] Petitioners' Memorandum for Cluster II Issues, p. 49.

[457] Id. at 50.

[458] Id. at 51.

[459] Id.

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[460] Id. at 50-51.

[461] Id. at 53-54.

[462] Id. at 56-57.

[463] Id. at 54.

[464] Petitioners' Memorandum for Cluster V Issues, p. 5.

[465] Id. at 6.

[466] Rollo (G.R. No. 252580), p. 54.

[467] Estrada v. Sandiganbayan, supra note 158.

[468] G.R. No. 167011, April 30, 2008, citing Romualdez v. Sandiganbayan, supra note 183 at 285.

[469] Joaquin G. Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary (2009 ed.), p. 168.

[470] Id. at 168, citing Meeting of the 166-Man Special Committee, November 16, 1972.

[471] Records of the Constitutional Commission No. 109, October 15, 1986.

[472] Records of the Constitutional Commission No. 032, July 17, 1986.

[473] Boyd v. United States, 116 U.S. 616 (1886), citing Cooley's Constitutional Limitations, 801-303 (5th ed. 368, 369), which quoted James Otis.

[474] 262 Phil. 160 (1990).

[475] Id. at 170.

[476] Id. at 171.

[477] 236 Phil. 691 (1987).

[478] Id. at 709.

[479] 253 Phil. 344, 362 (1989).

[480] Id.

[481] People v. Pardillo, 810 Phil. 911, 915 (2017), citing People v. Breis, 766 Phil. 785 (2015).

[482] RULES OF COURT, Section 13, Rule 113 and Section 23, Rule 114.

[483] People v. Villareal, 706 Phil. 511, 518 (2013), citing People v. Cuizon, 326 Phil. 345 (1996).

[484] People v. Tudtud, 458 Phil. 752, 773 (2003).

[485] People v. Cuizon, G326 Phil. 345 (1996).

[486] Id., citing People v. Burgos, G.R. No. L-68955, September 4, 1986.

[487] 810 Phil. 642 (2017).

[488] Id. at 659-660.

[489] People v. Villareal, supra note 483; see also People v. Cuizon, G.R. No. 109287, April 18, 1996.

[490] 746 Phil. 301, 325 (2014).

[491] Supra note 430.

[492] Id.

[493] San Miguel Corp. v. Avelino, 178 Phil. 47, 53 (1979).

[494] Mecano v. Commission on Audit, 290-A Phil. 272, 283 (1992).

[495] TSN of the Oral Arguments dated April 27, 2021, p. 94.

[496] 746 Phil. 301, 326 (2014).

[497] Id.

[498] <https://www.officialgazette.gov.ph/1972/09/22/general-order-no-2-s-1972> accessed on August 21, 2021.

[499] OSG's Memorandum (Volume I), p. 146.

[500] Philippine International Trading Corporation v. Commission on Audit, 635 Phil. 447, 458 (2010).

[501] OSG's Comment dated July 17, 2020, pars. 448-450.

[502] Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

[503] 384 U.S. 436 (1966).

[504] 362 Phil. 86 (1991).

[505] Id. at 116-117.

[506] Section 8. Method of arrest by officer without warrant. - When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, has escaped, flees or forcibly resists before the officer has opportunity so to inform him, or when the giving of such information will imperil the arrest.

[507] Section 14. Right of attorney or relative to visit person arrested. - Any member of the Philippine Bar shall, at the request of the person arrested or of another acting in his behalf, have the right to visit and confer privately with such person in the jail or any other place of custody at any hour of the day or night. Subject to reasonable regulations, a relative of the person arrested can also exercise the same right.

[508] Section 3. Duty of arresting officer. - It shall be the duty of the officer executing the warrant to arrest the accused and to deliver him to the nearest police station or jail without unnecessary delay.

[509] Id. at 147.

[510] Id.

[511] Senate Deliberations, TSN dated January 22, 2020, p. 30.

[512] Id. at 28-29.

[513] Id. at 33.

[514] Id. at 31.

[515] Id., citing Foucha v. Louisiana, 504 U.S. 71, 80 (1992).

[516] Sayo v. Chief of Police, 80 Phil. 859, 886 (1948).

[517] Petitioners' Memorandum, Cluster II, p. 53.

[518] Zadvydas v. Davis, 533 U.S. 678 (2001).

[519] Petitioners' Memorandum, Cluster II, p. 56.

[520] Id. at 57.

[521] Senate Deliberations, TSN dated January 22, 2020, p. 30.

[522] Metropolitan Police Service Anti-Terrorist Branch (SO13). Three Month Pre-Charge Detention (05 October 2005). Submission to the Mouse of Lords and House of Commons Joint Committee on Human Rights, Session 2005-06. Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters, Third Report, Volume II, at 58. See also McCulloch, Jude and Pickering, Sharon. Pre-Crime and Counter-Terrorism: Imagining Future Crime in the 'War on Terror'. BRIT. J. CRIMINOL. (2009) 49, 628-6245, at 632.

[523] Senate Deliberations, TSN dated January 22, 2020, pp. 28-30.

[524] Id. at 56.

[525] Jude McCulloch and Sharon Pickering, Pre-Crime and Counter-Terrorism: Imagining Future Crime in the 'War on Terror', BRIT. J. CRIMINOL (2009) 49, 678-6245, at 628.

[526] Id. at 401.

[527] United Nations Counter-Terrorism Implementation Task Force, CTITF Working Group on Protecting Human Rights while Countering Terrorism, Basic Human Rights Reference Guide: Detention in the Context of Countering Terrorism, October 2014, <https://www.ohchr.org/EN/newyork/Documents/DetcntionCounteringTerrorism.pdf> accessed on August 21, 2021.

[528] Id., citing General Assembly resolution 64/168 (2009), para. 6(f); and Address by Ms. Navanethem, Pillay, United Nations High Commissioner for Human Rights, to the Counter-Terrorism Committee of the Security Council, New York, October 29, 2009, p. 3.

[529] Id., citing Committee against Torture, General Comment No. 2 (Implementation of article 2 by States Parties), UN Doc CAT/C/GC2/CRP.I/Rev.4 (2007), para. 13.

[530] Id. at 1-3.

[531] Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, detents, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages: x x x (4) Freedom from arbitrary or illegal detention. x x x The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

[532] Petitioners' Memorandum of Arguments for Cluster IV Issues, p. 25.

[533] Id. at 26.

[534] Id.

[535] Id. at 24.

[536] Joaquin G. Bernas, S.J., An Introduction to Public International Law (2002 ed.), p. 141.

[537] Id.

[538] Id.

[539] OSG's Memorandum, p. 402.

[540] Petitioners' Memorandum on Cluster III Issues, p. 66.

[541] OSG's Memorandum Volume II, pp. 417-418, 421-422.

[542] R.A. No. 11479, Section 54.

[543] 456 Phil. 143, 155-156 (2003).

[544] Rollo (G.R. No. 254191, formerly UDK 16174), pp. 30-37.

[545] OSG's Memorandum (Vol. I), p. 140.

[546] Id. at 152-154.

[547] Id. at 161.

[548] CONSTITUTION, Article VI, Section 26.

[549] Joaquin G. Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary (2009 ed.), p. 786.

[550] G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873 & 115931, August 25, 1994.

[551] Id.

[552] 675 Phil. 316 (2011).

[553] Id. at 352.

[554] Krissy Aguilar, Duterte certifies as urgent anti-terror bill, supra note 35.

[555] Senate Deliberations, TSN dated January 22, 2020, p. 28.

[556] OSG's Memorandum (Vol. I), p. 155.

[557] 506 Phil. 1, 89 (2005).

[558] Id.

[559] Aharon Barak, Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy, 116 Harv. L. Rev. 19, 153 (2002-2003), citing C.A. 2/84, Neiwan v. Chairman of Central Elections Committee for Eleventh Knesset, 39 (2) P.D. 225, 310, and Terminiello v. Chicago, 337 U.S. 1, 37 (1949) (Jackson, J., Dissenting) <https://core.ac.uk/download/pdf/72831741.pdf> accessed on August 13, 2021.

[560] Id. at 26.

CONCURRING AND DISSENTING OPINION

GESMUNDO, C.J.:

"[T]he possibility of abuse is not argument against the concession of the power as there is no power that is not susceptible of abuse.... All the possible abuses of the government are not intended to be corrected by the judiciary.... All the agencies of the government were designed by the Constitution to achieve specific purposes, and each constitutional organ working within its own particular sphere of discretionary action must be deemed to be animated with the same zeal and honesty in accomplishing the great ends for which they were created by the sovereign will. That the actuations of these constitutional agencies might leave much to be desired in given instances, is inherent in the perfection of human institutions."

- Justice Jose P. Laurel in Angara v. Electoral Commission, et al.[1]

I submit this Concurring and Dissenting Opinion to reflect my views, perspectives, and conclusions on the rich yield of petitions, all of them challenging the constitutionality of the Anti-Terrorism Act of 2020 (R.A. No. 11479, or the "ATA," for brevity).[2]

I respectfully dissent from the majority vote on the following procedural issues, to wit:

- That thirty-five (35) petitions are admissible for judicial review as facial challenges and cases of transcendental importance. I respectfully vote only to admit four (4) petitions - G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 - as as-applied challenges; and

- That strict scrutiny is the appropriate level of the judicial review of the ATA.

The reasons for my dissent on the procedural issues are set out in this Opinion.

I concur with the following majority vote on the substantive issues, to wit:

> 1. That Sections 4(a), (b), (c), (d), (c); the phrase "organized for the purpose of engaging in terrorism" in Section 10; Sections 26 to 28; and Section 29 of the ATA are not unconstitutional; and
>
> 2. That the first and third modes of designation as set out in Section 25 of the ATA are not unconstitutional.

I respectfully dissent from the following majority vote on the substantive issues, to wit:

> 1. That the proviso "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safely" in Section 4 of the ATA is unconstitutional; and
>
> 2. That the second mode of designation in Section 25 of the ATA is unconstitutional.

The reasons for my concurrence and dissent on the substantive issues are set out in this Opinion.

My personal views on the above-mentioned provisions, as well as other assailed provisions of the ATA, in the context of the as-applied challenges presented by the four previously stated petitions, are contained in this Concurring and Dissenting Opinion.

PREFATORY STATEMENT

Thirty-seven (37) petitions (filed by 15 individuals, 7 organizations, and 15 combinations of individuals and organizations) are now before Us, challenging the constitutionality of the ATA - the government's most recent response to terrorism. This response and renewed will to light terrorism come almost two (2) decades after the

horrific World Trade Center bombing in New York City on September 11, 2001,[3] and almost three (3) years after our country's prolonged terrorism experience in Marawi City from May 23 to October 23, 2017.[4]

The Marawi carnage was no less gruesome than the World Trade Center terror attack: a 5-month long siege; the destruction of Marawi City; and multiple deaths: 150 security forces, 47 civilians, and more than 800 militants; with more than 1,780 hostages rescued and 400,000 residents of Marawi displaced.[5] It was also only one of the many terrorist attacks that the country suffered.

Before Marawi, terror attacks took place on November 27, 2011 at Zamboanga City;[6] on March 3, 2012 at Jolo;[7] and on September 2, 2016 at Davao City,[8] among others. After Marawi, other terrorist attacks came in varying levels of intensity and notoriety but all of them taking their toll on innocent Filipino lives. Among these attacks were: the January 27, 2019 Jolo Cathedral suicide bombing;[9] the June 28, 2019 Indanan suicide bombing perpetrated by the first known Filipino suicide bomber;[10] the September 8, 2019 bombing also in Indanan, Sulu,[11] and the August 24, 2020 Jolo suicide bombing.[12]

Because of these developments, I am not surprised that even some of the present petitioners acknowledge the need to fight terrorism. Interestingly, the consolidated petitions are not the first opposition to the country's anti-terrorism responses. The country's earliest response, R.A. No. 9372, or the Human Security Act of 2007[13] (HSA), was similarly challenged but the Court significantly upheld its constitutionality albeit under the ponencia of a magistrate who now stands as a petitioner opposing the ATA.[14]

Since Marawi, times have changed but terrorism still exists. It has not only flourished; it has worsened.[15] Thus, Congress thought it best, in the exercise not only of police power but also of collective and individual preservation, to craft another anti-terrorism law — the Anti-Terrorism Act (ATA) of 2020 that the petitioners now challenge. The legislative decision involved a policy issue that lies within the prerogative of Congress; policy-wise and under the separation of powers principle, this law and its measures lie outside the reach of this Court, save only when grave abuse of discretion or unconstitutionality intervenes.

In the present round of ATA challenges, the petitioners focus their objections on the means and measures that Congress has chosen to use in fighting terrorism. They claim that these are constitutionally unpalatable for exceeding established constitutional limits; the government, too, allegedly took unjustified liberties for its own private purposes in crafting the ATA.

The petitioners allege that the following constitutional provisions have been violated: the due process clause; the equal protection clause; the right against unreasonable searches and seizures; the right to privacy of communication and correspondence; the freedom of speech clause, along with its contingent rights; the free exercise clause; the right to travel; the right to information; the right of association; the right against incommunicado detention; the right to bail; the right to be presumed innocent; the rights of a person under custodial detention; the privilege of the writ of habeas corpus; the right to speedy disposition of cases; the prohibition against involuntary servitude; the right against cruel, degrading or inhuman punishment; the right against ex post facto laws and bills of attainder; the right to self-determination; the separation of powers among the three departments of the government; the principle of academic freedom; and the constitutionally prescribed procedure in passing legislation.

The petitioners likewise posit, along libertarian lines, that the Court should strictly adhere to constitutional terms in reading, interpreting, and applying the text of the Constitution to their challenges. They apparently expect the Court, under this norm, to conclude that the ATA is ridden with constitutional infirmities and should be declared wholly invalid.

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I am fully aware of the level of scrutiny that must be observed in resolving the consolidated petitions, as no less than blood and guts issues are involved, pitting individual and collective claims of constitutional transgressions against the government's bid to protect national sovereignty, our people's security, and their right to life. It is undeniable that the highest individual and collective interests are at stake. This situation alone renders Us aware of the care and sensitivity that must be observed in acting and ruling on these cases.

For the sake of clarity, it must be remembered that our laws carry the disputable presumption of validity and their implementation is similarly presumed regular.[16] Thus, the petitioners carry the burden of showing that the disputed ATA violates the Constitution.[17] This has been this Court's starting premise from its earliest days in examining the validity of laws, regulations and governmental acts, and shall be the norm that this Court should now follow.[18]

Everyone should likewise remember, as a matter of established law, that any Constitution-based challenge to governmental actions is undertaken through constitutional litigation, a process that may not at all be easy to undertake: the process is not as simple as many people think it to be, nor is it as permissive as some of the petitions appear to suggest.

Another point that is best raised now - a mix of the legal and the practical - is that the Court's disquisition today is not and cannot be a complete solution to all the hidden and expressed woes on terrorism, whether from the government side or from those of the petitioners. Considering terrorism's complexity, as will amply be shown below, there is no magic wand to get all the attendant conflicts and problems immediately resolved.

Thus, the Court's ruling, although final on the litigated issues, may only be a beginning, an initial illumination to lighten the darkness that both parties predict will engulf the country should their respective causes fail. For this Court, I implore that We recognize that the country has a long way to go in its battle against terrorism; whichever way the present dispute might go, the fight against terrorism must proceed and should be as continuous as the efforts of the terrorists in sowing chaos for their nefarious aims. Only by continued and comprehensive efforts on everybody's part can we address the menace facing us. In the meanwhile, we need to address and resolve the doubts and misgivings hindering our national effort against terrorism.

What assumes importance for now is the airing and the resolution of all existing problems, disagreements and misgivings, and our continuing efforts to address them, either by the legislation that today is disputed and those that are yet to come; by the implementation that follows every legislative act; or by the adjudication, such as the current one, through which the country avoids festering disputes.

The gravity of the issues before us - national sovereignty and national security (that translates, at the individual level, to the protection of the right to life of innocent victims of terrorism) versus the protection of individual legal and constitutional rights and of democratic ideals - cannot but play a big part in our actions on the consolidated petitions. We are assisted in this task, in no small measure, by the very enlightening counsel of our amici curiae - former Chief Justice Reynato Puno and former Associate Justice Francis Jardeleza.

Our former Chief Justice impressed upon us, after walking us through the evolution of terrorism, that what we see today are new developments in man's history of threats to peace and security.[19] Former Associate Justice Jardeleza, on the other hand, candidly outlined - through his Gios-Samar v. Department of Transportation and Communications[20] (Gios-Samar, for brevity) ruling - the fate that awaits this Court and the country if We would wholly and solely be swayed by idealism in conducting our adjudication; if We disdain concerns for practicality; and if We fail to show a firm hand in applying the brakes on the current and potential influx of cases from the litigating public.

Terrorism is destructive and deadly and is at the same time a more resilient and cunning foe: it is clandestine, swift, elusive and is difficult to immediately detect, deter, and apprehend.[21] It does not recognize front lines nor respect national boundaries; it can be anywhere and at the least expected places, and can change its face seemingly at will, as it mutates as actors, means, methods, and targets change. We cannot thus view terrorism as an act of violence alone that we can deal with in the manner we handle other criminal acts involving violence. We cannot simply act in the way the police and the prosecutors handle murder, or the rebellion that, at its worst, we can address through martial law.[22]

In dealing with terrorism, we should utilize all possible kinds of legally available measures and approaches - pre-emptive, preventive, proactive, remedial, and rehabilitative. Lives saved through prevention are as important as the injured ones saved from death in the terrorism that we failed to prevent. We should similarly tread carefully in considering the merits of the present cases lest we defeat the legislative purpose and the objectives of our Constitution through overzealous legalism, imaginative speculation, or very narrow perspectives.

We should likewise be reminded that our anti-terrorist authorities cannot act alone in protecting the public whose physical safety as well as constitutional rights may be at risk in the fight against terrorism. Either way, we cannot allow our authorities to engage in their protective duties while ill-equipped. They need and must be given ample support by all our people and by government, from the lowest to the highest levels. With everybody's support, we can win and in fact have won many times under our chosen democratic ways.

To cite a notable past example, albeit a foreign one, the air-riding public must be aware that the airport authorities are now very strict in the regulation of airport pre-boarding procedures. What they may not know is the reason why air passengers' personal belongings, even their cosmetics and liquid personal effects, are now subjected to highly restrictive inspections and cannot simply be brought on board.

The reason arose from a highly successful but unheralded operation in 2006 against terrorists who sought to blow up planes coming from the United Kingdom to the United States. The plot sought to use liquid explosives to destroy the United States-bound aircrafts.[23]

According to news accounts concerning the incident, the terrorists, guided by the Al-Qaeda had been able to prepare bombs from materials commonly bought over the counter in our malls and groceries - hydrogen peroxide, a common orange drink, and AA batteries. It was further reported that the authorities in Britain believed that hydrogen peroxide was the liquid explosive component, the orange juice was the fuel component, and the AA batteries were intended to conceal the hexamethylene triperoxide diamine (HMTD), which constituted the detonator component.[24]

News accounts also recounted that the terrorists planned to bring these innocuous materials on board; mix them during flight; and set them to explode mid-flight. It was further reported that, as planned, 7 planes going to American and Canadian cities would have exploded at about the same time over the Atlantic Ocean, killing all those on board and at the same time obliterating traces of how the explosion happened.[25]

Counter-operations against these types of terrorism take time, open and covert efforts, substantial resources, political will, and a very significant amount of coordination and cooperation among nations at the international level.

As in any war, operations of this nature often translate to loss of lives of both friends and foes alike, and, at times, may cause the temporary loss or suspension of highly prized individual rights during unavoidable covert operations. When searches, seizures, surveillance, arrests, and detentions take place, lives may temporarily be disrupted and properties damaged or lost, with or without the strict observance of the legal niceties that normal

times absolutely require.[26]

These realities are mentioned, not to justify any attendant or consequent illegalities nor to defend restrictive laws or regulations, but simply to recognize that they do happen and to emphasize how vicious terrorism is and how urgent it needs to be adequately checked.

We bury our heads in the sand if we say that these kinds of realities should now prevent us from passing laws requiring strict measures, both preventive and remedial, to address terrorism. We irresponsibly put the nation at risk when we say that we should not pass these laws because of the attendant and consequent illegalities and abuses that could take place.

To fully do our duty to protect the nation and the lives of our people, we must embrace reality and do what We must and can do, simply because terrorism, an intrinsic evil, exists and must be prevented and fought. Abuses are realities in the light against terrorism, but these are separate problems which should not be confused with terrorism.

While there can be built-in, or the possibility of added, counter-abuse measures in the ATA to guard against or respond to the possibility of abuses, our role as a Court is not to inject these kinds of wisdom into, or second guess Congress which formulated these measures; Our role is simply to test the ATA against the requirements of our Constitution.

One guiding principle this Court observes in the exercise of judicial power and judicial review is to exercise restraint in recognition of the democratic mandate of the executive and legislative branches, as well as the vast resources and expertise that they contribute in the formulation of police power measures. Judicial restraint is not deference but simply a measured response in considering challenges to a law that has been forged for a public purpose by two co-equal branches of government.[27]

For now, practicality and the urgency of thwarting terrorism soonest demand that We rule on the ATA as We find it today and let Congress and the nation approach any possible abuses separately and differently; they constitute another kind of menace that require and are best met with separate and different approaches and counter-measures.

What We should not do or allow to be done, as a Court, is to consciously allow the passage or the interpretation of laws and measures that would and could foreseeably and unreasonably disregard the legal and constitutional rights and guarantees afforded citizens and the public in our normal lives under normal times.

If we stoop to this level, we would be no different from the terrorists who simply look to their objectives and disregard the legality or morality of their means. We must not, and we cannot, light at this self-defeating level. If we do, we may temporarily save lives or notch temporary victories, but at the cost of our chosen way of life and, ultimately, even our basic and foundational values and beliefs as a people and as a nation. Real victory can only come if we fight terrorism under our own democratic and constitutional terms although we know that these approaches, at times, may not be the most expedient and the most immediately effective.

Like any other Filipino institution, the Court is obligated to join the nation's fight against terrorism. A measure it can undertake now, on Its own and as part of Its obligations under the Constitution, is to fully recognize and adjust to the new realities that terrorism poses, without however bowing to and using terrorism's unlimited and ignoble goals, means, and methodologies. In so doing, We must ensure that the national effort is undertaken in a principled way, in the way of the Constitution that We are sworn to defend.

As We adjudicate today, the Court must be strict but it must - above all - be fair; it must be sensitive to the plight

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of the individual and his rights under the Constitution, but it must also be conscious of the State and of the State's own needs and purposes under the same Constitution. This is the sense of fairness the Court extends to the parties, and, most especially, to the Filipino people whose interests, though not fully articulated, should be foremost in our minds.

Our most available equalizer in undertaking our judicial duty is the keen awareness and the careful analysis we can give when we appreciate the facts and when we read and interpret our laws. We must remember the past; the evolution that terrorism has undergone; our previous encounters with terrorism inside and outside our courts (such as in our Southern Hemisphere ruling); and the developments that have transpired since then, nationally and internationally.

Moreover, this Court must never lose sight of the attributes and characteristics of the terrorism menace now facing the country. To its negative attributes, We must apply the full rigors of our laws while being sensitive to the rights and needs of individuals and the ideals that our democratic life imposes on us.

From a defensive perspective, this Court cannot and must not be tied to the remedial measures the country has applied in the past and which measures have failed us. Our approaches and rulings must also evolve in order to be ahead, or at the very least, be at pace with, terrorism's evolution. The Court cannot - as in simple mathematics - simply substitute and apply its Southern Hemisphere ruling to our present circumstances. Most of all, the Court must be very discerning and sensitive to changes and attendant nuances, and accept this awareness to be part of being strict and of being fair.

Lastly, the Court needs a grand view of the conflicting interests of the State and of individual citizens, and be ready to address their respective interests, if possible, without one fully negating the other. If this kind of choice is not possible, then the Court should not shirk from doing its sworn duty; It must then weigh and choose from among the open options to achieve the policy that the law seeks to put in place while protecting the nation and citizens' rights to the utmost. It must undertake this task while being sensitive and sufficiently prescient to the consequences of Its choices.

This approach is the balancing approach that, as applied to terrorism and the constitutional challenges now before the Court, considers the need to combat terrorism effectively but in a way that does not fully negate the individual constitutional rights of citizens if such ideal medium can be found.

This means that the Court shall not simply fully focus on one side or the other in the present dispute. It cannot give full protection to the interests of the State at the expense of the protection of individual constitutional rights, or vice versa. The Court must have all interests in mind - individual as well as collective, properly weighed and considered - in resolving the pending disputes.

The alternative to this balancing approach, to our mind, is to play into one of the unstated aims of the terrorists - to indirectly and by slow accretion destroy our society as a community existing under the rule of law, justice, and democracy. The terrorists would be one step closer to destroying our national sovereignty and security, if and when they achieve this unexpressed aim. I need not stress that our society cannot exist for long if terrorism triumphs, nor exist as a democracy without the respect for the Constitution and the individual rights it embodies.

Another aspect of judicial review that this proposal seeks to address is that, in the exercise of judicial power, a currently noticeable tendency in court rulings is to veer away from their sworn duty of settling rights and obligations or determining the presence of grave abuse of discretion on the part of the government by unwittingly determining policies themselves, an exercise of power reserved for the political branches. This anomaly has come to be known as "judicial legislation" where a court "engraft[s] upon a law something that has been omitted which

[the court] believes ought to have been embraced," as opposed to finding a statute's true meaning by way of liberal construction.[28]

In cases that could give rise or lead to murky complications (as in counter-terrorism), courts often run the danger of judicially legislating their interpretations into the Constitution or into statute books in an attempt to balance civil liberties with compelling or legitimate State interests, albeit made with no intention to favor one side or the other. An alarming danger posed by this kind of move in situations ridden with complexities is either the exposure of civil liberties to State abuses, or the exposure of the People's safety and health to lawless elements. Both scenarios do not favor the People who should not be forced or be expected to choose between either ends of this spectrum. Thus, the courts should now recognize the need to refine judicial review tools to allow them to be used surgically to carve out the constitutionally offending parts of a penal or regulatory statute and preserve the compelling State interest component of an offending statute. This manner of judicial review is achieved by adopting the method of narrow construction or tailoring.[29]

A well-settled rule is that the Constitution, being the "fundamental paramount and supreme law" is deemed written in every statute.[30] Thus, all laws are invalidated or modified accordingly when the need or the occasion arises. In the exercise of its interpretative powers, the Court should always remember that It cannot and should not tread outside the bounds of Its judicial power by encroaching on the people's power to amend or revise the Constitution, or on the Legislative's plenary power to legislate and to determine the subjects of legislation. For the Court to exercise these powers is almost a fraud on the people by effectively changing the Constitution outside the prescribed constitutional modes of amendment or revision, or by determining policy in the guise of interpretation that amounts to judicial legislation.

An alternative for the Court - in feet, a new approach to judicial review - is through narrow construction. As opposed to judicial legislation, narrow construction does not add to the law; it merely recognizes the inherent limitations of an assailed statute as outlined in the Constitution that is deemed an integral part of every law. The Court, in other words, merely recognizes the bounds of an assailed law by pointing out the governing or applicable constitutional provisions and defining its scope in the exercise of the Court's power to interpret the Constitution. In effect, it is the Constitution itself, not the Court (itself a mere constitutional creature) which tailors the law into one that protects both civil liberties and the general welfare. Thus, instead of nullifying a penal statute containing a compelling and legitimate State interest in its entirety on the ground of being vague or overbroad, the Court merely sets out constitutional boundaries that are anyway deemed written into the laws.

Likewise, instead of "returning" nullified statutes to Congress, which then second-guesses the calibration of the statute to the level acceptable to the Court's sensibilities, the latter simply draws the outer limits of assailed statutes according to what the Constitution itself provides. In this manner, while the Court does not pre-empt the exclusive prerogative of the people and the Legislative Branch to choose policy directions and the subjects of governance or regulation, it still provides clear directions or guidance according to principles recognized by or institutionalized in the Constitution. Stated more succinctly, narrow construction is a method of enforcing constitutional provisions affecting the validity or implementation of a statute or its parts by limiting a statute's ostensible reach, thereby emphasizing constitutional—not judicial—supremacy.

To implement this concept of judicial review, the US Supreme Court in New York v. Ferber[31] suggested that, when an overbroad criminal statute is sought to be applied against a protected conduct, the proper recourse for the courts is "not to invalidate the law in toto, but rather to simply reverse the particular conviction." This course of action implies two things: (1) that there must first be a characterization of or determination whether a conduct is protected or not; and (2) that courts should only allow an as-applied challenge of overbroad penal statutes. These implications require courts to weigh unique factual circumstances and determine whether the act or acts of the

accused constitute protected conduct or speech.

JURISDICTIONAL CONSIDERATIONS

I. Separation of Powers

Governmental power is generally divided into the powers exercised by the three great departments of government - the executive, the legislative and the judicial departments. The recognition of the Judiciary as a branch of government separate from the Legislative and the Executive started out when the Founding Fathers of the United States (US) of America proposed a system of checks-and-balances. In proposing the creation of the Judiciary as a separate branch, James Madison (one of the Founding Fathers) took the cue from Baron de Montesquieu's book (The Spirit of the Laws) where the latter pointed out that: (1) violence and oppression would result if judicial power is combined with executive power; and (2) life and liberty would be subjected to arbitrary control if judicial power is combined with legislative power.[32] In other words, the point of separating judicial power from legislative and executive power and of making it passive in the first place, is to prevent state abuses with the aid of magisterial powers.

For its part, the Philippine Constitution situates judicial power (Article VIII) vis-a-vis legislative power (Art. VI) and executive power (Art. VII). Constitutional law refers to this rule as the separation of powers principle. Accordingly, each branch of government is generally supreme in its constitutionally assigned tasks and cannot intrude into the tasks or powers of the others; an essence of the principle of separation of powers.[33]

II. Definition and Inclusions of Judicial Power

A. Judicial Power Proper

Section 1, Art. VIII of the Constitution defines "judicial power" as follows:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Traditionally, judicial power is confined to settling actual controversies involving legally demandable and enforceable rights.[34] However, it comes in two modes, i.e., in the regular "enforceable and demandable rights-based" mode under the first clause of the 2nd paragraph (judicial power proper); and in the "expanded" and "grave abuse of discretion-based" mode of the 2nd clause which empowers courts to resolve complaints involving "grave abuse of discretion" on the part of any branch or instrumentality of government (judicial review).

B. Jurisdictional Requisites and Limitations

The Court in Francisco v. House of Representatives[35] laid down the limitations of judicial review which have since been recognized as its requisites, viz.:

> - There must be an actual case or controversy calling for the exercise of judicial power;
>
> - The person challenging the act must have legal "standing" or locus standi (demonstrated by a personal and substantial interest in a case which the challenger has sustained, or will sustain, direct injury as a result of an invalid statute or executive issuance's enforcement) to challenge;

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- The question of constitutionality must be raised at the earliest possible opportunity; and

- The issue of constitutionality must be the very lis mota of the case.

The presence or absence of any of these elements determines whether the judicial review petition filed with the Court shall proceed for consideration on its merits, or be dismissed outright for not being justiciable, i.e., for being inappropriate for the Court's consideration on the merits.

C. Exceptions to the Requirement of Legal Standing

A first exception provided by jurisprudence is the transcendental importance of the issue that the petition raised. By this exception, the Court recognized the primacy of issues raised that, in the Court's view, stand at a higher plane of constitutional importance than locus standi as a requirement in determining the justiciability of a petition.

While the term "transcendental importance" may carry a dictionary definition, the questions of "when," "how," "why," and the "extent of its application" could be problematic, as importance may vary from individual to individual; views on the importance of an issue and the level of its importance may not be uniform even within a small group.

Transcendental importance, to be considered in constitutional litigation, must be understood in the constitutional law sense and is not satisfied by the dictionary meaning, either of the term "transcendental importance" or of the issue involved. Neither will an unsubstantiated claim of transcendental importance in the petition suffice; the petitioner must identify and explain to the Court the issue involved and the reasons for its importance. Unless so explained, the Court would have no basis to justify its primacy over the required locus standi.

The Court, fortunately, has provided guidelines through the decided cases, in the form of listed determinants that the Court or the parties may use as standards, tests, or comparators in considering whether an issue is sufficiently important to be accepted for the Court's consideration. These determinants are: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.[36]

This enumeration, of course, is not exclusive but the nature of the listed items and the underlying reason for their inclusion in the list already suggest the filters and the levels of importance that the Court considers for recognition.

In Pimentel, Jr. v. Aguirre,[37] the Court set a very low threshold for the existence of a justiciable controversy when it held that "by the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act"[38] (violating the disputed law) and that "when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws . . settling the dispute becomes the duty and the responsibility of the courts." Bluntly stated, the Pimentel ruling - if followed - would allow the immediate judicial review of a disputed law once it is signed by the President; there would be no need for a petitioner to wait for the violation of the law or a regulation before the petitioner can bring a petition before the Court for recognition as a justiciable controversy and adjudication on the merits. Pimentel's trigger point, to be sure, is not difficult to appreciate and to apply. Its formulation, considered together with the transcendental importance of the issue raised, has been reiterated in several cases, among them, the recent Pimentel v. Legal Education Board.[39]
Moving beyond the mere executive approval that Pimentel required, the Court, in Tatad v. Secretary of the Department of Energy,[40] focused on the issue raised and injected its transcendental importance as basis for the petition's justiciability, explaining that its flexibility as a Court to admit cases with issues of this nature derives

from the second strand of judicial review under the ruling that:

> Judicial power includes not only the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, but also the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. The courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. Where a statute violates the Constitution, it is not only the right but the duty of the judiciary to declare such act as unconstitutional and void.[41] (citations omitted)

On this reasoning, the Court considered the Rule 65 petition for certiorari and prohibition in Tatad to be justiciable. Tatad, however, may not be as jurisprudentially significant when applied to the "actual controversy" and "transcendental importance" perspectives; transcendental importance is far from the grave abuse of discretion which the Constitution expressly recognizes under Art. VIII, Sec. 1, par. 2 as basis for justiciability. By this recognition, the Constitution effectively equated the presence of grave abuse of discretion to an "actual" controversy over which judicial power may be exercised.

Notably, other cases where transcendental importance also played a prominent role in considering justiciability pertained to issues on controls on housing rentals (1949);[42] the conduct of constitutional referendum (1975);[43] synchronization of elections (1991);[44] the distribution of election districts (1992);[45] limitation of election campaign airtime (1998);[46] the validity of the Visiting Forces Agreement (2000);[47] the bidding of infrastructure projects (2016);[48] compromise agreements on ill-gotten wealth (1998);[49] and an ordinance on oil depots (2007).[50] Parenthetically, the statutes involved in these cases are all non-penal, i.e., they do not provide penalties for their violation. This characteristic is stressed at this point as jurisprudence has made an increasingly pronounced distinction between penal and non-penal statutes in determining the justiciability of cases whose issues are claimed to be transcendentally important, as the discussions below will show. Despite the number of these cited cases, the Court also notes that these cases do not appear to have established any clear and consistent guidelines on how and why the issues raised came to be recognized as transcendentally important and why such recognition became the determinative consideration in concluding that the petitions were fit for the Court's exercise of judicial power.

Interestingly, as early as 1994, an approach had already been made in a case, albeit in a Concurring Opinion, where locus standi and transcendental importance of the issues raised were major considerations in determining justiciability. In Kilosbayan v. Guingona,[51] Justice Florentino P. Feliciano sought to answer in his Concurring Opinion the question of "x x x when, or in what types of cases, the Court should insist on a clear showing of locus standi understood as a direct and personal interest in the subject matter of the case at bar, and when the court may or should relax that apparently stringent requirement and proceed to deal with the legal or constitutional issues at stake in a particular case."[52] Furthermore, he opined that "it is not enough for the Court simply to invoke 'public interest' or even 'paramount considerations of national interest,' and to say that the specific requirements of such public interest can only be ascertained on a 'case to case' basis."[53] Hence, he proposed three determinants that the Court could consider when the principle of transcendental importance is invoked as basis for a petition's justiciability. In short, he met head-on the issue of when the principle of transcendental importance may be invoked and be given primacy.[54]

The Feliciano Opinion, unfortunately, did not find its way into a main Court ruling until Senate of the Philippines v. Exec. Sec. Ermita,[55] These guidelines likewise later appeared in the Court's ruling in CREBA v. Energy Regulatory Commission.[56] The Court took another view of and approach to justiciability in Gios-Samar v. Department of Transportation and Communications,[57] when it held, among others, that to qualify as a case of

transcendental importance, the question raised must be purely constitutional. Similar to a facial challenge, a case of transcendental importance is an exception to the general rule that the parties must have legal standing and raise an actual controversy.

In Parcon-Song v. Parcon,[58] on the other hand, the Court focused its attention on the "demonstrably and urgently egregious" character of the constitutional violation that it said must clearly be alleged and discussed in order to bring the case to the level of justiciability. This line of consideration is akin to one of the Feliciano determinants, with the added requirement that the plea for recognition of transcendental importance be clearly explained to the Court.

Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City,[59] (a challenge to curfew ordinances filed by the parents of the minors being subjected to the ordinance) made its own contribution to the justiciability issue via the prism of the Court's expanded jurisdiction, thus hewing to the Court's ruling in Tatad v. Secretary of the Department of Energy[60] mentioned above. In recognizing that an actual controversy existed and is thus justiciable, the Court said:

> Applying these precepts, this Court finds that there exists an actual justiciable controversy in this case given the evident clash of the parties' legal claims, particularly on whether the Curfew Ordinances impair the minors' and parents' constitutional rights, and whether the Manila ordinance goes against the provisions of RA 9344. Based on their asseverations, petitioners have — as will be gleaned from the substantive discussions below — conveyed a prima facie case of grave abuse of discretion, which perforce impels this Court to exercise its expanded jurisdiction. The case is likewise ripe for adjudication, considering that the Curfew Ordinances were being implemented until the court issued the TRO enjoining their enforcement. The purported threat or incidence of injury is, therefore, not merely speculative or hypothetical but rather, real and apparent.[61]

This statement, as in Tatad, confirms that a case raising a question of transcendental importance must clearly state the acts of grave abuse of discretion giving rise to the question.

The need to show direct injury to the petitioner as a factor in determining justiciability when transcendental importance is likewise invoked, was definitively recognized in Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council[62] — the Court's first decided case on terrorism, an issue whose importance even then was undisputed. The Court ruled in said case that to justify direct recourse based on the transcendental importance of the issue of the constitutionality of a penal law, the petitioner must show personal and direct injury. The Court said:

> While Chavez v. PCGG holds that transcendental public importance dispenses with the requirement that petitioner has experienced or is in actual danger of suffering direct and personal injury, cases involving the constitutionality of penal legislation belong to an altogether different genus of constitutional litigation. Compelling state and societal interests in the proscription of harmful conduct, as will later be elucidated, necessitate a closer judicial scrutiny of locus standi.
>
> Petitioners have not presented any personal stake in the outcome of the controversy. None of them faces any charge under RA 9372 [HSA].
>
> x x x x
>
> Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.
>
> The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of

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> the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.[63] (citations omitted, emphases supplied)

Notably in this cited case, the disputed law, the HSA, is a penal legislation; hence, the ruling should particularly apply when the disputed law is penal, as distinguished from the other transcendental importance cases cited above,[64] which all involved non-penal statutes.

The Court considered the direct injury requirement satisfied in Estipona v. Lobrigo,[65] where the petition was filed by the person directly charged under the impugned law, R.A. No. 9165 (the Dangerous Drugs Act), even though the petition suffered from other technical delects, such as the failure to implead Congress and the collateral nature of the constitutional attack. In recognizing justiciability, the Court also cited the transcendental importance of the issues raised.[66]

In Fuertes v. Senate of the Philippines,[67] the Court allowed direct recourse to it by a person charged under the impugned law after, likewise, considering the transcendental importance of the issue raised.

In contrast, in Private Hospitals Association of the Philippines, Inc. v. Medialdea,[68] the Court gave no weight and disregarded transcendental importance as justification and disallowed the constitutional challenge to the penal provisions of R.A. No. 10932 (or Anti-Hospital Deposit Law) that the Association raised on the ground that the owners and managers of private hospitals (who were to bear the penalty) did not expressly authorize the Association to bring the case.

The cases of transcendental importance which the Court recognized despite the absence of a party with direct and immediate injury, have been outlined in David v. Macapagal-Arroyo.[69] The Court specifically said: "(2) For taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; (3) for voters, there must be a showing of obvious interest in the validity of the election law in question x x x and (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators."[70]

In Tañada v. Tuvera[71] and Joya v. PCGG,[72] the Court required a citizen suit for "mandamus to procure the enforcement of a public duty for the fulfilment of a public right recognized by the Constitution."[73] Thus, although the damage is not direct and immediate, for a case to be declared justiciable, there must nevertheless be a discernible conflict of interest traceable to the allegedly unconstitutional law for a case to be declared justiciable.

To articulate the implication from the trends that the above line of cases suggests, it seems that while the transcendental importance of the litigated issue may do away or lessen a party's need to establish direct legal standing to sue, such importance does not completely remove the need to clearly show the justiciability of a controversy through the existence of conflicting interests even if only remotely, as well as the ripeness of the issues raised for adjudication.[74] A separate class unto itself would be cases involving penal laws, where the rule is that the transcendental importance of the question must be accompanied by a prim a facie showing of locus standi.

From the above analysis, it is clear that when the disputed law is non-penal, transcendental importance must be invoked as basis for justiciability through the Feliciano determinants first mentioned in Kilosbayan and later cited by the Court in its Senate v. Ermita and CREBA v. Energy Regulatory Commission rulings.

The second exception to locus standi, rooted in American jurisprudence and merely transplanted to Philippine jurisprudential soil, relates to the mode of challenge a petition undertakes. Direct damage or injury to the

petitioner (and therefore his direct "standing" to sue) does not need to be actually shown in a facial challenge as the injury contemplated in this mode of challenge is potential, and it may affect third parties who are not before the Court.

The Court, under this situation, recognizes - as a consideration higher than locus standi (and the actual case or controversy of which is a part) - that a petitioner may sue under a statute potentially implicating fundamental freedom of expression, on behalf of parties not before the Court (third parties), whose exercise of these rights could be "chilled."

Initially developed based on the right to freedom of speech, the Court sought to avoid the situation when parties would refrain from engaging in constitutionally protected speech (i.e., which would be chilled) due to the fear that their speech would violate a statute regulating speech. Whether and to what extent this Court would adopt the American facial challenge rule is a matter for the Court to definitively rule upon in light of the actual case or controversy provision of our Constitution which expressly requires the existence of an "actual" controversy, in contrast with the American Constitution which does not have a similar requirement and which relics merely on jurisprudence, Marbury v. Madison,[75] for its power of judicial review. Facial challenge and its complexities in the Philippine setting shall be discussed at length at its proper place below.

D. Hierarchy of Courts

One of the Constitution's built-in rules (by implication and by jurisprudence) in the exercise of judicial review is the application of the hierarchy of courts principle, i.e., that cases falling within the concurrent jurisdiction of courts of different levels should be filed with the lowest court with jurisdiction over the matter.

In Vergara, Sr. v. Suelto,[76] a 1987 case, the Court already stressed that:

> The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.[77] (emphases supplied)

This ruling has been repeated in a long line of cases, among them: People v. Cuaresma[78] in 1989; in Ouano v. PGTT International Investment Corporation[79] in 2002; in Bañez, Jr. v. Concepcion in 2012;[80] and most recently in Gios-Samar v. Department of Transportation and Communications[81] in 2019, where the Court pointedly mentioned that one reason is to control its docket by preventing the filing of cases before the Court when these same cases also fall within the jurisdiction of the lower courts.

A deeper reason for the application of this principle, however, relates to the differing powers of the Court and the lower courts with respect to the trial of facts.

Cases involving questions of fact are filed and tried before the lower courts because these courts are fully equipped by law to receive evidence during the trials conducted before them. The Court, on the other hand and by the nature of its powers and structure, is not a trial court and is not a trier of facts. It is not, in other words, designed to handle the reception of evidence in the way that the trial courts can. If no evidence has been presented before the lower courts and as this Court is not equipped to receive evidence or factual support for the petitions,

there would therefore be no facts to support a decision on the merits at the level of the Court. Thus, petitions riddled with factual issues that are directly filed with the Court deserve outright dismissal.

As pointed out by the amicus curiae Justice Francis H. Jardeleza, not one of the petitions passed through the lower courts; they were all filed directly with this Court, although a few did satisfactorily explain the reasons for such. For the petitioners who violated the hierarchy of courts principle through their direct filing with this Court and who failed to explain the reasons for their move, the warning of dire consequences made by Gios-Samar should not be forgotten:

> Accordingly, for the guidance of the bench and the bar, we reiterate that when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.[82]

I likewise note that a few of the petitioners are also involved in existing actual or potential controversies where they can raise or potentially plead the constitutional concerns they now bring before this Court.[83] More importantly, they could have or still can, if they wanted to or now want to, introduce evidence of their interest/s and the damage or injuries these interests suffered. These petitioners have no excuse to directly file their petitions with this Court.

As in Gios-Samar (where the petitioners sought direct recourse to Us to prohibit the bidding process of allegedly illegally bundled projects that, to them, involved matters of public interest and transcendental importance), We have to fall back on the general rule that We cannot hear factual issues at the first instance. The only instance when the Court is constitutionally allowed to take cognizance of factual issues in the first instance is in the exercise of its constitutionally mandated task to review the sufficiency of the factual basis of the President's proclamation of martial law under Sec. 18, Art. VII of the 1987 Constitution - a far different case from the present petitions. The Court likewise would not dare to risk the possibility of denying litigants their right to due process by depriving them of the opportunity to completely pursue or defend their causes of actions through a premature and uncalled for intervention on factual issues.

I explain these operational concepts and interactions in the present dispute to allow our people to appreciate how the different governmental branches, all of them within one government and one system, check, balance, and interact with one another, to have a harmonious and unified whole acting together for the interest of the people. These constitutional rules likewise explain the limits and extent of this Court's adjudicative powers so that the people themselves can be sure that the Court, when adjudicating, acts within the limits of Its constitutional powers. The Court owes the people this explanation as It acts in the people's name and for their individual and collective interests; It must thus always act within the scope of the power the people granted It through the Constitution.

Thus, judicial review is framed by three basic principles. The first principle is that under Sec. 1, Art. VIII of the 1987 Constitution, judicial power is, all at once, vast and limited. Judicial power includes the power to strike down a legislative or executive act that contravenes the Constitution. However, the Court may exercise that power only after it has satisfied itself that a party with legal standing raised an actual controversy in a timely manner and after recourse to the hierarchy of the courts, and that resolution of the case pivots on the constitutional question. The second principle is that judicial power is activated only when the Court assumes jurisdiction over a petition that has passed through a well-defined procedural screening process. The third principle is that judicial power is exercised through judicial review by applying long established standards and levels of judicial scrutiny and/or tools of constitutional interpretation and statutory construction. I call these procedural filters and substantive

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standards of constitutional litigation.

I adhere to the foregoing parameters of the Court's discretion by observing judicial restraint. Judicial restraint is not deference but simply a measured response in considering constitutional challenges to a law that has been forged for a public purpose by two co-equal branches of government.[84] It adopts a measured response by admitting into its jurisdiction only those cases that meet certain requirements and, having assumed jurisdiction, conducting judicial review using standardized methods of scrutiny and interpretation.

E. Types of Constitutional Challenges

i. Modes of Challenging the Constitutionality of Statutes

The judicial review of statutes, treaties (as well as other forms of international agreements), and quasi-legislative administrative issuances is wielded in cases where: (1) a statute assailed in view of underlying facts that are either substantiated before trial courts or presented to and admitted by the reviewing court at first instance; or (2) the face of an assailed statute contains provisions that patently contravene protected speech and separation of powers. The first is called an "as-applied" challenge; the second is referred to as a "facial" challenge.

a. As-Applied Challenge

An as-applied challenge calls for the determination of how the law measures up to the established constitutional limits when these limits are applied to the petitioner's conduct under the disputed law. The court declares the offending part of the law, if severable, to be unconstitutional without affecting the totality of the law.[85] In this kind of challenge, the language of the statute itself does not show an apparent hint of any fundamental (law; the flaw, if one exists, only emerges when the statute is tested through the crucible of real-world circumstances.

The Court notably allowed the "as-applied" challenge in People v. Nazario,[86] People v. Dela Piedra,[87] Estrada v. Sandiganbayan,[88] People v. Siton,[89] and Celdran v. People.[90] It expounded on this challenge in Disini, Jr. v. The Secretary of Justice[91] but opted to accept the facial challenge under the unique circumstances of this case.

People v. Nazario[92] involved the charge of violating Ordinance No. 4, series of 1955, of Pagbilao, Quezon, for Nazario's failure to pay municipal taxes as a fishpond operator. Nazario averred, among others, that the ordinance is null and void for being ambiguous and uncertain.[93]

The Court considered the application of the ordinance and found Nazario to be within its coverage. As actual operator of the government-owned fishpond, he was the "manager" who should shoulder the tax burden since the government never shared in the profits. The Court further found no vagueness in the dates of payment since the liability for tax accrued on January 1, 1964 for fishponds in operation prior to Ordinance No. 12, and for new fishponds, three (3) years after their approval by the Bureau of Fisheries (October No. 15). The Court concluded that while the standards in the ordinances were not apparent from the faces, they were apparent from their intent.[94]

In People v. Dela Piedra[95] Carol M. dela Picdra (dela Piedra) was indicted for and convicted of illegal recruitment in large scale under Sec. 13(b) of Presidential Decree (P.D.) No. 442, as amended. On appeal to the Court, she assailed the constitutionality of the law for its supposed vagueness and overbreadth. The Court's review treated the petition as an as-applied challenge since dela Pieda had been charged with the crime and had alleged violation of her own right.

The Court denied the challenge as it did not find the law - as applied to dela Piedra - to be vague; it was merely couched in imprecise language that could be salvaged by proper construction. Additionally, the Court denied that

the law is overbroad as dela Pieda failed to specify the constitutionally protected freedoms embraced by the definition of "recruitment and placement."

In Romualdez v. Sandiganbayan[96] the Presidential Commission on Good Government (PCGG) charged Alfredo T. Romualdez (Romualdez) for violation of Sec. 5, Republic Act No. 3019, as amended. After the Sandiganbayan's denial of his motion to dismiss, Romualdez questioned the denial through a petition for certiorari (under Rule 65 of the Rules of Court) filed with this Court. He assailed the denial on the ground, among others, that the provision under which he was charged, Sec. 5 of Republic Act No. 3019, was vague and impermissibly overbroad.

The Court held that an "as-applied" challenge, not a facial challenge, was appropriate as conduct, not speech, was the object of the penal statute. The Court thereafter declared that the disputed Sec. 5 is not vague; it adequately answers the question of "What is the violation?" and that the term "intervene" should be understood in its ordinary and common meaning.

Another "as-applied" challenge was allowed in People v. Siton.[97] Evangeline Siton (Siton) and Krystal Kate Sagarano (Sagarano), charged with vagrancy under Art. 202(2) of the Revised Penal Code, filed a petition for certiorari and prohibition before the trial court, assailing the provision's constitutionality on the ground, among others, that it is vague as the definition of vagrancy includes persons otherwise performing ordinary peaceful acts. In support of their contention, they cited the U.S. case of Papachristou v. City of Jacksonville,[98] where the U.S. Supreme Court declared a Jacksonville vagrancy ordinance unconstitutional. The trial court sustained the petitioners' averments and declared Art. 202(2) unconstitutional.[99]

The Court, on appeal, reversed the trial court and upheld the constitutionality of Art. 202(2), ruling that the underlying principles in Papachristou (failure to give fair notice of what constitutes forbidden conduct, and the promotion of discriminatory law enforcement) are inapplicable in our jurisdiction.[100]

It held that, under our legal system, ignorance of the law is not an excuse for non-compliance - a principle of Spanish origin that governs and limits legal conduct. This principle is in contrast with its American counterpart where ignorance of the law is merely a traditional rule that admits of exceptions.[101]

The Court further distinguished the Jacksonville ordinance from our Art. 202(2), and likewise declared that our probable cause requirement is an acceptable limit on police or executive authority in enforcing Art. 202(2). Any claimed unfettered discretion given to enforcing bodies is checked by this constitutional requirement.[102]

In Celdran v. People,[103] the Court of Appeals (CA) found Carlo Celdran guilty of offending religious feelings under Art. 133 of the Revised Penal Code (RPC). The Court reversed the CA ruling on motion for reconsideration after considering that Art. 133 regulates the content of speech and its overbreadth and vagueness have resulted in a chilling effect on free speech. Notably, the Court resolved the case as an as-applied challenge and discussed the application of facial and as-applied challenges in its ruling.

The Court rejected the use of a facial challenge made on the basis of vagueness and overbreadth, holding that Art. 133 of the RPC does not encroach on freedom of expression because it regulates conduct, not free speech. It observed that "[t]he gravamen of the penal statute is the disruption of a religious ceremony and/or worship by committing acts that are notoriously offensive to the feelings of the faithful inside a place devoted to religious worship or during the celebration of a religious ceremony. There is nothing in the provision that imposes criminal liability on anyone who wishes to express dissent on another religious group. It does not seek to prevent or restrict any person from expressing his political opinions or criticisms against the Catholic church, or any religion."

The Court also held that a facial challenge on the basis of overbreadth is impermissible because Art. 133 does not

regulate only spoken words. It covers all acts notoriously offensive to the religious feelings, which is within the State's authority to regulate.

The Court likewise declared that the terms "notoriously offensive" and "religious feelings" are not utterly vague as they are words in common use. Hence, any person of ordinary intelligence may understand the words in their ordinary and usual meaning. The Court also noted that jurisprudence contains sufficient examples of acts considered notoriously offensive to religious feelings.

To summarize, Romualdez and Celdran make it clear that Art. III, Sec. 4 of the Constitution cannot serve as refuge for the use of facial challenge to claim free speech protection on the basis of alleged vagueness and overbreadth when the implicated statute involves acts or conduct, not speech.

b. Facial Challenge

The general mode of challenge of constitutionally-challenged statutes in our jurisdiction is through the "as-applied" mode, i.e., by examining the statute through the prism of a concrete and discrete set of facts showing the substantial and direct impairment that the statute's enforcement has caused a petitioner's constitutional rights.[104] Under this mode, the petitioner can claim a violation of his constitutional rights such as abuse of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness, but can only do so only if he asserts the violation of his own right; he cannot assert the right of a third party who is not before the Court.[105]

For the most part, disputes that give rise to situations calling for an as-applied analysis of statutes often involve a complex interplay and occasional conflict between "legitimate and compelling" governmental interest in preventing crime and individual civil liberties guaranteed by the Bill of Rights;[106] the text of the law is always scrutinized in relation to actual facts experienced and presented as evidence by the parties to the dispute.

A facial challenge, in contrast with and as an exception to an as-applied challenge, can be made - as jurisprudence has established - even prior to the enforcement of a disputed law, based solely on alleged "vagueness" or "overbreadth" of what the law, on its face, provides. It can be made by a petitioner for himself or on behalf of third parties not before the court. Pursuant to the same line of jurisprudence, the challenge - if successful - can result in the invalidity of the entire law.[107]

In other words, the constitutional infirmities appear in the text or "face" of the statute itself even without considering surrounding facts, i.e. even before evidentiary facts have been presented before the court for consideration. The burden is for the challenger to show that no set of circumstances exists under which the assailed legislation could be valid.[108] In this kind of situation, the reviewing court must be careful not to go beyond the statute's face and speculate about "hypothetical" or "imaginary" scenarios.[109]

In the Philippine setting, facial challenge has been notably considered in the following cases:

First, in Quinto v. COMELEC,[110] the Court initially held that the right to run for public office and the right to vote are protected rights under Sec. 1 and Sec. 4 of Art. III. The Comelec resolution and the law it implements impair the protection by being overly broad in that they fail to distinguish between partisan and non-partisan appointive officials who will be deemed resigned by merely filing for candidacy.

On motion for reconsideration, however, the Court reversed itself and held that Sec. 4 is not implicated for there is no "fundamental right to express one's political views through candidacy."

Moreover, it found no overbreadth even as the resolution/law applies to both partisan and non-partisan employees. Citing Broadrick v. Oklahoma,[111] the Court held that as the disputed resolution/law regulates conduct rather

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than protected speech,[112] overbreadth must be substantial rather than merely real. The Court, moreover, adopted the following measure of the substantiality of a law's overbreadth:

> [It] would entail, among other things, a rough balancing of the number of valid applications compared to the number of potentially invalid applications. In this regard, some sensitivity to reality is needed; an invalid application that is far-fetched does not deserve as much weight as one that is probable. The question is a matter of degree. Thus, assuming for the sake of argument that the partisan-nonpartisan distinction is valid and necessary such that a statute which fails to make this distinction is susceptible to an overbreadth attack, the overbreadth challenge presently mounted must demonstrate or provide this Court with some idea of the number of potentially invalid elections (i.e., the number of elections that were insulated from party rivalry but were nevertheless closed to appointive employees) that may in all probability result from the enforcement of the statute.[113]

In addition to this measure of substantiality of overbreadth, the Court adopted the rule that there must be no countervailing weight against such substantiality. Otherwise, and as it ultimately concluded, the proper remedy is an as-applied challenge in which the Court may adopt a limiting interpretation.

Second, in Adiong v. COMELEC,[114] the Comelec resolution (implementing the Omnibus Election Code) was challenged for violation of Sec. 4 of the Bill of Rights, for prohibiting the posting of decals and stickers in mobile places like cars and other moving vehicles. The Court held that such prohibition implicates "freedom of expression ... not so much that of the candidate or the political party ... [but] of an individual to express his preference and, by displaying it on his car, to convince others to agree with him."

Overbreadth was also alleged as the restriction on "where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property." The Court allowed the facial challenge and, after subjecting the law to an intermediately level of scrutiny, concluded thus:

> [E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.[115]

The Court ultimately found the resolution unreasonable for being overly broad vis-a-vis the governmental purpose.

Third, in Ople v. Ruben Torres,[116] the Court allowed a facial challenge against an administrative order issued by the President instituting the national identification system on the ground that it was patently ultra vires and implicated Sec. 3(1) of the Bill of Rights on the right to privacy. Here, it reiterated the ruling in Morfe v. Mutuc[117] that privacy is constitutionally protected. There is impairment through overbreadth as there exists a wide range of technologies for obtaining biometrics, with some of them more intrusive than others. Yet, the administrative order does not specify the biological characteristics and biometric technology that shall be used.

Fourth, in Biraogo v. Philippine Truth Commission,[118] the Court allowed a pre-enforcement facial challenge against an executive order creating a truth commission. The order implicated Sec. 1 on equal protection. However, the impairment of Sec. 1, Art. III of the Constitution is not through overbreadth or vagueness but through an invalid classification that targeted the previous administration. It is notable that the parties here were part of the previous administration; hence, they stood to be prejudiced by the executive order.

Fifth, in Disini, Jr. v. The Secretary of Justice,[119] the Court allowed the pre-enforcement facial challenge on Sec. 5 of the Cybercrime Law.

The Court noted the Solicitor General's position that "the plain, ordinary, and common usage" of the terms "aiding

and abetting" is sufficient to guide law enforcement agencies in enforcing the law and that the "legislature is not required to define every single word contained in the laws they craft." Their meaning is easily discernible through common sense and human experience.

Nonetheless, the Court held that such common understanding and application are incongruous in cyberspace where persons post, tweet, like, comment, share privately, or publicly. However, as other persons can repost or retweet these texts, images or videos, the original parties to the communication no longer have control over the subsequent dissemination. Hence, in this context, with respect to materials offending the Cybercrime Law, the terms aiding, abetting, and attempting would need to be more precisely defined.

The relevance of Disini to the current petitions, however, relates to the petitioners' recourse to facial challenge when the disputed law is penal, a position that I disagree with because terrorism involves acts or conduct and, hence, is not subject to facial challenge. If it involves speech at all, it is not speech protected by the freedom of speech in the same way that obscenity and defamation are not protected speeches.

Sixth, in Nicolas-Lewis v. Commission on Elections,[120] the Court allowed a pre-enforcement facial challenge against a Comelec resolution implementing a law on overseas voting. The resolution prohibited "partisan political activities" abroad during the 30-day overseas voting and was deemed to implicate protected speech under Sec. 4, Art. III of the Constitution.

Moreover, it impairs protected speech through overbreadth for the prohibition applies "abroad" rather than to well-defined premises where elections are conducted. As the mischief sought to be addressed by the resolution is the risk of threat to the integrity and order in the conduct of overseas voting, such mischief is likely to take place only in voting premises, such as Philippine embassies, rather than the vast area termed "abroad."

A facial challenge was found appropriate because a protected right and an overextended statute were involved.

Seventh, in Inmates of the New Bilibid Prison v. De Lima,[121] the main and concurring Opinions agreed that a pre-enforcement facial challenge is viable against the implementing rules that prospectively applied the availability of good conduct time allowance under a new law. The implementing rules were found to impair equal protection under Sec. 1, Art. III of the Constitution through the adoption of an invalid classification system.

Lastly, We come to Southern Hemisphere v. Inc. v. Anti-Terrorism Council.[122] This case is most significant in considering the present petitions as it ruled on the constitutionality of the earlier anti-terror law — the HSA. The Court emphasized the rationale for the use of facial challenge and its non-availability in penal status, stating that:

> The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech x x x [T]his rationale is inapplicable to plain penal statutes that generally bear an "in terrorem effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.
>
> x x x If a facial challenge to a penal statute is permitted, the prosecution of crimes may be hampered. No prosecution would be possible x x x A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it.[123]

In my view, no less weighty than an alleged violation of a fundamental right in a facial challenge is the consideration of the State's interest involved in a disputed legislation. The ATA is not an ordinary legislation but a very weighty one that by nature is comprehensive; it encompasses both preventative and punitive interests and approaches. In direct conflict are both individual and collective interests that should be properly considered and weighed.

From another perspective, collective interests cannot be any less important than the individual interests that a facial challenge places and holds sacred in the altar of constitutional rights. Let it not be forgotten that individual rights can only be enjoyed if society continues to viably exist. A contrary view could be blind idealism that disregards the reality of how life operates. The Constitution and its guaranteed rights will all be for naught if the State itself - that the Constitution supports - is extinguished. Survival is the law of life; where the life of the State is at stake, everything else takes secondary precedence.

Thus, the primary question in considering legislation like the ATA, whose aim is the defense of the State against those who threaten its survival, is or should be - should the Court maintain the current jurisprudence on the non-availability of facial challenge to penal laws such as the ATA?

The first consideration, as Associate Justice Mendoza fully explained in Estrada, is that the unavailability of a facial challenge cannot at all be equated to the denial or the non-recognition of an aggrieved individual's fundamental rights. Violation can still be alleged and proven, but these will have to be undertaken based on concretely adduced facts showing the prejudicial effect of a disputed statute on the individual, not on the basis of assumed facts that can border on speculation. In this manner, fairness prevails between the individual and the society in whose behalf and in whose defense the legislation was formulated and passed.

Let it not be forgotten in this regard that terrorism is a socially harmful conduct. Terrorism, like Covid-19, affects not only individuals but the nation as a whole[124] or at least a very substantial number of our citizens.[125] By undisputed world experience, it is no longer a purely local concern that can be treated as an ordinary police matter. It has become a worldwide problem that has drawn the attention of no less than the United Nations.[126] It has been proven to cross borders into nations that have not properly or seasonably applied their anti-terrorism preventive measures.[127]

At its ugliest, terrorism can affect the sovereignty and security of a nation when terrorists aim for political power outside the limits that the Constitution narrowly allows. Unlike rebellion that is usually undertaken in the open, terrorism works insidiously and clandestinely.[128] A nation could thus fall incrementally in a long agonizing descent into chaos, or in one blow even before the government realizes what it is up against.[129]

The last and most important consideration, again taking cues from Justice V.V. Mendoza's Opinions, is that terrorism involves acts and conduct, not speech (except where speech integral to criminal conduct is involved, which is unprotected);[130] thus, any challenge to the ATA should be "as-applied."

This course of action offers the advantage of being fully consistent with the actual case or controversy that the Constitution requires. It is, at the same time, closer to the congressional intent of having a comprehensive anti-terrorism law. Respecting the wisdom of Congress when it passed the ATA would not at all signify the Court's subservience to a co-equal body; it is in fact its bow to the primacy of the Constitution.[131]

JUDICIAL REVIEW PARAMETERS

II. Judicial Review

A. Nature of Judicial Review

The power of the judicial department (or the judiciary) is "expanded" under the grant of judicial power because it allows the courts to resolve disputes and to nullify actions involving "grave abuse of discretion" committed by the two other great branches of government - the executive and the legislative. From the constitutional perspective, actions undertaken with "grave abuse of discretion" are actions outside of the actor's constitutionally or statutorily allowed limits, and, hence, are nullities that courts can so declare pursuant to constitutional command.[132] In

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other words, judicial review is simply the exercise of judicial power, the objective of which is to review the constitutionality of the act or acts of the other co-equal branches of government or the offices and agencies under them.

However, the courts, when they so act, do not thereby cross constitutional boundary lines and are not, in fact, rendered more powerful than the other two branches of government. Their authority merely confirms that in our governmental system, the Constitution is supreme and all three branches of government must keep within the limits of their respective powers.[133] Even the judicial branch must keep within the constitutional limits of its power to check grave abuse of discretion. Accordingly, the Constitution circumscribes judicial power in two ways: first, it imposes certain requisites and conditions before a court may activate its judicial power and assume jurisdiction to resolve a case; and second, it requires the courts to apply specific methods of judicial review, including the appropriate level of judicial scrutiny and tools of constitutional interpretation and/or statutory construction. As such, judicial power has been described as the "distinguished but delicate duty of determining and defining constitutional meaning, divining constitutional intent, and deciding constitutional disputes."[134] Nonetheless, unlike legislative and executive powers, judicial power is passive; meaning, it is initiated only in the filing of a petition in an appropriate proceeding.[135]

Corollary, in the traditional exercise of judicial power, the right on which a petition is based must be identified with particularity, together with allegations on how this right has been violated. This same rule applies with equal force to the "expanded" mode: the grave abuse of discretion committed by the governmental agency, office, or officer must likewise be properly alleged through prima facie showing of the abusive act and of the manner the abuse was committed. These allegations constitute the "case or controversy" requirement for the exercise of judicial power under Art. VIII, Sec. 1 of the Constitution. Without these allegations, the Court shall dismiss a petition for failure to show the required grave abuse of discretion.

After the Court's examination, It then decides whether the disputed law complies with or violates the terms of the Constitution. In the latter case, the Court ultimately decides whether the law, found to be flawed, must be struck down in its entirety, or saved through a limiting construction that does not rewrite but merely aligns the law with the Constitution, or partly saved through a separability interpretation.[136] In rare instances, the Court urges the executive and legislative branches to fine tune their implementing rules in order to forestall the excesses that would render the law's enforcement unconstitutional.[137]

B. Approaches to Judicial Review

i. Effect of Nature of Challenge Admitted on Choice of Judicial Scrutiny

Prior to enforcement means that a challenge could be launched even before the law is applied and before the petitioner or parties who are not before the Court suffer any actual or direct damage or injury (thus, even without showing the locus standi or actual case or controversy that the Constitution expressly requires).[138]

Without a clearly pleaded and defined actual controversy, a facial challenge is a very sensitive aspect of constitutional litigation as the court runs the risk of ruling on hypothetical situations unless it strictly adheres to the "facial" description of the challenge. To be "facial," the law must show, based solely on its wording or its direct and immediate implication, that a constitutional violation exists through vagueness or overbreadth.[139]

Assuming that the challenge is admitted, its nature—that is, whether it be an as-applied challenge, a facial challenge, or a case of transcendental importance—does not pre-determine the level of judicial scrutiny to be employed.

ii. Proposed Judicial Scrutiny

a. Gradations of Scrutiny

Judicial review proper proceeds by determining whether the law, as it operated on the petitioner, falls within constitutional parameters, using the appropriate lens of scrutiny and its necessary gradations. The levels of scrutiny are discussed at length below.

A critical analytical tool considered together with the mode of challenge in reviewing the constitutionality of a disputed law is the level of scrutiny that the Court shall apply in considering the case.[140] The level of scrutiny depends on the level of protection accorded by the Constitution to the fundamental right allegedly affected by the law;[141] the gravity of the governmental objective sought through the law; and the degree of the law's interference on the affected fundamental right.[142] Thus, the Court often makes a textual and jurisprudential re-examination of the scope of the right implicated. For example, the lowering of society's expectations of the right to privacy at airports,[143] as well as the legal context in the formulation of the law,[144] (such as when its adoption is in compliance with a binding treaty obligation)[145] affect the Court's level of scrutiny.

Jurisprudence has provided us three levels or gradations of scrutiny through the years.

The rational-basis scrutiny is appropriate where the law is merely regulatory rather than prohibitive, it is narrowly targeted and it does not impact protected rights.[146] In general, a rational-basis scrutiny ascertains whether the law is rationally related to a legitimate government purpose.[147] A soft rational-basis scrutiny accords a presumption of validity to a law of longstanding application, such as on vehicle registration.[148] A hard rational-basis scrutiny suspends any presumption of validity and weighs the public interest sought to be advanced by the law vis-a-vis any countervailing interest which is peculiar to a party, such as the right to private property.[149]

Both intermediate or means-end scrutiny and strict scrutiny are appropriate where the law implicates a right that is protected by the Constitution,[150] or a right that is enjoyed by persons who are protected by the Constitution, such as Overseas Filipino Workers.[151] However, intermediate scrutiny shall be employed if the law is content-neutral in that it is aimed merely at the time, place, or manner of exercise of a protected right.[152] In that event, the Court ascertains whether the law (1) serves an important government interest; (2) it is reasonably appropriate for the purpose of advancing said government interest; and (3) it narrowly tailors the burden on protected rights only to the extent necessary to advance the government interest.[153]

Strict judicial scrutiny shall be employed where the core content of the protected right or the right of a protected person is burdened by the law,[154] or where a suspect classification based on race, sex, or religion is adopted.[155] However, intermediate review is sufficient where the core of a protected right to speech is merely unnecessarily burdened by a law through overbreadth.[156] When engaging in strict scrutiny, the Court suspends the presumption of regularity of official conduct and, by extension, the presumption of constitutionality of the law.[157] It inquires whether the government has established that (1) there is a distinctly compelling governmental interest; and (2) the law is narrowly designed to achieve said governmental interest.[158]

b. Proposed Level of Scrutiny

The aforementioned considerations, to my mind, cannot be applied in a plain and mechanistic way; application must be attended by the discretion appropriate to the subject under consideration. For example, when the importance of the government's interest weighs heavily (as the compelling interest that terrorism does), the third element of a narrow focus may appropriately be adjusted and widened to ensure that the government's interest is properly and thoroughly addressed. Failure to make this adjustment may spell the difference in the effectiveness of the law.

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The fight against terrorism is indisputably a compelling government interest in light of the nature and background of this menace and its continuing threat to the country. Whether and to what extent the government measure should focus should depend on the nature and extent of the interest at stake and on the character of the measure the law prescribes, considered in relation with the constitutional right involved. A material question on this point is whether the abuse of constitutional right is patent or immediately threatened, or whether it is only considered possible. The element of pervasiveness of the violation should likewise not be forgotten.

After its scrutiny, the Court then decides whether the disputed law violates the Constitution and declares whether it must be struck down in its entirety, saved through a narrow construction that would align it with the Constitution, or partly save it through an existing separability clause or through the narrow interpretation and application already suggested elsewhere in this Opinion.[159]

In rare instances, the Court may urge the executive and legislative branches to fine tune their implementing rules in order to forestall excesses in enforcement of a measure that has been found to be constitutional.[160] But in no case can the Court question the policies or measures that Congress adopts on the basis of their wisdom, nor can the Court delve into the adequacy under existing conditions of the enacted measures.[161]

In essence, the power of the Court to pass upon the constitutionality of laws, regulations or other acts of the legislature and the executive is awesome but is a reserved power that may be used only when and as may be appropriate; to our mind, the Court should only exercise the power when it must, not because it can. On the occasions when it must, the Court should still have the discretion to adjust the application of its conclusions based on its balancing approach, as discussed above.

By laying down the foregoing principles and mapping out the stages of constitutional judicial review, the Court provides a guide to the disposition of each disputed constitutional issue in the surviving petitions. Every stage and level of review and the resulting application shall be discussed in full in the course of their consideration.

C. Tests on the Constitutional Validity of Statutes

i. Approaches to Testing the Scope of Statutes

a. Void-for-Vagueness and Overbreadth Doctrines

As mentioned above, "vagueness" exists when the law is so unclearly or loosely framed that a person cannot reasonably know what the law exactly provides or commands; it prevents a person from reasonably knowing whether he acts within or outside the law.[162] Through vagueness the law transgresses the due process requirements of the Constitution by not giving a fair notice of what the law penalizes.[163] Vagueness also leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the government's muscle.[164]

An "overbreadth" exists when the means employed to achieve a governmental purpose are unnecessarily broad and, thus, invades constitutionally guaranteed rights.[165] In speech terms, facial challenge may be allowed if the disputed law prohibits not only speech that the legislature may regulate, but also speech protected under the Constitution,[166] in the U.S., if it prohibits a substantial amount of protected speech.[167]

Where conduct and not merely speech is involved, the statute's alleged overbreadth must be both real and substantial, judged in relation with the statute's plainly legitimate sweep.[168] The concept of "substantial overbreadth," however, cannot readily be reduced to an exact definition; the mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render the statute susceptible to an overbreadth challenge.[169]

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In sum, "vagueness" is concerned with the clarity of the law; while "overbreadth" is concerned with the precision of a law.[170]

b. Chilling Effect of Speech Restriction

The "chilling effect" reasoning applies with full force to freedom of speech and expression cases as the Court may, out of concern for this effect, decide in favor of a challenged law's invalidity and allow the law's targeted speech to go unregulated to avoid any deterrent effect on citizens who might otherwise lawfully speak.[171]

In balancing terms, this means that the Court is choosing to allow the existence of some unregulated speech so that citizens may enjoy the salutary effect of their full speech rights.[172] The Court thus accords preference, primacy, and full constitutional protection to citizens' right to speak.

In my view, this liberal approach outweighs the risk the community may run from the speech that remains unregulated. Note in this regard that certain types of speech such as those involving obscenity and defamation lie outside constitutional protection and are, thus, subject to statutory regulation without intruding into the Constitution's freedom of speech guarantee.[173]

A chilling effect, however, when recognized outside the factual circumstances of a case could raise a host of questions that ultimately boils down to one of fairness: the who, what, when, where, why, how, and whether or not a chill intervened are always hanging questions whose answers - in the absence of concrete facts — are largely assumed from the nature of the constitutional right involved.

Unfortunately, this assumption is at times made without considering the State's own interests.[174] In the context of terrorism, these interests are the constitutional duties of the State to maintain its own viability and survival; and its duties to protect and promote the interests of the governed, including the interests of potential victims among the governed who are not also before the court.

The chilling effect line of thought likewise glosses over the nature of the disputed law that, when penal by nature, is intended to send signals to the governed that the prohibited action should not be committed without running the risk of the law's penalty whose purpose is to deter behaviour against the interests of society. In other words, a chilling effect is built-in and is part and parcel of every penal legislation.

These concepts are not at all new in our jurisdiction as Associate Justice V.V. Mendoza, years ago, eloquently summed up the basic underlying principles in his Concurring Opinion in Estrada v. Sandiganbayan:[175]

> x x x x
>
> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

and dwelt as well on these challenges' characteristics and limits of use:

> This rationale does not apply to penal statutes. Criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances

> as in the area of free speech.
>
> The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an overbreadth doctrine outside the limited context of the First Amendment." In Broadrick v. Oklahoma, the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it has been held that "a facial challenge to a legislative Act is ... the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the Conduct of the others."
>
> In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant." Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.
>
> x x x x
>
> Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected. It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts. But, as the U.S. Supreme Court pointed out in Younger v. Harris:
> [T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, ... ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.

For these reasons, "on its face" invalidation of statutes has been described as "manifestly strong medicine," to be employed "sparingly and only as a last resort," and is generally disfavored. In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged, (citations in the original omitted.)

The Associate Justice supplemented these thoughts in the Court's Resolution denying petitioner Estrada's Motion for Reconsideration when he added:[176]

> "Indeed, it has been pointed out that "procedures for testing the constitutionality of a statue 'on its face'... are fundamentally at odds with the function of courts in our constitutional plan." When an accused is guilty of conduct that can constitutionally be prohibited and that the State has endeavored to prohibit, the State should be able to inflict its punishment. Such punishment violates no personal right of the accused. Accordingly, as

> the enforcement of the Anti-Plunder Law is not alleged to produce a chilling effect on freedom of speech or religion or some "fundamental rights" to be presently discussed, only such of its provisions can be challenged by petitioner as are sought to be applied to him. Petitioner cannot challenge the entire statute on its face. A contrary rule would permit litigation to turn on abstract hypothetical applications of a statute and disregard the wise limits placed on the judicial power by the Constitution. As Justice Laurel stressed in Angara v. Electoral Commission, "the power of judicial review is limited to actual cases and controversies ... and limited further to the constitutional question raised or the very Us mot a presented." (emphasis supplied)

Subsequent to its Estrada ruling, the Court ruled on the merits of Southern Hemisphere v. Inc. v. Anti-Terrorism Council on the issue of the validity of the country's first anti-terrorism legislation, the HSA.

The Court significantly declared the HSA valid, again drawing heavily on Associate Justice V.V. Mendoza's Separate Opinions in Estrada. It thus reinforced the strength of the Court's pronouncements, first made in Estrada, on facial challenge, and also established the unavailability of facial challenge in reviewing penal laws.

Consistent with these positions, the Court has subsequently limited the application of a facial challenge to cases clearly involving the freedom of speech and other fundamental rights and showing that these rights had been at risk. Except for its ruling in Disini, mentioned below, it also limited the application of facial challenge to non-penal statutes that do not involve violations of fundamental rights.

Thus, aside from an equal protection clause violation (that the Court allowed in Biraogo v. Philippine Truth Commission based on the invalid classification made in the disputed law),[177] jurisprudence has allowed a facial challenge only for violation of the freedom of speech and expression under Art. III, Sec. 4 of the Constitution;[178] the right to privacy of communication and correspondence under Sec. 3(l);[179] and the right to form association under Sec. 8.[180]

Justice V.V. Mendoza's 2001 Concurring Opinion in Estrada v. Sandiganbayan, cited above, was made a part of the main opinion in that case and likewise became part of the main opinions in Romualdez v. Sandiganbayan (2004); Spouses Romualdez v. Commission on Elections (2008); Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council (2010); Spouses Imbong v. Ochoa, Jr. (2014); Lagman v. Medialdea (2017) and Madrilejos v. Gatdula (2019), among others.

The Court (and the U.S. Supreme Court whose "facial challenge" approach became this Court's initial model)[181] has allowed a facial challenge in the past to address the "chilling effect" that the challenged law could bring to third parties who are not before the Court even prior to the law's implementation,[182] thus, based solely on what the law provides "on its face" and without the benefit of factual context or concrete evidence of the actual circumstances of the alleged violation of rights.[183]

In this sense, facial challenge is an approach that the Court allows in an excess of caution to prevent situations where citizens are prevented from acting, in a manner otherwise protected under the Constitution, due to their uncertainty on the meaning and scope of the law and their fear that the law could cover and penalize them. This is the "chilling effect" that compelled the Court to immediately act, without waiting for the law's implementation, on overbroad or vague laws affecting fundamental rights.

In plainer terms, because of a statute's vagueness or overbreadth, a person might stay away from doing anything that could possibly fit the uncertain wording of the law, thereby limiting what he could otherwise legitimately do. Invalidity arises because the wording of the challenged law may cover both protected and unprotected speech, thus preventing people from speaking due to their fear or concern that they would overstep into unprotected territory and thereby violate the law.

c. Speech v. Criminal Conduct

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Speech, as a fundamental right, is constitutionally protected.[184] Thus, the U.S. Supreme Court has only recognized limited categories of speech that the government may regulate because of their content and for as long as the regulation is even-handed.[185] Content-based restrictions on speech, i.e., laws that "appl[y] to particular speech because of the topic discussed or the idea or message expressed," are thus presumptively unconstitutional and subject to strict scrutiny.[186]

Likewise, it has been held that an utterance or other mode of expression is said to be "unprotected" if it is "of such slight social value as a step to truth that any benefit that, may be derived from them is clearly outweighed by the social interest in order and morality."[187] The U.S. Court has recognized various categories of unprotected speech, albeit these characterizations have remained live and open, largely depending on the character and context of the speech.[188] Under the unprotected category are: obscenity, defamation, fraud, incitement, speech integral to criminal conduct, and child pornography.[189]

In the Philippines, this Court has issued its own line of rulings on the protection of free speech pursuant to Sec. 4 of Art. III (our Bill of Rights). Our early decisions were largely guided by U.S. doctrines on the extent of speech protection, the kind of scrutiny to be applied, as well as on the categories of speech that fall outside constitutional protection. This Court adopted the clear and present danger rule as early as the case of Cabansag v. Fernandez[190] and explained the doctrine and its roots in Soriano v. Laguardia.[191] Chavez v. Gonzales[192] further instructs Us that the clear and present clanger test is used when the governmental action that restricts freedom of speech or of the press is based on content.

Another criterion for permissible limitation on freedom of speech and of the press, which includes vehicles of the mass media such as radio, television, and the movies, is the "balancing-of-interests test." The principle "requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation." Lagunzad v. Vda. de Gonzales elaborated on the justification for this test in these words:

> The right of freedom of expression, indeed, occupies a preferred position in the "hierarchy of civil liberties." It is not, however, without limitations. As held in Gonzales vs. Commission on Elections:
> From the language of the specific constitutional provision, it would appear that the right is not susceptible of any limitation. No law may be passed abridging the freedom of speech and of the press. The realities of life in a complex society preclude however, a literal interpretation, freedom of expression is not an absolute. It would be too much to insist that at all times and under all circumstances it should remain unfettered and unrestrained. There are other societal values that press for recognition.[193]

In SWS v. COMELEC,[194] former Chief Justice Reynato Puno opined that "the dangerous tendency test [...] now commands little following" owing to the preferred status of freedom of speech and of the press. Justice Melo in Iglesia Ni Cristo v. CA[195] went to say that the dangerous tendency rule has long been abandoned and that "the sole justification for a given restraint or limitation [...] is the existence of a grave and present danger of a character both grave and imminent, of a serious evil to public safety, public morals, public health or any other legitimate public interest that the state has the right and duty to prevent."

We likewise began to develop our own line of rulings on unprotected speech, taking our cue from Gitlow v. New York.[196] In Philippine Journalists, Inc. (People's Journal) v. Theonen, this Court held that lewd, obscene, profane, libelous, and insulting or "fighting words" are unprotected speech:

> But not all speech is protected. "The right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances

> are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."[197]

The U.S. Supreme Court has likewise recognized that "fighting words" (i.e., words or speech "likely to provoke the average person to retaliation, and thereby cause a breach of the peace") are not protected speech. It drew the line, however, in Chaplinsky v. New Hampshire (315 U.S. 568, 574) when it stated that "speech cannot be restricted simply because it is upsetting or arouses contempt."[198] And although the Court continues to cite "fighting words" as an example of speech that the government may proscribe, it has not upheld a government action on the basis of that doctrine since Chaplinsky.

The U.S. Supreme Court has similarly ruled that the constitutional free speech guarantee does not bar the government from prohibiting some form of intimidation such as "true" threats.[199] True threats—as distinguished from "political hyperbole"—occur when the speaker "means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."[200]

Along these lines of speech and of particular interest and relevance under the ATA, given the objections made in the present consolidated petitions, is "speech integral to criminal conduct." The U.S. Supreme Court recognized that, in general, the free speech guarantee affords no protection to speech "used as an integral part of conduct in violation of a valid criminal statute," citing Giboney v. Empire Storage & Ice Co.[201]

The U.S. Court cited this case as one reason the government may prohibit, for example, conspiracy or solicitation to commit a crime, offers or requests to obtain illegal material or impersonating a government officer and thereby recognized "speech integral to criminal conduct" as an exception to the First Amendment guarantee of free speech under the U.S. Constitution.

Giboney, decided in 1949, was not cited in U.S. Supreme Court rulings from 1991 to 2005.[202] However, since 2006, it has been cited six times.[203] It has also been observed that the Giboney ruling has later been extensively cited in the US.[204]

In the Philippines, Giboney has been cited twice. The first citation was in Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,[205] a ponencia of Justice Carpio-Morales; the second was in Senior Associate Justice Carpio's Concurring Opinion in Spouses Imbong v. Ochoa, Jr.[206]

The object of the ATA is to criminalize and penalize terrorism, which should include speech integral to this criminal conduct. This is evident from the provisions of the ATA that petitioners Justices Carpio-Morales and Carpio now assail through their own petition, Antonio T. Carpio v. Anti-Terrorism Council (G.R. No. 252736).

After due consideration, I submit that there is wisdom and patent practicality in following the U.S. Supreme Court lead on unprotected speech. Speech integral to criminal conduct (along the lines of the Giboney ruling) should receive the attention of this Court as aspects of speech that Arts. 4 to 12 of the ATA and other terrorism-related acts proscribed by law can regulate without necessarily running against the protection guaranteed by Art. III, Sec. 4 of our Constitution.

D. Speech-Related Standards of Review

In the usual understanding, speech is oral or written communication of ideas from one person to another. Numerous activities that do not involve the use of words, however, have been held to be speech, while in some cases, the use of language, both written and oral, was not considered as speech. For example, the wearing of black armbands by high school students to protest the Vietnam War was characterized as akin to pure speech in Tinker v. Des Moines[207] while the burning of a U.S. flag was deemed communicative conduct warranting protection under the First Amendment in Texas v. Johnson.[208] Meanwhile, slander or libel, despite involving spoken or

written words, are punishable.

i. Reviewing Restrictions as to Time of Speech

Speech or expression may be restrained as to time or manner. On the one hand, restrictions, or burdens on speech as to time are classified into two types: (1) prior restraint; and (2) subsequent punishment. Prior restraint refers to official government restrictions on the press or other forms of expression in advance of actual publication or dissemination.[209] Subsequent punishment, on the other hand, is the imposition of liability (penal, civil, or administrative) to the individual exercising his freedom. It may be in any form - penal, civil, or administrative.[210]

ii. Reviewing Restrictions as to Manner of Speech

Restrictions on speech based on the manner of regulation come in two categories: (1) content-based; and (2) content-neutral. Content-based regulations are those based on the subject-matter of the utterance or speech; while content-neutral regulations are merely concerned with the incidents of speech, or one that merely involves the time, place, manner, or means and circumstances of communication.[211]
Restraints on free speech as to content are generally evaluated on one of or a combination of three tests: (1) the dangerous tendency doctrine; (2) the balancing-of-interest test; and (3) the clear-and-present danger rule.[212] First, the "dangerous tendency" doctrine simply means that, "[i]f the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable."[213] Second, the "balancing-of-interest" test operates "[w]hen particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, [courts are duty-bound] to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented."[214] Last, the "clear-and-present danger" rule "is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."[215]

To date, Philippine courts adhere to the clear-and-present danger rule in testing the constitutionality of statutes that regulate speech.[216]

E. Proposed Judicial Review Approach to Anti-Terrorism Statutes

The appropriate level of judicial scrutiny in the instant case is the intermediate level of judicial scrutiny.

The Court enjoys a margin of discretion in the selection of the appropriate level of judicial scrutiny. Nonetheless, the Court must not cherry pick and rely solely on the petitioners' allegations of impairment of constitutional rights while completely ignoring the arguments of public respondents on other material factors justifying the scope and mode of criminalization of terrorism. In The Nature of Constitutional Rights : The Invention and Logic of Strict Judicial Scrutiny, Professor Richard Fallon examines the practice of US courts in jurisdictions and argues that levels of judicial scrutiny are inventions of judges designed to enable them to apply words that are fixed in time (the constitution) to realities that are constantly changing, including the very nature of rights.[217] It follows that the choice of level of scrutiny is determined not just by the nomenclature of the rights affected but also by the changing social perceptions about the values sought be protected by the exercise of such rights vis-a-vis the values sought to be promoted by a law that regulates or restricts the exercise of such rights.[218]

Terrorism is an evolving target. Accordingly, efforts to criminalize it have shifted towards the prevention of terrorism before acts of violence are committed. Prevention is carried out through the suppression of acts that, hitherto innocuous and innocent, enable the commission of violent acts of terrorism. The use of the internet for radicalization, recruitment and movement of warm bodies and logistical resources leading to the Marawi siege serve as concrete context for the necessity to adopt the preventative criminalization of terrorism in the

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Philippines.[219] The ATA is the government response to this need.

There are at present 19 universal/multilateral international legal instruments as well as several resolutions issued by the United Nations Security Council (UNSC) that make up an international legal regime on terrorism. Inter-state, bilateral and regional instruments on designation and proscription of terrorist persons and entities have been concluded.[220] This regime creates certain binding state obligations regarding the criminalization of terrorism.[221] The consequences for non-compliance with these binding obligations range from chokepoints in financial services, trade, and investment to designation as a state sponsor of terrorism.[222]

The foregoing history of the criminalization of terrorism and crystallization of an international legal regime governing counter-terrorism justify recourse to an intermediate level of judicial scrutiny.

Moreover, even assuming that freedom of expression is incidentally implicated by any provision of the ATA, whether by Sec. 4 or Sec. 10 or Sec. 25, these measures are merely regulatory of the manner rather than content of the expression. In fact, Sec. 4 insulates "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights" from criminalization, without qualifying that such expression must contain a particular perspective or ideology. Rather, Sec. 4 criminalizes the manner of exercising freedom of expression that amounts to acts intended to cause death or serious bodily injury. The established rule is that content-neutral regulations that implicate protected speech are more appropriate for an intermediate level rather than strict level of judicial scrutiny.[223]

Thus, even if a penal law is subjected to a facial challenge, if said law affects only the time and manner but not the content of the exercise of free speech, such law shall be not be subjected to strict judicial scrutiny. A penal law proscribing unprotected speech is also not subject to strict judicial scrutiny.

There is nothing in the ATA, much less in the allegations of the petitions or the findings in the Decision, indicating that a provision thereof targets a particular ideology or belief In particular, the proviso in Sec. 4 proscribes speech as an integral part of an overt act of terrorism. Hence, it regulates the manner of exercising freedom of speech, specifically that said right be not exercised as an integral part of terrorism. More importantly, the proviso regulates unprotected speech; that is, speech as an integral part of an overt act of terrorism. As mentioned already, the proviso would validly apply to an advocacy for the Islamic State or for cultural-religious cleansing as integral parts of a terrorist attack.

Thus, even assuming that the ATA regulates speech, it does so with respect to the manner of its exercise and covers unprotected speech as an integral part of a criminal act. Strict judicial scrutiny is not appropriate. Rather, intermediate judicial scrutiny is.

III. Allowance of Petitions

A. Presence of Grave Abuse of Discretion

A common feature present in the consolidated petitions before this Court is the remedy they seek - the nullification of the ATA, the official act of a separate co-equal body, pursuant to Sec. 1, paragraph 2 of Art. VIII when grave abuse of discretion exists, or under Sec. 5 of Art. VIII.

Recourse through a petition for certiorari or prohibition means that there must at least be the prima facie allegation of grave abuse of discretion,[224] not simply by claiming that grave abuse of discretion intervened, but by briefly describing how it intervened. Short of these, the Court will dismiss the petition for failure to show the case or controversy that the exercise of judicial power requires.

Despite repeated warnings from this Court and many previous outright dismissals of petitions for failure to

properly plead and allege grave abuse of discretion, some lawyers - it seems - have not learned the lesson that it is not sufficient to simply state that "grave abuse of discretion" had been committed, without more. The abusive act must always be alleged with particularity, together with allegations on why and how the act constituted grave abuse of discretion. This ground, too, yielded not a few dismissals among the consolidated petitions.[225]

To briefly recall the roots of this, power of the Court, the Court was confronted with cases during the martial law days involving the martial law administration, which cases the Court dismissed for involving "political questions" that the judiciary could not entertain because they involved the actions of other co-equal branches of government. This Court position, based on the terms of the 1935 Constitution, was not at all without basis because of the separation of powers principle existing under the 1935 Constitution (and which still exists under our present Constitution).

In refraining a new Constitution after the martial law regime fell, no less than former Chief Justice Roberto Concepcion sponsored the present Art. VIII, Sec. 1 and its "expanded jurisdiction" provision in order to avoid the future recurrence of the country's (and the Court's) pre-martial law experiences;[226] thus, the history-dictated and unique wording of the current 2[nd] par. of Art. VIII, Sec. 1.

A significant decided case on the Court's expanded jurisdiction was Araullo v. Aquino III,[227] which pointed to certiorari and prohibition (under Rule 65 of the Rules of Court) as the appropriate remedies for the review of cases even against the branches or instrumentalities of government which do not exercise the judicial, quasi-judicial or ministerial functions that Rule 65 requires. The primary marker to recognize, according to this case, is the presence of "grave abuse of discretion," not strictly the nature of the function exercised.

Umali v. Judicial and Bar Council restated the Araullo ruling by zeroing in on the nature of the certiorari and prohibition that may be used under the Court's expanded jurisdiction:

> But, the remedies of certiorari and prohibition are necessarily broader in scope and reach before this Court as the writs may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. Thus, they are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[228]

Kilusang Mayo Uno v. Aquino III[229] reiterated Araullo in a similar manner.

Hence, as matters now stand, the Court is now empowered by the combined application of the second paragraph of Sec. 1 of Art. VIII of the 1987 Constitution and Rule 65 of the Rules of Court to determine whether a branch of government or agency or its officials has committed any error of jurisdiction. This error of jurisdiction arises from a grave abuse of discretion.

Any claim of grave abuse of discretion in constitutional litigation has two (2) components, the procedural and the substantive. It is important not only to point in the petition to the "grave abuse of discretion" committed, and to briefly explain how grave abuse of discretion came to exist, but also equally important to prove and argue in detail in the petition why the grave abuse came to exist.

The term "grave abuse of discretion" carries a specific and technical meaning - an act done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction."[230] The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[231] Furthermore, a petition for certiorari is restricted only to "truly

extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void,"[232] or if the petitioner can manifestly show that such act was patent and gross.[233]

These are the parameters that the Court looks for and considers when resolving the issues raised under the grave abuse of discretion part of Art. VIII, Sec. 1 of the Constitution. To point out a subtle distinction, mere violation of the law or of the Constitution is not per se grave abuse of discretion. Without the element of action outside of jurisdiction, a plain error is not the appropriate subject of petition for certiorari but more properly of an appeal to this Court.

A charge of grave abuse of discretion necessarily implies that there is an act on the part of the respondent which exceeds or goes beyond the parameters outlined above. Whether an excess in fact exists constitutes the "actual case or controversy" that the Court resolves in the exercise of judicial power and its complementary remedy, judicial review.

B. Application of Constitutional Litigation Standards

In the present case, Our examination of the petitions and the proceedings shows that while claims of locus standi have commonly been alleged, some of the parties failed to provide details on the personal injury they allegedly suffered or stand to suffer due to the ATA and its enforcement;[234] others failed to support their allegations through prima facie proof stated or attached to their petitions;[235] and still others even failed to claim that their interest or standing should be recognized or accorded "judicial notice" by this Court.[236]

In Southern Hemisphere, the Court outlined the judicial notice that the petitioners can avail of to effectively claim interests and injury to their interests. The Court said:

> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.
>
> Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries, or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the Court has no constructive knowledge.[237] (emphasis supplied)

Thus, jurisprudence is not lacking in guidelines and directions on what petitioners can do to claim the personal interests and the injury that locus standi requires to enable them to seek redress through the courts. They have only themselves to blame if and when they fail to heed these directions. Hopefully, this Opinion, read together with Gios-Samar, would lend enough certainty to guide future petitioners in preparing their petitions.

Among the petitions that failed the actual controversy / locus standi filters are those suing as taxpayers and citizens[238] and who, by their generalized statements as such taxpayers or citizens, failed to show the direct

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personal injury or prejudice they would suffer through the enforcement of the ATA.[239] Specifically, they failed to show the tax collection and spending involved, and how and why they - as plain citizens - would be prosecuted under the ATA. Their claims, thus, never left the realm of speculation.

There, too, are those who claim that their professional interests, either as lawyers,[240] lawmakers,[241] or human rights advocates,[242] necessarily or inevitably lay them open to damage or injury, either to themselves personally or to their activities.[243] Their petitions, though, show claims that are generalized and, for this reason, fall short of the established jurisprudential standards necessary to rise to the required level of damage or injury.[244]

Membership in the Bar, to be sure, makes one an officer of the Court in the administration of justice. But short of an actual appointment as a specially designated or deputized court officer or counsel actively appearing before the Court, a lawyer bears no specific responsibility for the constitutional interests of the citizenry in general that is specifically separate and distinct from that which he/she carries as a citizen.[245]

In Galicto v. H.E. President Aquino III,[246] the Court held that the injury is not something that everyone with some grievance or pain may assert. It has to be direct and substantial to make it worth the Court's time, as well as the effort of inquiry into the constitutionality of the acts of another department of government.[247]

Obviously lacking in evidence of imminent prosecution under the ATA are the petitioners who merely claim that they had been tagged as "terrorists" in the past or who are now under imminent threat of being so labelled.[248]

Tagging almost always requires governmental actions that leave documentary and other trails behind. These documentary evidence, to be considered by the Court, must be validly introduced into evidence pursuant to with the Rules of Court or must at least be attached in the petition as prima facie proof of the petitioner's claim. Without these trails or clear indicators of enforcement intents, the claim of imminent damage or injury must likewise fail.[249]

Nor are lawmakers such as petitioners Lagman, Pangilinan, and De Lima, Belmonte, Sangcopan, and Hataman specially identified in our country as citizens carrying the specific responsibility of serving as guardians of the constitutional welfare of the citizenry outside of their functions as lawmakers.[250]

While indeed they carry out important public functions, any threat or the imminence of danger or threat related to the enforcement of a disputed legislation must specifically be related to their roles and functions as lawmakers. Without these distinctive circumstances, they speak as plain citizens subject to the direct personal injury test to show personal interest or stake in a constitutional litigation exercise.

From the grave abuse of discretion filtration end, of the thirty-seven (37) petitions before us, fifteen[251] (15) impleaded officials purely from the Executive branch, twenty-one[252] (21) impleaded a mixture of officials from the Executive and Legislative branches, and only one (1) petition impleaded only the Legislative branch of the government.[253] As already mentioned above, these petitions must necessarily allege the respondents' actions that constitute grave abuse of discretion and must briefly explain the reason/s for the allegation. Failing in these regards means failure to pass through one of the Court's constitutional filters.

Fourteen[254] (14) out of the fifteen (15) petitions which impleaded officials purely from the Executive branch failed to point to some actual act on the part of the Executive branch or its officials that constitutes grave abuse of discretion. This is obvious since no enforcement action has yet been taken against the petitioners in these 14 petitions. Meanwhile, eighteen[255] (18) out of the twenty-one (21) petitions, which impleaded a mixture of officials from the Executive and Legislative branches, also failed to point to actions by the Executive or the Legislative branches which constituted grave abuse of discretion or the reasons why their actions should be

characterized as grave abuse of discretion. The latter reason is also true for the one[256] (1) petition that exclusively impleaded the Legislative branch.

Based on the foregoing, I submit that the following petitions - G.R. No. 252578, G.R. No. 252579, G.R. No. 252580, G.R. No. 252613, G.R. No. 252623, G.R. No. 252624, G.R. No. 252646, G.R. No. 252702, G.R. No. 252726, G.R. No. 252733, G.R. No. 252736, G.R. No. 252741, G.R. No. 252747, G.R. No. 252755, G.R. No. 252759, G.R. No. 252765, UDK 16663, G.R. No. 252802, G.R. No. 252809, G.R. No. 252903, G.R. No. 252904, G.R. No. 252905, G.R. No. 252916, G.R. No. 252921, G.R. No. 252984, G.R. No. 253018, G.R. No. 253100, G.R. No. 253118, G.R. No. 253124, G.R. No. 253252, G.R. No. 253254, G.R. No. 253420, and G.R. No. 254191 [Formerly UDK 16714] - be dismissed outright.

C. The Surviving Petitions

Left for the Court's consideration on the merits are the following petitions:

- Coordinating Council for People's Development and Governance, Inc., represented by Vice-President Rochelle M. Porras, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 253242;

- Bayan Muna Party-List Representatives Carlos Isagani T. Zarate, Ferdinand Gaite, and Eufemia Cullamat, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 252585;

- Bishop Broderick S. Pabillo, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 252767; and

- GABRIELA, Inc., et al. v. President Rodrigo R. Duterte et al., G.R. No. 252768.

Before proceeding to discuss their substantive merits, however, We reflect for the record the reasons that justified the survival of these petitions for consideration on the merits.

i. Coordinating Council for People's Development and Governance, Inc., represented by Vice-President Rochelle M. Porras, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 253242

The petitioners base their legal standing on the actual as well as the imminent impairment of their rights as a result of the ongoing and the foreseeable future application of the ATA against them.

In their sworn statements and reports,[257] the petitioners allege that the inter-agency body National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) issued an official report containing their photographs; displaying the names and logos of their organizations; and referring to them as communist terrorists[258] or fronts, officials, and members of the Communist Party of the Philippines (CPP), New People's Army (NPA) and National Democratic Front (NDF).[259]

They further allege that, based on personal knowledge and third-person accounts at around the time of the adoption of the ATA, one of their leaders was summarily executed;[260] that their members and offices were subjected to surveillance and threats of raids; and that during a peaceful protest in August 2020, some of their members were arrested and their publications confiscated.[261]

As others would likely be arrested and prosecuted under the ATA, they have contacted their network of legal groups and coordinated with the Commission on Human Rights.

ii.

Bayan Muna Party-List Representatives Carlos Isagani T. Zarate, Ferdinand Gaite, and Eufemia Cullamat, et al. v.

President Rodrigo R. Duterte, et al., G.R. No. 252585.

The petitioners claim legal standing as "victims of terrorist-tagging by State forces ... [which puts them] immediately in danger of sustaining some direct injury as a result of the implementation of the assailed law," which threat of injury is both real and immediate, not merely conjectural or hypothetical."[262]

They attached the official report of NTF-ELCAC where Chapter 6, Annex "A" and Annex "B" contain photographs of the petitioners, their statements and activities, and the names and logos of their party-list organizations, labelling these as communists-terrorists.[263]

The official report issued by the government using public funds establish that the petitioners face a real and immediate danger of prosecution under the ATA and a substantial prejudice as taxpaying citizens. They also aver that this kind of red-tagging is in direct violation of their rights and authority as a legitimate and duly elected party-list organizations, which the Commission on Elections (COMELEC) itself affirmed in Resolution No. 19-006 dated January 30, 2020.[264]

iii.

Bishop Brodcrick S. Pabillo, et al. v. President Rodrigo R. Duterte, et al., G.R. No. 252767

The petitioners allege that, on December 26, 2019, their bank accounts were placed under a freeze order per Anti-Money Laundering Council (AMLC) Resolution TF-18, issued pursuant to R.A. No. 10168, based on National Security Council (NSC) allegations that they are part of communist-terrorist groups and have been engaged in terrorist financing.[265]

The Court of Appeals extended the freeze order to include other accounts.[266] As their accounts have been frozen "for alleged financing of terrorism," they face a credible threat of prosecution under the ATA. Moreover, government officials have formally reported the petitioners to be terrorist organizations.

In particular, National Security Council (NSC) Deputy Director General Vicente Agdamag has filed a complaint, currently pending, with the Philippine Permanent Representative to the United Nations (UN) and with other international organizations in Geneva, Switzerland claiming that the petitioners are fronts of communist-terrorist organizations.[267]

As the NSC is part of the ATC, there is a real and imminent risk that petitioners shall be subjected to the designation and proscription powers of the ATC under the ATA.

These submissions - whether by attachments or allegations supported by arguments - taken together, are enough to give the petitioners the locus standi that the Constitution requires.

iv.

GABRIELA, Inc., et al. v. President Rodrigo R. Duterte, et al. (G.R. No. 252768)

Petitioner GABRIELA argues that it is the target of human rights violations and has been tagged as a communist front,[268] citing several instances where it or its members have been red-tagged. Petitioner De Jesus has been the target of red-tagging and red-baiting while petitioner Wilson was also terrorist-tagged.[269] It attached Annexes "D" to "Y" in support of this averment. Petitioner GABRIELA itself has been tagged as a communist-front by National Security Adviser (NSA) Hermogenes C. Esperon, Jr. in his PowerPoint presentation which they attached as their Annex "Z."[270]

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Petitioner GABRIELA claims that NTF-ELCAC itself filed a verified petition for the cancellation of its registration before the Comelec. It attached a copy of the verified petition as Annex "AA."[271] Its finances, on the other hand, were investigated by the Anti-Money Laundering Council (AMLC), as requested by the National Intelligence Coordinating Agency (NICA).

It cited the following as supporting documents: (1) AMLC's Initial Financial Investigation Report on GABRIELA, Inc. (Annex "AA-1"); (2) March 7, 2019 letter from NICA requesting the AMLC to conduct financial investigation on the subject foreign and domestic non-government organization (NGOs) reported to have been providing financial support to the CPP-NPA through its front organizations and/or NGO (Annex "AA-2"); (3) Letter from ASG Angelita Villanueva Miranda, Chairperson, Legal Cooperation Cluster of the NTF-ELCAC, requesting the AMLC to conduct financial investigation of the financial transactions of Gabriela, Inc./ Gabriela Women's Party List (GABRIELA) (Annex "AA-3"); and (4) May 3, 2019 letter from NICA regarding information received from the Kingdom of Belgium (Annex "AA-4").[272] It is notable that the AMLC's Initial Financial Investigation Report on GABRIELA, Inc. (Annex "AA-1") concluded that "there is likelihood that the funds in the bank accounts of GABRIELA/GAWR may have been used for, or related to terrorism and/or terrorism financing."[273]

Based on these submissions, petitioner GABRIELA sought to establish that it is within the radar of the NTF-ELCAC as an alleged communist-front. Its financial transactions were or are under investigation due to its supposed ties with the CPP. They, thus, face credible threat of prosecution under the ATA.

RESPONSE TO THE MAJORITY VOTE ON PROCEDURAL ISSUES

I respectfully dissent from the majority vote that thirty-five (35) petitions are admissible for judicial review as facial challenges and cases of transcendental importance. I respectfully vote only to admit four (4) petitions - G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 - as as-applied challenges, not facial challenges, insofar as they are directed at Sec. 4, Secs. 5-14, Secs. 16-20, Secs. 22-24, Sec. 25, Secs. 26-28, Sec. 29, and Sec. 34 of the ATA.

My dissent is based on three grounds.

First, the constitutional principle of separation of powers, the constitutional procedural requirements for the exercise of judicial review, and well-established doctrine behoove the Court to dismiss all facial challenges and cases of transcendental importance against the ATA where there are four as-applied challenges against said law.

Second, being a penal law that regulates conduct rather than speech, the ATA is not susceptible to a facial challenge. Even if the Court were to consider the proviso of Sec. 4 of the ATA as a regulation on speech, such proviso would not make the ATA susceptible to a facial challenge, for the speech being regulated is an integral part of an overt act of terrorism and therefore unprotected.

Third, Disini, Jr. v. The Secretary of Justice is not applicable.

I.

Admission of G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 as justiciable as-applied challenges is proper

The petitions docketed as G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 are justiciable and admissible as as-applied challenges.

The petitioners in G.R. No. 253242 cited the official report of NTF-ELCAC, in which their organization and members are clearly identified as part of the CPP-NPA-NDF. Proclamation No. 374 designated the CPP-NPA-NDF as a terrorist organization.[274] Similarly, petitioners in G.R. No. 252585 attached the NTF-ELCAC official report where their groups and members are identified as terrorists and lined up for arrest and prosecution. Some of their members who are identified in the official report as terrorists are elected party-list representatives whom the Comelec affirmed as legitimate.[275] Meanwhile, petitioners in G.R. No. 252767 alleged that their bank accounts were placed under a freeze order under AMLC Resolution TF-18. With respect to petitioners in G.R. No. 252768, their financial accounts are under AMLC formal investigation for being alleged sources of terrorist financing.[276]

The foregoing four petitions constitute as-applied challenges to the ATA. They involve parties with legal standing and raise actual controvery. As such, they comply with the general requirements for the exercise by the Court of its power of judicial review.

The presence or absence of any of these requisites determines whether the judicial review petition filed with the Court shall proceed for consideration on its merits, or shall be dismissed outright for not being justiciable, i.e., for being inappropriate for the Court's consideration on the merits. Compliance with these requisites is jurisdictional and mandatory. Even as the Constitution recognizes that the Court has jurisdiction over justiciable political questions, such jurisdiction shall be exercised only after the Court has satisfied itself that the party before it has legal standing and raise an actual controversy. In Private Hospitals Association of the Philippines, Inc. v. Medialdea, We held:

> [w]hile the remedies of certiorari and prohibition are proper legal vehicles to assail the constitutionality of a law, the requirements for the exercise of the Court's judicial review even under its expanded jurisdiction must nevertheless first be satisfied.[277]

The Court has characterized these requisites as mandated by the Constitution itself. As held in Board of Optometry v. Colet:

> [T]he unbending rule in constitutional law [is] that courts will not assume jurisdiction over a constitutional question unless the following requisites are first satisfied: (1) there must be an actual case or controversy involving a conflict of rights susceptible of judicial determination; (2) the constitutional question must be raised by a proper party; (3) the constitutional question must be raised at the earliest opportunity; and (4) the resolution of the constitutional question must be necessary to the resolution of the case.[278]

The foregoing jurisdictional requirements are not dispensed with through mere consolidation or clustering of petitions. In Republic v. Court of Appeals, the Court declared that "[an] essential requisite of consolidation is that the court must have jurisdiction over all the cases consolidated before it."[279] Thus, notwithstanding the preliminary consolidation or clustering of the 37 petitions in this case, the admission of the four as-applied challenges does not open the back door for the admission of all the other petitions. The Court must satisfy itself that each of the petitions complies with the requirements before it assumes jurisdiction over their challenges to the ATA.[280]

Therefore, I find that the petitions docketed as G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 satisfy all the requisites for the exercise of judicial review by this Court. I vote to admit these petitions for review on the merits.

However, based on the facts alleged and official documents presented in the petitions docketed as G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768, only their challenges to Sec. 4, Secs. 5-14, Secs. 16 to 20, Secs. 22-24, Sec. 25, Secs. 26 to 28, Sec. 29, and Sec. 34 are ripe for adjudication. As to these

provisions, there is prima facie showing that petitioners have the legal standing to raise a constitutional challenge as they have been subjected to the actual enforcement of said provisions or face a direct exposure to such enforcement.

II.

Admission of the other petitions as facial challenges and cases of transcendental importance is not proper

The majority, with due respect, incorrectly admitted the other petitions.

To illustrate, it admitted G.R. No. 252736 on the ground that the "ATA personally affects" petitioner former Senior Associate Justice Antonio T. Carpio, whose public criticisms of the inability of the President "to defend the rights of the Philippines over the West Philippine Sea x x x may expose him to prosecution x x x for inciting to commit terrorism through extensive interference with critical infrastructure intended to provoke or influence the government to take a particular action."[281] In a social media post of the son of the President, Justice Carpio is linked to a destabilization plot.[282] Petitioner former Associate Justice and Ombudsman Conchita Carpio-Morales also "is exposed to the risk of being prosecuted under Sec. 4(c) of the ATA after she initiated a complaint with the International Criminal Court (ICC) against People's Republic of China (PROC) President Xi Jinping."[283]

It also allowed the petition docketed as G.R. No. 252904[284] for petitioners Beverly Longid, Windel B. Bolinget, Joanna K. Cariño and the organizations they respectively work for were impleaded in a petition for proscription (DOJ v. CCP and NPA Petition dated February 21, 2018).[285]

Yet, in Southern Hemisphere v. ATC, the Court declared that parties lack legal standing when they merely peg their case against a "double contingency, where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized."[286] Fear of prosecution is insufficient to lend a petitioner legal standing when said fear is engendered merely by "remarks of certain government officials which were addressed to the general public."[287] The same can be said of the specter of prosecution alleged by the petitioners in the other petitions: it is too obscure and remote, unlike the documented actual enforcement or real exposure to enforcement faced by the petitioners in G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768.

These other petitions allege controversies that, in the words of the majority opinion, "are mere hypothetical/theoretical suppositions."[288] To illustrate, the social media post and contingent reprisal alleged in G.R. No. 252736 do not amount to concrete and direct or imminent but real enforcement of the ATA as would cloth the petitioners therein with legal standing and categorize the controversy they raise as actual. Moreover, petitioners' fear of prosecution is unfounded. The views expressed by my esteemed former colleague Justice Carpio are not wholly opposed to that of the President, who has officially and repeatedly declared before the United Nations General Assembly (UNGA) and the Association of Southeast Asian Nations (ASEAN) that the Philippines considers China bound by the Arbitral Award in the South China Sea arbitration.[289] The ICC complaint of Justice Carpio-Morales was dismissed as early as 2019.[290] The dismissal was for lack of jurisdiction, and such dismissal is not subject to appeal.[291] With respect to petitioners Beverly Longid, Windel B. Bolinget, and Joanna K. Cariño in G.R. No. 252904, the Court takes judicial notice of court records indicating that petitioners have been dropped as respondents in the amended petition for proscription.[292]

In other words, there is no tactual basis to hold that the foregoing petitioners, as well as the petitioners in the other petitions, are facing an actual or imminent enforcement of the ATA as would qualify them as parties with legal

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standing and that there exists an actual controversy.

Therefore, I respectfully dissent from the majority vote in its admission of these other petitions. I vote to dismiss these petitions outright.

It is respectfully submitted that the majority incorrectly adopted an alternative mode of admitting the other petitions as facial challenges and cases of transcendental importance.

It is basic doctrine that the presence before the Court of as-applied challenges precludes the admission of any facial challenge[293] or case of transcendental importance.[294]

In our jurisdiction, the general mode of constitutional challenge is through the "as-applied" mode, i.e., by examining the statute through the prism of a concrete and discrete set of facts showing the substantial and direct impairment that the statute's enforcement has caused a petitioner's constitutional rights.[295] Under this mode, the petitioner may claim a violation of its constitutional rights such as abuse of due process, kick of fair notice, lack of ascertainable standards, overbreadth, or vagueness, but only if petition asserts the violation of its own right; the latter cannot assert the right of a third party who is not before the Court.[296] In other words, the petitioner has legal standing and raises an actual controversy.

A facial challenge, in contrast with and as an exception to an as-applied challenge, can be made even prior to the enforcement of a disputed law, based solely on alleged "vagueness" or "overbreadth" of what the law, on its face, provides. It can be made by a petitioner for himself or on behalf of third parties who are not before the court.[297] In other words, the constitutional infirmities appear in the text or "face" of the statute itself even without considering surrounding facts, i.e., even before evidentiary facts of the enforcement of the law have been presented before the court. The petitioner need not establish legal standing or allege an actual controversy.

Being an exceptional mode of challenge, a facial challenge is not admissible if there is a petition before the Court that complies with all the procedural requirements, qualifies as an as-applied challenge and, more importantly, cite concrete facts upon which the constitutionality of the assailed law can be ascertained. Logic itself dictates that when the Court has occasion to apply the general rule, recourse to the exception would be arbitrary. Otherwise, the purpose of an as-applied challenge as the general rule, and a facial challenge as a rare exception, would be defeated.

In this case, there are four as-applied challenges alleging facts on the actual and concrete or imminent but real enforcement of the ATA. Moreover, these as-applied challenges raised the same issues that the other petitions raised, albeit situated in their respective factual settings. There is no danger, as the majority opinion imagined, that the dismissal of the other petitions would lead to the marginalization of the public interest.

The principle of separation of powers behooves the Court to decide these challenges on the basis of the facts alleged in the four as-applied challenges rather than on the abstract scenarios conjured in the facial challenges. In Executive Secretary v. CA,[298] the trial court's facial invalidation of a penal law was reversed, as the case before it and a number of other decided and pending cases elsewhere were all as-applied challenges. In Board of Optometry v. Colet,[299] the mere availability of an as-applied challenge would bar admission of a facial challenge. In that case, public respondent Judge Colet had issued a preliminary injunction restraining the implementation, in its entirety, of Republic Act No. 8050 (Revised Optometry Law) and its implementing rules, on the grounds that, among others, it is facially invalid for violating the public rights to health.[300]

Petitioner Board of Optometry filed with this a Court a special civil action for certiorari against public respondent Judge Colet for grave abuse of discretion. Among the grounds cited by the petitioner board were:

> I. Respondent judge gravely abused his discretion and/or acted without or in excess of jurisdiction in finding

> that private respondents have locus standi to file the petition a quo.
>
> II. Respondent judge gravely abused his discretion and/or acted in excess of jurisdiction in decreeing that prima facie evidence of unconstitutionality/invalidity of RA 8050 exists which warrant the enjoinment of its implementation.[301]

The Court granted the petition and annulled the preliminary injunction on the ground that the private respondents lacked legal standing to question the law. The Court added that the general rule is that a constitutional challenge must be as-applied in that there must be an existing controversy:

> Civil Case No. 95-74770 must fail for yet another reason. As a special civil action for declaratory relief, its requisites are: (1) the existence of a justiciable controversy; (2) the controversy is between persons whose interests are adverse; (3) that the party seeking the relief has a legal interest in the controversy; and (4) that the issue invoked is ripe for judicial determination. On this score, we find no difficulty holding that at least the first and fourth requisites are wanting.
>
> Then there is the unbending rule in constitutional law that courts will not assume jurisdiction over a constitutional question unless the following requisites are first satisfied: (1) there must be an actual case or controversy involving a conflict of rights susceptible of judicial determination; (2) the constitutional question must be raised by a proper party; (3) the constitutional question must be raised at the earliest opportunity; and (4) the resolution of the constitutional question must be necessary to the resolution of the case.
>
> An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory.[302]

Moreover, the Court noted that while the petitioners had alleged potential impairment of public rights, there was yet no impairment resulting from the actual enforcement of the law:

> It cannot be disputed that there is yet no actual case or controversy involving all or any of the private respondents on one hand, and all or any of the petitioners on the other, with respect to rights or obligations under R.A. No. 8050. This is plain because Civil Case No. 95-74770 is for declaratory relief.[303]

Similar to Executive Secretary v. CA, Board of Optometry v. Colet cautioned against the facial invalidation of statutes without awaiting the emergence of an actual controversy. The Court warned:

> The conclusion then is inevitable that the respondent Judge acted with grave abuse of discretion when he issued a writ of preliminary injunction restraining the implementation of R.A. No. 8050, as well as of the Code of Ethics promulgated thereunder, if one has been issued. Even if there was before him a case involving the law, prudence dictated that the respondent Judge should not have issued the writ with undue haste, bearing in mind our decision, penned by Mr. Justice Isagani A. Cruz, in Drilon vs. Lim.[304] (citation omitted, emphasis supplied)

In Drilon v. Lim,[305] the Court held that there must be an actual infraction of the Constitution in order to overcome the presumption of the constitutionality of a law.

Thus, Executive Secretary v. CA and Board of Optometry v. Colet are unassailable authorities in support of the view that where an as-applied challenge actually or potentially exists, no facial challenge may be entertained against the same law.

The nature of the ATA as a penal law has profound consequences on the applicable mode of constitutional challenge for the case at bar. It is proper to remind petitioners of this court's ruling in Estrada v. Sandiganbayan,[306] which still reflects the applicable doctrines in constitutional litigation cases. In that case, the Court mentioned that the rationale for facial challenges - which allows for the application of void-for-vagueness

and overbreadth doctrines - does not apply to penal statutes, thus:

> The void-for-vagueness doctrine states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." The overbreadth doctrine, on the other hand, decrees that "a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."
>
> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.
>
> This rationale does not apply to penal statutes. Criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.[307] (emphases supplied.)

Accordingly, the ATA, as a penal statute, cannot simply be challenged in its entirety following an "on-its-face" approach by merely alleging that it is vague or overbroad. On the contrary, the general rule for constitutional challenges should govern in this case: only the provisions in the ATA that are sought to be applied to the petitioner may be challenged and not the entire statute. Justice Mendoza's opinion on the applicability of "as-applied" challenges as compared to facial challenges is on point:

> "Facial" challenges are the exceptions. They are made whenever it is alleged that enforcement of a statute produces a chilling or inhibitory effect on the exercise of protected freedoms because of the vagueness or overbreadth of the provisions of such statute. Put in another way, claims of facial overbreadth alone, when invoked against ordinary criminal laws like the Anti-Plunder law, are insufficient to move a court to examine the statute on its face. It can only be reviewed as applied to the challenger's conduct. The same rule applies to claims of vagueness. It is equally settled that "a plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."
>
> In free speech or First Amendment cases, the rule is different because of the chilling effect which enforcement of the statute might have on the exercise of protected freedoms. This reason is totally absent in the case of ordinary penal laws, like the Anti-Plunder law, whose deterrent effect is precisely a reason for their enactment. Hence, we declared in this case that "the doctrines of strict scrutiny, overbreadth and vagueness are analytical tools for testing 'on their faces' statutes in free speech cases or, as they are called in American law, First Amendment cases [and therefore] cannot be made to do service when what is involved is a criminal statute."[308] (emphases supplied)

In deference to a co-equal branch of government, this Court does not favor a wholesale destruction of legislation when only specific provisions of law may be examined for its validity on an as-applied basis. Otherwise, public order can break down and the survival of the State will be endangered when laws can be invalidated on its face for every challenge in that regard. The same is true for legislating measures to combat terrorism. Our Congress has deemed it proper to penalize acts related to terrorism, and parties whose rights may be affected on as-applied basis may seek recourse from courts on actual cases or controversies. This Court is not tasked to resolve hypothetical

cases, nor provide advisory opinions, if it is to uphold the essential mandate given to the judiciary under our present Constitution.

The presence before the Court of four petitions whose parties have legal standing and raise an actual controversy likewise prevents the 33 other petitions from gaining admission as cases of transcendental importance. From 2003 through 2021, this Court has imposed three minimum conditions in order for an invocation of the transcendental importance of the issue raised in a case to exempt the parties therein from establishing legal standing: (1) the public character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) there is no other party having a more direct and specific interest in the case.[309] In Anak Mindanao Party-List Group v. Executive Secretary Ermita,[310] the Court, through the ponencia of one of the petitioners in this case, former Associate Justice Conchita Carpio-Morales, declared these minimum conditions mandatory. As it were, the four surviving petitions involve parties with a direct and specific interest in the constitutionality of the ATA.

The majority relaxed the minimum conditions in order so as not to "clip the wings of the Court." The rationale for its libertarian approach is to enable the Court to "exercise x x x some discretion on significant issues that may not yet be anticipated now but may be brought to the Court in the future."

I respectfully beg to differ from the majority.

To discard the minimum conditions is to transform an exception into a general rule. It should be borne in mind that the general rule of justiciability and admissibility is that a party must have legal standing. One exception is when a case raises an issue of transcendental importance, in which event the case may be admitted even if the party involved lacks legal standing. Being an exception to the general rule, the same must be delineated; that is, the conditions giving rise to such exception must be defined. Otherwise, there would be no point in adopting a general rule and carving out an exception.

An unrestrained use of the "transcendental importance" doctrine goes against the presumption of constitutionality as regards the acts of other branches and constitutional bodies of government. The Court would be arrogating unto itself the power of determining policies which rightly belong to the political branches of government. As eloquently pointed out in Vera v. Avelino:[311]

> Let us likewise disabuse our minds from the notion that the judiciary is the repository of remedies for all political and social ills. We should not forget that the Constitution [had] judiciously allocated the powers of government to three distinct and separate compartments; and that judicial interpretation has tended to the preservation of the independence of the three, and a zealous regard of the prerogatives of each, knowing full well that one is not the guardian of the others and that, for official [wrongdoing], each may be brought to account, either by impeachment, trial or by the ballot box.[312]

Adherence to the mandatory conditions is all the more imperative when the act being questioned is an exercise by the executive branch or legislative branch of their inherent powers or even their core constitutional powers. As the preceding discussion in the section entitled "Exceptions to the Requirement of Legal Standing" would show, the trajectory of Philippine jurisprudence indicates a narrowing avenue for cases of transcendental importance directed against penal statutes.

I pointed out in my ponencia in Joint Ship Manning Group, Inc. v. Social Security System[313] that:

> x x x [T]he Court, through the years, has allowed litigants to seek from it direct relief upon allegation of "serious and important reasons." Diocese of Bacolod v. Commission on Elections summarized these circumstances in this wise:

> (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
>
> (2) when the issues involved are of transcendental importance;
>
> (3) cases of first impression;
>
> (4) the constitutional issues raised are better decided by the Court;
>
> (5) exigency in certain situations;
>
> (6) the filed petition reviews the act of a constitutional organ;
>
> (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]
>
> (8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

It must be clarified, however, that the presence of one or more of the so-called "serious and important reasons" is not the only decisive factor considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. Rather, it is the nature of the question raised by the parties in those "exceptions" that enables us to allow the direct action before the Court.

Notwithstanding that petitioners in said case did not allege enforcement of the law against them, their petitions were admitted because of the "existence of two of the exceptions, particularly: (1) that this case is of first impression; and (2) that the present issue involves public welfare and the advancement of public policy, or demanded by the broader interest of justice [for the] assailed law concerns the welfare of OFWs."

In the present case, the majority has foisted Joint Ship Manning Group, Inc. v. Social Security System as authority in support of the view that the mandatory conditions for the admission of cases of transcendental importance should be relaxed and that the 33 other petitions admitted as such.

It is respectfully submitted that the majority's reliance on Joint Ship Manning Group, Inc. v. Social Security System may be misplaced.

To begin with, the admission of four as-applied challenges precludes the Court from entertaining mere facial challenges and cases of transcendental importance. A doctrine embedded in the principle of separation of powers is that the Court may not accept a mixed bag of as applied challenges, facial challenges and cases of transcendental importance. If the Court must resolve the constitutionality of an act of a co-equal branch of government, it should base its judgment on actual controversies affecting real parties and within the context of concrete facts.

Further, in the foregoing instances where there appears to be no clear parameters for the admission of cases of transcendental importance, the legislations involved were non-penal, i.e., they did not provide penalties resulting in restrictions on liberty for their violation. In contrast, as the following cases involving penal legislations would demonstrate, the Court has tracked an increasingly defined trajectory towards a more stringent application of the rules of justiciability vis-a-vis claims to exceptions from said rules on the ground that the question being raised is of transcendental importance.

Unlike in Joint Ship Manning Group, Inc. v. Social Security System[314] where a labor legislation was involved, Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council[315] and Republic v. Roque[316]

involved the HSA, a penal law. Direct recourse based on the transcendental importance of the issues failed for lack of showing that petitioners were facing any charges under the HSA. Mere possibility of abuse of the HSA was found to be too speculative and theoretical.

On the other hand, in Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City,[317] the Court allowed a challenge to curfew ordinances filed by the parents of the minors being subjected to the ordinance, as the same was already being enforced until restrained by the Court.[318]

In Estipona v. Lobrigo,[319] as the petitioner was facing charges under the impugned law (R.A. No. 9165), the technical defects in his petition did not obstruct the resolution of the transcendental issue raised. The Court also allowed direct recourse to it in Fuertes v. Senate of the Philippines,[320] as the petitioner had been charged under the impugned law.

Thus, while the transcendental importance of the litigated issue may do away or lessen a party's need to establish direct legal standing to sue, such importance does not completely remove the need to clearly show the justiciability of a controversy through the existence of conflicting interests even if only remotely, as well as the ripeness of the issues raised for adjudication.[321] A separate class unto itself would be cases involving penal laws, for then the rule is that the transcendental importance of the question must be accompanied by a prima facie showing of locus standi. This requirement, which is peculiar to cases involving penal laws, reinforces the mandatory condition that there be no other party having a more direct interest in the issue. Together, they effectively bar the admission of the petitioners in the 33 other petitions, for it so happens that the petitioners in G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 have legal standing, clear and solid.

At this juncture, the undersigned respectfully points out that there appears to be a confusion of as-applied challenges with petitions that raise factual issues. The former is perfectly within the jurisdiction of the Court while the latter must be initiated before the lower court. In fact, an as-applied challenge, such as the four surviving petitions, is the general rule for it alleges and establishes prima facie that there has been an enforcement of the law being assailed. This does not involve the resolution of a factual issue, which would require the reception of evidence before the lower courts. There are public and official documents indicating that the petitioners have been subjected to an actual and concrete, if not an imminent but real, enforcement of the ATA. These public and official documents are within the judicial notice of the Court. Moreover, public respondents have not denied any of said documents.

Contrast this with G.R. No. 252904, where the petitioners alleged that some of them (Beverly Longid, Windel B. Bolinget, Joanna K. Cariño and the organizations they respectively work) have been imp leaded in a petition for proscription (DOJ v. CCP and NPA Petition dated February 21, 2018). The public respondents countered in page 66 of their Supplemental Comment that these 3 petitioners have been dropped as respondents from the amended petition for proscription. For this reason, this petition has been dismissed outright.

It must be emphasized that the undersigned voted to dismiss outright those petitions which merely relied on affidavits concerning the enforcement of the ATA. This is due to the fact that such allegations would require the reception of evidence, which the Court is not equipped to handle.

Therefore, I respectfully dissent from the majority vote that the 33 other petitions are admissible as facial challenges and cases of transcendental importance. I vote to dismiss outright these 33 other petitions.

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III.

The majority vote that the ATA is susceptible to a facial challenge is incorrect

The majority is of the view that the 33 other petitions properly subject the ATA to a facial challenge.

I respectfully disagree.

In Southern Hemisphere v. ATC, the Court emphasized the rationale for the general rule that a penal is not susceptible to a facial challenge:

> The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech x x x [T]his rationale is inapplicable to plain penal statutes that generally bear an "in terrorem effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.
>
> x x x If a facial challenge to a penal statute is permitted, the prosecution of crimes may be hampered. No prosecution would be possible. x x x A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it.[322]

As previously mentioned, it is the view of the undersigned that no less weighty than an alleged violation of a fundamental right in a facial challenge is the consideration of the State's interest involved in a disputed legislation. The Constitution and its guaranteed rights will all be for naught if the State itself - that the Constitution supports - is extinguished.

Thus, it is imperative for the Court to maintain the general rule on the non-availability of facial challenge against a penal legislation like the ATA, whose aim is the defense of the State against those who threaten its very survival. This general rule is grounded on reasons stated earlier, particularly on the fact that the ATA penalizes conduct, not speech. Where speech is involved, such speech is unprotected because it is speech integral to criminal conduct.

Therefore, I respectfully dissent from the majority vote that the 33 other petitions can subject to a facial challenge a penal law like the ATA.

The majority further holds that the ATA is susceptible to a facial challenge for it regulates not just conduct but also speech, specifically through the proviso in Sec. 4. The majority included in the coverage of freedom of speech the exercise of cognate rights.

On the contrary, this Court has consistently held that the source and scope of its authority to admit facial challenges are confined to Sec. 4 on freedom of speech and Sec. 5 on freedom of religion under Art. III of the Constitution. Only these provisions expressly and categorically permit a challenge to the mere enactment of a law impairing or threatening to impair the rights guaranteed therein. All other provisions of the Bill of Rights expressly recognize limitations or regulations by law of the exercise of rights protected therein.

The plain meaning of Sec. 4 of the ATA is that, as a general rule, terrorism is committed through well-defined overt acts which manifest the criminal intent and purpose, taking into account the nature and context. Terrorism is not committed through the exercise of the right to freedom of speech and expression. This general rule is qualified by the proviso that terrorism can be committed through, and criminal intent manifested in, specific overt acts enveloping forms of speech or expression. In both, criminalization is directed at specific conduct equivalent to overt act of and manifestation of intent to commit terrorism, not at speech or expression in and of itself. This may be seen in Sec. 4(a): that is, "engag[ing] in acts intended to cause death or serious bodily injury to any person, or

endanger[ing] a person's life" for the purpose of, among others, "seriously undermin[ing] public safety." To illustrate, advocacy per se for the Islamic State would be protected speech but if enveloped within a terrorist attack similar to the Marawi attack, such advocacy would be unprotected speech. Advocacy for cultural-religious cleansing per se would be protected speech but if enveloped within a genocidal campaign similar to the Marawi attack, the same is unprotected speech. Hence, the last proviso of Sec. 4 is directed at the attacks rather than the advocacy per se.

Even assuming that the ATA regulates speech, such speech or advocacy is an integral part of an overt act of terrorism and therefore unprotected. It is axiomatic that unprotected speech is beyond the scope of Sec. 4 of Art. III of the 1987 Constitution.[323] Consequently, a law regulating unprotected speech is not subject to a facial challenge.

At this juncture, it must also be respectfully stated that the oft-quoted phrase "the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing on their faces statutes in free speech cases"[324] have led some members of the Court to erroneously conflate, on the one hand, the preliminary stage of ascertaining whether a law is susceptible to a facial challenge on the ground of overbreadth or vagueness with, on the other hand, the main stage of scrutinizing whether said law serves a public purpose and adopts measures that are reasonable in that they do not suffer from overbreadth or vagueness.[325]

An as-applied challenge does not foreclose a facial review of the entire ATA. There is no test of overbreadth or vagueness independent of or separate from the conduct of judicial scrutiny in an as-applied challenge. Rather, the overbreadth and vagueness tests are components of judicial scrutiny, and are employed to ascertain whether, as applied to the petitioners, the means adopted by the law are reasonable. Whether applying a strict level of judicial scrutiny or an intermediate level of judicial scrutiny of a law that imposes a prior restraint on a protected right, such as the content of or the time and place of an exercise of freedom of expression, reasonableness is measured according to whether the "restrictions imposed are neither overbroad nor vague."[326] Overbreadth and vagueness render the means employed by the law too sweeping and pervasive as to foreclose every avenue of expression, rather than be narrowly tailored to achieve the governmental purpose.

Thus, it is respectfully submitted that there is no inherent incongruity in the admission of the four surviving petitions as as-applied challenges and the facial review of the ATA.

Based on the foregoing, I respectfully dissent from the majority vote that the ATA is a penal law that regulates speech and that, as such, it is susceptible to the facial challenges raised by the 33 other petitions. I vote only to admit the four above-mentioned petitions as as-applied challenges.

IV.

Disini, Jr. v. The Secretary of Justice is not applicable

The majority opines that Disini, Jr. v. The Secretary of Justice has paved the way for a facial challenge of a penal law that implicates speech, including unprotected speech.

A closer examination of Disini, Jr. v. The Secretary of Justice reveals the contrary.

The relevant provisions in Disini, Jr. v. The Secretary of Justice were Sec. 4(c)(2) on Child Pornography, Sec. 4(c)(3) on Unsolicited Commercial Communications, Sec. 4(c)(4) on Libel, and Sec. 5 on Aiding and Abetting of the Cybercrime Law. Undoubtedly, speech associated with child pornography and libel are unprotected speech. The question is whether the Court allowed a facial challenge against these provisions.

The Court addressed the issues relating to Sec. 4(c)(2) and Sec. 4(c)(3) without stating that it was entertaining a facial challenge. Rather, it directly upheld the constitutionality of Sec. 4(c)(2) and Sec. 4(c)(4) with respect to the original author. The Court was silent on whether it was reviewing these provisions facially. In fact, the discussion of the Court on these provisions makes no reference to overbreadth or vagueness. Thus, by the time the Court attended to the facial challenge against Sec. 5, it had already upheld the constitutionality of Sec. 4(c)(2) and Sec. 4(c)(4) as regulations on unprotected speech.

Sec. 5 on aiding and abetting refers to several provisions including Sec. 4(c)(2) and Sec. 4(c)(4). However, Sec. 5 was aimed at the act of aiding and abetting certain forms of communications that have earlier been declared constitutional. Thus, when the Court facially invalidated Sec. 5 in relation to Sec. 4(c)(2) and Sec. 4(c)(4), the invalidation was confined to the speech-related acts of aiding and abetting. In fact, the Court also facially invalidated Sec. 5 in relation to Sec. 4(c)(3) on spam, which is clearly not unprotected speech.

In sum, the facial invalidation in Disini, Jr. v. The Secretary of Justice was of a provision (Sec. 5) of the Cybercrime Law regulating a speech-related act rather unprotected speech. Such facial invalidation has no relevance to the ATA, not even to the last proviso of Sec. 4 as the speech regulated therein, if at all, is an integral part of an overt act of terrorism and therefore unprotected. Rather than Disini, Jr. v. The Secretary of Justice, the general rule, that a facial challenge is not available against a penal law in general or a penal law that regulates unprotected, is the law of the present case.

Therefore, I respectfully dissent from the majority view that Disini, Jr. v. The Secretary of Justice paved the way for the facial challenge raised by the 33 other petitions against the ATA as a penal law.

ISSUES RAISED BY THE SURVIVING PETITIONS

The surviving petitions ask the Court to undertake a facial challenge of the ATA and to invalidate the entire law even before its enforcement, based on the allegations and positions summarized below.

I.

G.R. No. 253242 - Coordinating Council for People's Development and Governance, Inc., represented by Vice-President Rochelle M. Porras, et al. v. President Rodrigo R. Duterte, et al.

A. Vagueness of Section 4 and Section 9

The petitioners argue that the ATA's Secs. 4 and 9 are facially invalid for vagueness since they fail to provide standards that ordinary persons can use to determine whether their speech and conduct violate ATA, or that law enforcers can use to determine if speech or conduct is legal or illegal.[327] On this basis, they conclude that they can challenge these provisions for themselves and for other persons whose rights are impaired.[328] They consider the following phrases too abstract to qualify as useful guides for law enforcers: "undermine public safety," "create a public emergency," "seriously destabilize or destroy," "fundamental political, economic or social structure of the country."[329]

Given the deficiency, the petitioners posit that the Anti-Terrorism Council (ATC) and law enforcers can characterize any act as terroristic by merely attributing to the person a terroristic intent, despite the absence of any outward manifestation of terroristic or criminal intent.[330] The deficiency, in their view, violates the fundamental criminal law precept that no crime exists in the absence of any criminal act or a criminal mind.[331] Specifically, these provisions violate the right to a presumption of innocence under Sec. 14 (2), Art. III of the Constitution.[332]

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The petitioners further argue that Sec. 9 punishes as incitement to terrorism a person who does not participate in terrorism but whose speeches, writings, and other public expressions have content that incites another person to commit an act enumerated in Sec. 4. The provision disregards the need to establish criminal intent and, thus, similarly violates the principles of criminal law.[333] According to them, in view of the vagueness of Sec. 4 and Sec. 9, Secs. 5, 6, 7, and 8 can punish individuals based on the content of their speech, in violation of the express prohibition under Sec. 4, Art. III of the Constitution, which provides that no law shall be enacted impairing freedom of expression.[334]

They further argue that given the lack of clear standards, an ordinary law enforcer can conclude that a politically charged speech violates the ATA.[335] They claim that these provisions, being overly broad, have the effect of forcing a person to muzzle himself lest he violates the ATA through his speech.[336]

B. Prohibition on development and humanitarian work and advocacy

The petitioners argue that Secs. 12 and 13 curtail humanitarian and advocacy work for no apparent legal reason.[337] They object to Sec. 13 which, to them, limits the organizations that can undertake humanitarian work to only the Red Cross and to those authorized by ATC. Since the NTF-ELCAC has declared the petitioners as communist-terrorist organizations,[338] petitioners argue that there is unreasonable curtailment not only of their freedom of association but also of the constitutional policy on the promotion of civic organizations.[339] It also endangers communities facing natural disasters and environmental threats.[340]

C. Proscription of legitimate socio-economic and cultural organizations

According to the petitioners, Secs. 25, 26, 27, 29, and 34 on proscription likewise suffer from lack of standards so that legitimate socio-economic and cultural organizations like theirs can be labelled as terrorists despite the Constitution's declaration that their formation and function serve an important public interest.[341] Under these disputed provisions, they argue that the ATC can subject any organizations to proscription without any clear basis. The ATC, the petitioners contend, is not a judicial or quasi-judicial body that is required to determine probable cause as basis for its actions.[342]

The petitioners also contend that while proscription can be issued within two days, the hearing for a proscribed organization to challenge the proscription can be delayed for up to six months.[343] They claim that, in the meantime, their organization, its members, and the communities they serve are deprived of their freedom of association and their right to represent their socio-economic and cultural identities.[344]

D. Warrantless arrest and detention - Section 29

Finally, the petitioners argue that Sec. 29 is both an unreasonable and an unnecessary infringement of the right to due process and freedom from unreasonable search and seizure. Further, they object to the extension of the period of warrantless detention and the removal of the protection afforded by the HSA as they believe that these acts cannot be justified by any overwhelming government interest.[345]

Based on these grounds and arguments, the petitioners ask the Court to declare the ATA unconstitutional in its entirety.[346]

II.

G.R. No. 252585 - Bayan Muna Party-List Representatives Carlos Isagani T. Zarate, Ferdinand Gaite, and Eufemia Cullamat v. President Rodrigo R. Duterte.

The petitioners are party-list representatives and officers of party-list organizations[347] who cite the following arguments to support their petition:

A. Vagueness and overbreadth of Section 4

The petitioners argue that Sec. 4, together with Secs. 5 to 12, are facially invalid. They claim that, through vagueness and overbreadth, the ATA infringes on the right to due process and smothers protected speech without any valid and compelling government interest.[348] They maintain that Sec. 4 is overly broad such that it can smother protected speech. According to them, Sec. 4 enumerates specific terroristic intents but does not identify the outcomes or outward indicators that would enable the ATC or a law enforcer to objectively attribute such terroristic intents to any specific act. The petitioners allege that Sec. 4 likewise declares that such terroristic intent can be attributed to any act regardless of the stage of execution. In effect, petitioners argue that a law enforcer can point to any act, including speech, and declare it as a terrorist act based on their subjective belief, rather than based on any objective criteria, that the act or speech is animated by one of the enumerated terroristic intents.[349] Even protected speech can be declared by a law enforcer to be a terroristic act if, in the enforcer's subjective assessment, a terroristic thought is behind the utterance.[350]

The petitioners add that Sec. 4 is vague in many of its material aspects.

First, they argue that Sec. 4 refers to the "nature and context" of the act as basis for a law enforcer to deduce a terroristic intent. The relevant "nature and context" of the act, according to petitioners, would depend on the subjective assessment of the law enforcer who can then be influenced by the government's public labelling of persons and organizations (such as the petitioners) and their speeches and activities as terroristic.[351]

Second, they claim that Sec. 4 describes a terroristic intent according to the likelihood of "extensive damage," "extensive destruction," "extensive interference," or "debilitating impact," all of which would depend on the subjective assessment of the ordinary law enforcers who can hardly be expected to make a consistent assessment in the absence of any standard to determine what effects are considered extensive or debilitating.[352]

The petitioners further contend that the phrase "endanger a person's life" is equally vague and can be interpreted to include the violation of quarantine restrictions.[353] According to them, such vagueness is pervasive because other crimes defined in the ATA arise from an act of terrorism under Sec. 4, which can activate the ATC's wide range of powers.[354] Moreover, they claim that vagueness is pernicious because it can lead to abuses even against children and the elderly.[355] Similar to overbreadth, they argue that vagueness can lead to self-repression of thought and expression.[356]

Third, petitioners point out that while Sec. 4 ostensibly places the burden on the government to prove that an advocacy is terroristic, the ATA still enables the government to easily attribute to an act any of the abstract purposes enumerated as terroristic.

Thus, they conclude even the people's revolution in EDSA can be treated as terroristic given the likelihood and actual occurrence of some form of violence.[357] As further example, they claim that the lyrics of songs celebrating the revolution would also be terroristic.[358] They also allege that humanitarian work during this pandemic or any calamity would be terroristic if undertaken by organizations that have been merely labelled as terrorists by the government.[359]

B. Violation of the right to privacy

The petitioners cite the Ople v. Torres ruling to contend that when a vague law places in a person or in a group of persons the possession of privileged information, the law poses a clear and present danger to the right to privacy

and, by extension, to protected speech (both public and private) and to the freedom from unreasonable search and seizure.[360] They argue that Secs. 16, 17, 18, 19, 20, and 22 of ATA invade privacy without any compelling reason,[361] in violation of the affected person's right to due process since the latter has no means of opposing the intrusion.[362] According to them, in view of the vagueness of Sec. 4, the intrusions into privacy under Sec. 16, through Sec. 20 and Sec. 22, would have the effect of inhibiting legitimate dissent.[363]

C. Violation of due process

The petitioners argue that, under Sec. 25 of ATA,[364] in relation to Sec. 11 of R.A. No. 10168 (The Terrorism Financing Prevention and Suppression Act of 2012 or the Terrorism Financing Act),[365] private property and funds can be taken without due process of law.[366] They object to the fact that though not a judicial or quasi-judicial body, the ATC can initiate seizure without notice and hearing.[367] They also allege that no remedy is available against the ATC.[368]

D. Violation of presumption of innocence

The petitioners point out that under Secs. 25 and 27, a preliminary order of proscription (POP) can be obtained from the Court of Appeals (CA) even without probable cause as no act of terrorism has been or is being committed. They attribute this legal defect to the preventative rather than the punitive purpose of the POP. They claim that the CA, moreover, would have no other basis to decide except the DOJ's factual recitation in its application for proscription and POP.[369]

E. Violation of separation of powers

The petitioners argue that the authority of the ATC under Sec. 29 to order the warrantless arrest and detention of persons on mere suspicion of being terrorists amounts to a usurpation of judicial powers by the executive department, in violation of the express prohibition under the 1987 Constitution that "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce."[370]

Petitioners lament that detention, which can last up to 24 days, too, can transpire on mere suspicion and even without any crime being committed. According to them, no justification exists for such prolonged detention period.[371] In effect, petitioners claim that, without complying with the constitutional requirements on the suspension of the privilege of the writ of habeas corpus, the President, acting through the ATC, can effectively suspend the writ for longer than the three (3) days that the Constitution allows.[372]

F. Deprivation of the right to bail

The petitioners posit that if a person is charged under Secs. 5, 8, 9, or 10, the offense would be punishable by 12 years imprisonment. Notably, Sec. 13, Art. III of the Constitution grants a person so charged the right to bail.

Yet, petitioners point out that Sec. 34 of ATA provides that, even if a bail is granted as a matter of right, the court, upon the prosecutor's application, may - in the interest of national security - limit the right of the accused to travel within the municipality or city where he/she resides or where the case is pending.[373] In effect, they conclude that an accused out on bail will be denied provisional liberty.[374]

Based on these grounds and arguments, the petitioners ask the Court to declare the ATA null and void in its entirety.[375]

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III.

G.R. No. 252767 - Bishop Broderick S. Pabillo, et al. v. President Rodrigo R. Duterte, et al.

The petitioners are priests, religious and lay persons and organizations.[376] The arguments they raised to support their petition are outlined below.

A. Vagueness of Section 4

The petitioners argue that, except for Sec. 4(d), Sec. 4 is vague as it deprives a targeted person the right to due process; he is not given "fair notice of the conduct to avoid" whereas the law enforcer is given "unbridled discretion in carrying out its provisions."[377]

They point out that the phrase "endangering a person's life" is susceptible to a range of interpretation in terms of the degree of danger and the number of lives endangered, to the point that a protest action that erupts into some form of violence could be interpreted by law enforcers as terrorism.[378] According to the petitioners, the phrase "extensive interference" of a critical infrastructure, which includes a cyber infrastructure, is open to various interpretations and an ordinary law enforcer would not have the means to analyze the nuances of a particular interference.[379]

As the law does not draw the line between criminal and non-criminal act, they claim that the ATA can end up criminalizing even innocent acts.

B. Overbreadth of Section 6 and Section 9

The petitioners likewise argue that Sec. 6 is so general and abstract that it penalizes the "collecting or making of documents connected with the preparation of terrorism." The petitioners point out that this can cover the making of statements or posters in pursuit of an advocacy work that might be critical to the government and in support of certain legitimate sectors, such as the Lumads.[380] According to them, such protected speech can be implicated simply because the Lumads have been labelled as terrorists.[381]

The petitioners also object to Sec. 9 on speeches and writings whose content incite others to terrorism as it allegedly "intrudes into the area of protected speech and expression because it targets bare messages ... regardless of the actual role of the speaker in the commission of terrorism."[382] The requirement that the speech must "tend to the same end," petitioners claim, is puzzling considering that the person making the incitement is not supposed to take a direct part in the commission of terrorism.[383] They conclude that the expansive scope of Sec. 9 has the effect of stultifying the freedom of speech and conduct of individuals and organizations.[384]

C. Violation of the right of association

To the petitioners, Sec. 12 on providing support is so broad that it could criminalize legitimate advocacy work, which involves training local and indigenous communities in peace-building[385] and in providing sanctuary to internal refugees fleeing military operations or natural calamities.[386]D. Impairment of freedom against unreasonable search and seizure, right to privacy and right to due process

The petitioners argue that Sec. 5, Rule 113 is the Court's authoritative interpretation of the scope of the freedom against unreasonable search and seizure under Sec. 2, Art. 3 of the Constitution.[387] The petitioners posit that it specifies the instances when warrantless search and seizure are legitimate.

Petitioners also object to Sec. 29 of the ATA as it allegedly violates Sec. 2, Art. 3 of the Constitution by authorizing warrantless search, arrest, and detention even on mere suspicion rather than on probable cause.[388]

They further claim that it violates the right to privacy under Sec. 3, Art. 3 of the Constitution as Sec. 29 allows a roving warrantless surveillance and does not require any specificity or even relevance to the crime for which the search is being conducted.[389]

The petitioners conclude that the ATA violates the right to due process and the right to question an unlawful detention since a person - even on mere suspicion - can be deprived of liberty for up to 24 days without any means to question the basis of his detention.[390]

E. Deprivation of presumption of innocence

The petitioners argue that Sec. 25 of the ATA on the power of the ATC to designate terrorist individuals and groups violate the right to be presumed innocent. For petitioners, the ATC can issue a designation based on mere suspicion.

They also allege that even assuming that the ATC could only issue designations based on probable cause, the ATC's impartiality is doubtful since it is composed of the NSC and other security and law enforcement agencies, all of which have been labelling petitioners and other organizations as communist-terrorists. In any case, petitioners claim that the designation by the ATC under Sec. 25 disregards the presumption of innocence and right to due process that individuals enjoy under the Constitution.[391]

IV.

G.R. No. 252768 - GABRIELA, Inc., et al. v. President Rodrigo R. Duterte, et al.

The petitioners are comprised of the General Assembly of Women for Reforms, Integrity, Equality, Leadership, and Action (GABRIELA), Inc., along with its officers and members.[392] The arguments they allege in support of their petition are listed below.

A. Impermissibly vague definition of terrorism violates due process

The petitioners contend that the definition of terrorism under Art. 4 of the ATA is impermissibly vague and lacks sufficient comprehensible standards for persons of common intelligence to know what conduct to avoid. Further, they claim that the ATA affords the implementor unbridled discretion in its implementation. Accordingly, petitioners claim that this impermissible vagueness violates the due process clause of the Constitution.[393]

They also assert that it is left to the discretion of the implementors of the law to determine what (1) acts may be considered as intended to cause death or serious bodily injury to any person, or danger to a person's life, (2) acts may be considered as intended to cause extensive damage or destruction to a government or public facility, public place or private property, and (3) acts may be considered as intended to cause extensive interference with, damage or destruction to critical infrastructure.[394] Further, once the acts have been determined by the implementors, the petitioners allege that it is also up to them to determine, by their sole discretion, the existence of listed purposes since there is no reasonable standards set for "nature and context."[395]

The petitioners further contend that the acts penalized do not need to even result to any of the prohibited conduct as it is enough that the acts penalized are intended to cause such end result. Hence, they conclude that the definition is overbroad as it can cover even legitimate activities and conduct.[396]

They also do not find comfort in the exclusion provided in Sec. 4 because it appears to be an apparent veiled warning due to the qualification of "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety." Further, they contend that the determination

of whether the qualification is present is left to the sole discretion of the ATC.[397]

Correlatively, petitioners now claim that the other provisions in the ATA dependent on the definition of terrorism (Secs. 5, 6, 7, 8, 9, 10, and 14) are necessarily void for also being vague. The petitioners also call particular attention to Sec. 12 on material support, which covers any type of support — monetary or otherwise.[398]

Due to the alleged impermissibly vague definition of terrorism, the petitioners conclude that a facial challenge of the ATA is proper, and thus, the ATA must be struck down as unconstitutional.[399]

The petitioners also posit that the ATC is the law enforcer, the prosecutor, and the judge at the same time under the ATC. They point out that the ATC acts as a law enforcer because it gathers evidence against persons or associations it suspects of being terrorists under Sec. 16 of the ATA. The ATC is also the prosecutor because, according to petitioners, the ATC conducts investigations to determine probable cause under Sec. 25. Finally, petitioners argue that the ATC acts as a judge because it (a) designates terrorists at its own discretion, with finality and without judicial imprimatur under Sec. 25, (b) authorizes law enforcers to arrest and detain without judicial warrant and order the freezing of assets of any suspected person it designates as terrorist.[400] This, according to petitioners, is violative of the due process clause.

B. Violation of the principle of separation of powers

The petitioners argue that Sec. 29 empowers the ATC to authorize the law enforcement agents or the military to arrest a person without a judicial warrant of arrest through a written authority. This written authority, according to petitioners, takes the place of a warrant of arrest issued by a judge after judicial finding of probable cause. In this manner, they claim that the ATA allows the ATC to intrude into an exclusive judicial function, which is violative of the principle of separation of powers.[401]

C. Violation of the right against warrantless arrest, to liberty, to freedom of speech and expression, and to freedom of association

The petitioners contend that Sec. 29 authorizes law enforcement officers and military personnel to arrest on mere suspicion without judicial warrants and without personal knowledge. According to them, this is in violation of the constitutional protection against unreasonable searches and seizures.[402]

They also allege that Sec. 29 violates the right to liberty. They point out that the state has no power to detain a person for more than thirty-six (36) hours without delivering him/her to proper judicial authorities. The petitioners then conclude that Sec. 29 unduly extends the period of detention beyond 36 hours without the law enforcement or military personnel incurring any criminal liability. This is allegedly in violation of Art. 125 of the Revised Penal Code. The petitioners point out that even the waiver of the effects of Art. 125 does not give the government the right to detain a person indefinitely.[403]

The petitioners further assert that the vagueness of the ATA allows its implementors to target critics of the government. Hence, they argue that "it will quash legitimate dissent and quell the people's constitutionally-protected rights and freedom."[404]

Lastly, the petitioners allege that the vagueness of the ATA impedes the exercise of the right to freedom of association. They argue that any legitimate group of persons, organization, or association may be suspected of terrorism under the vague definition of the law. According to the petitioners, the ATA has a chilling effect on the people's right to form associations, "especially if the purpose of such association is to monitor government performance and advocate for improvements or to fight for the rights of the marginalized sectors in society."[405] The petitioners object to branding them as terrorists and communist front organizations or communist-terrorist groups as it violates their right to freely associate. The petitioners explain that their militant orientation and

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affinity to progressive groups are not contrary to law. Hence, they argue that the ATA must be struck down as void for being unconstitutional.[406]

COMMENTS OF PUBLIC RESPONDENTS

The public respondents responded through the arguments outlined below.

They first urged the Court to apply the preliminary rules on the worthiness of the petitions for judicial review,[407] and the application of the "as-applied" challenge rather than a facial challenge because the ATA is a penal law.[408]

According to the public respondents, since none of the petitioners has established that the ATA provisions had been directly applied to them or that they had suffered a concrete impairment of their rights, the Court must find that the petitioners lack legal standing and that the issues they raised are not proper for adjudication.[409] They claim that no petitioner has established any concrete evidence of impairment of their rights,[410] nor of any real threat to these rights.[411]

The public respondents also posit that the mantra of transcendental importance should not replace the fundamental rule, under the principle of separation of powers, that the Court must reserve its exercise of constitutional judicial review for only those acts of the legislative or executive branches of the government that directly and concretely impair the constitutional rights of individuals.[412]

The public respondents add that Rule 65 is not the proper remedial rule to challenge the ATA's constitutionality as its enactment was well within the jurisdiction of the legislative and executive branches of government; thus, no possible grave abuse of discretion or lack of jurisdiction can be attributed to them.[413]

The wisdom of enacting an expanded anti-terrorism law, according to the public respondents, is a political question.[414] The proper recourse is therefore to follow the hierarchy of courts by bringing an actual controversy to the trial court as the latter has the power to decide both the factual and the constitutional[415] questions the petitioners raised.[416] The public respondents argue that the petitions should be dismissed, especially as against the President who enjoys immunity from suit.[417]

The public respondents likewise find the petitions wanting in substance. They posit that a rational basis scrutiny is appropriate for a police power measure like the ATA, whereas an intermediate scrutiny is fit only for economic regulations, and a strict scrutiny is reserved for measures that burden fundamental rights.[418]

Assuming that a strict scrutiny is applied, the public respondents claim that the ATA can withstand the challenge as it serves a compelling government interest, i.e., to ensure the safety and security of the people from terrorism.[419] The ATA too, according to them, employs the least intrusive means and preserves existing safeguards, such as the prohibition against torture.[420]

While the public respondents admit that the ATA is not a perfect law, they nevertheless claim that the mere possibility of abuse or flawed application does not render it constitutionally infirm.[421] To them, the ATA specifically states that its definition of terrorism is based on the best international legislative practices in criminalizing terrorism.[422]

The public respondents likewise argue that the ATA does not suffer from overbreadth and should not be facially invalidated. The public respondents posit that, being a penal law, the ATA is necessarily broad in its application in the sense that it shall be given general territorial effect against socially harmful conduct,[423] except against speech or any other freedoms of expression, including academic freedom.[424] Thus, they argue that the ATA is not facially invalid for overbreadth.[425]

The public respondents cite Disini, Jr. v. The Secretary of Justice as involving a one-of-a-kind ruling as the provisions involved in that case apply particularly to a communication hub: cyberspace.[426] According to public respondents, Disini has no relevance to the ATA for this law expressly excludes advocacy and speech from its coverage.[427]

Even assuming that the ATA burdens protected speech, the public respondents claim that any attempt to facially invalidate it should fail for lack of any submitted allegation or evidence that no circumstance exists under which the ATA would have a valid application.[428]

The vagueness challenge should also fail according to the public respondents. Like the test of overbreadth, the public respondents point out that the test of vagueness "[applies] only to speech and not to conduct."[429] To them, the ATA punishes conduct, not speech.[430]

Moreover, the public respondents explain that the reason for the void-for-vagueness doctrine is the deprivation of fair notice of what constitutes criminal conduct; no crime is committed where there is no law punishing it.[431] Thus, no intrinsic vagueness exists if the law draws the line by which an ordinary person of common sense can distinguish between permissible and impermissible conduct.[432]

The public respondents likewise posit that the text of Sec. 4 is plain to anyone of common understanding. It describes four acts, the corresponding intent for each act, and the purpose common to all four intentional acts. According to the public respondents, taken together, the four intentional acts and their common purpose constitute acts of terrorism as distinguished from ordinary innocent acts, and as further distinguished from ordinary innocent acts.[433]

The respondents recall the petitioners' argument that the text defining the element of intent can be cherry-picked as one law enforcer can differ from another law enforcer on the degree of the damage, destruction, interference, and debilitating effect wrought by any of the four acts under Sec. 4.

The public respondents disagree with this position as the qualifying term "extensive" has an ordinary meaning of total if not nearly total, and clearly signals the terroristic intent.[434] Moreover, the public respondents point out that the purpose of intimidation can be revealed by the nature and context of the intentional acts.[435]

The public respondents acknowledge that the ATA shifted from an effects-based to a purpose-based approach in criminalizing terrorism.[436] They explain that the shift was dictated by the reality that to merely react to the effects of a terroristic act is no longer enough to guarantee people's safety and security. As the siege of Marawi demonstrated, terrorists could use seemingly innocent network building that, although long detected, could not be stopped for lack of proper legislation.[437]

The public respondents further explain that the shift was also driven by the issuance of United Nations Security Council decisions and the adoption of treaty instruments requiring states to adopt preventative criminalization of normally innocent acts that enable terrorism.[438] Nonetheless, they explain that the expansion from punishment to prevention does not result in penalizing a mere act without any criminal intent or a mere intent, such as a threat, without any criminal act.[439]

Since the definition of terrorism under Sec. 4 is allegedly clear, the public respondents argue that the section effectively illuminates the other acts constituting terrorism under Secs. 5, 6, 7, 8, 9, 10, 11 and 12, as well as the necessary factual basis by which the ATC can exercise its power to cause the designation and proscription of terrorist individuals and organizations under Secs. 25, 26, and 27.[440]

Moreover, the public respondents posit that the authorization and conduct of search and surveillance under Secs.

16 and 17 would necessarily be based on probable cause of the commission of the acts defined under Secs. 4 to 12.[441] Thus, the person subjected to search or surveillance may have the order quashed for lack of probable cause.[442]

Further, the public respondents claim that whatever intrusion into privacy that may occur in instances of secret wiretapping is justified by the highest exigency of public safety and reinforced by presumption that the public has only a reasonable expectation of privacy rather than an absolute right.[443] In addition, they argue that the law itself provides safeguards and remedies against abuse.[444]

To them, although Sec. 29 uses the term "suspected," probable cause would still be the basis for the detention of a suspected individual.[445] The public respondents explain that the term "suspected" simply refers to a person who has not been charged or subjected to a court process.[446] The public respondents submit that:

> "Taken in this light, simply because Section 29 uses the word "suspected" does not mean that the "probable cause" threshold has been supplanted and that arrest can now be undertaken under mere suspicion when the entirety of the Act is in fact geared toward protecting the same fundamental rights."[447]

The public respondents point to the need for probable cause prior to the detention of a suspected person to reassure the public that the law carries sufficient safeguards and reiterate that:

> 455. Contrary to petitioners' interpretation, therefore, the use of "suspected" in Section 29 does not at all signify an abandonment of probable cause as threshold in warrantless arrest under Section 5(b), Rule 113 of the Revised Rules of Court. Neither does Section 29 seek to carve out a new exception to the rules governing valid warrantless arrests. Instead, consistent with the context of the entire law, the provision must be construed to contemplate warrantless arrest under the circumstances mentioned in Section 5(b), Rule 113 of the same Rules [as] in Remegio v. People.[448]

Notwithstanding the need for probable cause as basis for the order of the detention of suspected person under Sec. 29 or the designation of a terrorist person or organization under Sec. 25, the public respondents maintain that the ATC remains a purely executive body. Thus, no violation of separation of powers exists.[449]

Unlike proscription, which is a judicial process, the public respondents allege that the designation of a terrorist person or organization under Sec. 25 is a purely executive law enforcement function that "entails a determination of facts constituting an infraction," such that "[o]nce the factual background has been ascertained based on probable cause, the ATC can utilize the tools within its disposal to prevent the proliferation of terrorist acts."[450]

The public respondents clarify that the ATC does not issue a warrant of arrest to cause the detention of a person under Sec. 29. Rather, they explain that the detention is only for the purpose of giving "law enforcement agencies adequate time to obtain sufficient evidence that will hold against judicial scrutiny."[451] For this reason, they claim that the detention requires a mere ATC written order rather than a warrant of arrest.[452]

To them, upon arrest on the basis of a formal charge, a person may avail of provisional liberty on bail, although the extent of that liberty is restricted to the area where the person can travel and his access to mobile communications is likewise restricted. The public respondents believe that these are valid measures, however, to ensure public safety and security, according to the public respondents.[453]

Relying on these positions and arguments, the public respondents seek the dismissal of the petitions and the affirmation of the constitutionality of the ATA.[454]

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PRELIMINARY SUBSTANTIVE CONSIDERATIONS

I. Basic Premises

Disputes, in the usual course, arise from the application of the law on human conduct and interactions. The petitioners object to the law, the ATA, on constitutional grounds, among others.

To be clear in its rulings and to avoid any misunderstanding in reviewing the ATA based on the petitioners' allegations of unconstitutionality, it is prudent to first define the basic premises for its review based on the character of the ATA and the constitutional litigation concepts and principles discussed above.

A. First Basic Premise - ATA is an exercise of police power

I have, to some extent, recited above some of the notorious incidents of terrorism in the world and in the country.[455] The recital is by no means complete and covers only the more notorious examples. I mention these incidents merely as an introduction, to show the reader and the public at the outset the type of evil that confronts the government. These recitals are reiterated here for the same purpose - to gauge the extent of the government's interest in considering the constitutionality of the ATA as the government's response to terrorism.

Underlying the Constitution are three inherent powers of state - police power, eminent domain, and the power of taxation. They are underlying powers because they need not be expressly granted under the Constitution; they are inherent in the State and must necessarily be there to ensure the survival of the society that the Constitution governs and supports.[456] Rather than being granted, the Constitution provides limits to these powers for the protection of the governed.[457]

Eminent domain is the power to take private property for public use upon payment of just compensation.[458] This power does not need to concern us in the present case as no taking of private property, directly or indirectly, is involved. The power of taxation, on the other hand, is the power to assess and collect taxes pursuant to a public purpose and in accordance with due process requirements.[459] It is based on the principle that taxes are the lifeblood of the government and, without it, the government cannot provide for the general welfare of the people.[460] Again, this is not a power at issue in the present case.

What the consolidated petitions bring to the fore is the police power of state or the inherent power of a government to exercise reasonable control over persons and property within its jurisdiction in the interest of general security, health, safety, morals, and welfare. It is an awesome power limited only by the terms of the Constitution that the people established and approved.

The ATA, by its own express statement, was passed by Congress pursuant to its policy "to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations."

Thus, the ATA, an exercise of the police power of state, is strictly a response that a State takes to defend itself. From this perspective, it is a power that expands or contracts depending on the nature, extent, and circumstances of the needs to be addressed or the aggression that it is repelling.[461] When the State's needs are serious, severe or pervasive, the power that it exercises through Congress may similarly be so.

An anti-terror law is effectively a State's self-defense response to terrorism, an unlawful aggression that attacks the very life of a State despite the lack of any sufficient provocation by the State; and which justifies the reasonable necessity for the State repel it, by law and other legal measures. Under these terms, a State does not only have the right but the duty and the justification to pass an anti-terror law like the ATA.[462]

Art. II, Sec. 4 of the Constitution provides that:

> The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service.

In turn, to protect citizens and guard against excesses that may present themselves when the State so acts, the Constitution requires that its exercise must have an objective that is within the authority of Congress to address, and that the means that Congress takes must be reasonably proportionate to the harm sought to be avoided or prevented.[463]

Thus viewed, the balancing that the Court ought to consider should be between the chilling effect that citizens who are not before the Court would suffer, as against the paralyzing effect on the nation's capability to defend itself against the invasive menace of terrorism.

This is embodied in the concept of due process under Art. III, Sec. 1 of our Constitution, which provides - "No person shall be deprived of life, liberty, or properly without due process of law, nor shall any person be denied the equal protection of the laws."

By established jurisprudence, due process requires the reasonableness of the objective that Congress seeks to address; it must be a concern that lies within the authority of Congress to address and there must be proportionality between the objective that Congress seeks to achieve and the means that Congress adopts to achieve its desired end.[464] Procedurally, due process requires notice and hearing by an impartial and competent tribunal before a citizen could be deprived of life, liberty or property.[465]

Terrorism, even in common understanding, is the unlawful use of force or violence, or threat of force or violence, against persons and property, to intimidate, coerce or secure objectives that the terrorists aim for.[466] This definition, incidentally, is not peculiar to the ATA but is a definition and a concept of terrorism widely shared the world over.[467]

It is therefore a concern that the State, given its objective of securing peace, order, security, and harmony within its borders, can legitimately address. If it is to be effectively addressed, its measures should be as wide and as deep as the evil that it seeks to remedy. The background facts and evolution of terrorism will show these.

If the ATA will violate the people's right to due process at all, the violation could only be due to its coverage of matters outside of Congress' authority to act upon, or with respect to the means and measures that Congress has taken, which are subject to tests of reasonableness and proportionality that the Court can decide upon as constitutional issues.

Even the petitioners, in fact, do not contest that the State can combat terrorism.[468] This means that they do not dispute that the ATA is a police power measure. Dean Jose Manuel I. Diokno, the counsel of one of the petitioners, even admitted during the February 9, 2021 Oral Arguments that the ATA is a piece of legislation enacted pursuant to the State's exercise of police power:

> ASSOCIATE JUSTICE GESMUNDO:
> Thank you. Atty. Diokno, would you agree lo the proposition that the Anti-Terrorism Law was enacted by the legislature in the exercise of police power?
>
> ATTY. DIOKNO:
> Yes, Your Honor.

They only claim that the State's methods violate the rights guaranteed to them by the Constitution.[469] From the

due process perspective, the parties merely diverge in their views on the reach or limits of the measures that the ATA contains.

In this light and considering the nature of the power that Congress exercises in passing the ATA, this law should carry the strongest presumption of validity and regularity.[470] Relatedly, the Court had previously held that a statute enacted pursuant to a valid exercise of the police power enjoys the presumption of constitutionality.[471]

Likewise, the level of our scrutiny should, at most, be at the intermediate level, not the strict scrutiny that the petitioners demand.

This too is the position most consistent with the balancing exercise We have adopted all along in our review of the ATA. I find it significant that none of the surviving petitions has given lie to the reality that the State has a compelling interest to prevent and combat terrorism as an evil endangering the nation and its people.

I note too that the petitioners challenge the ATA for the vagueness and overbreadth they discern from its wording, brought on apparently by its comprehensive scope and its departure from the MSA approach. The respondents, on the other hand, defend a law whose measures are drawn from lessons from the country's past MSA, which Congress now seeks to improve on by supplementing the measures that the MSA started and which Congress found wanting.

These are important perspectives that cannot be left out or glossed over as yardsticks in ruling on the ATA measures' reasonableness in this case or in future challenges to ATA. With these as background, the question to ask in a case properly brought to the Court is - are the ATA measures reasonable or are they in excess of what the country needs to contain terrorism?

All these shall be covered in our discussions in this Opinion.

B. Second Basic Premise: The ATA is in compliance with the Philippines' international obligations

One of the basic premises of this Opinion is the recognition that Congress passed the ATA to comply with our country's international obligation on peace and security. In this regard, it is noted that our country adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.[472]

There is no doubt that the ATA is a police power measure that addresses a social problem and serves the public interest. However, unlike other police power measures, the ATA is not merely punitive or regulatory but also preventative, and the public interest it serves is not merely individual protection but collective self-preservation.

Terrorism has been in our statute books since 1970-1971. Yet, it was only in 2007 that its punishment as a distinct crime was adopted through the HSA. Recently, by the growing local and global threats of terrorism and the state obligations of the Philippines under international instruments, necessitated the prevention of terrorism through the regulation, if not restriction, of hitherto innocuous acts. This process is detailed in the discussion that follows.

Under Sec. 17, R.A. No. 6132 (Constitutional Convention Act) dated August 24, 1970 and Secs. 10 and 11, R.A. No. 6388 (Election Code) dated September 2, 1971, acts of terrorism that prevent the holding of a free and honest election are a ground for the Comelec to constrain the right of suffrage through postponement or declaration of failure of a constitutional convention or regular election.[473] Even as the Comelec measures against acts of terrorism resulted in a degree of curtailment of the right to vote,[474] these were sustained by the Court as a valid exercise of police powers to ensure orderly elections under the 1973 Constitution[475] and 1987 Constitution.[476] It is notable that R.A. No. 6132 and R.A. No. 6388 were adopted upon the Court's previous suggestion for Congress to address the recurring problem of terrorist acts tainting the electoral process or causing

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disenfranchisement.[477]

R.A. No. 6132 and R.A. No. 6388 did not define terrorism as a distinct crime; rather, they punished specific acts that were purposely intended to engender fear but were already defined as criminal or electoral offenses under other existing laws.[478] In 1980, terrorism was identified in P.D. No. 1736, dated September 12, 1980, as one of the "illegal means" by which a subversive political party or organization would seek to overthrow the government. Those terroristic means were not identified or declared a crime, whereas the other "illegal means," such as arson or assassination, are already well-defined criminal acts.[479] P.D. No. 1835 cited P.D. No. 1736 as the basis for declaring the CPP as a subversive organization.[480] This Court held that P.D. No. 1835 is a valid restriction on freedom of association.[481]

Terrorism also has been invoked to justify increased airport security checks for firearms and explosive devices. In People v. Johnson, this Court sustained the legality of warrantless body and luggage checks, as such temporary suspension of "the protection of the search and seizure clause" is demanded by the exigencies of public safety against terrorist bombings.[482] At the time of the search, terrorism itself had not yet been defined as a crime, although possession of unlicensed firearms or explosives was already penalized.[483]

Thus, throughout the foregoing period, the mere specter of terrorism was sufficient to warrant police power measures that constrained the right to vote, right to privacy, freedom to associate and freedom to travel. There was no urgent necessity to criminalize terrorism itself for existing penal laws provided the government with adequate means to punish specific acts of terror.

The necessity to criminalize terrorism was high-lighted in David v. Macapagal-Arroyo,[484] where the lack of legislation defining terrorism as a criminal act was raised as a ground to nullity General Order No. 5. This measure called upon the "Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP), to prevent and suppress acts of terrorism." The Court declared that as "Congress has yet to enact a law defining and punishing acts of terrorism," the phrase "acts of terrorism" in General Order No. 5 is vague and unconstitutional.[485]

As early as 1937, there was already an initiative to adopt a transnational definition of terrorism. Under the auspices of the League of Nations, twenty-four states signed the Convention for the Prevention and Punishment of Terrorism.[486] Art. 1 defined acts of terrorism as "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public." However, the convention did not come into force as only one state ratified it and the League of Nations was dissolved.

Sixty years later in 1996, another attempt at drafting an international convention on terrorism was started at the level of the UN General Assembly (UNGA).[487] By 2002, the UNGA ad hoc committee had adopted a working definition of terrorism committed through predicate crimes,[488] and at various degrees of participation and stages of execution, except planning and preparation.[489] Thereafter, at the UNSC, Resolution No. 1566 (2004) defined terrorism as

> [C]riminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism x x x

It is notable that both UNGA and UNSC definitions do not include acts of planning, preparation, and recruitment.[490]

The 2007 HSA defined terrorism as the commission of predicate crimes under the Revised Penal Code[491] and special penal laws[492] but whose purpose is to sow a "condition of widespread and extraordinary fear and panic x x x among the populace to coerce the government to give in to an unlawful demand."[493] By referring to existing penal laws, the definition covers various stages and degrees of participation. However, it does not criminalize the planning, preparatory, and recruitment stages.

Meanwhile, as early as 1997, the UNGA urged members-states to ratify eleven international conventions and protocols to combat international terrorism,[494] and to "enact x x x domestic legislation necessary to implement the provisions."[495] This was followed in 2003 by UNSC Resolution No. 1456 reiterating the call for member-states to ratify the conventions. However, neither UNGA nor UNSC imposed on member-states a binding obligation to incorporate the provisions of the conventions into the domestic legal system.

The Philippines had ratified seven of these conventions but did not adopt implementing legislations.[496] R.A. No. 9497 or Civil Aviation Authority Act of 2008 incorporates some of the provisions of the instruments on aviation safety but imposes only a penalty of six months to one year imprisonment for acts that jeopardize aircraft safety.[497] HSA itself provided for financial forfeiture as a penalty but did not punish terrorist financing as a distinct crime.[498] It did not punish incitement to or preparation for the commission of terrorism[499] or civil aviation and maritime-related offences as distinct crimes of terrorism.[500]

By 2012, the Philippines further expanded the definition of terrorism to include acts that violate international conventions. While the Terrorism Financing Prevention and Suppression Act of 2012[501] (TFPSA) retained the definition of terrorism under Sec. 3 and Sec. 4 of HSA, it added two other categories of acts of terrorism. Under Sec. 3(j)(3), provides:

> Sec. 3. Definition of terms - As used in this Act:
>
> xxxx
>
> (j)
>
> Terrorist acts refer to the following:
>
> xxxx
>
> (3)
>
> Any act which constitutes an offense under this Act, that is within the scope of any of the following treaties of which the Republic of the Philippines is a State party:
>
> (a)
>
> Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970;
>
> (b)
>
> Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;
>
> (c)
>
> Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;
>
> (d)

> International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;
>
> (e)
>
> Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;
>
> (f)
>
> Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988;
>
> (g)
>
> Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
>
> (h)
>
> Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988; or
>
> (i)
>
> International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

Under the TFPSA, the acts defined as terrorism under the foregoing international conventions are considered as acts of terrorism in the Philippines. This particular formulation of the definition of terrorism by reference to existing conventions is consistent with the International Convention for the Suppression of the Financing of Terrorism (ICSFT), to which the Philippines is a party.[502] The ICSFT obliged states to penalize the financing of any act of terrorism, such as "[a]n act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex."[503]

But then the TFPSA is of limited scope. As the title suggests, its subject matter is the criminalization of the financing aspects of terrorism. The HSA, as the only other existing domestic law at that time, punished terrorism committed through predicate crimes. Thus, the effect of TFPSA was the express incorporation of nine international conventions into the Philippine domestic system, without, however, penalizing their violation, except the financing aspect thereof.

In 2019, the International Court of Justice (ICJ) rendered a Judgment in Ukraine v. Russia[504] in which it declared the binding nature of state obligations under the ICSFT:

> [A]ll States parties to the ICSFT are under an obligation to take appropriate measures and to co-operate in the prevention and suppression of offences of financing acts of terrorism committed by whichever person. Should a State breach such an obligation, its responsibility under the Convention would arise.[505]

In the same judgment, the ICJ declared that, by reason of UNSC Resolution No. 1373, whereby the UNSC, "acting under Chapter VII of the Charter, decided that all States shall x x x [r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts," the financing by a State of acts of terrorism is not lawful under international law.

All this time, terrorism itself has been evolving in nature and scope. Back then, acts of terrorism were acts of violence for economic opportunism, specifically the taking of hostages for ransom[506] or the coercion of

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election officials to manufacture votes favoring a particular candidate.[507] Since then, terrorism has taken an increasingly horrific and ideological turn, such as the remote-control bombing in 2005 of a passenger transport in the middle of the financial district, allegedly to "show x x x anger towards the Christians."[508] In 2016, homegrown and foreign terrorists laid siege to Marawi City[509] in order to transform it into a satellite of the Islamic State.[510]

As early as 1999, the shifting form of terrorism was already apparent. As pointed out earlier, the ICSFT, through the UNGA, obliges states to penalize the financing of any act of terrorism. It is significant that under Art. 2.1 of the ICSFT, the term "act of terrorism" takes two forms:

> Article 2
>
> 1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
>
> (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
>
> (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

The same definition found in the ICSFT was presented at the UNGA by the Secretary General,[511] to wit:

> any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council Resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.[512]

Under the foregoing definitions, terrorism is committed by any act which is in violation of a treaty instrument, whether or not penalized by a domestic law, or any act of violence, whether or not constituting a predicate crime, provided there is intent to cause death and serious bodily injury and the purpose, "by its nature or context," is to stoke fear and terror.

The foregoing new formulations were in response to "two new dynamics:" 1) the rise of "armed non-state networks with global reach and sophisticated capacity;" and 2) the pronounced aim of these networks to cause random mass casualties by any means.[513] The increasingly random nature of terrorism means that predicate crimes with predetermined targets are no longer the sole means of committing it.

Accordingly, R.A. No. 10168 further expanded the definition of terrorism by adopting the following third category of acts:

> (2) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

The phrase "any act" is not qualified by the condition that it be in violation of an existing penal law. However, the provision does not state whether all stages of any of said act is being criminalized, including the stages of planning and preparation.

The constitutionality of the foregoing definition of terrorism under the TFPSA has not been questioned. It has not been repealed by the ATA. However, as pointed out earlier, the TFPSA is limited in scope to the punishment of the financing aspect of terrorism.[514]

While it repealed the HSA, the ATA, specifically Sec. 4, is broad enough to cover terrorism committed through predicate crimes. Moreover, as it did not repeal the TFPSA, the ATA covers in Sec. 4 the two categories of terrorist acts in the TFPSA which, as discussed earlier, are: first, acts in violation of the nine international conventions on terrorism; and second, any overt act, even if not constituting a predicate crime. However, while the ATA filled the gap in the TFPSA by imposing penalties on any overt acts of terrorism, the ATA did not prescribe penalties on acts in violation of international conventions. The penalties for these would have to be imposed by legislation incorporating the conventions, such as Republic Act No. 101697 on weapons of mass destruction.[515]

In addition, Sec. 5 to Sec. 12 of the ATA criminalize all stages of execution and degrees of participation, including mere planning, preparation, and recruitment.

Using its Chapter VII powers,[516] the UNSC issued resolutions requiring member-states to punish as terroristic acts the (1) planning, preparation and facilitation of acts of terrorism;[517] (2) incitement to or glorification of terrorism;[518] (3) attacks critical infrastructure;[519] and (4) entry or transit of foreign terrorist fighters (FTF).[520] These UNSC resolutions acknowledge that it is naive to await the horrific outcome of terrorism before punishing the same; rather, it is imperative to suppress terrorism through preventative measures.[521]

To illustrate the extent to which measures to prevent terrorism have been adopted, the European Union issued Directive (EU) 2017/541 obliging members states to criminalize public expressions that provoke others to commit terrorism,[522] including the glorification of past and present acts of terrorism.[523] The need to criminalize glorification has been heightened by the use of the internet for radicalization and recruitment.[524]

For this purpose, the UNSC built a regime of binding sanctions through resolutions issued in exercise of its Chapter VII powers.[525] The most important are UNSC Resolution No. 1267 and UNSC Resolution No. 1373. The substance of these resolutions and their binding nature are discussed hereunder.

UNSC Resolution No. 1267 created a committee that designates the airerafts and assets of the Taliban to be subjected to sanctions. It imposed the obligation on all states that beginning on 4 November 1997, no designated Taliban aircraft may land or take off from any territory and no designated Taliban person or entity may access financial resources or assets from or through another territory.[526] The resolution expressly states that these measures are adopted to enforce a decision of the UNSC in its exercise of its Chapter VII powers.[527]

According to UNSC Resolution No. 1373, the 9/11 attack has shown that terrorism is not merely a territorial but already an international crime.[528] Individual and collective self-defense require all states to punish as a serious crime acts of financing, planning, or preparation that enable the perpetration of terroristic acts.[529] Moreover, all states must apply sanctions on persons and entities designated as terrorists by the UNSC.[530] In this resolution, the UNSC reiterated its decision to declare terrorism as a "threat to international peace and security" and invoked its Chapter VII powers to enforce this decision through the foregoing preventative measures.

UNSC Resolutions No. 1267, No. 1373, and succeeding related resolutions impose binding obligations on states.

The UNSC may issue resolutions that are either binding or non-binding.[531] As a general rule, resolutions invoking Art. 25, Chapter V or Art. 39 and Art. 41, Chapter VII of the United Nations Charter (UNC) are considered decisions that are binding on all States and prevail over other international instruments.[532] Chapter V is about the powers and functions of the UNSC, and Art. 25 thereof states:

> The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Chapter VII is about the powers of the UNSC to address threats to or breaches of the peace and acts of aggression. Under Art. 39 thereof, the UNSC can declare the existence of such situation and "decide what measures shall be taken x x x to maintain or restore international peace and security." Under Art. 41, it "may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures." In the Congo case and Occupied Palestine case, the ICJ interpreted the use of the term "decide"[533] or an express proscription against a particular state behaviour[534] as a signal that the UNSC intended its resolution to be binding, even if the resolution itself did not invoke Chapter V or Chapter VII. Ukraine v. Russia is the nearest to a categorical declaration by the ICJ that an act in violation of a Chapter VII UNSC resolution is not lawful under international law.[535]

In the Lockerbie case, Libya filed with the ICJ a request for an advisory opinion that the bombing of the Pan Am aircraft is governed by the Montreal Convention on the Suppression of Unlawful Acts and that, under the convention, Libya does not have an obligation to surrender the two Libyan bombers to any foreign jurisdiction.[536] The U.S. objected to the jurisdiction of the ICJ on the ground that the dispute had been mooted by UNSC Resolution No. 748 (1992) and Resolution No. 883 (1998) prohibiting Libya from giving safe haven to the bombers and enforcing the prohibitions with sanctions.[537] The case was discontinued when Libya complied with the UNSC resolutions.[538]

The action taken by the UNSC and the ICJ against Libya demonstrates the effects of non-compliance with binding UNSC resolutions on terrorism. In 1992, UNSC issued Resolution No. 731 directing the government of Libya to respond to questions regarding the terroristic bombing of Pan Am Flight 103 and Union de Transports Aeriens Flight 772.[539] As Libya failed to comply, UNSC issued Resolution No. 748 obliging all States to prohibit flights to and from Libya; to impose an arms embargo; and to deny entry of Libyan nationals who have been expelled from other states for involvement in terrorism.[540] Moreover, it set up a Committee of the Security Council to monitor compliance by all states and "recommend appropriate measures" for non-compliance. As explained in the Lockerbie case, Libya eventually complied with the resolutions.

With respect to enforcement of UNSC Resolution No. 1267 and No. 1373, the ISIL (Da'esh) and Al-Qaida Sanctions Committee as well as the Counter-Terrorism Committee identify possible cases of non-compliance and recommend to the UNSC the appropriate course of action to be taken.[541] For non-compliance with counter-terrorism sanctions, the U.S. government has designated Syria, Iran, and Sudan as state sponsors of terrorism.[542] Such designation by the US comes with economic sanctions relating to funds, assets, trade, and investments.[543]

Since the 9/11 terrorist attack in 2001 to the present, the UNSC has issued fifty-one (51) Resolutions on terrorism.[544] In its state practice, the Philippine government has acknowledged the binding nature of UNSC resolutions.[545] This Court has held that the Philippines is bound by "enforcement measures decided by the Security Council for the maintenance of international peace and security under Chapter VII of the Charter."[546] It went so far as to declare that a "directive by the Security Council" can create a "non-derogable duty" on the part of the Philippines.[547] The Philippine Congress has enacted laws implementing UNSC resolutions, especially on terrorism.[548]

The ATA itself declares under Sec. 3(b), (h), (m), Sec. 10, Sec. 25, and Sec. 36 that it is implementing UNSC Resolution No. 1373 and "any binding terrorism-related resolutions x x x pursuant to Art. 41 of the [UN] charter." Sec. 43(i) authorizes the ATC to take appropriate "action on relevant resolutions issued by the UN Security Council acting under Chapter VII of the UN Charter." These provisions adopt preventative measures against

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terrorism, consistent with the requirements of the UNSC. Sec. 27 on the preliminary order of proscription and Sec. 29 on detention are avowedly preventative in purpose. Sec. 16 to Sec. 20 prescribe rules on surveillance for the purpose of prevention.

The Senate deliberations on the ATA reveal that the turning point in counter-terrorism legislation in the Philippines was the 2017 Marawi siege.[549] The necessity to regulate, if not criminalize hitherto, innocuous acts in order to prevent violent acts of terrorism was highlighted by the Marawi siege where foreign terrorists beefed up the ranks of local terrorist and radicalized resident. Access to funding and equipment allowed them to hold off the government for several months.[550]

It should be borne in mind that, at this stage, these findings are limited to the binding effect of resolutions issued by the UNSC in exercise of its Chapter V and Chapter VII powers. These findings are not conclusive on the issue of whether the ATA, as a legislation giving effect to UNSC resolutions, violates the Constitution.

Based on these additional international law perspectives, I add to my earlier conclusions (on the presumptions of validity and regularity that the ATA enjoys, and the level of scrutiny it deserves) that this Court should adopt not only a balanced approach but a flexible one within the limits of the law, to allow the ATA to achieve its aims and objectives and thereby comply in good faith with its international obligations.

It is significant that none of the surviving petitions has denied that the State has a compelling interest to prevent and combat terrorism as an evil endangering the nation and its people. In terms of compliance with our international anti-terrorism obligations, I add as a last point on this topic the consequences should we be remiss in our compliance.

Well-enshrined in public international law is the principle of pacta sunt servanda expressed as a treaty obligation under Sec. 26 of the Vienna Convention on the Law of Treaties, which was ratified by the Philippines on 15 November 1972. Accordingly, the Philippines must comply with its international obligations in good faith.[551] We have emphatically held in a long line of jurisprudence that treaties are binding on the Philippines further to Sec. 2, Art. II of the 1987 Constitution, which provides that the country "adopts the generally accepted principles of international law as part of the law of the land."[552] Sec. 21, Art. VI further provides a constitutional mandate on the validity of treaties or international agreements concurred in by at least two-thirds of all the Members of the Senate.

In Bayan v. Zamora,[553] the Court explained the import of compliance with international law obligations, thus:

> As a member of the family of nations, the Philippines agrees to be bound by generally accepted rules for the conduct of its international relations. While the international obligation devolves upon the state and not upon any particular branch, institution, or individual member of its government, the Philippines is nonetheless responsible for violations committed by any branch or subdivision of its government or any official thereof. As an integral part of the community of nations, we are responsible to assure that our government, Constitution and laws will carry out our international obligation. Hence, we cannot readily plead the Constitution as a convenient excuse for non-compliance with our obligations, duties and responsibilities under international law.
>
> Beyond this, Article 13 of the Declaration of Rights and Duties of States adopted by the International Law Commission in 1949 provides: "Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty."[554] (emphasis in the original)

A state, by act or omission, which breaches an international obligation, also incurs state responsibility due to the existence of an internationally wrongful act. This much is provided under the Articles for the Responsibility of States for Internationally Wrongful Acts, which is a work of codification of international law by the International

Law Commission under the auspices of the United Nations.[555]

As fully discussed above, the Philippines has an international obligation to accept and carry out the decisions of the Security Council, including taking all necessary steps to prevent the commission of terrorist acts and punishing acts related to terrorism such as financing; support, facilitation, participation, or attempt to participate in the financing, planning, preparation or actual commission of terrorism; incitement to or glorification of terrorism; and entry or transit of foreign terrorist fighters, among others. The provisions of the ATA show the country's good faith compliance to the UN Charter and related instruments as a member of the international community.

Terrorist organizations do not respect geographical boundaries and territorial limits, precisely why no less than a collective effort of the whole international community is needed to combat it. Declaring ATA as unconstitutional has transcendental consequences not just for the country, but on other states as well. Of equal import are the consequences, legal and socio-economic, of invalidating an act of Congress, which is essential to the country's compliance with its international obligations.

Further to the legal implications of a breach of international law obligation, this Court recognizes the devastating consequences of not taking all necessary steps in the fight against terrorism. Not only are we endangering the state's preservation, but we also become complicit in the furtherance of terrorist goals if we allow their ignoble goals to fester within our shores. This, in turn, affects international relations and our ability to contribute to international peace and security.

C. Third Basic Premise: the ATA is a Penal Law

A third premise for us is the nature of the ATA as a penal law.

This Opinion has already detailed the development of the criminalization of terrorism in the Philippines in the preceding paragraphs, specifically in the section entitled "Second Basic Premise: The ATA is in compliance with the Philippines' international obligations." Nonetheless, to stress what terrorism is and how it is continuously evolving, We draw attention, too, to its development over the years, both in its nature and scope.

Before terrorism was highlighted nationally and internationally, acts of terrorism in the Philippines were confined to armed individuals coercing election officials to manufacture votes favoring particular candidates,[556] or taking hostages for ransom.[557]

By the turn of the current century, terrorism in the country had taken an increasingly horrific and ideological turn, such as the remote-controlled bombing in 2005 of a passenger transport in the middle of the financial district, allegedly to "show x x x anger towards the Christians."[558]

Other notorious incidents are mentioned above and need not be repeated here. Suffice it to say that terrorism's notoriety in our country peaked in 2016 when homegrown and foreign terrorists laid siege to Marawi City in order to transform it into a satellite of the Islamic State.[559]

The recent fall of Afghanistan to the Taliban is of note - a Middle East development that could have ripple effects on our country, in the way that developments in that part of the world before had affected our terrorist situation.

As previously mentioned, David v. Macapagal-Arroyo[560] stressed the need to criminalize terrorism because, in said case, the lack of legislation defining terrorism as a criminal act was raised as a ground to nullify General Order No. 5, a police power measure. General Order No. 5 called upon the "Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) to prevent and suppress acts of terrorism." Responding to the objection raised, the Court declared that "Congress has yet to enact a law defining and punishing acts of

terrorism," and, on this premise, declared the phrase "acts of terrorism" in General Order No. 5 to be vague and unconstitutional.[561]

Consequently, when the HSA[562] defined terrorism, it sought to avoid vagueness by referring to acts that were then defined criminal offences under the Revised Penal Code and under special penal laws, and added as an element that the purpose of these crimes is to sow a "condition of widespread and extraordinary fear and panic ... among the populace to coerce the government to give in to an unlawful demand."[563] In effect, the government still relied on existing penal laws as the principal means to punish acts of terror.

The penal character of the ATA appears as early as its subtitle which states that it "prohibit(s) and penalize(s) terrorism." This intent is made clear and express under its Sec. 2 which makes it a policy of the State "to make terrorism a crime..."

Clear and established legal implications arise from the ATA's penal character, the first of which is that the ATA is not subject to a facial challenge (as this challenge is described and discussed above). Thus, the ATA - because it regulates acts and conduct - can only be examined through an as-applied challenge. Inasmuch as it applies to speech, such speech is integral to criminal conduct. Hence, it is not subject to a facial challenge but to an as-applied challenge.

II. The ATA - its objectives and approaches

The ATA - by intent and by what it provides - has been an effort to address the HSA's weaknesses and its deficiencies and is our country's direct response to our international obligation to address terrorism within our borders.

It defined "terrorism" in more concrete and far stronger terms. Its Declaration of Policy (Sec. 2) provides the lenses from which terrorism and the ATA's terms can be viewed and understood. It provides:

> SECTION 2. Declaration of Policy. — It is declared a policy of the State to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations.
>
> In the implementation of the policy stated above, the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution.
>
> The State recognizes that the light against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military, and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. Such measures shall include conflict management and post-conflict peace building, addressing the roots of conflict by building state capacity and promoting equitable economic development.
>
> Nothing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government. It is to be understood, however, that the exercise of the constitutionally recognized powers of the executive department of the government shall not prejudice respect for human rights which shall be absolute and protected at all times.

This Declaration unequivocally lays down the purpose and the very spirit or raison d'etre behind the ATA as the congressional response to terrorism. This, in fact, is the government's response that the Executive branch must implement and the Judiciary must observe and respect in interpreting any ambiguity.[564]

The Court explained the rationale behind the use of a policy declaration as an interpretative tool in Sarcos v. Castillo,[565] where the Court said:

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> It is fundamental that once the policy or purpose of the law has been ascertained, effect should be given to it by the judiciary. From Ty Sue v. Hord, decided in 1909, it has been our constant holding that the choice between conflicting theories falls on that which best accords with the letter of the law and with its purpose. The next year, in an equally leading decision, United States v. Toribio, there was a caveat against a construction that would tend "to defeat the purpose and object of the legislator." Then came the admonition in Riera v. Palmaroli, against the application so narrow "as to defeat the manifest purpose of the legislator." This was repeated in the latest case, Commissioner of Customs v. Caltex, in almost identical language.[566] (citations omitted)

In numerous cases,[567] the Court considered a statute's Declaration of Policy to determine the purpose of, or the legislative intent behind, the law. The declaration of policy reflects the essence of the law; it is the statement of its guiding principle, the purpose and necessity for its enactment.[568]

A close examination of the ATA's Declaration of Policy readily reveals the State's three-fold aims and its policy against terrorism:

> 1. To protect life, liberty, and property from terrorism;
>
> 2. To condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people; and
>
> 3. To make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations.

Thus, disclosing the congressional intent to fight terrorism through a comprehensive approach that nevertheless must uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution. This comprehensive approach takes into account a wide range of activities in Philippine society - political, economic, diplomatic, military, and legal means - while decreeing in unmistakable terms that "human rights x x x shall be absolute and protected at all times,"[569] even in the exercise by the executive department of its constitutionally recognized powers.

Under these terms, the ATA is clear on -

(1) what it means and what it covers;

(2) the aims it intends to achieve;

(3) the areas of its operations; and

(4) the limits it imposes in its implementation.

It, thus, aims to protect life, liberty, and property by following and fighting terrorism to the extent it defined in the areas it listed. It further characterizes terrorism for what it is - inimical and dangerous to national security and to the welfare of the people; and identifies it as a crime not only against the Filipino people, but against humanity and the Laws of Nations.

As written, therefore, the ATA uses a comprehensive approach that covers practically all aspects and stages of terrorism - before it takes place (prevention, deterrence, planning, and preparation); the tools and measures to address terrorism (international linkages, regulation of foreign fighters, designation, proscription, surveillance, and investigation); the act of terrorism itself (that includes its definition, the liability of persons who may be involved in terms of conspiracy, proposals, inciting to terrorism, recruitment and membership, and all stages of its commission from attempt to consummation); as well as the post-terrorism stage (that includes investigation, arrest and detention, retribution, and rehabilitation).

The ATA, significantly, has incorporated safeguards against abuses that could be committed in the course of enforcement, and for the protection of constitutional rights. The ATA, therefore, while proceeding against terrorism, at the same time takes pains to ensure that its terms shall be properly used by those empowered to enforce it.

From these perspectives - as shown and confirmed by its own provisions - the ATA is a very comprehensive statute that covers terrorism from its inception and preparatory stage, all the way to its punitive post-consummation stage.

Given the ATA's professed objective of covering all incidents of terrorism, this law should be read and understood in its totality rather than isolating its various parts and considering them as stand-alone provisions; every part should be related to the whole to fully understand the law's thrusts and objectives.

In particular, the ATA's definition of terrorism in its Sec. 4 should be read and understood in its totality, not in terms of specific terms or provisos dissociated from the whole. Its Implementing Rules and Regulations (IRR)[570] should be considered as executive directives to the executive branch, particularly to law enforcers, for the implementation of the ATA. They are there as well for the guidance of the public - as ATA companion reading materials to fully understand how the government seeks to combat terrorism.

This IRR, incidentally, is not being questioned before Us in the present petitions. The Court, therefore, does not need to pass upon the validity of any of its provisions. For now, it is simply evidence of how the government understands and interprets the ATA for purposes of implementation. Sufficient occasions and opportunities should exist in the future for this Court to pass upon this IRR in the future cases where concrete facts are before Us, to which the ATA and its IRR have been applied.

The ATA's wide coverage is a policy choice that Congress has made and is not for this Court to question for as long as it does not intrude into areas that are outside of the concerns of Congress in battling terrorism.

None of the petitioners appear to have any active concerns in this regard although there are some faint echoes of objections to the preventative measures made available even before an actual attack materializes.[571]

These echoes should not be heard for obvious reasons and in light of the lessons the country has learned so far from the HSA — when the bombs explode, the government might have already been remiss in its duties; terrorism has struck and people could already be dead or dying. Like the government, We choose to assume the risks that prior preparation entails and, accordingly, read the Constitution with these thoughts in mind.

On the whole, I do not see any intrusion into the ATA of extraneous matters not reasonably linked to terrorism and that the government has no reason to include within its terms. Thus, the objections I shall focus on - from the prism of police power and due process - relate only to the reasonableness of ATA's measures in battling terrorism.

What the Declaration of Policy and the terms of the ATA clearly disclose is that it is a penal law that addresses and penalizes terrorism. As discussed above, the ATA is therefore not subject to a facial challenge, only to an as-applied challenge based on actual violations of its provisions.

III. The ATA definition of terrorism

A. The origin of the ATA definition of terrorism

Terrorism, as the ATA presents it, is not a canned definition simply lifted from other terrorism laws.[572] Like obscenity that, in the words of one U.S. Supreme Court Justice is hard to define but is obvious when seen,[573] everyone knows and can recognize terrorism for what it is, but its definition has so far eluded universal unanimity. National interests, circumstances, and views vary among nations such that no one specific definition has been

universally accepted.[574]

The ATA (like other national laws on terrorism) gravitates around the UN Security Council issuances as this body has taken the lead in fighting terrorism at the international level and has cascaded its efforts to the different national jurisdictions.[575] Prevention, control, and action against terrorism and terrorists, however, are largely up to the various national jurisdictions to undertake through their own local laws, with significant assistance now from the international community.[576]

This is the reality that we and all other countries should recognize: although the international community provides assistance, the initiative, focus, and continued maintenance of vigilance and efforts against terrorism are our own as a sovereign nation.

B. The Influence on the ATA of Past Experience

The ATA, though taking cues from the UN lead, is the result of our own past sad experiences that were partly due to the weakness of our initial effort - the HSA. Thus, the terms of the present ATA are driven by the need to remedy the HSA's defects and deficiencies that, as our law enforcers bitterly remember, only produced only one conviction and one proscription in the 13 years that it was in effect.[577]

C. Removal of Predicate Crime as Foundation

The first to go in re-formulating the approaches to terrorism under the ATA were the predicate crimes that the HSA recognized as the means to commit terrorism.[578]

Under the ATA, Congress saw no point and no need to go to the process of proving predicate crimes as basis to secure a terrorism conviction. It thus opted to directly define the acts that constitute terrorism without any reference to established predicate crimes. The change is conceptual one; the old thinking was initially focused on predicate crimes to which the element of fear and terror were added to constitute the crime of terrorism. This was the punitive approach that focused on identifying the act of terrorism and mainly penalizing the terrorists after they have done their worst, i.e., after the attack had happened and deaths, injuries, and damages had been sown. The big conceptual leap under the ATA is to bypass these predicate crimes and to define terrorism directly by stating what it is and what Congress seeks to address and prohibit. Another significant step is to view terrorism preventively, i.e., to give primacy to the prevention of terrorist attacks from happening and to grapple with terrorism even before an attack happens to every extent possible.

D. Criminalizing all terrorism-related acts

The ATA, therefore, considers terrorism from all angles and from all its stages - from inception to post-consummation, from anywhere around the world, and by all terrorists whether Filipinos or foreigners. The ATA thus covers terrorism-related acts that happen way before an attack takes places; acts on or about the time an attack is happening; and acts after the attack happens.

Another way of putting it is that the ATA covers all activities that may contribute to, attend, facilitate, hasten, aggravate, or intensify a terrorist attack by addressing them separately from the terrorist attack itself. These are the reasons behind the present ATA Arts. 5 to 12 criminalizing preparatory, contemporaneous, and subsequent acts: they prevent future attacks from happening by nipping them in the bud, so to speak.

E. Terrorism in formula form: Terrorism = Act + Intent + Purpose (Nature & Context)

To define terrorism, the ATA did not depart from the common understanding of terrorism but refined its

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definition by clarifying that its core or starting component is an "act" (in strict legal terms, an "overt act" that metamorphoses into terrorism when attended to by intents and purposes specific to the nature of terrorism.)

In this manner, the definition of terrorism immediately leaves the generality of an innocuous "act" by defining it through its "intent" or intended result — to cause death, injury, or destruction to property and other specified results. Thus, the intent is a material defining component of terrorism and directly links it to the perpetrator as the intent is his.

The first question to ask, therefore, relates to the perpetrator's intent or intended result, based on his overt act itself if this act is strongly suggestive of and could be the basis of a presumed intent. This kind of approach, of course, may not often be fruitful and could be a big cause for objection against the ATA as between an overt act and the intent to kill, injure, or destroy could be a big wide gap.

To cite an example, the possession of a gun or a bomb is not, by itself, indicative of any terroristic intent and would require more indicators of intent before it could be labelled as terroristic in intent, their illegal possession being a crime in itself.

In contrast, the act of planting a time bomb at a subway flower garden is an altogether another story as the series of acts (the possession of the bomb + the act of planting it, properly primed and timed) could already be indicative of terroristic intent.

This example only goes to show that an act which is generally neutral requires more in terms of surrounding circumstances or other additional acts to be considered and examined in order to arrive at the perpetrator's intent to kill, to seriously injure, or to destroy.

This reality has given rise to the petitioners' objections based on lack of standards in the definition of terrorism - a very valid objection if the definition stopped at this point. But even at this point, the generality of an act is already delimited when the intent is considered as this intent is very specific - to kill, to injure, or to destroy.

Interestingly, the USA could also be said to be suffering from a problem of the same nature even if it requires a predicate crime as its jump off point to arrive at the conclusion that terrorism is present. The HSA likewise requires that, aside from the predicate crime, the intent to sow fear or panic, among others, would have to be established separately from the intent specific to the predicate crime.

Thus, under the HSA, two kinds of intents must be considered - the intent to commit the predicate crime (a must in considering every criminal act) and, subsequently, the intent to sow fear or panic that presumably is deduced from the resulting predicate crime or from surrounding circumstances as indicated by extraneous evidence.

To remedy this HSA situation, the ATA introduced its present definition that further narrows down the punishable "act" by requiring that this be supported by an expressly provided purpose, as gleaned from the nature and the context of the act - to intimidate the general public or a segment thereof; to create an atmosphere or spread a message of fear; to provoke or influence by intimidation the government or any international organization; or seriously destabilize or destroy the fundamental political, economic, or social structures of the country; or create a public emergency or seriously undermine public safety.

This is a powerful limiting factor when added to the intent-defined overt act and is rendered operationally feasible by expressly particularizing that the purpose can be discerned from the nature of the act itself, or from its context or surrounding circumstances - i.e., the circumstances that precede, surround, or takes place together with the act itself. Thus, the author of the act, the persons, or the public affected by the act, and the event itself can lend character to the act to define it for what it really is.

The questions to ask in considering an act under these limitations are the questions a newspaper reporter always asks in examining an event or piece of news to be reported - what, when, where, how, why and to what extent? If the answers carry neither relational links to the intent under the first question nor to the listed purposes, then a questioned act cannot be terrorism (although it can constitute another illegality, as in the case of illegal possession of firearms pointed out above).

Viewed from these perspectives, the "act," even a seemingly innocuous one that a viewer starts out with, can change depending on the attendant intent and purpose (as determined by its nature and context).

Thus, to say that the ATA is overbroad or vague because it refers to any "act" may be correct, but only up to a certain point; the act does not become terrorism unless the elements of intent and purpose are thrown in.

Based on this understanding, the more accurate statement is that terrorism under the ATA is intent- and purpose-based - a big conceptual change from the HSA's effects-based approach that looked back to the terrorist and his acts after the terror act had happened.

F. Separate criminalization of preparatory and related acts

The criminalization of acts that, by their nature, are preparatory to defined crimes, is not a new approach in our system of laws. The crimes of Proposal to Commit Rebellion and Inciting to Rebellion are prime examples of crimes related to, but are separate from, the crimes of Rebellion and Sedition defined and penalized under the Revised Penal Code, Arts. 136 (as amended by R.A. No. 6968, known as Coup d'Etat Law, and R.A. No. 10951) and 138, respectively. So are the following crimes under the same Code: Conspiracy and Proposal to Commit Treason (Art. 115, as amended by R.A. No. 10951), Conspiracy to Commit Sedition (Art. 141, as amended by R.A. No. 10951) and Inciting to Sedition (Art. 142, as amended by R.A. No. 10951). These crimes cease to be preparatory acts in legal contemplation but become full crimes in themselves that are related to a main evil that the law seeks to guard against.

Arguably, an objector to this mode of examining an act may still go further and deeper by asking not only for nature and context of the act that point to the intent to kill, injure, or destroy, but by directly asking for fixed quantified standards, perhaps in numerical terms, as some of the petitions have done.

For example, a petition asks what an "extensive" damage is; how "serious" should destabilization or destruction be, or what constitutes "public emergency." Should the term "public" extend only people at the EDS A; in the whole of Manila; or in the whole country?

It is pointless to go into this kind of nitpicking that at times goes into the level of absurdity because the answers can be found or are obvious from the application of common sense or the general knowledge that Filipinos, in this day and age, generally possess. They are obvious, too, from a reading of the ATA as a whole and not in isolated bits and pieces.

What appears certain is that all that the Constitution would require, for due process purposes, is that the elements that the law contain should be fixed and determinable in order not to offend due process. I stress in this regard the quality of being "determinable," not determinate as the petitioners appear to demand.

To be "determinable" means capable of being ascertained from a reading of the law itself and, without significantly departing from its specified elements, what the law means or requires.

Determination can be made using the wording of the law as standard and applying common knowledge of things, ordinary usage in the community, or the usual accepted understanding of how human activity operates, all applied using our "common sense" or the "sound and prudent judgment based on a simple perception of the situation or

facts"[579] or the "the basic level of practical knowledge and judgment that we all need to help us live in a reasonable and safe way."[580]

A law intended for general application cannot be more specific than this standard as the law and its definition apply to people of differing circumstances who would all be expected to understand the coverage of the law because they are patent, obvious or can at least be readily ascertained.

In other words, a law that provides for a less determinable standard would suffer from vagueness as the law's terms would escape common understanding. On the other hand, if the law would be more specific, then the intent of Congress to legislate a general law would suffer; people, otherwise intended to be covered, could be excluded from the law's coverage.

To address this situation, a reasonable reading of the Constitution and usual experience require only the availability of a least common denominator among the different people to which the law is intended to apply. This least common denominator is the understanding of the law using people's common sense.

In the context of terrorism, common sense tells everyone what death, injury, or destruction means and these are the terms that would qualify an "act." The prohibition against killing is a rule that everyone of ordinary knowledge about life should know intuitively or by information.

Crimes described under these terms are penalized by our established laws which have been accepted, without any detailed explanation in the law itself of what all the individual terms used in the law mean or connote. Acceptance comes because the terms are self-explanatory or are generally understood through established common usage or common sense.

To be sure, explanations, however detailed they might be, could be useless to those who do not conceptually want to accept the ATA for their individual or personal reasons; none can be so blind as those who do not want to see.[581]

In defining rebellion and coup d'etat, for example, the Revised Penal Code simply provides:

> Art. 134. Rebellion or insurrection; How committed. — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives. (As amended by R.A. 6968).
>
> Article 134-A. Coup d'etat; How committed. — The crime of coup d'etat is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications network, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office of employment with or without civilian support or participation for the purpose of seizing or diminishing state power. (As amended by R.A. 6968).

without raising questions about the validity of the law because of the use of the terms "rising publicly," "taking up arms," or "removing allegiance" and what they exactly mean, or what "power or prerogatives" include. In the same manner, there could be no question on what constitutes a camp or how big it should be or how many soldiers it should house to be considered a camp.

In any case, under the ATA, nature and context should be sufficiently precise for a person to know the prohibitions the law carries as these will define whether his act falls within the coverage of the law.

Intent, of course, is another matter as it cannot refer to purely internal intent, particularly from the prism of enforcement. In law, intent- reckoned at the time of an "act" and without knowing its results - must be supported by material evidence or matters that can be perceived or deduced, either from the act itself, or from surrounding circumstances as shown by material evidence. Jurisprudence, of course, presumes that the result of an act, alter its consummation, has all along been intended.

In the same manner, the adjective "extensive" used in relation with destruction is not difficult to understand as it denotes a substantial or great amount. Aside from its dictionary meaning, the term is understood using ordinary common sense and the context of use. Additionally, the intended meaning of the term "extensive" is obvious from the rest of Sec. 4 which speaks of death or serious injury in the same breath that it speaks of "extensive" damage. It is obvious that no quantified price or cost is necessary because exact amounts are not that relevant to terrorism; what assumes relevance is the destruction and its extent, both of which can readily be perceived.

Thus, while the adjective "extensive" does not expressly translate to any specific amount, the law is reasonably certain if the extent of destruction is determinable. This nitpicking could be one of the precise reasons, by the way, why an "as-applied" challenge is required, not a facial challenge in testing for the constitutional validity of an act penalizing terrorism.

Before a court and, as already mentioned above, in the event the issue is reduced to what "extensive" exactly means, the whole listing of the items enumerated would be considered by the court under the principle of ejusdem generis. Damage would be extensive if compared to the other listed items that can serve as measures of the damage that the law intends or considers. Among those listed are death, serious bodily injury, and weapons of mass destruction. Common sense, applied in its most ordinary meaning, would already suggest what "extensive" damage the law and the courts would require under the definition of terrorism.

From another perspective, the definition of terrorism, because of the way it is formulated, has opened up concerns that "terrorism," as defined by Congress might be vague and/or overbroad. Critics decry the broadness of the law as to its reaches as it apparently gives law enforcers the leeway to make an "interpretation" so as to include acts that may not be unlawful as acts of terrorism.

This is perhaps largely due to the phrase "regardless of the stage of execution" found in the epigraph of Sec. 4. Moreover, the use of the words "acts intended" in defining specific acts constitutive of terrorism give the appearance that the State's reach is overbroad and does not give potential suspects a "fair notice" of what acts to avoid.

Contrary to these seemingly grave concerns and observations, the phrase "regardless of the stage of execution" is no different from the offenses the Revised Penal Code (RPC) punishes. The only difference between the ATA and the RPC is that the latter provides for specific and differing penalties depending on the stage of execution while the former does not. Nonetheless, this is not a constitutionally objectionable feature of the ATA because it is the absolute prerogative of Congress to determine the proper subjects of the legislation it is enacting.

Besides, crimes in the RPC are predominantly defined by the evil results sought to be prevented coupled with the intent of the perpetrator to achieve such results. For example, Art. 248 of the RPC defining and penalizing the crime of murder states:

> Article 248. Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:
>
> - With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to

> weaken the defense or of means or persons to insure or afford impunity.
>
> - In consideration of a price, reward, or promise.
>
> - By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
>
> - On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
>
> - With evident premeditation.
>
> - With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse, (emphasis and underscoring supplied)

The phrase "shall kill another" coupled with "deliberate [criminal] intent" enunciated in Art. 3 of the RPC and with any of the aforementioned circumstances define what "murder" is. The law does not enumerate each and every act (e.g. shooting, stabbing, etc.) which may result to the death of another in defining the crime of murder.

To my mind, it would be absurd to require Congress to enumerate the ways in which a person may commit the crime of murder for the number of these ways is limited only by one's imagination. Needless to say, Congress being composed of natural persons subjected to human limitations - is not omniscient and cannot be expected to predict each and every future scenario on matters it wishes to govern.

Clearly, to the RPC, the fact that "murder" has been committed can be concluded based on an act's result and intent - the death of one person deliberately caused by another under the enumerated circumstances.

To apply the above statement, one's act of pushing another off the rooftop of a tall skyscraper cannot simply be to vex; it is, at the very least, an attempt to cause the letter's death or serious physical injuries - a situation where law enforcers are duty-bound to take action in order to prevent the obvious result of death or serious physical injuries and to hold the perpetrator criminally liable for his or her actions.

As to the imputation of being overbroad and vague, the crime of "terrorism" as defined in Sec. 4 of the ATA bears a similar method of legislative definition. Like murder, terrorism is defined by the act's result coupled with the perpetrator's intent. For instance, the first mode of committing terrorism under Sec. 4(a) of the ATA reads as follows: "[e]ngages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life."

The use of the phrase "intended to cause" (to spell out the requirement of criminal intent) along with the phrases "death," "serious bodily injury," and "endangers a person's life" (to point out the result sought by Congress to be prevented) effectively qualifies the phrase "engages in acts;" thereby, greatly reducing, if not completely eliminating, traces of vagueness or overbreadth from the first mode of terrorism.

Like the crime of murder, terrorism under its first mode of commission effectively covers all acts and instances that may lead to "death" or "serious bodily injury" without including those "protected" acts not intended to cause these results.

Corollary, the issue of vagueness or overbreadth in the crime of terrorism opens up the issue of whether courts and prosecutorial agencies are the only recognized government entities constitutionally-empowered to perform actions that, temporarily or permanently deprive one of some right on the ground of probable cause—to the exclusion of all others.

To address this quandary, courts should recognize that most criminal statues possess an inherent but limited flexibility. This means that, in the performance of their duties, law enforcers are expected to exercise some degree of discretion to evaluate the attendant circumstances necessary to determine probable cause. The discretion should be sufficiently wide to allow law enforcers to act in the discharge of their duty to protect the public from harm but should be no wider than reasonable necessity demands.

By jurisprudence, the Court has established that "[t]he existence of probable cause justifying the warrantless search is determined by the facts of each case,"[582] and thus expands or contracts based on what reason dictates to these facts. The incontrovertible minimum is that "[an] arresting officer must justify that there was a probable cause for an arrest without a warrant."[583]

To "justify" again implies the use of reason and its applicable to the attendant facts. Thus, the discretion, although not quantified in terms of specific metes and bounds, should be determinable based on the standard of reason.

These established jurisprudential tenets imply that law enforcers are, in a limited sense, permitted to assess for themselves the existence or non-existence of probable cause in the course of performing their duties. A contrary principle would render the State inutile in performing its duties under the social contract and would signify the pointless surrender of certain rights in exchange for protection.

In a pragmatic sense, law enforcement serves no purpose in the context of the governing social contract if they cannot even guarantee public safety or, at the very least, the equal enjoyment of public rights. Law enforcers would be less than fully effective in delivering the State's end under its social contract with the governed if they can perform their duties only after, not before, the consummation, of a crime.

To reiterate an oft-repeated principle in this Opinion, the timing of the State's approach to crimes - whether it should be before or after the commission of a crime - pertains, too, to the wisdom of the law which Congress—not this Court—is empowered to address.

G. Act of terrorism - What it is not

The ATA, bowing to constitutional demands and in a last attempt to narrow the definition of terrorism, resorts to legalism by stating what, in legal contemplation, the punishable act is not: terrorism does not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil or political rights that are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

For clarity and certainty, the ATA also provided that these rights do not include activities that are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

This formulation has led some of the petitions to mockingly deride the ATA for excluding the exercise of civil and political rights under its coverage, but at the same time providing the seeming twist that the exclusions do not include acts intended to cause death or serious physical harm or create a serious risk to public safety.

The provision, to be sure, is not perfect, but does not contain any insurmountable contradiction. The seeming twist only effectively declares that any act intended to achieve the ends of terrorism are excluded, omitting in this attempt at simplicity that an act with such intent cannot be an exercise of civil or political rights. Instead of rendering the law vague or confusing, the twist in feet renders the ATA internally consistent.

Understood in this sense, a demonstration that becomes a riot resulting in death or injury does not remove it from being a protected political right. It only ceases to be so once it is shown that the intent had always been to cause

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injury or death or destruction for the defined purposes of terrorism, in which case the terrorism would be deemed to have been committed.

Implicit in this explanation, of course, are narrow distinctions whose application may lead to abuse or that law enforcement authorities may not be in the position, or may not have the capability, to appreciate.

The possibility of abuse is always present in any law however perfect its formulation may be. Such possibility cannot and should not be a valid reason for objection or for the invalidity of the law.[584] No extended discussion, to my mind, is needed to support this statement and conclusion.

Neither should enforcers' capability to recognize distinctions be a ground for the law's invalidity if the distinctions in the law are obvious, patent, or determinable, as already explained above. Enforcers' competence is also another matter that does not go into the validity of a law that is sufficiently clear and certain in its terms.

MAIN SUBSTANTIVE CONSIDERATIONS

In view of the foregoing disposition of the preliminary and procedural issues (in particular, that no facial challenge is allowed against the ATA and the adoption of the intermediate level of judicial scrutiny as the appropriate approach), the outstanding substantive issues raised by the surviving petitions are consolidated and restated as follows:

> I.
>
> WHETHER OR NOT SECTIONS 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 AND 14 OF REPUBLIC ACT NO. 11479 VIOLATE SECTIONS 1, 4 AND 14, ARTICLE III, 1987 CONSTITUTION ON THE GROUND OF VAGUENESS.
>
> II.
>
> WHETHER OR NOT SECTIONS 16, 17, 18, 19, 20, 22, 23 AND 24 OF REPUBLIC ACT NO. 11479 VIOLATE SECTION 2 AND SECTION 3, ARTICLE III, 1987 CONSTITUTION ON THE GROUND OF UNREASONABLENESS.
>
> III.
>
> WHETHER OR NOT SECTIONS 25, 26, 27, 28, 29 AND 34 OF REPUBLIC ACT NO. 11479 VIOLATE SECTIONS 6, 8, 12 AND 13, ARTICLE III, 1987 CONSTITUTION.
>
> IV.
>
> WHETHER OR NOT SECTION 29 OF REPUBLIC ACT NO. 11479 VIOLATE THE PRINCIPLE OF SEPARATION OF POWERS UNDER THE CONSTITUTION.

I. Whether or not Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Republic Act No. 11479 violate Sections 1, 4, and 14, Article III, 1987 Constitution, on the ground of vagueness

In both their submissions and oral presentations, petitioners acknowledge that the ATA aims to protect public safety and security. However, they argue that the ATA employs means that restrict constitutionally protected rights in a way that is not narrowly targeted. Petitioners claim that the provisions of the ATA are so vague that the law's impending enforcement on them shall spell an imminent impairment of their constitutionally protected rights to due process and freedom of expression. The provisions also are an unwarranted intrusion into their right to be secure in their homes, effects and persons and the privacy of their communications.[585]

Petitioners seek the nullification of Sec. 4 of the ATA on the ground that it is overly broad and vague such that

this provision violates their right to due process and freedom of expression. Sec. 4(a) penalizes mere intent for the actus reus is unclear, making its imminent application on petitioners violative of their right to due process.[586] Moreover, the term "endanger" is open to subjective interpretation with the effect that the imminent enforcement of the provision on petitioners can smother freedom of expression.[587]

According to petitioners, the vagueness of Secs. 5 to 14 generally stems from the vagueness of Sec. 4.[588] In Sec. 5, no standards are provided by which the existence of the threat can be ascertained.[589] The terms "planning, preparing, and facilitating" and "participation" in Sec. 6 refer to equivocal acts that could be interpreted in many ways.[590] Even "training" can cover a range of activities, while possession of objects, without naming said objects, can mean anything.[591] Conspiracy under Sec. 7 is ill-defined for no evidentiary standards are specified by which a law-enforcer would know that an agreement to commit terrorism exists.[592] Sec. 8 is inconsistent with Sec. 3(g) for the proposal in the former is to commit terrorism under Sec. 4 whereas the proposal in the latter is to commit any act of terrorism.[593] Sec. 9 on incitement to terrorism can cover speech for the definition of terrorism is not confined to predicate crimes.[594] Although the IRR clarified that incitement requires a reasonable probability of success, this amounts to an unauthorized amendment.[595] The IRR also attempted to correct the vagueness of Sec. 10 by adding the requirement that recruitment be intentional and knowing.[596] Sec. 11 does not clarify whether a person designated or proscribed by the ATC can be considered a foreign terrorist when travelling abroad.[597] Even support for terrorism under Sec. 12 does not account for the situation when there is lack of knowledge that terrorism is being committed by the recipient of support.[598] Moreover, support is penalized regardless of whether the giver shares the purpose of the recipient.[599] Sec. 13, as an exception to Sec. 12, is also vague for the term "impartial" is subjective.[600] The definition of accessory under Sec. 14 does not seem to require criminal intent.[601]

Petitioners argue that the foregoing deficiencies cannot be remedied by the corrective interpretation in the IRR or the language of international law.[602]

Public respondents maintain that Sec. 4 is clear and constitutional. It is a complete and unified structure. Sub-paragraphs (a) through (e) identify five distinct actus reus. The clause beginning with the phrase "when the purpose ..." identifies the mens rea.[603] The last sentence excludes from the scope of actus reus acts of advocacy, protest, dissent, etc., provided they are "not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."[604]

In applying the intermediate level approach to address the foregoing issue, the questioned provisions shall be situated in the context of the two-fold purpose of the ATA, viz.: to comply with Philippine treaty obligations under the UNSC regime on terrorism, and to ensure flexibility in the legal response of the Philippines to the shifting modes of terrorism.

Restating the rule on vagueness in an as-applied challenge

Sec. 14, in relation to Sec. 1 of Art. III of the Constitution, defines criminal due process to mean notice prior to investigation, apprehension, prosecution, and conviction.[605] The mirror test of fair notice requires that any person of common sense understands the plain meaning of the text of the law taken in its entirety[606] and, based on that understanding, know the range of behaviours that is covered by the law and the specific behaviour that would violate it.[607] The person of common sense would not have to speculate on what behaviour is criminal.[608] However, it is not necessary for the law to specify how and why a violation is committed as these are evidentiary matters for the court to appreciate.[609]

The mirror test further requires that any ordinary law enforcer, acting on the basis of the plain meaning of the law

in its entirety, would know the reasonable parameters of the behaviours that are covered by the law and the basic criteria by which to identify the particular behaviour that violates it.[610] The law enforcer would not have to rely on personal bias and subjective opinion to enforce the law in any given situation.[611] It is sufficient for the law to provide a comprehensible standard; it is not necessary for it to detail the precise behaviour and exact scenario, as these evidentiary matters are for the court to appreciate.[612]

Moreover, in an as-applied challenge based on vagueness, the test of fair notice is satisfied even if the language of the law is imprecise, provided it can be salvaged through construction.[613]

A. Application of the tests to Section 4

Sec. 4 passes the tests of fair notice and comprehensible standards.

As public respondents correctly pointed out, Sec. 4 is a unified and complete definition composed of four inter-related segments. Its meaning may only be understood when these segments are read together and in relation to the entirety of the ATA. This is basic statutory construction.[614] The fragmented reading adopted by petitioners goes against reason and practice, for every statute is deliberated upon and enacted as a whole rather than as the sum of all of its parts.[615]

i. First three elements of terrorism under Section 4

The first segment identifies overt acts rather than mere thoughts or intentions. This is borne out by the plain meaning of the active verbs "engages in acts," "develops," "manufactures," "possesses," "acquires," "transports," "supplies," "uses," "release[s]," and "cause[s]." These acts have outward manifestations in a specific point in space and time, i.e., in the here and now. They do not exist merely in the mind.

At the same time, the overt acts being engaged in must be accompanied by an intent to cause a particular harm, namely: "death," "serious bodily injuries," "endangerment to life," "extensive damage or destruction to a government facility, public place or private property." With respect to the overt acts "develop," etc., the intent to cause harm is presumed from the nature of the object of the act, which are weapons and explosives. The overt act of releasing or causing are also deemed to have a harmful intent in view of their object, which are dangerous substances, fire, floods, or explosions.

The intent is unequivocal because the nature and extent of the harm intended are linked to the type of overt acts performed. Thus, if the particular harm is actually produced by the overt act, the specificity of the intent would not be difficult to discern. If the particular harm is not actually produced by the overt acts, the specificity of the intent can still be ascertained from the overt acts that have been performed. It should be borne in mind that, under Sec. 4, terrorism is committed without regard to the stages of execution and to the physical absence of the perpetrator in Philippine territory.

Together, the overt acts performed, the intent to cause harm, and the specific harm linked to each type of overt act make up the first segment of Sec. 4. The function of this segment is to delineate three elements of terrorisms: (1) the specific overt acts, whether or not already penalized as ordinary crimes; (2) the intent to cause harm, whether or not said harm has been produced; and (3) the link between the specific overt acts and the particular harm intended.

ii. Fourth clement of terrorism under Section 4

Unofficial copies of the ATA that have been published, such as by CD Asia, incorporate the provision on terroristic purpose into Sec. 4(d), as though such purpose qualifies only the overt acts of "[r]elease of dangerous substances, or causing fire, floods or explosions."[616] In contrast, in the official copy of the ATA that was

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published by the Official Gazette, the provision on terroristic purpose is not indented but rather separated by a space from the preceding enumeration of overt acts.[617] Thus, the provision on terroristic purpose qualifies not just the overt acts under paragraph (d) but all the overt acts in the preceding paragraphs (a) through (d).

The second segment of Sec. 4 identifies the terroristic purpose of the overt acts, to wit: (1) intimidate the general public or a segment thereof; (2) create an atmosphere or spread a message of fear; (3) provoke or influence by intimidation the government or any international organization; (4) seriously destabilize or destroy the fundamental political, economic, or social structures of the country; (5) create a public emergency; or (6) seriously undermine public safety. The elements of overt act, intent to cause a specific harm, and linkage between the act and the harm must be accompanied by one or more of the foregoing terroristic purposes. Terroristic purpose is the fourth element of the crime of terrorism and it is separate and distinct from the element of intent to cause harm.

iii. Fifth element of terrorism under Section 4

The third segment of Sec. 4 enumerate the standards by which a terroristic purpose is identified. The standards are "nature and context" of the overt acts performed and the harm intended. These standards refer to the overt acts for the phrase "nature and context" comes after the proximate antecedent "such act."[618] Thus, "nature and context" are concrete and specific standards for they are ascertainable from the overt acts performed. As such, they are sufficient standards for they enable ordinary individuals and law enforcers to know which acts are terrorism and which are not.

iv. Express exclusion of advocacy

The fourth segment is a carve-out clause. It declares the general rule that the definition of terrorism under Sec. 4 shall not include overt acts of "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights" which are "not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety." Thus, a protest that results in a riot but which protest was not intended to cause death, etc., would not qualify as an overt act of terrorism. Conversely, if such protest was intended specifically to cause death, etc., it would fall under paragraph (a) on overt acts.

Majority of the members of the Court isolated the words and phrase "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" from the rest of Sec. 4, referring to it as the "Not Intended Clause." Citing the statement of Assistant Solicitor General (ASG) Rigodon during the oral arguments as the "government's official understanding" of said provision, they maintain that the "Not Intended Clause" imposed on the individual the burden of proof that their speech or expression is not tainted with criminal intent. My esteemed colleagues concluded that the "Not Intended Clause" is a problematic means to attain the purpose of the law because "the proviso's scope of application is indeed very large and contemplates almost all forms of expression."[619] They further held:

> More significantly, the "Not Intended Clause" causes serious ambiguity since there are no sufficient parameters that render it capable of judicial construction. To demonstrate this ambiguity, one may dangerously suppose that "intent to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" may be inferred from strong public clamor attendant to protests, mass actions, or other similar exercises of civil and political rights.[620]

The ATA must be interpreted in its entirety, its provisions in relation to each other, and its words and phrases in the broader context of the provisions to which they relate. More importantly, a concentric interpretation emanating from Sec. 4 is necessary for this provision provides the core definition of terrorism from which all other provisions defining acts of terrorism take their bearings.

The enumeration of overt acts of terrorism under Sec. 4(a), (b), (c), (d) and (e) does not include speech or expression. Rather, the categorical command in the phrase "shall not include" forestalls any confusion about whether speech or expression are excluded as overt act of terrorism. The qualification is that if speech or expression is coupled by any of the overt acts of terrorism under Sec. 4(a), (b), (c), (d) and (e) then terrorism is committed. However, this leaves no room for doubt that what is being criminalized is the accompanying or ensuing overt act of and manifestation of intent to commit terrorism. Sec. 4(a), (b), (c), (d) and (e) limit the scope of "intent to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety." The ordinary man on the street is alerted that (1) speech which is not accompanied by any of these overt acts to and manifestation of intent to commit terrorism is not covered by the ATA, whereas (2) the commission of those overt acts during or immediately following such speech is covered by the ATA. At no point is speech per se terrorism.

The chief reason of the majority in declaring the proviso of Sec. 4 as unconstitutional is that it supposedly turns the exercise of civil and political rights into a defense, the burden of proof laying with the defendant. This view on the burden of proof is attributed by the majority to the government as well as Rule 4.4 of the IRR.

The majority then holds that while the burden of proof is borne by the defendant, the latter is not guided by sufficient parameters on whether a "strong public clamor attendant to protests, mass actions, or other similar exercises of civil and political rights x x x [which] x x x are intended to express disapproval against someone else's proposition or stance on a given issue" would constitute terrorism. The "people are not guided whether or not their impassioned and zealous propositions or the intense manner of government criticism or disapproval are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" and that "these types of speech essentially refer to modes of communication by which matters of public interest may be discussed truthfully and brought to the attention of the public. They are vehicles by which the core of civil liberties in a democracy are exercised."[621]

In effect, the "Not Intended Clause" is void for being vague because "liberties are abridged if the speaker—before he can even speak—must ready himself with evidence that he has no terroristic intent" and that "[t]hey will have to contend whether the few hours they would spend on the streets to redress their grievances against the government is worth the prospect of being indefinitely incarcerated."[622]

I respectfully diverge from the interpretation of the majority.

While it is true that the exception provided in the "Not Intended Clause" must be invoked or raised as a defense by the defendant, the burden of proving that the exception does not apply (i.e., that the exercise of civil and political rights was, in fact, intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety) clearly lies with the government.

This is by express provision of Rule 4.4 of the IRR:

> RULE 4.4. Acts Not Considered Terrorism. —
>
> When not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safely, the following activities shall not be considered acts of terrorism:
> a. advocacy;
> b. protest;
> c. dissent;
> d. stoppage of work;
> e. industrial or mass action;
> j. creative, artistic, and cultural expressions; or

g. other similar exercises of civil and political rights.

If any of the acts enumerated in paragraphs (a) to (g) of Rule 4.4, however, are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safely, and any of the purposes enumerated in paragraph (b) under Rule 4.3 is proven in the engagement in the said act, the actor/s may be held liable for the crime of terrorism as defined and penalized under Section 4 of the Act. The burden of proving such intent lies with the prosecution arm of the government.

It is not for the defendant to prove that the intent does not exist but for the government to prove that the intent, in fact, exists. With this, the rationale for the supposed unconstitutionality of the "Not Intended Clause" disappears.

The majority cited the statement of ASG Rigodon as the "government's official understanding" of the burden of proof under Sec. 4. In doing so, it is respectfully submitted that the majority inexplicably glossed over Rule 4.4 of the IRR, which clearly states that the government bears the burden of proving criminal intent. Even the statement of ASG Rigodon is predicated upon proof by the government that an overt act has been committed.

It is basic in criminal prosecutions that it is the State who is automatically burdened to properly allege and prove all the elements as well as all the aggravating circumstances of the crime so that the accused can properly prepare for his or her defense.[623] All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he or she is proved guilty.[624] The only exception is self-defense where the accused had admitted to the commission of acts constituting a crime but not to the guilt.[625]

An erroneous submission by the OSG cannot change this unbending principle already woven into our constitutional fabric. In other words, just because the State's statutory counsel, the OSG, happened to put forward a position contrary to established jurisprudence, does not and cannot mean that the accused has now the burden to justify that his or her expression was devoid of criminal intent. Evidentiary rules do not work in a way that they are dependent on what one of the parties to a litigation posits—they are dependent on the Constitution as well as the jurisprudence interpreting such fundamental law. Thus, notwithstanding the OSG's stand, there is no basis to the claim that the "Not Intended Clause" shifts the burden of evidence to the accused to prove that his or her expression had not been tainted with criminal intent.

To summarize, under Sec. 4, the elements of terrorism are clear and unmistakable. They notify any ordinary person, including petitioners, and guide any law enforcer about what constitutes an act of terrorism. Sec. 4 does not violate the rights of petitioners under Sec. 1 (due process), in relation to Sec. 14 (criminal due process), and Sec. 4 (freedom of expression) of the 1987 Constitution.

In conclusion, Sec. 4 is a reasonable means to attain the two-fold governmental purpose of the ATA. Hence, I vote to declare the "Not Intended Clause" as not unconstitutional.

B. Application of the tests to Section 5 to Section 14

In contrast to the abstracted and fragmented approach adopted by petitioners, each of these provisions shall be examined in their entirety and in relation to the other provisions of the ATA.

Even without the IRR providing an elaboration, the terms threaten (Sec. 5), conspiracy (Sec. 7), proposal (Sec. 8), incitement (9) and recruitment and membership (Sec. 10) have well established meanings in Philippine criminal jurisprudence.

A threat is considered real if the person making it has the capacity and means to carry it out.[626] In the light of Sec. 4, a threat to commit the acts defined therein would be credible depending on the entity making the threat and the latter's capacity to execute it. Conspiracy and proposal also have a standard meaning in our case law,[627] The

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role of an accessory also is well understood in our jurisprudence.[628] When placed in the context of Sec. 4 of the ATA, proposal, conspiracy, and modes of participation of an accessory acquire even more clarity. In our jurisprudence, incitement is clearly more than public theoretical discourse.[629] When Sec. 9 is read in relation to the fourth segment of Sec. 4, incitement does not include "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."

Finally, our existing jurisprudence on illegal labor recruitment and human trafficking for exploitation provides that knowledge and consent of the subject are immaterial.[630] However, this is not applicable to recruitment and membership under Sec. 10 of the ATA, as the provision clearly requires knowledge, intent, and consent in promotion, recruitment, travel facilitation, and membership. It also applies to recruitment to and membership in only designated or proscribed organizations. These are clear standards by which any person of common sense can tell which behaviour constitutes recruitment and membership violative of the ATA.

Broad terms such as planning, preparing, facilitating, participating, and training have broad dictionary meanings that refer to innocuous acts. However, when these acts are examined in the context of Sec. 4, they assume a meaning peculiar to terrorism. Moreover, Sec. 12 and Sec. 13 must be read together and with reference to Sec. 4. Based on the plain meaning of their text, these provisions apply the provision of material support with knowledge that the recipient is committing or planning to commit any of the overt acts of terrorism under Sec. 4. It is only reasonable that any exception provided under Sec. 13 should be restricted, otherwise, the purpose of Sec. 12 would be defeated. Sec. 13 is intended to align Sec. 12 with international humanitarian law, specifically the principle that during non-international armed conflict, such as the Marawi siege, the flow of "impartial" medical and humanitarian aid for non-combatant civilians should not be impeded.[631] Impartiality is expressly required under international humanitarian law itself.[632]

Some members of the Court isolated the phrase "organized for the purpose of engaging in terrorism,"[633] and declared it impermissibly vague and therefore an unreasonable means for attaining the purpose of the ATA. They held:

> [T]he phrase "organized for the purpose of engaging in terrorism" ... is impermissibly vague. In the context of penalizing a person's alleged membership in a terrorist organization, association, or group, there is nothing in the law which provides rules or guidelines to determine and verify the nature of said organization, association, or group as one "organized for the purpose of engaging in terrorism".

To the contrary, Sec. 4 circumscribes Sec. 10, including the act of "voluntarily and knowingly join[ing] any organization, association or group of persons knowing that such organization, association or group of persons is ... organized for the purpose of engaging in terrorism." There is no disagreement that overt acts of terrorism are clearly defined in Sec. 4.[634] Consequently, any ordinary man on the street, including petitioners, would know that Sec. 10 pinpoints to organizations whose purpose is to engage in any of the five types of overt acts defined under Sec. 4 as terrorism.

Moreover, it must be respectfully pointed out that there may be an inherent contradiction in some of my colleagues' disquisition concerning Sec. 10. They take exception to the phrase "organized for the purpose of engaging in terrorism" in the third paragraph of Sec. 10 for the reasons explained above and have, accordingly, voted to declare the same unconstitutional. However, the exact same phrase is found in the first paragraph of Sec. 10, yet this paragraph is spared from being included in their discussion of the phrase's unconstitutionality. Sec. 10 provides:

> SECTION 10. Recruitment to and Membership in a Terrorist Organization. — Any person who shall recruit

another to participate in, join, commit or support terrorism or a terrorist individual or any terrorist organization, association or group of persons proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

The same penalty shall be imposed on any person who organizes or facilitates the travel of individuals to a state other than their state of residence or nationality for the purpose of recruitment which may he committed through any of the following means:

(a)

Recruiting another person to serve in any capacity in or with an armed force in a foreign state, whether the armed force forms part of the armed forces of the government of that foreign state or otherwise;

(b)

Publishing an advertisement or propaganda for the purpose of recruiting persons to serve in any capacity in or with such an armed force;

(c)

Publishing an advertisement or propaganda containing any information relating to the place at which or the manner in which persons may make applications to serve or obtain information relating to service in any capacity in or with such armed force or relating to the manner in which persons may travel to a foreign state for the purpose of serving in any capacity in or with such armed force; or

(d)

Performing any other act with the intention of facilitating or promoting the recruitment of persons to serve in any capacity in or with such armed force.

Any person who shall voluntarily and knowingly join any organization, association or group of persons knowing that such organization, association or group of persons is proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of imprisonment of twelve (12) years. (emphasis supplied)

Despite the kick of discussion pertaining to the first paragraph, their respective votes appear to extend the declaration of unconstitutionality to all instances of the phrase in Sec. 10. This raises the question of whether the phrase in the first paragraph of Sec. 10 was also intended to be declared unconstitutional.

A law must not be read in truncated parts and its provisions must be read in relation to the whole law.[635] Every part of the statute must be interpreted with reference to the context (i.e. that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment).[636] Thus, in construing a statute, courts have to take the thought conveyed by the statute as a whole: construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.[637]

In the case at hand, the "rules or guidelines" that some of my colleagues claim to be missing are explicitly provided in Sec. 4 of the ATA. Accordingly, the last paragraph of Sec. 10 should be read in pari materia with Sec. 4 in order to give effect to the Legislature's intent. A statute must be so construed so as to harmonize and give effect to all its provisions whenever possible.[638] This is consistent with the principle that every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or

phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.[639] Therefore, the "standards" or "guidelines" for which the purpose (of an organization suspected of being formed in view of terrorism) is to be determined are provided in the very definition of terrorism itself which is found in Sec. 4 of the ATA.

I maintain that, when interpreted in its entirety and in relation to Sec. 4, Sec. 10 is a reasonable means to attain the purpose of the ATA. It does not violate the Constitution. Hence, I vote to declare the phrase "organized for the purpose of engaging in terrorism" in Sec. 10 as not unconstitutional.

In sum, Sec. 5 to Sec. 14, whether on their own and taken together with Sec. 4, provide sufficient notice to ordinary persons, including petitioners, and a clear guide to law enforcers of the behaviour that would constitute a violation of the ATA. The provisions do not violate the rights of the petitioners to due process and freedom of expression under Sec. 1, Sec. 4, and Sec. 14, Art. III of the Constitution. They are therefore a reasonable means for attaining the governmental purposes of the ATA.

II.

Whether or not Section 16 to Section 20 and Section 22 to Section 24 of Republic Act No. 11479 violate Section 2 and Section 3, Article III, 1987 Constitution, on the ground of unreasonableness

As demonstrated above, given that official government reports have branded petitioners as terrorists and that their accounts have been frozen under the TFPSA, petitioners face a real and imminent threat of having their rights against unreasonable search and seizure under Sec. 2 and right to privacy under Sec. 3 of the 1987 Constitution subjected to the intrusive effects of Sec. 16 to Sec. 20 and Sec. 22 to Sec. 24 of the ATA.

On the other hand, public respondents remind petitioners that these rights are not absolute for the Constitution itself allows reasonable restrictions; and that the restrictions imposed by the ATA under the assailed provisions are reasonable for they serve a government purpose and are restricted by substantive and procedural requirements.[640]

Sec. 16 to Sec. 20 and Sec. 22 to Sec. 24 are about surveillance and interception of private communications.

A. When a search and seizure is reasonable

As a general rule, under Sec. 2, Art. III of the Constitution, a search and seizure is reasonable if conducted on the basis of a judicial warrant issued according to Rule 126 of the Rules of Court. Any evidence obtained during the valid search would be admissible. The purpose of Sec. 2, Art. III of the Constitution is to ensure that the State shall respect the private security of the person and property and the sanctity of the home of an individual.[641]

Even without a judicial warrant, the search and seizure would be reasonable and the evidence obtained admissible under the following instances: search based on consent; search of a moving vehicle; seizure of evidence in plain view; search incidental to an inspection, supervision and regulation sanctioned by the State in the exercise of its police power; customs search; stop and frisk search; search under exigent and emergency circumstances; routine security check being conducted in air and sea ports and military checkpoints in public places; and search incidental to a lawful arrest, including a permissible warrantless arrests, such as arrests in flagrante delicto, arrests effected in hot pursuit, and arrests of escaped prisoners.[642]

For this Court, "to search means to look into or over carefully or thoroughly in an effort to find something."[643]

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While this definition was adopted to clarify the meaning of searching questions following a guilty plea, it is generic enough to be relevant also to apply to the term "search and seizure" in Sec. 2, Art. III of the Constitution. The term means to look for and obtain evidence as part of criminal detection and investigation.[644]

In contrast, surveillance per se, whether physical or audio-visual, is the gathering of information as part of intelligence work.[645] The purpose is for law enforcers to establish personal knowledge of information that would support an application for a search warrant.[646] Thus, Sec. 2, Art. III does not apply to surveillance: that is to say, surveillance per se and as part of police work is reasonable with or without a judicial authorization.[647]

There are certain types of surveillance that are regulated. The use of closed-circuit television (CCTV) is expressly allowed under the Safe Space Act[648] but subject to regulations implementing the Data Privacy Act.[649] Moreover, the use of CCTV by a private individual on private property is subject to Art. 26(1) of the Civil Code.[650] These laws do not require prior judicial authorization of surveillance.

However, the Anti-Wiretapping Act (1965),[651] HSA,[652] and Cybercrime Prevention Act[653] require judicial authorization when surveillance is accompanied by or entails a wiretap and interception. Under the Anti-Wiretapping Act, a "tap" refers to either a physical interruption using a wire or cable or a deliberate installation of a device or arrangement in order to overhear, intercept, or record the spoken.[654] Under the Cybercrime Prevention Act, an "[i]nterception refers to listening to, recording, monitoring or surveillance of the content of communications, including procuring of the content of data, either directly, through access and use of a computer system or indirectly, through the use of electronic eavesdropping or tapping devices, at the same time that the communication is occurring."[655]

Authorization under the Anti-Wiretapping Act is in the form of an order by the Regional Trial Court based on a written application and testimony under oath that there is reasonable ground to believe that crimes such as treason, espionage, etc., has been committed or is being committed or about to be committed; that "there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any such crimes;" and "that there are no other means readily available for obtaining such evidence."[656] Unlike search and seizure under Sec. 2, Art. III of the Constitution which admits of exceptions to a warrant, wiretap under this law is not possible without judicial authorization. That is to say, there is no such thing as a warrantless wiretap.[657] A wiretap without judicial authorization is punishable under Sec. 2 of the law. This is in addition to the inadmissibility of any evidence obtained.[658]

In contrast, under the HSA, authorization is in the form of a written order issued by the CA based on an "ex parte written application x x x and upon examination under oath or affirmation of the applicant and the witnesses x x x: (a) that there is probable cause to believe based on personal knowledge of facts or circumstances that the said crime of terrorism or conspiracy to commit terrorism has been committed, or is being committed, or is about to be committed; (b) that there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained; and, (c) that there is no other effective means readily available for acquiring such evidence." The element of probable cause rather than mere reasonable belief brings the required authorization closer to a search and seizure warrant. However, unlike search and seizure under Sec. 2, Art. III of the Constitution, which can be warrantless yet reasonable under certain circumstances, interception and recording under the HSA must be with judicial authorization; otherwise, the person conducting the unauthorized interception and recording shall be criminally liable.[659] The evidence obtained shall also be inadmissible.[660]

Under the Cybercrime Prevention Act, a law enforcer may conduct interception, as defined earlier, provided there is a prior search and seizure warrant.[661] The Rule on Cybercrime Warrants[662] provides that the warrant shall

issue based on probable cause, established through facts within the personal knowledge of the applicant or witness, that an offense has been committed, being committed, or about to be committed.[663] Unlike the Anti-Wiretapping Act and HSA, the Cybercrime Prevention Act does not penalize interception without a warrant; it merely declares the evidence obtained inadmissible.[664] Nonetheless, under the Rule on Cybercrime Warrants, a warrantless interception is not countenanced, for even in the event of a valid warrantless arrest, law enforcers must obtain a warrant before computers at the scene of the crime or arrest can be seized (and their data examined).[665]

To summarize, search and seizure are reasonable if authorized by a judicial warrant, unless the circumstance of the case are such that a warrantless search would nonetheless be reasonable. With respect to surveillance per se, no warrant is necessary. However, surveillance accompanied by interception, in whatever form, requires a judicial authorization similar to a search warrant in terms of the need to establish probable cause. Unlike the Cybercrime Prevention Act, the Anti-Wiretapping Act and USA penalize interception without a warrant.

The foregoing standards shall be applied to test the ATA provisions.

B. When interference with privacy is reasonable

The right to privacy can be reasonably restricted by an order of the court or by law when "when public safety or order requires otherwise, as prescribed by law."[666] Although the Rule on the Writ of Habeas Data extends to cases beyond extra-judicial killing,[667] it does not make the right to privacy absolute.[668]

In Disini, Jr. v. The Secretary of Justice, Sec. 12 of the Cybercrime Prevention Act was declared unconstitutional. Said section provides that "[l]aw enforcement authorities, with due cause, shall be authorized to collect or record by technical or electronic means traffic data in real-time associated with specified communications transmitted by means of a computer system." The Court found that when pooled traffic data can be used to create the profile of a person under surveillance, that type of information is protected by Sec. 3, Art. III of the Constitution on the right to privacy, specifically informational privacy or a person's right to a reasonable expectation of control of information defining one's individuality, including the right to be let alone. The right to control such information can be restricted to serve a public purpose but the means employed must be within reason. The Court found no such reasonable limitations imposed by Sec. 12 on the intrusion to privacy. The standard of "due cause" is left to the discretion of the law enforcer, as due cause cannot be akin to probable cause of the commission of a crime, which only a court can ascertain for purposes of the issuance of an arrest warrant. Even the express prohibition against access to parts of the traffic data indicating identities and content was found insufficient as a restraint. Had it intended to provide for the circumstances of a valid warrantless surveillance and collection, Sec. 12 would have said so.[669]

On the other hand, police power and regulatory measures restricting the right to privacy have been found reasonable when the intrusion seeks only basic identifying information;[670] it is confined within well-defined limits, as when a judicial determination of probable cause is required prior to authorizing interception;[671] it respects the dignity of the person whose privacy is affected;[672] and it seeks information that, in view of the public office held by the person affected, are not wholly private in that the public has a legitimate interest in them.[673]

The foregoing standards of reasonableness shall be applied to the present issue.

C.

Application of the tests of reasonableness to Section 16 to Section 20 and Section 22 to Section 24 of the ATA

To reiterate, petitioners do not question that these provisions are designed to serve a compelling state interest, namely, the punishment and prevention of terrorism. Their objection has to do with the means employed in the provisions.

The objections of petitioners are unfounded. The provisions employ means that are necessary and reasonable. They are even more narrowly designed than those currently employed under the Anti-Wiretapping Act and Cybercrime Prevention Act. They clearly delineate the substantive and procedural limitations of surveillance and interception.

First, the targeted parties are identified, namely, "members of a judicially declared and outlawed terrorist organization;" members of a designated person; a "person charged with or suspected of committing" any of the crimes defined and penalized under the ATA; and any "person suspected of any of the crimes." Surveillance and interception of a mere suspect, including an unidentified suspect, is standard police detection and investigation method, especially in counter-terrorism.[674]

Second, the type and nature of the targeted communication are identified, namely, "private communications, conversation, discussion/s, data, information, messages in whatever form, kind or nature, spoken or written words;" customer information and identification records as well as call and text data records, content and other cellular or internet metadata; and tapes, discs, other storage devices, recordings, notes, memoranda, summaries, excerpts, and all copies thereof.

Third, the types of communication that are insulated from surveillance and interception are identified, namely, communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence.

Fourth, the mandatory nature of the requirement of judicial authorization by the CA is guaranteed by not only rendering the evidence illegally obtained inadmissible but also imposing a steep penalty of 10 years imprisonment on any law enforcer or military personnel who engages in warrantless surveillance and interception.

Fifth, judicial authorization shall issue only upon probable cause based on the personal knowledge of the applicants and witnesses. This requirement applies even to cases where the private communications of a mere suspect is sought to be subjected to surveillance and interception. Probable cause, not mere suspicion, would justify a judicial authorization.

Given the clarity of Sec. 4 of the ATA, the courts are properly guided as to the relevant facts and circumstances that should be within the personal knowledge of and presented under oath by the ex parte applicants and witnesses. Sec. 17 adds that personal knowledge should be as to "facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained." This particular requirement is not found in the Anti-Wiretapping Act, Cybercrime Prevention Act, HSA, or Rule 126. It minimizes the risk of a fishing expedition, for the applicant must convince the CA that the evidence to be obtained exists and that it is essential either to the resolution of a pending case or to the solution of a crime or the prevention of one.

Sixth, the procedural and substantive requirements for the application, evaluation, implementation, and effectivity of the judicial authorization are detailed. Even the chain of custody is guaranteed under Sec. 21. Accountabilities

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for the safe-keeping and preservation of the intercepted communication are identified.

Sec. 18 to Sec. 24 provide that "individual identity of members" of the authorized surveillance team must be stated in the order and that, after expiration of the period of authorization, these identified applicants shall be accountable to the CA regarding the filing of a case based on the recorded communication. If no case is filed, the record is sealed, with said applicants being accountable for the preservation of the confidentiality and integrity of thereof. Throughout this period, the persons targeted for surveillance have no participation. However, if an application to break the seal of the record is made, the targeted person(s) shall be notified.

In addition, the modes of carrying out the surveillance and interception are clearly spelled out. The participants are identified in the court order.

The foregoing substantive and procedural requirements provide layers of protection to the privacy of individuals, including petitioners. At the same time, they provide the necessary means in order for the ATA to attain the public purpose for which it was adopted. Thus, Sec. 16 to Sec. 20 and Sec. 22 to Sec. 24 of the ATA do not violate Sec. 2 and Sec. 3, Art. III of the Constitution. They are a reasonable and necessary means to attain the public purpose of the ATA.

To cover all the bases, the ATA's compliance with the Rule 126 of the Rules of Court was also tested. The objective of this comparison is to see the elements of the constitutional requirements for the validity of Rule 126 of the Rules of Court and find parallelisms with surveillance under the ATA for communication data.

After a close comparison, I found the following elements, present in the current Rules for the issuance of a search warrant for materials or things, to likewise be present under the ATA's surveillance for communications data:

- A presence of a competent court with jurisdiction over the geographical area of the search or surveillance - under the ATA, this court is the Court of Appeals which has a nationwide jurisdiction;

- Identified target of surveillance - identified or identifiable individuals listed in the ATA or whose identification can be made through the ATA's processes of designation or proscription, or as ATA suspected violators;

- Identified subject matter of surveillance - communications data between the targets of the surveillance, in relation with the crimes defined and penalized under the ATA;

- Filing of an ex parte written application for the conduct of a surveillance, duly authorized in writing by the Anti-Terrorism Council (ATC), based on the personal knowledge of the ATA applicant and the witnesses he may produce;

- Personal examination under oath or affirmation of the applicant and the witnesses he may produce, by the issuing court, is also present in the ATA;

- The requirement for the presence of probable cause to believe, based on the application and the personal examination that crimes defined and penalized under the ATA has been committed, is being committed, or is about to be committed;

- The requirement for the presence of probable cause to believe, based on personal knowledge of facts or circumstances that the evidence to be obtained are essential to convict, to resolve pending questions, or to prevent ATA violations.

In light of this favorable point by point comparison and clear parallelism, I find that the essential elements of a valid search under Art. III, Sec. 2 of the Constitution, unquestioned under Rule 126 of the Rules of Court, are all

present in Secs. 16 and 17 of the ATA.

Under these circumstances, there is no merit to the claim that surveillance under the ATA is an invalid and unconstitutional surveillance pursuant to the Constitution's search and seizure provision.

III. Whether or not Sections 25,, 26, 27, 28, 29 and 34 of Republic Act No. 11479 violate Sections 6, 8, 12, 13 and Section 14, Article III of the 1987 Constitution

Sec. 25 to Sec. 29 and Sec. 34 of the ATA establish a system of designation and proscription as preventative measures whose principal purpose is the prevention and suppression of terrorism. For petitioners, the main objection to these measures is grounded on the disproportionality between prevention or precaution as the objective sought to be achieved and repression of certain fundamental rights as the principle means.

I find that the system of designation and proscription established under the ATA is necessary and reasonable. While it affects certain fundamental rights, especially those of petitioners, these rights, are not absolute. Moreover, the intrusion is narrowly targeted and, at the same time, layers of protection are guaranteed.

A.

Section 6 on the right to travel and Section 13 on the right to bail

Section 6, Art. III of the 1987 Constitution recognizes that the right to travel may be impaired in the interest of national security, public safety, and public health as expressly provided by law.[675] There are existing laws that expressly regulate the right to travel.[676]

Any restriction on the right to travel as a condition to the grant of bail is a valid exercise by the courts of the criminal jurisdiction that has been conferred upon them by law, even when the reason for the restriction is that bail is a privilege of provisional liberty and the purpose is to enable the court to maintain jurisdiction over the person of the accused, rather than to serve the interest of national security, public safety, or public health.[677] Moreover, guidelines issued by the Department of Labor and Employment (DOLE) on the temporary suspension of the deployment of Filipino domestic helpers was sustained by the Court as a valid exercise of the authority granted by the Labor Code to DOLE "to afford protection to labor," especially in the light of reports on abuses committed against them.[678]

In contrast, in Genuino v. De Lima,[679] the Court nullified the Consolidated Rules and Regulations Governing Issuance and Implementation of Hold Departure Orders, Watchlist Orders and Allow Departure Orders issued by the Department of Justice (DOJ) to restrict the right to travel of former President Gloria Arroyo, et al. The reason for the restriction was "the pendency of the preliminary investigation of the Joint DOJ-COMELEC Preliminary Investigation Committee on the complaint for electoral sabotage against them." However, the Court found that the guidelines were issued beyond the authority conferred by law on the DOJ. The Court ruled on the validity of the purpose of the restriction.

In the interest of national security and public safety, the ATA imposes restrictions on the right to travel under Sec. 10, Sec. 11, and Sec. 34. Under Sec. 10 and Sec. 11, travel is an element of the crime of engaging in terrorist recruitment and membership or in foreign terrorist activities, respectively. Given the ability of terrorists to move in and out of porous national borders—as proven by the participation of FTFs during the Marawi Siege - the criminalization of certain activities that involve travel is both logical and necessary. Under these provisions, the

act of travelling is, itself, an element of the crime.

i. Travel as an act of terrorism

Sec. 10 and Sec. 11 of the ATA are a legislative transformation of UNSC Resolution No. 1278[680] in order that its provisions shall become part of the Philippine domestic legal system. The UNSC issued Resolution No. 1278 in exercise of its Chapter VII powers. It declared that terrorism is a threat to international peace and security, and decided under paragraph 5 that all member-states shall:

> [P]revent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities x x x[681]

More importantly, in paragraph 5, the UNSC "decide[d] that all States shall ensure that their domestic laws and regulations establish serious criminal offenses" in order to prosecute and penalize their nationals who travel or attempt to travel in order to become FTFs.[682]

Sec. 10 and Sec. 11 of the ATA signify the Philippines' compliance with its state obligations UNSC Resolution No. 1278. The measures adopted do not violate Sec. 6, Art. III of the Constitution for the right to travel can be validly impaired as may be provided by law and for national security.

ii. Restriction on travel through a hold departure order

The restrictions on the right to travel under Sec. 34 of the ATA are preventative and preservative measures. These are a precautionary hold departure order (PHDO) and hold departure order (HDO), both of which are intended to prevent the departure of a person suspected or accused of a crime from departing from the Philippines.[683]

The PHDO is issued by the Regional Trial Court on a person against whom an information for the crime of terrorism under the ATA is about to be filed. The substantive and procedural requirements for its issuance conform to the provisions of the Rule on Precautionary Hold Departure Order[684] that the Court has adopted, particularly the requirement that the investigating prosecutor shall apply for PHDO only upon a preliminary determination of probable cause. A PHDO is necessary in cases involving recruitment and membership as well as the mobility of FTFs, as penalized under Sec. 10 and Sec. 11 of the ATA. It is doubtlessly necessary towards ensuring that persons who have violated Sec. 6 to Sec. 9 and Sec. 12 to Sec. 14 of the ATA are brought to face trial in the Philippines.

Sec. 34 of the ATA goes on to authorize the prosecutor, after having filed the information, to obtain an HDO from the RTC. Again, this precautionary step is consistent with judicial practice, specifically under the Guidelines in the Issuance of Hold-Departure Orders,[685] for the issuance of an HDO "is but an exercise of [the] court's inherent power to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused,"[686] even before arraignment.[687] The difference is that Sec. 34 leaves the RTC with no discretion but to issue an HDO where "the evidence of guilt is strong."

The period of effectivity of the PHDO and HDO is clearly defined in the last paragraph of Sec. 34.

Petitioners have not shown that the substantive and procedural requirements under Sec. 34 are an inadequate protection against excessive and unreasonable restrictions on the right to travel. On the contrary, the provisions are consistent with the Court's own rules on PHDO and HDO. Moreover, adoption by the Philippines of no-fly lists is in compliance with its state obligations under UNSC Resolution No. 2178, in relation to UNSC Resolution No. 1373, on the prevention and punishment of the movement of FTFs.[688]

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iii. Restriction on local mobility and communication

In addition to HDO, Sec. 34 authorizes the RTC to further restrict the right to travel of the accused while on bail.

First, the court may limit the mobility of the accused "to within the municipality or city where he/she resides or where the case is pending". Travel outside said municipality or city without authorization from the court shall cause the cancellation of the bail.

Second, the court may place the accused on house arrest and out of communication except with other house residents. The provision does not expressly state that house arrest shall be a condition for bail and that its violation shall lead to its cancellation. However, the immediately preceding provision refers to the situation in which the evidence against the accused is not strong and bail has been granted.

The standard by which the court may decide to adopt the foregoing restrictions on local mobility and communication is "the interest of national security and public safety." Such standard has been upheld by this Court as valid.[689] It sufficiently narrows the limitations on mobility and communication, especially as the court may relax the restrictions as it sees fit.

In sum, Sec. 34 of the ATA does not violate Sec. 6 and Sec. 13, Art. III of the Constitution. Its preventative and preservative measures are a reasonable means to attain the ends of the law.

B. Section 8 on freedom of association

Petitioners have been officially red-tagged by government officials and agencies that are part of the ATC. Moreover, their funds have been placed under a freeze order. Their designation and proscription are therefore impending. The question is whether the application of Sec. 25 to Sec. 28 on petitioners would violate their freedom of association as guaranteed under Sec. 8, Art. III of the Constitution.

Freedom of association under Sec. 8 is self-limited for it is available only when the purposes of the association are not contrary to law. Sec. 25 to Sec. 28 of the ATA adopt a mechanism for the designation of persons and groups of persons and the proscription of groups of persons whose purposes have been found to be contrary to law, specifically the ATA, TFPSA, Cybercrime Prevention Act and other laws punishing terrorism. Moreover, designation and proscription are not punitive but preventative. They are a preliminary step to the issuance of a freeze order on monetary instruments and properties that might be used for terrorism. They notify the public of the illegitimate status of certain organizations to deter recruitment and membership in and support for said organizations.

The question is whether designation and proscription and the consequent issuance of a freeze order are reasonable means towards the ends of the ATA.

III.

Section 25 on Designation and its Consequences

A.

Designation by automatic adoption of the United Nations Security Council Consolidated List and upon the request of foreign or supranational jurisdiction (First and Second Modes of Designation)

Sec. 25 adopts three modes of designation: automatic designation based on the UNSC consolidated list;

designation upon application by a foreign government or supranational organization; and designation by the ATC. Thus, the question is whether each mode is a reasonable and necessary means to attain the purposes of the ATA. Each will be tested according to the substantive basis and procedural fairness.

i. UNSC Consolidated List

The UNSC Consolidated List referred to in Sec. 25 of the ATA is culled from 14 sanctions regimes established under various UNSC resolutions. Under each regime, the UNSC declared that certain individuals, organizations, and activities are a threat to international peace and security and, to counter the threat, decided to impose upon these individual, organizations and activities specific sanctions short of the use of armed force.[690] UNSC Resolution No. 1373 broadened the scope of the existing sanctions regimes by declaring that other individuals and organizations supporting those identified terrorists individuals and organizations should also be designated as terrorists and subjected to the same sanctions.[691] Consequently, it imposed a positive obligation on member states to implement in their own territories the prescribed sanctions on individual, organizations, activities and undertakings that are covered by the UNSC Consolidated List.[692] It even established a committee to monitor compliance.[693]

The sanctions regime relevant to Sec. 25 of the ATA is that established under UNSC Resolution No. 1267(1999). The UNSC declared the Islamic State in Iraq and the Levant (Da'esh), Al-Qaida, and associated individuals, groups, undertakings, and entities as threats to international peace and security, and adopted specific sanctions against them, such as asset freeze and aircraft grounding.[694] It established the ISIL (Da'esh) & Al-Qaida Sanctions Committee which implements the sanctions regime by administering the listing of individuals and organizations.[695] The updated listing criteria for this regime are set out in UNSC Resolution No. 2368 (2017), to wit:

> 1) Participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of or in support of 2) Supplying, selling or transferring arms and related materiel to; 3) Recruiting for; or otherwise supporting ads or activities of ISIL (Da'esh), Al-Qaida or any cell, affiliate, splinter group or derivative thereof.

The procedure applied to the filing of requests to list, formulation of decisions on requests, adoption of the list, notification and delisting are also set out in UNSC Resolution No. 2368[696] as well as the ISIL (Da'esh) & Al-Qaida Sanctions Committee Guidelines.[697] Delisting is decided by an Office of the Ombudsperson.[698]

The Abu Sayyaf Group (ASG) is included in the ISIL (Da'esh) & Al-Qaida Sanctions List.[699] The narrative summary on the ASG published by the UNSC states that the ASG was listed in 2001 on the basis of paragraph 8(c), UNSC Resolution No. 1333; (2000) and on the ground that it is affiliated with Al-Qaida, Usama bin Laden or the Taliban, as follows:

> ASG has links to Al-Qaida (QDe.004) and Jemaah Islamiyah (JI) (QDe. 092), and ASG members have been trained by both organizations in guerrilla warfare, military operations and bomb making. Usama bin Laden's (deceased) brother-in-law, Mohammad Jammal Khalifa, used an organization to channel funds to ASG to pay for training and arms.
>
> ASG has been involved in a number of terrorist attacks, including assassinations; bombing civilian and military establishments and domestic infrastructure, including airports and ferries; kidnapping local officials and foreign tourists; beheading local and foreign hostages; and extortion against local and foreign businesses.[700]

The ASG is also included in the UNSC Consolidated List.[701]

The foregoing concrete case of the ASG demonstrates that stringent substantive and procedural standards are

applied before individuals and organizations are included in the UNSC Consolidated List. The automatic designation, under Sec. 25 of the ATA, of said listed individuals and organizations can hardly be considered an unreasonable infringement of freedom of association.

Accordingly, I vote to declare the first mode of designation under Sec. 25 as not unconstitutional.

ii. Designation upon the request of a foreign or supranational jurisdiction

Sec. 25 of the ATA specifically provides that, upon written request by a foreign or supranational jurisdiction, the latter's designation of an individual or organization shall be adopted by the ATC only on the basis of its own assessment using the criteria of UNSC Resolution No. 1373, specifically under paragraphs 1 and 2. They would apply to those who:[702]

- Finance terrorist acts;[703]

- Provide or collect, by any means, directly or indirectly, of funds with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;[704]

- Commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts;[705]

- Make any funds, financial assets, or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts;[706]

- Finance, plan, support, facilitate, or commit terrorist acts, or provide safe havens;[707] and

- Cross borders as FTF or facilitate the movement of said FTFs.[708]

The foregoing substantive and procedural requirements make the second mode of designation reasonable. For this reason, I cannot join my esteemed colleagues in declaring this mode of designation as unconstitutional. Furthermore, the first and second modes of designation provide a mechanism for delisting. Under UNSC Resolution No. 1898 (2011) and Resolution No. 2368 (2017), an Office of the Ombudsperson is tasked created to receive and decide on requests for delisting from the ISIL (Da'esh) & Al-Qaida Sanctions List. With respect delisting from other sanctions list and the UNSC Consolidated List, UNSC Resolution No. 1730 (2006) established a focal point that receives and farms out requests for de-listing and letters questioning designations to the proper sanctions committee for decision.[709]

Foreign and supranational jurisdictions, such as the European Union, adopt their own delisting procedure, including a judicial process all the way to the Court of Justice of the European Union (Grand Chamber) and on substantive grounds.[710]

It is reiterated that this second mode of designation provides the mechanism for the implementation of any existing or future bilateral cooperation agreement on designation and proscription, such as the US-Israel Counter - Terrorism Cooperation Accord.[711] The necessity and urgency for this type of cross-border and inter-state cooperation arose from the reality that our borders are porous and that terrorists have no nations or nationalities. Without the second mode of designation, any future bilateral or regional agreement on reciprocity in the adoption of designations and proscriptions would have no teeth. As stated in previous portions of this Opinion, this second mode of designation is in compliance with the Philippines' international obligations.

Hence, I vote to declare the second mode of designation under Sec. 25 as not unconstitutional.

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B.

Designation by the Anti-Terrorism Council (Third Mode of Designation)

Interestingly, "designation" is defined in Sec. 3(b) of the ATA, as well as Sec. 3(e) of the TFPSA, by way of describing its subjects instead of providing details about the nature of the act itself. Both provisions are juxtaposed to give a clearer picture as follows:

> TFPSA
> (Section 3)
>
> ATA
> (Section 3)
>
> (c) Designated persons refer to:
>
> (1) any person or entity designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group under the applicable United Nations Security Council Resolution or by another jurisdiction or supranational jurisdiction;
>
> (2) any organization, association, or group of persons proscribed pursuant to Section 17 of the Human Security Act of 2007; or
>
> (3) any person, organization, association, or group of persons whose funds or property, based on probable cause are subject to seizure and sequestration under Section 39 of the Human Security Act of 2007.(emphasis supplied)
>
> (b) Designated Person shall refer to:
>
> Any individual, group of persons, organizations, or associations designated and/or identified by the United Nations Security Council, or another jurisdiction, or supranational jurisdiction as a terrorist, one who finances terrorism, or a terrorist organization or group; or
>
> Any person, organization, association, or group of persons designated under paragraph 3 of Section 25 of this Act.
>
> For purposes of this Act, the above definition shall be in addition to the definition of designated persons under Section 3 (e) of Republic Act No. 10168, otherwise known as the "Terrorism Financing Prevention and Suppression Act of 2012." (emphasis supplied)

Comparing both of the aforementioned provisions yields the following findings:

> - Semantically, the foregoing provisions do not distinguish between the terms "designated" and "identified" as it only enumerates those who may be subjected to designation. The use of the grammatical conjunction "and/or" without any provision as to both terms distinction also contributes to the indistinguishability of both terms. As such, the same indistinguishability implies that "designation" and "identification" may be used interchangeably as both appear to refer to the same official act.
>
> - The third paragraph in Sec. 3(b) of the ATA considers its own "definition" of "designation" as an "addition" to that provided under the TFPSA.
>
> - Sec. 3(e)(2) of the TFPSA also includes proscribed persons and entities as among those who are considered as "designated" for purposes of issuing freeze orders and subjecting targets to sequestration proceedings.

Despite the lack of a categorical statutory definition of what "designation" is, Rule 3.a.6 of the Implementing Rules (IRR) of the TFPSA promulgated by the Anti-Money Laundering Council (AMLC) undertook to define

"designation" in this wise:

> RULE 3.a.6. "Designation" or "Listing". — refers to the identification of a person, organization, association or group of persons that is subject to targeted financial sanctions pursuant to the applicable United Nations Security Council Resolutions. (emphasis supplied)

The aforementioned rule equated "designation" with the "listing" and "identification" of individuals, organizations, associations, and groups suspected of engaging in acts relating to terrorism. However the same definition lacks express statutory fiat as it is merely supplied by the AMLC - an administrative body.

To address the perceived statutory gap as to definition, the proper recourse to apply the rule on statutory construction of interpreting every part of the statute with reference to the context where every part must be considered together with the other parts and kept subservient to the general intent of the whole enactment.[712] The law must not be read in truncated parts; meaning, a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.[713] Relatedly, it is also a recognized rule of statutory construction for harmonizing laws that different statutes that are in pari materia are to be taken together as if they were one law.[714] In this regard, statutes are in pari materia when they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter.[715]

Therefore, in order to define "designation" by determining its nature, it is necessary that the Court resorts to other parts of the ATA by identifying the effects of its issuance. This is provided for by Sec. 25 of the ATA, which reads as follows:

> SECTION 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. — Pursuant to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, groups of persons, organizations, or associations designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group.
>
> Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373.
>
> The ATC may designate an individual, group of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, group of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act.
>
> The assets of the designated individual, group of persons, organization or association above-mentioned shall be subject to the authority of the Anti-Money Laundering Council (AMLC) to freeze pursuant to Section 11 of Republic Act No. 10168.
>
> The designation shall be without prejudice to the proscription of terrorist organizations, associations, or groups of persons under Section 26 of this Act. (emphasis supplied)

It can be clearly deduced from the foregoing provision that the effect of designation is to subject an individual, group, organization, or association to the AMLC's authority to freeze according to Sec. 11 of the TFPSA. In this regard, a comparison of both provisions of the ATA and the TFPSA pertaining to the authority to freeze is imperative to determine the scope of such authority:

> TFPSA
> (Section 11)

ATA
(Section 36)

SECTION 11. Authority to Freeze. — The AMLC, either upon its own initiative or at the request of the ATC, is hereby authorized to issue an ex parte order to freeze without delay: (a) property or funds that are in any way related to financing of terrorism or acts of terrorism; or (b) property or funds of any person, group of persons, terrorist organization, or association, in relation to whom there is probable cause to believe that they are committing or attempting or conspiring to commit, or participating in or facilitating the commission of financing of terrorism or acts of terrorism as defined herein.

The freeze order shall be effective for a period not exceeding twenty (20) days. Upon a petition filed by the AMLC before the expiration of the period, the effectivity of the freeze order may be extended up to a period not exceeding six (6) months upon order of the Court of Appeals: Provided, That the twenty-day period shall be tolled upon filing of a petition to extend the effectivity of the freeze order.

Notwithstanding the preceding paragraphs, the AMLC, consistent with the Philippines' international obligations, shall be authorized to issue a freeze order with respect to property or funds of a designated organization, association, group or any individual to comply with binding terrorism-related Resolutions, including Resolution No. 1373, of the UN Security Council pursuant to Article 41 of the Charter of the UN. Said freeze order shall be effective until the basis for the issuance thereof shall have been lifted. During the effectivity of the freeze order, anaggrieved party may, within twenty (20) days from issuance, file with the Court of Appeals a petition to determine the basis of the freeze order according to the principle of effective judicial protection.

However, if the property or funds subject of the freeze order under the immediately preceding paragraph are found to be in any way related to financing of terrorism or acts of terrorism committed within the jurisdiction of the Philippines, said property or funds shall be the subject of civil forfeiture proceedings as hereinafter provided. (emphasis supplied)

SECTION 36. Authority to Freeze. — Upon the issuance by the court of a preliminary order of proscription or in case of designation under Section 25 of this Act, the AMLC, either upon its own initiative or request of the ATC, is hereby authorized to issue an ex parte order to freeze without delay: (a) any property or funds that are in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or any violation of Sections 4, 5, 6, 7, 8, 9, 10, 11 or 12 of this Act; and (b) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of the aforementioned sections of this Act.

The freeze order shall be effective for a period not exceeding twenty (20) days. Upon a petition filed by the AMLC before the expiration of the period, the effectivity of the freeze order may be extended up to a period not exceeding six (6) months upon order of the Court of Appeals: Provided, That, the twenty-day period shall be tolled upon filing of a petition to extend the effectivity of the freeze order.

Notwithstanding the preceding paragraphs, the AMLC, consistent with the Philippines' international obligations, shall be authorized to issue a freeze order with respect to property or funds of a designated organization, association, group or any individual to comply with binding terrorism-related resolutions, including UNSCR No. 1373 pursuant to Article 41 of the charter of the UN. Said freeze order shall be effective

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> until the basis for the issuance thereof shall have been lifted. During the effectivity of the freeze order, an aggrieved party may, within twenty (20) days from issuance, file with the Court of Appeals a petition to determine the basis of the freeze order according to the principle of effective judicial protection: Provided, That the person whose property or funds have been frozen may withdraw such sums as the AMLC determines to be reasonably needed for monthly family needs and sustenance including the services of counsel and the family medical needs of such person.
>
> However, if the properly or funds subject of the freeze order under the immediately preceding paragraph are found to be in any way related to financing of terrorism as defined and penalized under Republic Act No. 10168, or any violation of Sections 4, 5, 6, 7, 8, 9, 10, 11 or 12 of this Act committed within the jurisdiction of the Philippines, said property or funds shall be the subject of civil forfeiture proceedings as provided under Republic Act No. 10168. (emphasis supplied)

Based on the aforementioned comparison, it can now be clearly deduced that:

> - The third paragraph in Sec. 25 of the ATA, as well as Sec. 3(e)(3) of the TFPSA, empowers the ATC to: (a) adopt the list of terrorists provided by the United Nations (UN) Security Council pursuant to its terrorism-related resolutions; and (b) designate as terrorists, based on probable cause, individuals, associations, organizations, and groups.
>
> - The AMLC may issue 20-day ex parte freeze orders; either: (a) motu proprio; (b) upon the ATA's request; or (c) in compliance with UN Security Council resolutions.
>
> - Pursuant to the "principle of effective judicial protection," parties aggrieved by the aforementioned ex parte freeze order may file a petition with the Court of Appeals (CA) to determine such order's basis.
>
> - The properties of designated individuals, organizations, associations, or groups may be the subject of forfeiture proceedings under the TFPSA.

The aforementioned enumeration appears to present due process concerns as the AMLC can preliminarily restrict a target person, entity, or group's use of owned or held assets with the end goal of averting the consummation of terrorism - without judicial authority. However, the succeeding discussions will elucidate the reasons why the ATA's official act of "designation" does not violate the constitutional guarantee of due process.

First, as to the issue of supposed absence of judicial protection, there is no controlling and precise definition of due process.[716] The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.[717] Due process of law guarantees "no particular form of procedure; it protects substantial rights."[718] Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.[719] Its flexibility is in its scope—once it has been determined that some process is due—is a recognition that not all situations calling for procedural safeguards also call for the same kind of procedure.[720] This is especially applicable in matters involving administrative due process where its essence was explained in Cornejo v. Gabriel and Provincial Board of Rizal[721] which reads:

> The fact should not be lost sight of that we are dealing with an administrative proceeding and not with a judicial proceeding. As Judge Cooley, the leading American writer on Constitutional Law, has well said, due process of law is not necessarily judicial process; much of the process by means of which the Government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law, as is judicial process. While a day in court is a matter of right in judicial proceedings, in administrative proceedings it is otherwise since they rest upon different principles. In certain proceedings,

> therefore, of an administrative character, it may be stated, without fear of contradictions that the right to a notice and hearing are not essential to due process of law. Examples of special or summary proceedings affecting the life, liberty or property of the individual without any hearing can easily be recalled. Among these are the arrest of an offender pending the filing of charges; the restraint of property in tax cases; the granting of preliminary injunctions ex parte, and the suspension of officers or employees by the Governor General or a Chief of a Bureau pending an investigation. (emphasis supplied)

In the case of terrorism, an extraordinary situation where some valid governmental interest is at stake, postponing the hearing until after deprivation is justified.[722] Self-preservation is the first law of nature.[723] Moreover, parallel to individual liberty is the natural and illimitable right of the State to self-preservation.[724] On the part of the State, protecting public welfare by way of police power is an act of self-preservation.[725] This is justified by the realization that some individual liberties must give way to general welfare or public interest concerns.[726]

In other words, no right is absolute.[727] It must be borne in mind that the Constitution, aside from being an allocation of power is also a social contract whereby the people have surrendered their sovereign powers to the State for the common good.[728] It is also in recognition of the fundamental precept that police power has for its object the improvement of social and economic conditions affecting the community at large and collectively with a view to bring about "the greatest good of the greatest number."[729] Even liberty itself, the greatest of all rights, is not an unrestricted license to act according to one's own will—it is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others.[730] However, it is also necessary to stress that: "Individual rights may be adversely affected by the exercise of police power to the extent only — and only to the extent — that may fairly be required by the legitimate demands of public interest or public welfare."[731]

In essence, public interest is basically an aggregate or collection of everyone's private rights. This is also the essence of majority rule which is a necessary principle in this democratic governance.[732] Hence, in litigations between governmental and private parties, courts go much further both to give and withhold relief in furtherance of public interest than they are accustomed to go when only private interests are involved.[733] These rationalizations allow a summary but temporary deprivation of rights in the form of ex parte freeze orders to prevent terrorists from achieving their objectives and, thereby, prevent massive casualties. To hold otherwise and afford the individual or group, whose bank account is to be frozen, an opportunity to be heard would be to grant the same individual or group an opportunity to divert the funds so that they may still be used to fund their terrorist efforts. Such absurd scenario would, in effect, greatly endanger public safety for the "long arm of the law" would be rendered inutile in brining criminals to justice. This also holds true especially in acts preparatory to terrorism where the freezing of funds requires its immediate implementation.

In the case of the AMLC's power to issue twenty (20)-day ex parte freeze orders, it is justified for being a precautionary and provisional measure intended to prevent a greater evil: infliction of massive casualties brought about by terrorism. Under the "principle of effective judicial protection," aggrieved parties are entitled to question the basis of the AMLC's ex parte freeze orders before the CA; provided that the same remedy is pursued within the 20-day period from issuance of such orders. Here, procedural due process is not violated when the deprivation of a right or legitimate claim of entitlement is just temporary or provisional. When adequate means or processes for recovery or restitution are available to a person deprived of a right or legitimate claim of entitlement are in place, everyone is assured that the State—even in the legitimate exercise of police power—cannot summarily confiscate these rights or entitlements without undergoing a process that is due to all. The only exception where the State can effect a summary but permanent deprivation of a right or entitlement is if the same endangers public safety or public health which is, as earlier pointed out, a nuisance per se. As long as deprivation is temporary and due process requirements are still available to the one deprived of a right, the Constitution's due process clause cannot be considered to have been violated.[734] In essence, freeze orders should only be a preliminary step

towards justified final deprivations of rights which is civil forfeiture—a judicial process.

Even assuming that the aggrieved parties fail to question the basis of the AMLC's ex parte freeze orders before the CA within the 20-day period from issuance of such orders, remedies are still available for the recovery of the use of such frozen assets. To begin with, Sec. 18 of the TFPSA provides:

> SECTION 18. Civil Forfeiture. — The procedure for the civil forfeiture of property or funds found to be in any way related to financing of terrorism under Section 4 and other offenses punishable under Sections 5, 6, and 7 of this Act shall be made in accordance with the AMLA, as amended, its Revised Implementing Rules and Regulations and the Rules of Procedure promulgated by the Supreme Court. (emphasis supplied)

Connectedly, Secs. 8 and 9 of A.M. No. 05-11-04-SC[735] (Rules on Civil Forfeiture) provides for the following notice requirement:

> SECTION 8. Notice and Manner of Service. —
>
> (a)
>
> The respondent shall be given notice of the petition in the same manner as service of summons under Rule 14 of the Rules of Court and the following rules:
>
> (1)
>
> The notice shall be served on respondent personally, or by any other means prescribed in Rule 14 of the Rules of Court;
>
> (2)
>
> The notice shall contain: (i) the title of the case; (ii) the docket number; (iii) the cause of action; and (iv) the relief prayed for; and
>
> (3)
>
> The notice shall likewise contain a proviso that, if no comment or opposition is filed within the reglementary period, the court shall hear the case ex parte and render such judgment as may be warranted by the facts alleged in the petition and its supporting evidence.
>
> (b)
>
> Where the respondent is designated as an unknown owner or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication of the notice of the petition in a newspaper of general circulation in such places and for such time as the court may order. In the event that the cost of publication exceeds the value or amount of the property to be forfeited by ten percent, publication shall not be required.
>
> SECTION 9. Comment or Opposition. — The respondent shall file a verified comment or opposition, not a motion to dismiss the petition, within fifteen days from service of notice or within thirty days from the publication in case service of notice was by publication.
>
> The comment or opposition shall (a) state whether respondent admits the allegations of the petition; (b) specify such inaccuracies or falsities in petitioner's statement of facts; and (c) state clearly and concisely the respondent's defense in law and the specific and pertinent provisions of the law and their applicability to respondent. (emphasis supplied)

The aforecited rule affords parties aggrieved by the AMLC's ex parte freeze orders notice as well as opportunity

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to participate in the forfeiture proceedings. Moreover, the Rules on Civil Forfeiture also provides for a substituted service by way of publication if the whereabouts of aggrieved parties, who are respondents in civil forfeiture proceedings, cannot be "ascertained by diligent inquiry." As matter of course, public petitioners in forfeiture proceedings are required to at least present some evidence or factual basis as to the degree of such "diligent inquiry" to ascertain the respondents' whereabouts. This protects respondents from arbitrariness and abuse as regards the serving of notices. What this essentially means is that aggrieved parties may still have a chance to assail the basis of freeze orders and to discharge the properties from State custody in their favor. Since both notice and opportunity to be heard are ensured by the Rules on Civil Forfeiture, the due process rights of aggrieved parties are amply protected.

Second, the power to determine probable cause is not only limited to magistrates of regular courts. Even law enforcers may resort to the determination of probable cause to prevent the effects or direct results of crimes being committed in flagrante delicto. This is in consideration that a nuisance per se may be summarily abated under the undefined law of necessity for being a direct menace to public health or safety.[736] Allowing or requiring law enforcers to determine the presence of probable cause in conducting in flagrante arrests and other preventive measures even discourages and puts in check any arbitrariness or potential abuse on the part of State agents. The reason being is that the presence or absence of probable cause may be assailed by aggrieved parties during court proceedings. In this regard, law enforcers as well as statutorily authorized administrative agencies are inherently empowered to abate any nuisance per se. A contrary principle would render the very purpose of the Executive Branch as well as all offices under it inutile. More importantly, such contrary principle would violate the State's obligation under the social contract embodied in Secs. 4 and 5, Art. II of the Constitution to protect its citizens as well as those sojourning within its territory.

Last, as to an aggrieved party's ability to timely file a petition with the CA to question the basis of an ex parte freeze order, Sec. 15 of the TFPSA provides a mode of notice for aggrieved parties as follows:

> SECTION 15. Publication of Designation. — The Department of Foreign Affairs with respect to designation under Section 3 (c) (1) of this Act, and the ATC with respect to designation under Section 3 (e) (2) and (3) and Section 11 of this Act, shall publish a list of the designated persons to which this Act or the Human Security Act applies. The concerned agencies shall ensure that an electronic version of the document is made available to the public on their respective website.
>
> Each respective agency or authority shall ensure that information on procedures established in rules and regulations issued pursuant to this Act for delisting, unfreezing and exemptions for basic, necessary or extraordinary expenses shall likewise be made available in their respective website. (emphasis supplied)

The aforementioned provision on publication of the list of designated persons guarantees the due process rights of aggrieved parties to notice and opportunity to be heard. Suspected terrorist individuals, organizations, associations, or groups cannot reasonably be expected to maintain a predictable mailing address as they usually conduct their operations clandestinely to avoid run-ins with law enforcers. In this regard, an aggrieved party cannot reasonably complain of being denied due process in view of the statutorily mandated publication requirement.

Apart from the judicial remedies explained in the preceding discussions, parties aggrieved by the AMLC's ex parte freeze order may pursue the administrative remedy of delisting. This is provided under Sec. 22 of the TFPSA which reads:

> SECTION 22. Implementing Rules and Regulations. — Within thirty (30) days from the effectivity of this Act, the AMLC, in coordination with relevant government agencies, shall promulgate rules and regulations to implement effectively the provisions of this Act.

> The rules and regulations to be promulgated may include, but not limited to, designation, delisting, notification of matters of interest of persons affected by the Act, exceptions for basic, necessary and extraordinary expenses, matters of evidence, definition of probable cause, inter-agency coordination, publication of relevant information, administrative offenses and penalties, procedures and forms, and other mechanisms for implementation of the Act. (emphasis supplied)

The aforecited statutory provision is even fleshed-out by no less than the salient portions of Rule 6 of the IRR to the ATA, as follows:

> RULE 6.9. Request for Delisting. —
>
> For designations made under Rule 6.2 and Rule 6.3, a designated party or its assigns or successors-in-interest may file a verified request for delisting before the ATC within fifteen (15) days from publication of the designation.
>
> A request for delisting may be filed as often as the grounds therefor exist. However, no request for delisting may be filed within six (6) months from the time of denial of a prior request for delisting.
>
> The request shall set forth the grounds for delisting, as follows:
>
> - mistaken identity;
>
> - relevant and significant change of facts or circumstance;
>
> - newly discovered evidence;
>
> - death of a designated person;
>
> - dissolution or liquidation of designated organizations, associations, or group of persons; or
>
> - any other circumstance which would show that the basis for designation no longer exists.
>
> For designations made under Rule 6.2, the request for delisting shall be accompanied by proof of delisting by the foreign jurisdiction or supranational jurisdiction.
>
> For designations made under Rule 6.1, the ATC may motu proprio or upon request of a designated person file a petition for delisting with the appropriate committee of the UNSC. The petition for delisting may also be filed directly by the designated person pursuant to the rules established by the appropriate UNSC committee.
>
> The ATC shall be responsible for posting of the updated UNSC procedures for delisting and access to frozen funds setting forth the web links and addresses of the relevant UNSC committee responsible for acting on delisting requests and access to frozen funds.
>
> RULE 6.10. Notice of Delisting. —
>
> Where persons, organizations, associations, or group of persons are delisted by the UNSC or its appropriate sanctions committee, the ATC shall immediately issue a resolution that the person, organization, association, or group of persons has been delisted.
>
> All ATC resolutions of delisting shall be published in/posted on a newspaper of general circulation, the online official gazette, and the official website of the ATC. (emphasis supplied)

The aforementioned rules provide for a detailed administrative procedure as regards delisting and exemption in addition to judicial guarantees. It also ensures that parties aggrieved by the AMLC's ex parte freeze order can ventilate their grievances through an expedient administrative recourse such as delisting or exemption. In effect,

such administrative procedure of delisting and exemption complements and strengthens an aggrieved party's due process rights already guaranteed by the "principle of effective judicial protection."

Based on the foregoing, I vote to declare the third mode of Sec. 25 as not unconstitutional.

(3) Proscription

Secs. 26 to 28 of the ATA adopt a system of proscription according to which a group of persons, organization or association is declared as a terrorist and outlawed by the CA. Unlike designation which can refer to individuals, proscription attaches only to groups. Proscription clearly applies to associations or groups whose purpose is unlawful under Secs. 4 to 14 of the ATA and other laws punishing terrorism. Consequently, the right to form or maintain such association can be validly restricted if not denied in order to prevent and suppress terrorism. Proscription is the means employed to that end.

Sec. 26 and Sec. 27 expressly provide that "it shall be the burden of the applicant to prove that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26," in that the respondent "commits any of the acts defined and penalized under Secs. 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, or organized for the purpose of engaging in terrorism."

For purposes of issuing a preliminary proscription order, the burden is discharged if there is probable cause established through a "verified application which is sufficient in form and substance." With respect to an order for proscription, the same shall issue only after the applicant has discharged its burden in an adversarial process, with due notice to respondent and opportunity to be heard. The same adversarial process shall take place if proscription is sought by a foreign or supranational jurisdiction through the ATC and Department of Justice (DOJ). This entails access by the CA and the suspected association and its suspected members to information on the substantive and procedural basis of the request for proscription. The extent of such access, particularly to intelligence information, would have to be delineated according to actual cases. Such transparency is unique in the ATA, for in other jurisdictions suspected members and even their counsels are denied full access to the factual basis of counter-terrorism measures, especially when the factual basis consists of military or security intelligence information, domestic or foreign.[737]

The law even requires continuous hearings and commands completion within 6 months from application.

Based on their plain language, Secs. 26, 27, and 28 clearly delineate the basis and scope of proscription. They provide a reasonable means to attain the ends of the ATA.

In sum, designation and proscription are preventative measures that impose reasonable restriction on the right of association. Sec. 25 to Sec. 28 do not violate Sec. 8, Art. III of the Constitution.

Section 14 on presumption of innocence

Petitioners argue that Sec. 25 to Sec. 28 violate their right to presumption of innocence under Sec. 14, Art. III of the Constitution. According to them, their designation and proscription can preempt and prejudge the outcome of their prosecution and trial, for the designation and proscription will set off the process of freezing their funds and assets, subjecting them to surveillance, and exposing them to a charge of recruitment, membership, and support.

Petitioners are mistaken that a finding of probable cause amounts to a prejudgment and a denial of presumption of innocence. A finding of probable cause is not a determination of guilt or innocence.[738] While probable cause is sufficient to initiate a criminal case, it is not enough to obtain a conviction. It is not mere probability of the commission of criminal acts but rather evidence beyond reasonable doubt of the commission of the crime and the culpability of the accused person that can spell the difference between guilt and innocence.[739] Consequently,

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even a designated individual whose funds have been frozen would still be entitled to a presumption of innocence after being charged in court for the burden rest on the prosecution to present evidence that can overcome the presumption and prove the charge beyond reasonable doubt.

For the same reason, a finding of probable cause in a proceeding for the preliminary proscription of an association is without prejudice to the right of its individual members to be presumed innocent, for Sec. 10 on recruitment, membership, and support require evidence beyond reasonable doubt of knowledge, intent, and voluntariness.

With respect to the proscription of an association following an adversarial proceeding before the CA, the presumption of innocence of its members remains only as to the element of knowledge, consent, and voluntariness, which the prosecution must prove beyond reasonable doubt. As to the status of the association itself, the trial court would be bound through judicial notice and publication of any order of proscription previously issued by the CA.

Accordingly, I vote to declare Sec. 25 (in its entirety) and Secs. 26 to 28 as not unconstitutional.

IV.

Whether or not Section 29 violates the principle of separation of powers under the 1987 Constitution

Throughout its history, Philippine criminal law has seen several changes in the liability of public officers who, after the lapse of the permissible period, fail to deliver to judicial authorities a person who has been detained without a warrant of arrest. Art. 200 of The Penal Code of the Philippine Islands (1887)[740] does not punish as arbitrary detention a public official who, by reason of a crime, "arrests a person without authority of law or by virtue of some regulation of a general character in force in the Philippines."[741] However, Art. 202 punishes a public official who, not having authorization, "shall detain a person for a crime and shall not deliver him to judicial authority within the twenty-four hours after the detention took place."

The period was revised in 1930 to one hour[742] and in 1932 to six hours.[743] The period was again revised in 1954 under R.A. No. 1083, to wit:

> Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. — The penalties provided in the next preceding article shall he imposed upon the public officer or employee who shall detain any person for some legal ground and, shall fail to deliver such person to the proper judicial authorities within the period of: six hours, for crimes or offenses punishable by light penalties, or their equivalent; nine hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.[744]

P.D. No. 1404 retained the 12-18-36 periods but, as deemed necessary by the President in specific crimes affecting national security, permitted a delay of up to 30 days or more in the delivery of detained persons to the proper judicial authorities:

> ... the President may, in the interest of national security and public order, authorize by Executive Order longer periods, which in no case shall exceed 30 days, or for as long as, in the determination of the President, the conspiracy to commit the crime against national security and public order continues or is being implemented, for the delivery of persons arrested for crimes or offenses against public order as defined in Title III, Book II of this Code, namely: Article 134, 136, 138, 139, 141, 142, 143, 144, 146, and 147, and for subversive acts in viola/ion of Republic Act No. 1700, as amended by Presidential Decree No. 885, in whatever form such subversion may take; as well as for the attempt on, or conspiracy against, the life of the Chief Executive of the

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> Republic of the Philippines, that of any member of his family, or against the life of any member of his Cabinet or that of any member of the latter's family; the kidnapping or detention, or, in any manner, the deprivation of the Chief Executive of the Republic of the Philippines, any member of his family, or any member of his Cabinet or members of the hitter's family, of their liberty, or the attempt to do so; the crime of arson when committed by a syndicate or for offenses involving economic sabotage also when committed by a syndicate, taking into consideration the gravity of the offenses or acts committed, the number of persons arrested, the damage to the national economy or the degree of the threat to national security or to public safety and order, and/or the occurrence of a public calamity or other emergency situation preventing the early investigation of the cases and the filing of the corresponding information before the civil courts.[745]

In re Morales, Jr. v. Enrile, charges were filed after a delay of 60 days following the warrantless arrest and detention of petitioners. Citing PD 1404, the Court denied petitioners' application for habeas corpus.[746]

Executive Order No. 272 (1987) reverted to the shorter periods of "twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent, and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent."[747] The HSA extended the period to three days for crimes of terrorism.[748]

The foregoing changes in the period of detention following a warrantless arrest demonstrate that there is no constitutional standard. The period is wholly within the wisdom of Congress. There is no constitutional proscription against the adoption of a period of 24 days. It should be pointed out that in foreign jurisdictions, the period of administrative/preventive/pre-charge detention varies: in the US, it is 7 days or an indefinite period with respect to aliens;[749] Singapore, indefinite;[750] UK, 28 days;[751] Australia, 14 days;[752] and Canada, 7 days.[753] The purpose can be as broad as the protection of national security or as concrete as the likelihood of preventing a terrorist attack.

Moreover, notwithstanding the extension of the period of warrantless detention, Sec. 29 to Sec. 33 of the ATA provide for certain guarantees of the rights of the detained person and impose a positive obligation on law enforcers and military personnel to respect these rights under pain of penalty.

Delivery of a detained person to the proper judicial authorities means the filing of a complaint or information in court.[754] While Sec. 29 permits a delay in such filing, it requires that, immediately after the warrantless arrest and detention of the suspect, the law enforcer or military personnel must, within 48 hours, "notify in writing the judge of the court nearest the place of apprehension or arrest" and furnish copy of the notice to the ATC and the Commission on Human Rights (CHR). The notice must state the particulars of the warrantless arrest and detention as well as the condition of the detained suspect. More importantly, Sec. 29 penalizes non-compliance with this requirement of notice.

It also notable that Sec. 29 does not preclude the application of Rule 7, Rule 112 of the 2000 Rules of Criminal Procedure. The detained suspect may ask for a preliminary investigation. Although the periods under Art. 125 of the RPC would have to be waived, the suspect may already apply for bail and be assured that the preliminary investigation shall "be terminated within fifteen (15) days from its inception." Rule 9.7 of the ATA IRR acknowledges the availability of the options under Sec. 7, Rule 112.

Sec. 30 of the ATA expressly guarantees the right of the detained suspect to be "informed of the cause or causes of his/her detention in the presence of his legal counsel."[755] The law does not expressly restrict access to the factual basis of the detention, unlike in other jurisdictions where even the courts have only restricted access to secret information regarding a detained suspect.[756]

Hence, Sec. 29 does not violate Sec. 2, Art. III of the Constitution. It adopts reasonable measures to attain the purposes of the ATA.

Some members of the Court posit that, under Sec. 29 of the ATA, the ATC can authorize law enforcers arid military personnel to arrest suspected terrorists. The impression is engendered by the following unfortunate phraseology:

> The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall x x x

Consequently, they argue that Sec. 29 violates Sec. 2, Art. III of the Constitution, on the right to liberty and security of the person, in that it allows the ATC to usurp the exclusive authority of the courts to issue arrest warrants.

Public respondents expressly and repeatedly represented in their pleadings that Sec. 29 presupposes a valid warrantless arrest, and that the phrase "having been duly authorized in writing by the ATC" refers to those law enforcers and military personnel who may have validly effected warrantless arrests. Referring to Sec. 29, Rule 9 of the ATA IRR provides:

> RULE 9.2. Detention of a Suspected Person without Warrant of Arrest. - A law enforcement officer or military personnel may, without a warrant, arrest:
>
> a. a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;
>
> b. a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which has just been committed; and
>
> c. a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another.

Regrettably, the title of Sec. 29 alone - Detention Without Judicial Warrant of Arrest - coupled by the phrase "having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined under ... of the ATA" might suggest to the cursory reader the validity of the objections raised.

A close reading of Sec. 29, however, will show that any alarm that Sec. 29's title and contents may raise or suggest at first glance are in fact misplaced.

A reasonable reading and analysis of the whole provision and the verification of the referenced Art. 125 of the Revised Penal Code (RPC) disclose that Sec. 29's thrust, in fact, is simply to extend the period originally provided under the RPC's Art. 125 for the delivery to judicial authorities of an ATA suspect arrested without a formally-issued warrant. Delivery to judicial authorities means the formal filing of charges in court.[757]

A complete reading of Sec. 29 is necessary as its title is not a reliable indicator of what it provides; this title is no more than an abbreviated description that, on its face, speaks of "detention" and "without judicial warrant."

The combination of these terms purportedly give rise to confusion and questions. Neither does the phrase "having been duly authorized in writing by the ATC has taken custody of a person suspected of committing x x x (a violation of the ATA)" appear to be informative.

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These imprecisions, however, are not sufficient to invalidate the provision as - carefully read and considered in its entirety, together with a reading of the RPC's Art. 125 - Sec. 29's true meaning and intent clearly emerge: to establish an exception to the time limits that Art. 125 originally provides.

That Sec. 29 does not contemplate the issuance of a warrant of arrest by any entity is clear from an examination of its text; no mention of any kind of the issuance of a warrant of arrest is ever made. The written authority that the ATC can issue relates to a person already in custody.

Thus, the exact situation that Sec. 29 refers to (without need for detailed specification because of its reference to Art. 125 of the RPC) is a warrantless arrest situation. It provides for a period of 14 days that the ATC, by written authorization, can extend by 10 days, or a total delivery period of 24 days before filing of formal charges becomes mandatory. Upon failure to deliver within the extended period, the arresting enforcement officer suffers the added liabilities that Sec. 29 likewise provides.

The reading that the ATA authorizes the ATC to issue a written authorization to arrest a terrorism suspect is totally unwarranted as, by law, a person can only be arrested based on a warrant of arrest or through a warrantless arrest made under specified conditions.

A warrant of arrest, as provided by no less than Sec. 3, Art. III of the Constitution, can only be issued "upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing ... the person ... to be seized." This constitutional provision is deemed read and is part and parcel of Sec. 29 and of the whole ATA.

The ATC, despite its statutory powers under the ATA, is not a judge or a judicial officer; it is an executive agency by express terms of the ATA's Sec. 45. It cannot, therefore, issue a warrant of arrest and there is no textual basis under Sec. 29 to conclude that what it contemplates is in fact the authority to issue a warrant of arrest.

To reiterate, what the text of Sec. 29 expressly supports is the grant of a written authority to an enforcement officer to deliver a person already under custody after a warrantless arrest, to judicial authorities within a period extended from the original periods provided by Art. 125 of the RPC. In other words, it is an exception to the delivery period that Art. 125 originally provides.

Sec. 29 could not have also been an authority to undertake a warrantless arrest as, again, nothing on this point is expressed in its text. Besides, warrantless arrest is governed by Rule 1.13 of the Rules of Court where the required probable cause is approximated by any of following attendant conditions:

- When, in the presence of the policeman, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. This is the "in flagrante delicto" rule.

- When an offense has just been committed, and he has probable cause to believe, based on personal knowledge of facts or circumstances, that the person to be arrested has committed it. This is the "hot pursuit" arrest rule.

- When the person to be arrested is a prisoner who has escaped from a penal establishment.

These conditions are not touched at all by the terms of Sec. 29, which expressly deals with the extension of the delivery to the judicial authorities of an already arrested suspect.

Based on these considerations, it is clear that Congress, under ATA's Sec. 29, merely established an exception to Art. 125 of the Revised Penal Code (a substantive law that Congress can amend) with respect to the time limit for the delivery to judicial authorities of persons arrested without warrant for violation of the ATA: Sec. 29 simply extends the time limit upon written authority given by the ATC.

This view is confirmed and strengthened by the second paragraph of Sec. 29, which provides that:

> "Immediately alter taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Sec. 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.
>
> The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities."

Thus, instead of the immediate filing of charges in court after a warrantless arrest, a notification shall immediately be made to the nearest court, the ATC, and to the CHR, but the filing of charges will not be until the periods that Sec. 29 provides.

This view is further confirmed by the terms of the ATA IRR — the directive of the DOJ to enforcement officers on how the ATA is to be implemented. Rule 9 of this IRR spells out the finer details of the handling of suspected persons arrested without warrant for violation of the ATA. Arrest without warrant, of course, can be made without need for the ATA as the conditions in effecting such arrest are spelled out under Rule 113 of the Rules of Court, as indicated above.

This conclusion brings us to the petitioners' next objection - that Sec. 29 violates the Constitution by providing for an extended detention period of 10 days and a maximum period of 24 days, without need of showing probable cause.

The extension that the ATC can issue does not need any showing of probable cause (or its equivalent in warrantless arrests) simply because it does not involve any arrest, only the continued detention without need of the immediate filing of charges against a suspected ATA violator who had been previously arrested under conditions approximating the existence of probable cause.

The granted authority is a purely administrative matter pursuant to the ATC's role and responsibilities under the ATA - as the executive agency tasked to oversee the effectiveness of the ATA by coordinating and supporting the ATA's enforcement and investigatory activities.

Contrary to the petitioners' claim, the ATC's authority to issue a written authorization is not unbridled; it can only be made if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or to complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another act of terrorism; and (3) the investigation is being conducted properly and without delay.

To ensure that the ATA can achieve its avowed objectives through effective investigation and enforcement, Congress may - in its wisdom - provide for the period needed for the ATC's effective delivery of its tasks. In the absence of presented evidentiary facts showing grave abuse of discretion, this Court should not intervene by substituting its judgment on what the ATC needs to undertake to discharge its ATA responsibilities.

In its last point, the petitioners appear to confuse arrest without warrant and the required period for delivery to judicial authorities, with the habeas corpus provision of the Constitution.

With respect to the writ of habeas corpus, our basic Charter provides that -

> Art. VII, Section 18.
>
> x x x x
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The three-day limit for the delivery to judicial authorities is specifically mentioned in relation with the suspension of the writ of habeas corpus, not with the delivery to judicial authorities of those otherwise detained without warrant - a matter that Art. 125 of the Revised Penal Code governs and which has now been amended for exclusive ATA purposes. The constitutional deliberations, footnoted below, best confirm the correctness of this view.[758]

Besides, the fixing of detention periods in Sec. 29 is a matter of substantive law. Periods of preventive detention set by Congress cannot be reasonably interpreted as allowing the Executive Branch to summarily deprive an individual of liberty without due process if such detention itself is temporary. This is akin to those convicted of a judgment which has not yet attained finality but are detained for failing to post bail for provisional liberty. Here, detainees cannot be said to have been deprived of liberty without due process as such detention is temporary and subject to a final and executory verdict in their respective criminal cases. In other words, what is abhorred by the Constitution is the absolute lack of due process on the part of the detainee. Therefore, when a person is merely detained in the interim with all procedural due process safeguards available to him or her such as those found in Sec. 29, there can be no summary deprivation of liberty.

Most importantly, a plain reading of Rules on the Writ of Amparo, side by side with the terms of the ATA, shows the gross inaccuracy of the petitioners' position.

The Court, based on its constitutionally assigned role of actively protecting the exercise of constitutional rights through its rulemaking power, promulgated the Rules on the Writ of Amparo (A.M. No. 07-9-12-SC) on September 25, 2007. The Rules took effect on October 24, 2007, after its publication in three (3) newspapers of general circulation.

The Writ of Amparo is "a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity."[759]

The Court discussed its origins and coverage in Secretary of National Defense v. Manalo,[760] in these words:

> The adoption of the Amparo Rule surfaced as a recurring proposition in the recommendations that resulted from a two-day National Consultative Summit on Extrajudicial Killings and Enforced Disappearances sponsored by the Court on July 16-17, 2007. The Summit was "envisioned to provide a broad and fact-based perspective on the issue of extrajudicial killings and enforced disappearances," hence "representatives from all sides of the political and social spectrum, as well as all the stakeholders in the justice system" participated in mapping out ways to resolve the crisis.
>
> On October 24, 2007, the Court promulgated the Amparo Rule "in light of the prevalence of extralegal killing and enforced disappearances." It was an exercise for the first time of the Court's expanded power to promulgate rules to protect our people's constitutional rights, which made its maiden appearance in the 1987 Constitution in response to the Filipino experience of the martial law regime.[761]

This Rule covers three (3) incidents: extralegal killings, enforced disappearances, or threats of these incidents.

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The Court defined the elements of an enforced disappearance as follows:

(a)

that there be an arrest, detention, abduction or any form of deprivation of liberty;

(b)

that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;

(c)

that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the amparo petition; and,

(d)

that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.[762]

A close examination of these elements and their comparison with the terms of the ATA readily shows that the situation contemplated in the ATA - a detention beyond the limits set by the ATA's Sec. 29 - can conceivably take place and can fall within the contemplation of the above portion of the Amparo Rules.

When faced with this situation, affected individuals have a choice of the remedies to avail of without being negated, denied, or foreclosed by the terms of the ATA. These remedies are for them and/or their counsels to decide upon. How they are availed and whether or not they interact with other remedies under other laws or rules and under the unique factual circumstances of their cases, involve facts that are outside the scope of this Court's consideration in the present petitions. This Court can only stress that, as a matter of law, that affected parties are not in any way limited in their choices by the terms of the ATA.

Based on the foregoing, I vote to declare Sec. 29 as not unconstitutional.

SUMMARY OF THE OUTCOME OF THE SUBSTANTIVE STAGE

In the context of the factual allegations and legal arguments of the petitioners, after applying the intermediate level of judicial scrutiny, I find that:

1)

Secs. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of Republic Act No. 11479 do not contravene Secs. 1, 4 and 14, Art. III, 1987 Constitution;

2)

Secs. 16, 17, 18, 19, 20, 22, 23 and 24 of Republic Act No. 11479 do not contravene Sec. 2 and Sec. 3, Art. III, 1987 Constitution;

3)

Secs. 25, 26, 27, 28, 29 and 34 of Republic Act No. 11479 do not contravene Secs. 6, 8, 12 and 13, Art. III, 1987 Constitution; and

4)

Sec. 29 of Republic Act No. 11479 does not contravene the constitutional principle of separation of powers.

Further, I conclude that, with respect to petitioners in G.R. Nos. 253242, 252585, 252767, and 252768, the foregoing provisions of the ATA are not unconstitutional.

WHEREFORE, in view of the foregoing reasons, I VOTE to DISMISS OUTRIGHT the following petitions - G.R. No. 252578, G.R. No. 252579, G.R. No. 252580, G.R. No. 252613, G.R. No. 252623, G.R. No. 252624, G.R. No. 252646, G.R. No. 252702, G.R. No. 252726, G.R. No. 252733, G.R. No. 252736, G.R. No. 252741, G.R. No. 252747, G.R. No. 252755, G.R. No. 252759, G.R. No. 252765, UDK 16663, G.R. No. 252802, G.R. No. 252809, G.R. No. 252903, G.R. No. 252904, G.R. No. 252905, G.R. No. 252916, G.R. No. 252921, G.R. No. 252984, G.R. No. 253018, G.R. No. 253100, G.R. No. 253118, G.R. No. 253124, G.R. No. 253252, G.R. No. 253254, G.R. ^No. 253420, and G.R. No. 254191 [Formerly UDK 16714] - for failure to satisfy the requirements of judicial review.

Further, I VOTE to DECLARE Section 4, Section 10, Section 25, Sections 26 to 28, and Section 29 of the Anti-Terrorism Act of 2020 as NOT UNCONSTITUTIONAL.

Further, I FIND that Sections 16 to 20, Sections 22 to 24, and Section 34 of the Anti-Terrorism Act of 2020 are NOT UNCONSTITUTIONAL.

Finally, I VOTE to DISMISS the following petitions - G.R. No. 253242, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768 - for lack of merit.

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[1] 63 Phil. 139, 177-178 (1936).

[2] R.A. No. 11479 was signed into law on July 3, 2020.

[3] A total of 2,819 perished in New York City alone while 193 (68 of these on American Airlines Flight 77) died at Pentagon, Virginia. Another 45 lost their lives in the downing of United Airlines Flight 93 in Shanksville, Pennsylvania. In sum, 3,057 people expired on September 11, 2001 due to the coordinated terrorist attacks. (Population and Development Review, Vol. 28, No. 3, September 2002, p. 586); see The National Commission on Terrorist Attacks Upon the United States (2004, July 22) THE 9/11 COMMISSION REPORT: Final Report of the National Commission on Terrorist Attacks Upon the United States at https://www.govinfo.gov/content/pkg/GPO-911REPORT/pdf/GPO-911REPORT.pdf.

[4] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2017 (Bureau of Counterterrorism) pp. 60-62.

[5] Id. at 280.

[6] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2011 (Bureau of Counterterrorism), pp. 46-49.

[7] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2012 (Bureau of Counterterrorism), pp. 51-53.

[8] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2016 (Bureau of Counterterrorism), pp. 83-88.

[9] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2019 (Bureau of Counterterrorism), pp.

53-55.

[10] At least 8 persons perished while around 20 were wounded in this attack. (U.S. State Department, COUNTRY REPORTS ON TERRORISM 2019 (Bureau of Counterterrorism), p. 55.)

[11] Supra note 9 at 55.

[12] "The ASG killed more than a dozen people and injured more than 70 others in twin bombings. A female suicide bomber detonated a motorcycle bomb near a military truck next to a food market. An hour later, another female suicide bomber approached the area and detonated a bomb, likely targeting first respondents." (U.S. State Department, COUNTRY REPORTS ON TERRORISM 2020 (Bureau of Counterterrorism), pp. 55-56.)

[13] R.A. No. 9372 was passed on March 6, 2007.

[14] Justice Conchita C. Morales, in Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452 (2010).

[15] Respondents' Memorandum, Vol. III. pp. 573-577.

[16] In Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management 686 Phil. 357, 372-373 (2012), the Court reiterated that [e]very statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. Every presumption should be indulged in favor of the constitutionality and the burden of proof is on the party alleging that there is a clear and unequivocal breach of the Constitution.

To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because 'to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.' This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down. (citations omitted)

[17] Id.

[18] See Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, 127 Phil. 306 (1967); Morfe v. Mutuc, 130 Phil. 415 (1968).

[19] See Position Paper of Chief Justice Reynato Puno (ret.) as amicus curiae, undated.

[20] G.R. No. 217158, March 12, 2019.

[21] See Position Paper of Chief Justice Reynato Puno (ret.) as amicus curiae, undated.

[22] The 1987 Constitution provides:

SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vole of at least a majority of all its Members in regular or special session, may

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revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

[23] United States at the Ninth Meeting of Directors of Civil Aviation of the Central Caribbean (C/CAR/DCA/9) at Oranjestad Aruba, 9 to 12 July 2007. Carriage of Duty Free Liquids, Gels, And Aerosols In Cabin Baggage - Working Toward A Global Response To Immediate Threats, at https://www.icao.int/Meetings/AMC/MA/2007/9CCARDCA/9ccardcaip04.pdf

[24] "Using a sealed 17-ounce sports drink, the men planned to drain the plastic bottle through a tiny hole in the bottom and then inject an explosive mix of concentratcd hydrogen peroxide, along with food coloring to make it look like the original beverage. An instant glue would seal it shut. AA batteries filled with the explosive HMTD would serve as the detonator; a disposable camera would serve as the digger.

Prosecutors said the men had planned to carry the components onto seven trans-Atlantic planes, assemble them and then explode them in midair." (Sciolino, E. The New York Times, In '06 Bomb Plot Trial, a Question of Imminence. [July 15, 2008] at https://www.nytimes.com/2008/07/15/world/curope/15terror.html)

[25] Id.

"Using a sealed 17-ounce sports drink, the men planned to drain the plastic bottle through a tiny hole in the bottom and then inject an explosive mix of concentrated hydrogen peroxide, along with food coloring to make it look like the original beverage. An instant glue would seal it shut. AA batteries filled with the explosive HMTD would serve as the detonator; a disposable camera would serve as the trigger.

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[26] Respondents' Memorandum, Volume III, p. 608.

[27] Joint Ship Manning Croup, Inc. v. Social Security System, G.R. No. 247471, July 7, 2020.

[28] Tañada v. Yulo, 61 Phil. 515, 519 (1935).

[29] See Virginia v. American Booksellers Association, Inc., 484 U.S. 383 (1988), citations omitted; see also

Ward, et, al. v. Rock Against Racism, 491 U.S. 781 (1989), citations omitted.

"It has long been a tenet of First Amendment law that in determining a facial challenge to a statute, if it be "readily susceptible" to a narrowing construction that would make it constitutional, it will be upheld."

Skilling v. United States, 561 U.S. 358 (2010), citations omitted - where the US Supreme Court said: "It has long been our practice, however, before striking a federal statute as impermissibly vague, to consider whether the prescription is amenable to a limiting construction."

[30] Manila Prince Hotel v. Government Service Insurance System, 335 Phil. 82, 101 (1997).

[31] 458 U.S. 747 (1982).

[32] James Madison, Federalist No. 47, The Gideon Edition, George W. Carey and James McClellan (Indianapolis, IN: Liberty Fund, 2001), pp. 251-255.

[33] "The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government." (Angara v. Electoral Commission, 63 Phil. 139, 156 (1936).

[34] See Araullo v. Aquino, III, 131 Phil. 457, 525 (2014).

[35] 460 Phil. 830 (2003).

[36] See Concurring Opinion of Justice Florentino P. Feliciano in Kilosbayan, Inc. v. Guingona, Jr., 302 Phil. 107, 174-176 (1994); and Senate of the Philippines v. Ermita, 522 Phil. 1, 31 (2006).

[37] Pimentel, Jr. v. Aguirre, 391 Phil. 84 (2000).

[38] Id. at 107.

[39] G.R. Nos. 230642 & 242954, September 10, 2019.

[40] 346 Phil. 321 (1997).

[41] Id. at 357.

[42] Araneta v. Dinglasan, 84 Phil. 368 (1949).

[43] Aquino, v. COMELEC, 159 Phil. 328 (1975).

[44] Osmeña v. COMELEC, 276 Phil. 830 (1991).

[45] De Guia v. COMELEC, 284 Phil. 565 (1992).

[46] Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. COMELEC, 352 Phil. 153 (1998).

[47] Bayan v. Zamora, 396 Phil. 623 (2000); Lim v. Executive Secretary, 430 Phil. 555 (2002).

[48] Osmeña III v. Abaya, 778 Phil. 395 (2016).

[49] Chavez v. Presidential Commission on Good Government, 360 Phil. 133 (1998).

[50] Social Justice Society v. Hon. Atienza, Jr., 568 Phil. 658 (2008).

[51] Supra note 36.

[52] Concurring Opinion of Justice Florentino P. Feliciano in Kilosbayan, Inc. v. Guingona, Jr., supra note 36 at 173.

[53] Id.

[54] Id.

[55] Supra note 36.

[56] 638 Phil. 542 (2010).

[57] Supra note 20.

[58] Parcon-Song v. Parcon, G.R. No. 199582, July 7, 2020.

[59] 815 Phil. 1067 (2017). Only one party was a minor.

[60] Supra note 40.

[61] Supra note 59 at 1074-1076. This requirement is reiterated in the Concurring Opinion of Justice Francis H. Jardeleza in Nicolas-Lewis v. COMELEC, 529 Phil. 642 (2006).

[62] Supra note 14; see also Republic v. Roque, 718 Phil. 294 (2013).

[63] Id. at 472-482.

[64] Id.

[65] 816 Phil. 789 (2017).

[66] Id. at 798.

[67] G.R. No. 208162, January 7, 2020.

[68] G.R. No. 234448, November 6, 2018.

[69] 522 Phil. 705 (2006).

[70] Id. at 760.

[71] 220 Phil. 422 (1985).

[72] 296-A Phil. 595 (1993).

[73] Id. at 603.

[74] De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas, 809 Phil. 65, 85 (2017).

[75] 5 U.S. 137 (1803).

[76] 240 Phil. 719 (1987).

[77] Id. at 732-733.

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[78] 254 Phil. 418 (1989).

[79] 434 Phil. 28 (2002).

[80] 693 Phil. 399 (2012).

[81] Supra note 20.

[82] Id.

[83] Petitioners Maria Victoria Bellran, Joselito Saracho, and Arnel Barabarona in National Union of Journalists of the Philippines v. Anti-Terrorism Council (G.R. No. 252747); petitioners Main T. Mohammad, Jimmy P. Bla and Nazr S. Dilangalen in Main T. Mohammad v. Executive Secretary (G.R. No. 252916); and petitioner Joahanna Monta Veloso in Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson Lemuel Gio Fernandez Cayabyab v. Rodrigo R. Duterte (G.R. No. 252921).

[84] Joint Ship Manning Group, Inc. v. Social Security System, supra note 27.

[85] "[V]agueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant. x x x In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged." (Estrada v. Sandiganbayan, 421 Phil. 290, 355-356 [2001]).

[86] 247-A Phil. 276 (1988).

[87] 403 Phil. 31 (2001).

[88] Supra note 85.

[89] 616 Phil. 449 (2009).

[90] G.R. No. 220127 (Notice), November 21, 2018.

[91] 727 Phil. 28 (2014).

[92] Supra note 86.

[93] Id.

[94] Id. at 291.

[95] Supra note 87.

[96] 479 Phil. 265 (2004).

[97] Supra note 89.

[98] 405 U.S. 156, 31 L. Ed. 2d 110 (1972).

[99] People v. Siton, supra note 89.

[100] Id.

[101] Id.

[102] Id.

[103] Supra note 90.

[104] See Spouses Imbong v. Ochoa, Jr., 732 Phil. 1, 125-126 (2014):

In United States (US) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only protected speech, but also all other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.

In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights. The underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution. (emphasis and citations omitted)

[105] Disini, Jr. v. The Secretary of Justice, supra note 91 at 121-122. See Separate Opinion of Justice V.V. Mendoza in Estrada v. Sandiganbayan, G.R. No. 148560, January 29, 2002, citing Broaderick v. Oklahoma, 413 U.S. 601, 612-613, 37 L.Ed.2d 830, 840-841 (1973); United States v. Salerno, 481 U.S. 739, 745, 95 L.Ed. 697, 707 (1987); People v. Dela Piedra, supra note 87.

[106] See United States v. Salerno, id.

[107] It must be emphasized that while, in theory, a facial invalidation may result in the invalidity of the entire law, in practice where the Court allowed a facial challenge, the Court only declared certain provisions of the assailed law void.

In Disini, Jr. v. The Secretary of Justice, supra note 91, the Court held that particular provisions of the Republic Act (R.A.) 10175, the Cybercrime Prevention Act of 2012, may be facially invalidated. The Court only declared Section 4 (c)(3) may be facially challenged. The Court only declared Section 4(c)(3) on the ground that it employs means that are overly broad and vague vis-a-vis the governmental purpose of the law.

Meanwhile, in Spouses Imbong v. Ochoa, Jr., supra note 104, the Court allowed a facial challenge but only invalidated some provisions of Republic Act (R.A.) No. 10354, otherwise known as the Responsible Parenthood and Reproductive Health Act of 2012 (RH Law). It declared the RII Law as constitutional except for Section 7, Section 23(a)(l), Section 23(a)(2)(i), Section 23(a)(2)(i), Section 23(a)(3), Section 23(b), Section 17, Section 3.01(a), and Section 3.01(j).

[108] See Rest v. Sullivan, 500 U.S. 173 (1991).

[109] See Washington State Grange v. Washington State Republican Party, 552 U.S. 442 (2008).

[110] 621 Phil. 236 (2009).

[111] 413 U.S. 601. Note that a facial challenge was not allowed in this case because the law was found to have a valid application to the litigants themselves, and that it was not substantially broad as to impair conduct.

[112] The distinction between conduct and speech was reiterated in David v. Macapagal-Arroyo, supra note 69.

[113] Quinto v. COMELEC, 627 Phil. 193, 261-262 (2010).

[114] G.R. No. 103956, March 31, 1992, 267 SCRA 712.

[115] Id. at 720.

[116] 354 Phil. 948 (1998).

[117] Supra note 18.

[118] 651 Phil. 374 (2010).

[119] Supra note 91.

[120] 529 Phil. 642 (2006).

[121] G.R. Nos. 212719 & 214637, June 25, 2019.

[122] Supra note 14.

[123] Id. at 489-490.

[124] According to the United Nations Office on Drugs and Clinic (UNODC), terrorism affects both individuals and communities. However, these effects are not to be considered as separate phenomena but are, in fact, interlinked and interdependent responses. In fact, a layering effect of trauma, so to speak, arises from terrorist acts, to wit:

The potential effects on victims of terrorism can be devastating and multiple; it may be experienced al many interrelated levels - individually, collectively and societally. From a victimological perspective, there are three circles of 'personal victimization' which are determined in accordance with their proximity to the direct victim: "primary or first order victimization, experienced by those who suffer harm directly, whether it is injury, loss or death; secondary or second order victimization, experienced by family members, relatives or friends of primary victims; and tertiary or third order victimization, experienced by those who observe the victimization, are exposed to it through TV or radio coverage of the victimization, or help and attend to victims" (Erez, 2006, p. 20). (italics supplied)

Unlike the effects of accidental injury or disease, research on the effects of crime has stressed mental, psychological and social effects, in contrast to physical or financial effects. This is attributable to the fact that crime is "qualitatively different from being the victim of an accident or disease, because it includes someone deliberately or recklessly harming you" (Shapland and Hall, 2007, p. 178).

x x x x

In addition to the psychological impact of terrorism-related violations experienced at an individual level, affected societies may suffer collective trauma which is particularly the case where attacks are targeted against a particular group or community. (See Alexander, 2012, who explores the development of social and cultural trauma; see also Weine, 1998, p. 1721). In such a situation, the sense of group identity and allegiance is heightened (Aroche and Coello, 2004, p. 56), producing collective solidarity, identity and mutual support (Modvig and Jaranson, 2004, p. 37). Because of that heightened allegiance, when the group, or members of it, are attacked, it may collectively experience symptoms of psychological trauma (De Jong, 2004, pp. 165 and 168).

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x x x Collectively, communities enter into shock, which is compounded by grief for the loss of the victim through either death, the debilitating physical and psychological impact of the violation, or, in the case of rape, familial and community rejection (Yohani and Hagen, 2010, pp. 208 and 214; Hagen and Yohani, 2010, p. 19).

x x x x

Far from being conceptualized discretely, however, individual and societal forms of trauma are understood as interlinked and interdependent trauma responses. Gross violations of human rights can affect the individual not only as an individual per se, but also as a member of a community or of society more generally. In particular, community or societal allegiance or affiliation, as aspects of social and cultural identity, form part of the individual's personal identity system. Clinical literature describes a 'layering' of trauma, reflecting to some extent the 'victimization circles' referred to above, such that an individual, as a member of a particular group or of society more broadly, may experience the first phase of the traumatisation process with the onset or increase in group repression or persecution (which may include elements of social and political change). The period during which the individual personally becomes a victim of serious human rights violations marks the second phase in the traumatisation process. A third phase - characterized by dislocation and exile - arises where the victim is forced to flee their home to avoid the threat of harm (van der Veer, 1998, p. 5). Moreover, the societal response to individual and collective trauma has a significant impact on the rehabilitation of individual survivors (citations omitted). (United Nations Office on Drugs and Crime. E4J University Module Series: Counter-Terrorism, Module 14: Victims of Terrorism (July 2018) at https://www.unodc.org/e4j/en/terrorism/module-14/key-issues/effects-of-terrorism.html)

[125] Around 400,000 residents of Marawi were displaced due to the Marawi Seige. (U.S. State Department, COUNTRY REPORTS ON TERRORISM 2017 (Bureau of Counterterrorism), p. 280.)

[126] The United Nations claims to have been in the forefront of the fight against terrorism even prior to the 9/11 terrorist attack:

The United Nations was engaged with the issue of terrorism long before that calamitous September morning ten years ago. For decades, the Organization has brought the international community together to condemn terrorist acts and developed the international legal framework to enable states to fight the threat collectively. Sixteen international treaties have been negotiated at the United Nations and related forums that address issues as diverse as the hijacking of planes, the taking of hostages, the financing of terrorism, the marking of explosives, and the threat of nuclear terrorism. (Smith, M. Securing our Future: A Decade of Counter-terrorism Strategies. United Nations Chronicle (no date) at https://www.un.org/en/chronicle/article/securing-our-future-decade-counter-terrorism-strategies)

[127] Olof Skoog, Head of the European Union delegation, stated that "terrorism benefits from weak Government institutions, poor governance and porous borders, which lead to corruption, illicit trafficking and exploitation of natural resources" during the 8743[rd] meeting (AM) of the UN Security Council on March 11, 2020. (Security Council Issues Presidential Statement Calling for Greater Efforts to Help Africa Fight Terrorism, as Delegates Denounce 'Insufficient' Current Approaches. United Nations Meeting Coverage and Press Releases (March 11, 2020) at https://www.un.org/press/en/2020/sc14140.doc.htm)

"The idea that weak states can compromise security - most obviously by providing havens for terrorists but also by incubating organized crime, spurring waves of migrants, and undermining global efforts to control environmental threats and disease — is no longer much contested." (Grappling with State Failure. Washington Post. (June 9, 2004) at https://www.washingtonpost.com/archive/opinions/2004/06/09/grappling-with-state-failure/c5bd6d84-bd41-4255-

96d1-72c0e31b1ad6/)

[128] "On May 23, 2017, Philippine forces launched an operation attempting to capture Hapilon in the city of Marawi. ASG fighters opened fire on security forces and called on support from the pro-ISIS Maute Group. Together, the ASG and Maute Group militants laid siege over Marawi and clashed with government forces until October." (U.S. State Department, COUNTRY REPORTS ON TERRORISM 2017 (Bureau of Counterterrorism), p. 280.) Evidently, these parties were lying in wait and only acted when Philippine forces attempted to capture Isnilon Hapilon. The Marawi Seige began from this context.

[129] A prime example of this is the siege of Marawi. As stated in the previous footnote, the siege began when Philippine forces tried to capture Abu Sayyaf leader Isnilon Hapilon. However, to their surprise, they were met with a greater response as hundreds of militants emerged from the shadows. They raised the black of ISIS and declared Marawi a new caliphate. Thus, the Marawi Siege began. This incident perfectly captures the insidious and clandestine nature of terrorism.

[130] Giboney v. Empire Storage and Ice Co., 336 U.S. 490, 93 L. Ed. 834, 843-844 (1949).

[131] See Defensor-Santiago v. Guingona, Jr., 359 Phil. 276, 284 (1998):

The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents this Court from prying into the internal workings of the Senate. Where no provision of the Constitution or the laws of even the Rules of the Senate is clearly shown to have been violated, disregarded or overlooked, grave abuse of discretion cannot be imputed to Senate officials for acts done within their competence and authority. This Court will be neither a tyrant nor a wimp; rather, it will remain steadfast and judicious in upholding the rule and majesty of the law.

[132] See Araullo v. Aquino III, supra note 34 at 531 and Ifurung v. Carpio-Morales, 831 Phil. 135, 151-152 (2018).

[133] See Angara v. Electoral Tribunal, 63 Phil. 139, 156 (1936).

[134] Cf. Dueñas, Jr. v. House of Representatives Electoral Tribunal, 610 Phil. 730, 742 (2009).

[135] Cf. Lagman v. Medialdea, 812 Phil. 179, 269 (2009); see also Ang Tibay v. Court of Industrial Relations, 69 Phil. 635, 640 (1940).

[136] Lopez v. Court of Appeals, 438 Phil. 351. 361 (2002).

[137] Bayan v. Exec. Sec. Ermita, 522 Phil. 201, 236-240 (2006).

[138] The Court, in Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 14 at 489-490, held as follows:

Distinguished from an as-applied challenge which considers only extant fads affecting real litigants, a facial invalidation is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.

x x x x

A strong criticism against employing a facial challenge in the case of penal statutes, if the same is allowed, would effectively go against the grain of the doctrinal requirement of an existing and concrete controversy before

judicial power may be appropriately exercised. A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it. (citations omitted)

[139] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, id. at 489, citing David v. Macapagal-Arroyo, supra note 69 at 777 (2006) and Spouses Romualdez v. COMELEC, 576 Phil. 357, 390-394 (2008).

[140] Serrano v. Gallant Maritime Services, Inc., 601 Phil. 245, 282 (2009); Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, 487 Phil. 537, 599 (2004).

[141] Serrano v. Gallant, id. at 285-286.

[142] Chavez v. Gonzales, 569 Phil. 155, 193 (2008).

[143] People v. Suzuki, 460 Phil. 146, 157 (2003).

[144] Kabataan Party-List v. COMELEC, 775 Phil. 523, 551-552 (2015).

[145] Government of the United States of America v. Puraganan, 438 Phil. 417, 450 (2002).

[146] Id. at 439.

[147] Ynot v. Intermediate Appellate Court, 232 Phil. 615, 626-628 (1987), citing United States v. Toribio, 15 Phil. 85, 91-92 (1910). In Fernando v. St. Scholastica's College, 706 Phil. 138, 160 (2013), the Court held that beautification is not a valid governmental purpose.

[148] Bautista v. Juinio, 212 Phil. 302, 317 (1984).

[149] Quinto v. COMELEC, supra note 113 at 261-263. The Court held that political candidacy is not protected speech. See also, White Light Corp. v. City of Manila, 596 Phil. 444, 451-454 (2009).

[150] Samahan ng mga Progresibong Kabataan v. Quezon City, supra note 59 at 1113-1114.

[151] Sameer Overseas Placement Agency, Inc. v. Cabiles, 740 Phil. 403 (2014).

[152] Nicolas-Lewis v. COMELEC, supra note 120.

[153] Mosqueda v. Pilipino Banana Growers, 793 Phil. 17, 67 (2016).

[154] Estrada v. Escritor, 525 Phil. 110, 168-169 (2006).

[155] Republic v. Manalo, 831 Phil. 33 (2018).

[156] Adiong v. COMELEC, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 719.

[157] Chavez v. Gonzalez, supra note 142. See also, The Diocese of Bacolod v. COMELEC, 751 Phil. 301 (2015). While Senior Associate Justice Perlas-Bernabe concurred in the result, she found the regulation content-neutral thereby requiring intermediate scrutiny.

[158] The Diocese of Bacolod v. COMELEC, id.

[159] Lopez v. Court of Appeals, supra note 136; see discussions of narrow interpretation and application at pages 12 to 14.

[160] Bayan v. Exec. Sec. Ermita, supra note 137.

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[161] Cf. Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, supra note 140.

[162] In Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, supra note 18 at 325, the Court made the following pronouncement:

From Connally v. General Construction Co. to Adderley v. Florida, the principle has been consistently upheld that what makes a statute susceptible to such a charge is an enactment either forbidding or requiring the doing of an act that men of common intelligence must necessarily guess at its meaning and differ as to its application. Is this the situation before us? A citation from Justice Holmes would prove illuminating: "We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in constructing laws as saying what they obviously mean." (citations omitted)

In People v. Nazario, supra note 86 at 195, the Court held that "[a]s a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle." (citations omitted)

In David v. Macapagal-Arroyo supra note 69 at 777-778, the Court declared that "[r]elated to the 'overbreadth' doctrine is the 'void for vagueness doctrine' which holds that 'a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application.'" (citations omitted)

[163] A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (I) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. (Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 14 at 488.

[164] People v. Nazario, supra note 86.

[165] In Estrada v. Sandiganbayan, supra note 85 at 353, the Court adopted Justice V.V. Mendoza's definition of overbreadth in his Separate Opinion:

Moreover, we agree with, hence we adopt, the observations of Mr. Justice Vicente V. Mendoza during the deliberations of the Court that the allegations that the Plunder Law is vague and overbroad do not justify a facial review of its validity — x x x The overbreadth doctrine, on the other hand, decrees that "a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." (citation omitted)

This definition was reiterated in Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 14: "The overbreadth doctrine, meanwhile, decrees that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

The same definition was stated in Disini, Jr. v. The Secretary of Justice supra note 91 at 99: "Under the overbreadth doctrine, a proper governmental purpose, constitutionally subject to state regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms." (citation omitted)

[166] Samahan ng mga Progresibong Kabataan v. Quezon City, supra note 59.

[167] See United States v. Williams, 553 U.S. 285 (2008).

[168] Broadrick, et al. v. Oklahoma, supra note 111, citations omitted.

[169] See Members of City Council of Los Angelas, et al. v. Taxpayers for Vincent, 466 U.S. 789 (1984).

[170] See Barron, J., & Dienes, C., Constitutional Law in a Nutshell (8th ed.), West Academic Publishing (2013), pp. 404-405.

[171] In Disini, Jr. v. The Secretary of Justice, supra note 91 at 122, the Court held that:

A petitioner may for instance mount a "facial" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute. The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence. (citation omitted)

[172] See Estrada v. Sandiganbayan, supra note 85; Romualdez v. Sandiganbayan, supra note 96; and Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 14.

[173] The exclusion of unprotected speech brings to the fore the question of whether terrorism-related speech is protected or unprotected speech. See Madrilejos v. Gatdula, G.R. No. 184389, September 24, 2019; Soriano v. Laguardia, 605 Phil. 43 (2009); and Chavez v. Gonzales, supra note 142.

[174] See Interpellation of Associate Justice Leonen on February 2, 2021, pp. 96 to 122.

[175] Supra note 85, at 355-356.

[176] G.R. No. 148560, Resolution dated January 29, 2002.

[177] Supra note 118.

[178] Disini, Jr. v. The Secretary of Justice, supra note 91.

[179] Cf Ople v. Torres, 354 Phil. 948 (1998). It must be stated that Ople v. Torres did not expressly involve a facial challenge in the sense that there was no discussion in (he decision concerning the applicability of a "facial challenge." However, the Court appeared to have taken into consideration "...the broadness, the vagueness, the overbreadth of A.O. No. 308 which if implemented will put our people's right to privacy in clear and present danger" in rendering its decision. It held that "[i]t is noteworthy that A.O. No. 308 does not State what specific biological characteristics and what particular biometrics technology shall be used to identify people who will seek its coverage. Considering the banquet of options available to the implementors of A.O. No. 308, the fear dial it threatens the right to privacy of our people is not groundless."

[180] Cf Quinto v. COMELEC, supra note 110 at 277-278, Strictly speaking, Quinto v. Commission on Elections did not contain any specific discussions on the applicability of the "facial challenge" doctrine. Nonetheless, the Court held that "[t]he challenged provision also suffers from the infirmity of being overboard" on the following grounds:

First, the provision pertains to all civil servant's holding appointive posts without distinction as to whether they occupy high positions in government or not. Certainly, a utility worker in the government will also be considered as ipso facto resigned once he files his CoC for the 2010 elections. This scenario is absurd for, indeed, it is

unimaginable how he can use his position in the government to wield influence in the political world.

x x x x

Second, the provision is directed lo the activity of seeking any and all public offices, whether they be partisan or nonpartisan in character, whether they be in the national, municipal or barangay level. Congress has not shown a compelling state interest to restrict the fundamental right involved on such a sweeping scale. (citations omitted)

[181] Goading v. Wilson, 405 U.S. 518, 521, 31 L. Ed.2d 408, 413 (1972), cited in Estrada v. Sandiganbayan, supra note 85, at 353:

> The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity."

Broadrick v. Oklahoma, supra note 111, cited in David v. Macapagcd-Arroyo, supra note 69 at 776:

> [F]acial invalidation of laws is considered as "manifestly strong medicine," to be used "sparingly and only as a last resort," and is "generally disfavored;" The reason for this is obvious. Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, i.e., in other situations not before the Court. (emphasis omitted)

[182] In Chavez v. Gonzales, supra note 142 at 195-196, the Court held:

Freedom of expression has gained recognition as a fundamental principle of every democratic government, and given a preferred right that stands on a higher level than substantive economic freedom or other liberties. The cognate rights codified by Article III, Section 4 of the Constitution, copied almost verbatim from the First Amendment of the U.S. Bill of Rights, were considered the necessary consequence of republican institutions and the complement of free speech. This preferred stains of free speech has also been codified at the international level, its recognition now enshrined in international law as customary norm that binds all nations.

In the Philippines, the primacy and high esteem accorded freedom of expression is a fundamental postulate of our constitutional system. This right was elevated to constitutional status in the 1935, the 1973 and the 1987 Constitutions, reflecting our own lesson of history, both political and legal, that freedom of speech is an indispensable condition for nearly every other form of freedom. Moreover, our history shows that the struggle to protect the freedom of speech, expression and the press was, at bottom, the struggle for the indispensable preconditions for the exercise of other freedoms. For it is only when the people have unbridled access to information and the press that they will be capable of rendering enlightened judgments. In the oft-quoted words of Thomas Jefferson, we cannot both be free and ignorant. (citations omitted)

[183] See Disini, Jr. v. The Secretary of Justice, supra note 91.

[184] 1987 CONSTITUTION, Article III, Section 4; Chavez v. Gonzalez supra note 142 at 196.

[185] See R.A.V. v. St. Paul, 505 U.S. 377, 382-86 (1992).

[186] Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015) at 2226-27.

[187] United States v. Stevens, 559 U.S. 460 (2010), citations omitted.

[188] United States v. Stevens, id.:

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"Maybe there are some categories of speech that have been historically unprotected, but have not yet been specifically identified or discussed as such in our case law. But if so, there is no evidence that "depictions of animal cruelty" is among them. We need not foreclose the future recognition of such additional categories to reject the Government's highly manipulable balancing test as a means of identifying them."

[189] The U.S. Supreme Court has long considered political and ideological speech to be at the core of the First Amendment guarantee, including speech concerning "politics, nationalism, religion, or other matters of opinion."

Political speech can take other forms beyond the written or spoken word, such as money (Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam) or symbolic acts (Texas v. Johnson, 491 U.S. 397 (1989). A government regulation that implicates political or ideological speech generally receives strict scrutiny so that (he government must show that the law is narrowly tailored to achieve a compelling government interest.

Commercial speech, on the other hand, (i.e., speech that merely proposes a commercial transaction or relates solely to the speaker's and the audience's economic interests) has historically received less First Amendment protection than political speech. For many years, courts deferred lo legislatures when it came to economic regulations that impinged upon speech. However, the Court's 1976 decision in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, launched a trend of increased judicial scrutiny over laws implicating commercial speech.

[190] 102 Phil. 152 (1957).

[191] Supra note 173.

[192] Supra note 142 at 206-207. The Court held in this case that:

With respect to content-based restrictions, the government must also show the type of harm the speech sought to be restrained would bring about — especially the gravity and the imminence of the threatened harm — otherwise the prior restraint will be invalid. Prior restraint on speech based on its content cannot be justified by hypothetical fears, "but only by showing a substantive and imminent evil that has taken the life of a reality already on ground." As formulated, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

[193] 181 Phil. 45, 57-58 (1979).

[194] 409 Phil. 571, 596 (2001).

[195] 328 Phil. 893, 939 (1996).

[196] 268 U.S. 652, June 8, 1925. The U.S. Supreme Court explained in this case:

It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.

x x x x

That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question.

x x x x

And, for yet more imperative reasons, a State may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional Stale. Freedom of speech and press [...] does not protect disturbances to the public peace or the attempt to subvert the government. It does not protect publications or teachings which tend to subvert or imperil the government or to impede or hinder it in the performance of its governmental duties.

[197] 513 Phil. 607, 617 (2005).

[198] Snyder v. Phelps, 562 U.S. 443, 458 (2011).

[199] See Watts v. United States, 394 U.S. 705, 708 (1969).

[200] See Virginia v. Black, 538 U.S. 343, 359 (2003).

[201] Supra note 130 at 843-844. Giboney v. Empire Storage and Ice Co., involved an injunction issued by a state court against officers and members of the Ice and Coal Drivers and Handlers Local Union No. 953, affiliated with the American Federation of Labor. It enjoined them from picketing at the place of business of Empire Storage and Ice Co. The objective of the peaceful picketing was to prevent Empire from selling ice to non-union peddlers. Under state law, in this case, the law of Missouri, this kind of agreement is a crime punishable by a fine of not more than $5,000 and by imprisonment for not more than five years.

The union challenged the injunction on a couple of grounds, one of them, that "the injunction against picketing adjacent to Empire's place oj business is an unconstitutional abridgment of free speech because the picketers were attempting peacefully to publicise truthful fads about a labor dispute."

The U.S. Supreme Court rejected this argument and held that the constitutional freedom of speech and press does not extend its immunity to speech integral for conduct in violation of a crime.201 The U.S. Supreme Court held:

"It is true that the agreements and course of conduct here were, as in most instances, brought about through speaking or writing. But it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. See e.g., Fox v. Washington, 236 U. S. 273, 236 U. S. 277; Chaplinsky New Hampshire, 315 U. S. 568. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade, as well as many other agreements and conspiracies deemed injurious to society." (emphasis supplied)

[202] Eugene Volokh, The Speech Integral to Criminal Conduct Exception, 101 Cornell L. Rev. 981 (2016) Available at: http://scholarship.law.cornell.cdu/clr/vol101/iss4/3

[203] Id., citing in footnote 3 United States v. Alvarez, 132 S. Ct. 2537, 2544 (2012) (plurality opinion); see Sorrell v. IMS Health Inc., 131 S. Ct. 2653, 2665 (2011); Holder v. Humanitarian Law Project, 561 U.S. 1, 27 n.5 (2010); United States v. Stevens, 559 U.S. 460, 468-69 (2010); United States v. Williams, 553 U.S. 285, 297 (2008); Rumsfeld v. FAIR, 547 U.S. 47, 62 (2006).

[204] "The Court has used this exception to justify prohibitions on distributing and possessing child pornography (New York v. Ferber, 458 U.S. 747, 761-62 (1982), on soliciting crime (Williams, 553 U.S. al 297), and on announcing discriminatory policies (FAIR, 547 U.S. at 62). Lower courts have used it to justify restrictions on speech that informs people how crimes can be committed (Rice v. Paladin Enters., Inc., 128 F.3d 233, 244 (4th Cir. 1997)); on doctor speech that recommends medical marijuana to their clients (Pearson v. McCaffrey, 139 F. Supp. 2d 113, 121 (D.D.C. 2001); Conant v. McCaffrey, 172 F.R.D. 681, 698 (N.D. Cal. 1997); see also Petition

for a Writ of Certiorari at 20, Walters v. Conant, 540 U.S. 946 (2003) (No. 03-40) (arguing that the revocation of a physician's registration for recommending that patients use marijuana does not violate the first Amendment). But see Conant v. Walters, 309 F.3d 629, 637-38 (9th Cir. 2002) (holding such speech constitutionally protected); on union speech that "retaliates" against union members by publicly criticizing them for their complaints (See, e.g., Dixon v. Int'l Bhd. of Police Officers, 504 F.3d 73, 83-84 (1st Cir. 2007)); on intentionally distressing speech about people (See infra Part III.B.1.) and more (See, e.g., Pickup v. Brown, 740 F.3d 1208, 1222 (9th Cir. 2013)). Government agencies have used the exception to justify restrictions on, among other things, the publication of bomb-making instructions (U.S. DEP'T OF JUSTICE, 1997 REPORT ON THE AVAILABILITY OF BOMB-MAKING INFORMATION, https://pcrma.cc/63JT-WMEG.), speech by tour guides (Brier for Appellee District of Columbia at 23, Edwards v. District of Columbia., 755 F.3d 996 (D.C. Cir. 2014) (Nos. 13-7063 & 13-7064)), and offensive speech by protesters near a highway (Brief for Defendants-Appellees at 29, Ovadal v. City of Madison, 416 F.3d 531 (7th Cir. 2005))" (Id., citations included inline)

[205] Supra note 14.

[206] Supra note 104.

[207] 393 US 503 (1969).

[208] 491 U.S. 397 (1989).

[209] Soriano v. Laguardia, supra note 173 at 96.

[210] See Separate Opinion of Associate Justice Angelina Sandoval-Gutierrez in Chavez v. Gonzales, supra note 142 at 224.

[211] Nicolas-Lewis v. COMELEC, supra note 120.

[212] Disini, Jr. v. The Secretary of Justice, supra note 91 at 142.

[213] Cabansag v. Fernandez, supra note 190 at 163.

[214] American Communications Association, et al. v. Douds, 339 U.S. 382 (1950).

[215] Bridges v. California, 314 U.S. 252 (1941).

[216] See ABS-CBN Broadcasting Corporation v. COMELEC, 380 Phil. 780, 794 (2000).

[217] Richard Fallon, The Nature of Constitutional Rights: The Invention and Logic of Strict Judicial Scrutiny (Cambridge University Press, 2019). pp. 28-61. Prof. Fallon argues that strict scrutiny is an invention of the US Supreme Court in the 1960's and that the triggers have been constantly evolving.

[218] Id. at 68-90. See also Eric Posner and Adrian Vermcule, Terror in the Balance Security, Liberty, and The Courts (Oxford University Press, 2007). These authors argue that judges should not pretend to know more when security experts and politicians are themselves floundering about how best to respond to terrorism. The prudent option is for the court to adopt a trade-off approach by situating the metrics of security and liberty in varying real world contexts (pp. 21-28).

[219] Note No. 000350 - 2020 of the Permanent Mission of the Republic of the Philippines to the United Nations avails itself of this opportunity to renew to the United Nations Office of Legal Affairs.

[220] See, for example, US-Israel Counter-Terrorism Cooperation Accord, 30 April 1996, 7 US Department of State Dispatch 19, 225-226.

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[221] See Art. 3(j)(3), R.A. No. 10168 or The Terrorism Financing Prevention and Suppression Act of 2012 (Anti-Terrorism Financing Act or ATFA). It includes in the definition of terrorism act that violate 9 international agreements.

[222] For example, the US has designated Cuba, North Korea, Iran and Syria as state sponsors of terrorism for providing safe haven to terrorism. See Section 1754(c), US National Defense Authorization Act for Fiscal Year 2019.

[223] Ejercito v. COMELEC, 748 Phil. 205 (2014).

[224] In Kilusang Mayo Uno v. Aquino III, 788 Phil. 415, 428-429 (2016), the Court held that the petition was devoid of substantial basis despite a sweeping allegation of grave abuse of discretion tinder the petition's section on its Nature. This is similar to the case at hand. The pertinent excerpt from Kilusang Mayo Uno v. Aquino III is as follows:

> "Even if the procedural issues are disregarded, the petitions still failed to show that PhilHealth gravely abused its discretion in issuing the assailed circulars. On the contrary, PhilHealth acted with reasonable prudence and sensitivity to the public's needs. It postponed the rate increase several times to relieve the public of the burden of simultaneous rate and price increases. It accommodated the stakeholders and heard them through consultation. In the end, it even retained a lower salary bracket ceiling (Php35,000.00 instead of Php50,000.00) and a lower rate (2.5% rather than the planned 3%).
>
> The term "grave abuse of discretion" has a specific and well-defined meaning in established jurisprudence. It is not an amorphous concept that can be shaped or manipulated to suit a litigant's purpose. 48 Grave abuse of discretion is present when there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, 49 or where power is exercised arbitrarily or in a despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform a legal duty or act at all in contemplation of law.
>
> Other than a sweeping allegation of grave abuse of discretion under its Nature of the Petition section, the petition is devoid of substantial basis." (citations omitted)

Meanwhile, in Tribiana v. Tribiana, 481 Phil. 539, 549 (2004), the Court noted that "[t]he petition for certiorari filed by Edwin questioning the RTC's denial of his motion to dismiss merely states a blanket allegation of grave abuse of discretion. An order denying a motion to dismiss is interlocutory and is not a proper subject of a petition for certiorari. Even in the face of an error of judgment on the part of a judge denying the motion to dismiss, certiorari will not lie. Certiorari is not a remedy to correct errors of procedure. The proper remedy against an order denying a motion to dismiss is to file an answer and interpose as affirmative defenses the objections raised in the motion to dismiss. It is only in the presence of extraordinary circumstances evincing a patent disregard of justice and fair play where resort to a petition for certiorari is proper." (citations omitted)

The Court, in Odango v. National Labor Relations Commission (475 Phil. 596, 606-607 [2004]) held as follows:

> "We agree with the Court of Appeals that nowhere in the petition is there any acceptable demonstration that the NLRC acted either with grave abuse of discretion or without or in excess of its jurisdiction. Petitioners merely staled generalizations and conclusions of law. Rather than discussing how the NLRC acted capriciously, petitioners resorted to a litany of generalizations.
>
> Petitions that fail to comply with procedural requisites, or are unintelligible or clearly without legal basis, deserve scant consideration. Section 6, Rule 65 of the Rules of Court requires that every petition be sufficient in form and substance before a court may take further action. Lacking such sufficiency, the court may dismiss the petition outright."

[225] Atty. Howard M. Calleja v. The Executive Secretary (G.R. No. 252578); Melencio S. Sta. Maria, et al. v. Executive Secretary, et al. (G.R. No. 252580); Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al. (G.R. No. 252623); Christian S. Monsod, et al. v. Executive Secretary, et al. (G.R. No. 252624); Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea (G.R. No. 252741); National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252747); The Alternative Law Groups, Inc. v. Executive Secretary (G.R. No. 252765); HENDY ABENDAN of Center for Youth Participation and Development Initiatives, et al. v. Hon. Salvador C. Medialdea, et al. (G.R. No. 252802); Concerned Online Citizens, et al. v. Executive Secretary (G.R. No. 252809); Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252921); Association of Major Religious Superiors, et al. v. Executive Secretary, et al. (G.R. No. 252984); Philippine Bar Association, Inc. v. Executive Secretary, et al. (G.R. No. 253100); Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253118); Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al. (G.R. No. 253252); Rep. Edcel C. Lagman v. Executive Secretary, et al. (G.R. No. 252579); Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al. (G.R. No. 252613); SANLAKAS v. Rodrigo R. Duterte, et al. (G.R. No. 252646); Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al. (G.R. No. 252702); Jose J. Ferrer, Jr. v. Executive Secretary, et al. (G.R. No. 252726); Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAY AN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B., et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252733); Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252736); Kabataang Tagapaglang-gol ng Karapatan, et al. v. Executive Secretary, et al. (G.R. No. 252755); Algamar A. Latiph, et al. v. Senate, et al. (G.R. No. 252759); Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R. Duterte, et al. (G.R. No. 252903); Beverly Longid, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252904); Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines (G.R. No. 252905); Main T. Mohammad, et al. v. Executive Secretary, et al. (G.R. No. 252916); University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253018); Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al. (G.R. No. 253124); Pagkakaisa ng Kababaihan para sa Kalayaan (KAISA KA), et al. v. Anti-Terrorism Council, et al. (G.R. No. 253254); Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al. (G.R. No. 253420); and Anak Mindanao (AMIN) Parly-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al. (G.R. No. 254191 [Formerly UDK 16714]); and Lawrence A. Yerbo v. Senate President, et al. (UDK. 16663).

[226] Francisco, Jr. v. House of Representatives, supra note 35 at 883; Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc., 802 Phil. 116, 137 (2016); Kilusang Mayo Uno v. Aquino III, G.R. No. 210500, April 2, 2019.

[227] Supra note 34 at 531.

[228] 814 Phil. 253, 292 (2017).

[229] G.R. No. 210500, April 2, 2019.

[230] Alafariz v. Noble, 72 Phil. 278, 280 (1941).

[231] People v. Marave, 120 Phil. 602, 606 (1964).

[232] J.L. Bernardo Construction v. Court of Appeals, 381 Phil. 25, 36 (2000).

[233] Yu v. Hon. Reyes-Carpio, 667 Phil. 474, 482 (2011).

[234] Atty. Howard M. Calleja, et al. v. The Executive Secretary, et al. (G.R. No. 252578); Rep. Edcel C. Lagman v. Executive Secretary, et al. (G.R. No. 252579); Melencio S. Sta. Maria, et al. v. Executive Secretary, et al. (G.R. Mo. 252580); Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al. (G.R. No. 252613); Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al. (G.R. No. 252623); Christian S. Monsod, et al. v. Executive Secretary, et al. (G.R. No. 252624); SANLAKAS v. Rodrigo R. Duterte, et al. (G.R. No. 252646); Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al. (G.R. No. 252702); Jose J. Ferrer, Jr. v. Executive Secretary, et al. (G.R. No. 252726); Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea (G.R. No. 252741); Kabataang Tagapagtang-gol ng Karapatan, et al. v. Executive Secretary, et al. (G.R. No. 252755); Algamar A. Latiph, et al. v. Senate, et al. (G.R. No. 252759); The Alternative Law Groups, Inc. v. Executive Secretary (G.R. No. 252765); Lawrence A. Yerbo v. Senate President, et al. (UDK 16663); HENDY ABENDAN of Center for Youth Participation and Development Initiatives, et al. v. Hon. Salvador C. Medialdea, et al. (G.R. No. 252802); Concerned Online Citizens, et al. v. Executive Secretary (G.R. No. 252809); Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R. Duterte, et al. (G.R. No. 252903); Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines (G.R. No. 252905); Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252921); Association of Major Religious Superiors, et al. v. Executive Secretary, et al. (G.R. No. 252984); Philippine Bar Association, Inc. v. Executive Secretary, et al. (G.R. No. 253100); Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253118); Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al. (G.R. No. 253124); Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al. (G.R. No. 253252); Pagkakaisa ng Kababaihan para sa Kalayaan (KAISA KA), et al. v. Anti-Terrorism Council, et al. (G.R. No. 253254); and Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary et al. (G.R. No. 254191 [Formerly UDK 16714]).

[235] Petitioner Ernesto B. Neri in Christian S. Monsod, et al. v. Executive Secretary, et al. (G.R. No. 252624); Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B. et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252733); Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252736); National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252747); University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253018); and Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al. (G.R. No. 253420).

[236] Algamar A. Latiph, et al. v. Senate, et al. (G.R. No. 252759); Main T. Mohammad, et al. v. Executive Secretary, et al. (G.R. No. 252916); and Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252921).

[237] Supra note 14 at 473-474.

[238] Some of the petitioners suing in Rep. Edcel C. Lagman v. Executive Secretary (G.R. No. 252579); Melencio S. Sta. Maria v. Executive Secretary (G.R. No. 252580); Rudolf Philip B. Jurado v. Anti- Terrorism Council (G.R. No. 252613); Center for Trade Union and Human Rights (CTUHR) v. Hon. Rodrigo R. Duterte (G.R. No. 252623); Christian S. Monsod v. Executive Secretary (G.R. No. 252624); Federation of Free Workers (FFW-NAGKAISA) v. Office of the President (G.R. No. 252702); Jose J. Ferrer, Jr. v. Executive Secretary (G.R. No. 252726); Ma. Ceres P. Doyo v. Salvador C. Medialdea (G.R. No. 252741); Kabataang Tagapagtang-gol ng Karapatan v. Executive Secretary (G.R. No. 252755); Algamar A. Latiph v. Senate (G.R. No. 252759); The

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Alternative Law Groups, Inc. v. Executive Secretary (G.R. No. 252765); Lawrence A. Yerbo v. Senate President (UDK 16663); HENDY ABENDAN of Center for Youth Participation and Development Initiatives v. Hon. Salvador C. Medialdea (G.R. No. 252802); Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag v. President Rodrigo R. Duterte (G.R. No. 252903); Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines (G.R. No. 252905); Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB v. Rodrigo R. Duterte (G.R. No. 252921); University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo v. H.E. Rodrigo R. Duterte (G.R. No. 253018); and Pagkakaisa ng Kababaihan para sa Kalayaan (KAISA KA) v. Anti-Terrorism Council (G.R. No. 253254).

[239] Id.

[240] Melencio S. Sta. Maria, et al. v. Executive Secretary, et al. (G.R. No. 252580); Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al. (G.R. No. 252613); Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al. (G.R. No. 252623); Christian S. Monsod, et al. v. Executive Secretary, et al. (G.R. No. 252624); Algamar A. Latiph, et al. v. Senate, et al. (G.R. No. 252759); Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R. Duterte, et al. (G.R. No. 252903); Center for International Law (CENTER LAW), Inc. v. Senate of the Philippines (G.R. No. 252905); Main T. Mohammad, et al. v. Executive Secretary, et al. (G.R. No. 252916); Philippine Bar Association, Inc. v. Executive Secretary, et al. (G.R. No. 253100); Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al. (G.R. No. 253 124); and Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al. (G.R. No. 254191 [Formerly UDK 16714]).

[241] Rep. Edcel C. Lagman v. Executive Secretary, et al. (G.R. No. 252579); Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea (G.R. No. 252741); and Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al. (G.R. No. 254191 [Formerly UDK 16714]).

[242] Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al. (G.R. No. 252623); Christian S. Monsod, et al. v. Executive Secretary, et al. (G.R. No. 252624); SANLAKAS v. Rodrigo R. Duterte, et al. (G.R. No. 252646); Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al. (G.R. No. 252702); Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252733); Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al. (G.R, No. 252736); National Union of Journalists of the Philippines', et al. v. Anti-Terrorism Council, et al. (G.R. No. 252747); Kabataang Tagapagtang-gol ng Karapatan, et al. v. Executive Secretary, et al. (G.R. No. 252755); The Alternative Law Groups, Inc. v. Executive Secretary (G.R. No. 252765); Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines (G.R. No. 252905); Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253118); and Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al. (G.R. No. 253252).

[243] Some of the petitioners suing in Rep. Edcel C. Lagman v. Executive Secretary, et al. (G.R. No. 252579); Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al. (G.R. No. 252613); Christian S. Monsod, et al. v. Executive Secretary, et al. (G.R. No. 252624); SANLAKAS v. Rodrigo R. Duterte, et al. (G.R. No. 252646); Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al. (G.R. No. 252702); Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252736); Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea (G.R, No. 252741); Algamar A. Latiph, et al. v. Senate, et al. (G.R. No. 252759); Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R.

Duterte, et al. (G.R. No. 252903); Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines (G.R. No. 252905); Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252921); Philippine Bar Association, Inc. v. Executive Secretary, et al. (G.R. No. 253100); Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al. (G.R. No. 253252); and Anak Mindanao (AMIN) Party-List Representative AMIIIILDA SANGCOPAN, et al. v. The Executive Secretary, et al. (G.R. No. 254191 [Formerly UDK 167141).

[244] Integrated Bar of the Philippines v. Zamora, 392 Phil. 618, 633-634 (2000); Lacson v. Perez, 410 Phil. 78, 93 (2001); Lim v. Executive Secretary, 430 Phil. 555, 570-571 (2002); and Sanlakas v. Reyes, 466 Phil. 482, 507-508 (2004).

[245] In Integrated Bar of the Philippines v. Zamora, id. at 633, the Court held that the IBP's mere invocation of its duly to preserve the rule of law is not sufficient to clothe it with standing in said case. Such interest is "too general an interest which is shared by other groups and the whole citizenry."

[246] 683 Phil. 141, 172 (2012).

[247] Id., arose out of the following facts. On September 8, 2010, then President Benigno Simeon C. Aquino III issued E.O. No. 7 entitled "Directing the Rationalization of the Compensation and Position Classification System in the [GOCCs] and [GFIs], and for Other Purposes." Among others, E.O. No. 7 "ordered (1) a moratorium on the increases in the salaries and other forms of compensation, except salary adjustments under EO 8011 and EO 900, of all GOCC and GFI employees for an indefinite period to be set by the President, 9 and (2) a suspension of all allowances, bonuses and incentives of members of the Board of Directors/Trustees until December 31, 2010." Petitioner is an employee of the Philippine Health Insurance Corporation (PhilHealth), with a position of Court Attorney IV at the PhilHealth Regional Office CARAGA. He brought suit on the ground that he stood to be prejudiced by E.O. No. 7. Ultimately, the Court found that petitioner failed to demonstrate "x x x that he has a personal slake or material interest in the outcome of the case because his interest, if any, is speculative and based on a mere expectancy. In this case, the curtailment of future increases in his salaries and other benefits cannot but be characterized as contingent events or expectancies. To be sure, he has no vested rights to salary increases and, therefore, the absence of such right deprives the petitioner of legal standing to assail EO 7."

[248] Some of the petitioners suing in Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252733); Christian S. Monsod, et al. v. Executive Secretary, et al. (G.R. No. 252624); Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252736); National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252747); Main T. Mohammad, et al. v. Executive Secretary, et al. (G.R. No. 252916); University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillenno, et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253018); Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253118); and Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al. (G.R. No. 253420).

[249] Petitioners in Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252733); Christian S. Monsod, et al. v. Executive Secretary, et al. (G.R. No. 252624); Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252736); National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252747); Main T. Mohammad, et al. v. Executive Secretary, et al. (G.R.

No. 252916); University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253018); Malay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253118); and Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al. (G.R. No. 253420).

[250] Rep. Edcel C. Lagman v. Executive Secretary, et al. (G.R. No. 252579); Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea (G.R. No. 252741); and Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al. (G.R. No. 254191 [Formerly UDK 16714]).

Pangilinan, De Lima, and Belmonte are petitioners in Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea (G.R. No. 252741) and have specifically alleged their standing as incumbent lawmakers. Meanwhile, Sangcopan and Hataman are petitioners in Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al. (G.R. No. 254191 [Formerly UDK 16714]) who also assert their standing as lawmakers.

While Bayan-Muna Party-List representative Zarate is a petitioner in G.R. No. 252585, scrutiny of said petition shows that he does not bring suit on the basis of his standing as a lawmaker. The petition alleges terrorist-tagging, standing as citizens, and facial challenge as grounds for locus standi.

[251] Atty. Howard M. Calleja, et al. v. The Executive Secretary, et al. (G.R. No. 252578); Melencio S. Sta. Maria, et al. v. Executive Secretary, et al. (G.R. No. 252580); Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al. (G.R. No. 252623); Christian S. Monsod, et al. v. Executive Secretary, et al. (G.R. No. 252624); Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea (G.R. No. 252741); National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252747); The Alternative Law Groups, Inc. v. Executive Secretary (G.R. No. 252765); HENDY ABENDAN of Center for Youth Participation and Development Initiatives, et al. v. Hon. Salvador C. Medialdea, et al. (G.R. No. 252802); Concerned Online Citizens, et al. v. Executive Secretary (G.R. No. 252809); Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252921); Association of Major Religious Superiors, et al. v. Executive Secretary, et al. (G.R. No. 252984); Philippine Bar Association, Inc. v. Executive Secretary, et al. (G.R. No. 253100); Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253118); and Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al. (G.R. No. 253252).

[252] Rep. Edcel C. Lagman v. Executive Secretary, et al. (G.R. No. 252579); Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al. (G.R. No. 252613); SANLAKAS v. Rodrigo R. Duterte, et al. (G.R. No. 252646); Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al. (G.R. No. 252702); Jose J. Ferrer, Jr. v. Executive Secretary, et al. (G.R. No. 252726); Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et at. (G.R. No. 252733); Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252736); Kabataang Tagapagtang-gol ng Karapatan, et al. v. Executive Secretary, et al. (G.R. No. 252755); Algamar A. Latiph, et al. v. Senate, et al. (G.R. No. 252759); Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag. et al. v. President Rodrigo R. Duterte, et al. (G.R. No. 252903); Beverly Longid, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252904); Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines (G.R. No. 252905); Main T. Mohammad, et al. v. Executive Secretary, et al. (G.R. No. 252916); University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253018); Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al. (G.R. No. 253124); Pagkakaisa ng Kababaihan para sa Kalayaan (KAISA KA), et al. v. Anti-Terrorism Council,

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et al. (G.R. No. 253254); Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al. (G.R. No. 253420); and Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary, et al. (G.R. No. 254191 [Formerly UDK 16714]).

[253] Lawrence A. Yerbo v. Senate President, et al. (UDK 16663).

[254] Atty. Howard M. Calleja, et al. v. The Executive Secretary, et al. (G.R. No. 252578); Melencio S. Sta. Maria, et al. v. Executive Secretary, et al. (G.R. No. 252580); Center for Trade Union and Human Rights (CTUHR), et al. v. Hon. Rodrigo R. Duterte, et al. (G.R. No. 252623); Christian S. Monsod, et al. v. Executive Secretary, et al. (G.R. No. 252624); Ma. Ceres P. Doyo, et al. v. Salvador C. Medialdea (G.R. No. 252741); National Union of Journalists of the Philippines, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252747); The Alternative Law Groups, Inc. v. Executive Secretary (G.R. No. 252765); HENDY ABENDAN of Center for Youth Participation and Development Initiatives, et al. v. Hon. Salvador C. Medialdea, et al. (G.R. No. 252802); Concerned Online Citizens, et al. v. Executive Secretary (G.R. No. 252809); Brgy. Maglaking, San Carlos City Pangasinan Sangguniang Kabataan (SK) Chairperson LEMUEL GIO FERNANDEZ CAYABYAB, et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252921); Association of Major Religious Superiors, et al. v. Executive Secretary, et al. (G.R. No. 252984); Philippine Bar Association, Inc. v. Executive Secretary, et al. (G.R. No. 253100); Balay Rehabilitation Center, Inc., et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253118); and Philippine Misereor Partnership, Inc. et al. v. Executive Secretary, et al. (G.R. No. 253252).

[255] Rep. Edcel C. Lagman v. Executive Secretary, et al. (G.R. No. 252579); Rudolf Philip B. Jurado v. Anti-Terrorism Council, et al. (G.R. No. 252613); SANLAKAS v. Rodrigo R. Duterte, et al. (G.R. No. 252646); Federation of Free Workers (FFW-NAGKAISA), et al. v. Office of the President, et al. (G.R. No. 252702); Jose J. Ferrer, Jr. v. Executive Secretary, et al. (G.R. No. 252726); Bagong Alyansang Makabayan (BAYAN) Secretary General RENATO REYES, JR., BAYAN Chairperson MARIA CAROLINA P. ARAULLO Movement Against Tyranny Convenor GUILLERMINA "MOTHER MARY JOHN" D. MANANZAN, O.S.B, et al. v. Rodrigo R. Duterte, et al. (G.R. No. 252733); Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252736); Kabataang Tagapagtang-gol ng Karapatan, et al. v. Executive Secretary, et al. (G.R. No. 252755); Algamar A. Latiph, et al. v. Senate, et al. (G.R. No. 252759); Concerned Lawyers for Civil Liberties (CLCL) members Rene A.V. Saguisag, et al. v. President Rodrigo R. Duterte, et al. (G.R. No. 252903); Beverly Longid, et al. v. Anti-Terrorism Council, et al. (G.R. No. 252904); Center for International Law (CENTERLAW), Inc. v. Senate of the Philippines (G.R. No. 252905); Main T. Mohammad, et al. v. Executive Secretary, et al. (G.R. No. 252916); University of the Philippines (UP) System Faculty Regent Dr. Ramon Guillermo, et al. v. H.E. Rodrigo R. Duterte, et al. (G.R. No. 253018); Integrated Bar of the Philippines, et al. v. Senate of the Philippines, et al. (G.R. No. 253124); Pagkakaisa ng Kababaihan para sa Kalayaan (KAISA KA), et al. v. Anti-Terrorism Council, et al. (G.R. No. 253254); Haroun Alrashid Alonto Lucman, Jr. et al. v. Salvador Medialdea, et al. (G.R. No 253420); and Anak Mindanao (AMIN) Party-List Representative AMIHILDA SANGCOPAN, et al. v. The Executive Secretary et al. (G.R. No. 254191 [Formerly UDK 16714]).

[256] Lawrence A. Yerbo v. Senate President, et al. (UDK 16663).

[257] Petition, G.R. No. 253242, Annex "C" through Annex "P."

[258] Id., Annex "K," par. 5.

[259] Id. at 13-15.

[260] Id., Annex "P."

[261] Id., Annex "P," pars. 8 and 11. Affiant also alleged that their member was killed but this look place in May

2020 or two months before the ATA took effect.

[262] Petition, G.R. No. 252585, p. 8.

[263] Id., 2019 NTC Annual Report pp. 178-246.

[264] Id., Annex "E".

[265] Petition, G.R. No. 252767, pp. 28-29.

[266] Id.

[267] Id. at 92.

[268] Petition in G.R. No. 252768, pp. 9-18.

[269] Id. at 12-16; 17-18.

[270] Id. at 19.

[271] Id. at 21.

[272] Id. at 21-22.

[273] Id. at Annex "AA-1", p. 15.

[274] Declaring the Communist Party of the Philippines (CPP)-New People's Army (NPA) as a Designated/Identified Terrorist Organization under Republic Act No. 10168, December 5, 2017.

[275] Petitioners attached COMELEC Resolution dated January 30, 2020 in SPP No. 19-006.

[276] See G.R. No. 252768, Annex AA-1 to Annex AA-4.

[277] Private Hospitals Association of the Philippines, Inc. v. Medialdea, supra note 68.

[278] 328 Phil. 1187, 1205 (1996). See also Jumamil v. Cafe, 507 Phil. 455, 465 (2005).

[279] Republic v. Court of Appeals, 451 Phil. 497, 508 (2003).

[280] International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines), 791 Phil. 243, 258-259 (2016).

[281] Decision, pp. 48-49.

[282] Id. at 49.

[283] Id.

[284] The petition did not provide a statement of issues involved.

[285] Supra note 281 at 49.

[286] Supra note 14 at 482.

[287] Republic v. Roque, supra note 62 at 305-306; De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas, 809 Phil. 65, 82-83 (2017).

[288] Supra note 281 at 55.

[289] Message for the 76th United Nations General Assembly (Speech), September 22, 2021, at

https://www.youtube.com/watch?v=VsxO7w6QaEg.

[290] International Criminal Court Office of the Prosecutor, Report on Preliminary Examination Activities 2019, pars. 44-51. Justice Carpio-Morales filed a communication under Article 15 of the Rome Statute. It was dismissed at Phase I on the ground that the act complained of took place within the exclusive economic zone, which is not a Philippine territory. The ICC prosecutor held: "In the present situation, the conduct alleged in the communication received did not occur in the territory of the Philippines, but rather in areas outside its territory, purportedly in its EEZ and continental shelf" (par. 51). The territorial status of the place of the commission of the acts of complained of was crucial for the international crimes under jurisdiction of the ICC are territorial (pars. 44-47).

[291] Article 15 complainants are not entitled to request a review of a dismissal based on lack of jurisdiction. There is no record that Justice Carpio-Morales filed an appeal with the ICC.

[292] OSG Supplemental Comment, p. 66.

[293] Board of Optometry v. Colet, supra note 278.

[294] Pangilinan v. Cayetano, G.R. No. 238875, March 16, 2021; Central Realty and Development Corp. v. Solar Resources, Inc., G.R. No. 229408, November 9, 2020; Kilusang Mayo Uno v. Aquino III, G.R. No. 210500, April 2, 2019; Ocampo v. Rear Admiral Enriquez, 815 Phil. 1175 (2017); Jumamil v. Cafe, supra note 278; Francisco, Jr. v. House of Representatives, 460 Phil. 830 (2003).

[295] See Spouses Imbong v. Ochoa, Jr., supra note 104 at 125-126.

In United States (US) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only protected speech, but also all other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.

In this jurisdiction, the application of doctrines originating from the [US] has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious Freedom, and other fundamental rights. The underlying reason for this modification is simple. For unlike its counterpart in the [US], this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or inslrumcntality of the Government. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution.

[296] Disini, Jr. v. The Secretary of Justice, supra note 91 at 344-345. See the Separate Opinion of Justice Vicente V. Mendoza in Estrada v. Sandiganbayan, supra note 105, citing Broaderick v. Oklahoma, 413 U.S. 601, 612-613 (1973); United States v. Salerno, supra note 105 at 745; People v. Dela Piedra, supra note 87.

[297] It must be emphasized that while, in theory, a facial invalidation may result in the invalidity of the entire law, in practice where the Court allowed a facial challenge, the Court only declared certain provisions of the assailed law void.

Meanwhile, in Spouses Imbong v. Ochoa, Jr., supra note 104 at 277-278, the Court allowed a facial challenge but only invalidated some provisions of Republic Act (R.A.) No. 10354, otherwise known as the Responsible

Parenthood and Reproductive Health Act of 2012 (RH Law). It declared the RH Law as constitutional except for Section 7, Section 23(a)(1), Section 23(a)(2)(i), Section 23(a)(2)(ii), Section 23(a)(3), Section 23(b), Section 17, Section 3.01 (a), and Section 3.01(j).

[298] 473 Phil. 27 (2004).

[299] Supra note 278.

[300] Id. at 1199. The order of the respondent judge reads:

On the basis of the main petition, which is for declaratory relief directed at the nullification of R.A. 8050 on constitutional grounds, and for a writ of prohibition, likewise premised on the nullity of said law due to constitutional infirmities, the Court finds that the whole or part of the relief which petitioners are seeking and to which prima facie they are entitled, consists in restraining the enforcement or implementation of the law.

The Court likewise concludes, on its finding that both public, rights would be prejudiced by the operation of R.A. 8050, that its enforcement pendente would inflict substantial injustice to petitioners.

[301] Id. at 1200.

[302] Id. at 1205-1206.

[303] Id. at 1206.

[304] Id.

[305] Phil. 146 (1994).

[306] Supra note 85.

[307] Id. at 353-354.

[308] Estrada v. Sandiganbayan, supra note 85.

[309] See Francisco, Jr. v. House of Representatives, supra note 35 at 899; Tecson v. COMELEC, 468 Phil. 421, 670-671 (2004); Central Realty and Development Corp. v. Solar Resources, Inc., supra note 294; Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board, 701 Phil. 483, 495 (2013); Social Justice Society Officers v. Lim, 748 Phil. 25 (2014); In Re Supreme Court Judicial Independence v. Judiciary Development Fund, 751 Phil. 30 (2015); Rosales v. Energy Regulatory Commission, 783 Phil. 774, 787 (2016); Pangilinan v. Cayetano, supra note 294.

[310] 558 Phil. 338 (2007).

[311] 77 Phil. 192 (1946).

[312] Id. at 205-206.

[313] Supra note 27.

[314] Supra note 27.

[315] Supra note 14.

[316] Supra note 62.

[317] Supra note 59.

[318] Supra note 59 at 1076-1077.

[319] 816 Phil. 789-820 (2017).

[320] G.R. No. 208162, January 7, 2020, pp. 9-10.

[321] De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas, 809 Phil. 65, 85 (2017).

[322] Supra note 315, at 489-490.

[323] Chavez v. Gonzales, supra note 142 at 208; Soriano v. Laguardia, supra note 173; and Madrilejos v. Gatdula, supra note 173.

[324] This phrase originated in the concurring opinion of Justice Mendoza in Estrada v. Sandiganbayan, supra note 105.

[325] Inmates of the New Bilibid Prison v. De Lima, G.R. No. 212719, June 25, 2019.

[326] Chavez v. Gonzalas, supra note 142 at 208; Nicolas-Lewis v. COMELEC, supra note 120.

[327] Petition in G.R. No. 252768 pp. 44-58.

[328] Id. at 59-61.

[329] Id. at 62.

[330] Id. at 64.

[331] Id. at 62-64.

[332] Id. at 64-65.

[333] Id. at 65.

[334] Id. at 65-68.

[335] Id. at 67-68.

[336] Id. at 68-68.

[337] Id. at 69-70.

[338] Id. at 70-71.

[339] Id. at 72-73.

[340] Id. at 72-74.

[341] Id. at 74-76.

[342] Id. at 79-85.

[343] Id. at 77-79.

[344] Id. at 85-88.

[345] Id. at 88-92.

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[346] Id. at 95.

[347] Bayan Muna Party-List Representatives Carlos Isagani T. Zarate, Ferdinand Gaite, and Eufemia Cullamat; Gabriela Women's Party Representative Arlene D. Brosas; Ac-Teachers Party-List Representative France L. Castro; Kabataan Parlylist Representative Sarah Jane I. Elago; Bayan Muna Party-List President Saturnino Ocampo; Makabayan Cochairperson Liza Largoza Maza; Bayan Muna Party-List Chairperson Neri J. Colmenares; Act-Teachers Parly-List President Antonio Tinio; AnakpawisParty-List Vice-president Ariel Casilao; Makabayan Secretary General Nathanael Santiago.

[348] Petition in G.R. No. 252585, pp. 20-21, 40.

[349] Id. at 24-26.

[350] Id. at 26.

[351] Id. at 29-32.

[352] Id. at 26-28.

[353] Id. at 27.

[354] Id. at 28, 39-40.

[355] Id. at 28-29.

[356] Id. at 30-34.

[357] Id. at 34-36.

[358] Id. at 35-36.

[359] Id. at 38.

[360] Id. at 46-47.

[361] Id. at 48-51.

[362] Id. at 58-59.

[363] Id. at 55-56.

[364] On the designation of terrorist individuals and organizations.

[365] On the freezing of the properties and funds of a designated person or group of persons.

[366] Id. at 57-59.

[367] Id. at 60-63.

[368] Id. at 63-67.

[369] Id. at 67.

[370] Id. at 68-71.

[371] Id. at 71.

[372] Id. at 72-74.

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[373] Id. at 75-77.

[374] Id. at 77-79.

[375] Id. at 81-82.

[376] Bishop Broderick S. Pabillo; Bishop Reuel Norman O. Marigza; Rt. Rev. Rex B. Reyes Jr.; Bishop Emergencio Padillo; Bishop Gerardo A. Alminaza; Dr. Aldrin M. Peñamora; Dr. Annelle G. Sabanal; Dr. Christopher D. Sabanal; Fr. Rolando F. De Leon; Sr. Ma. Liza H. Ruedas; Sr. Anabell "Theodora" G. Bilocura; Rev. Marie Sol S. Villalon; Dr. Ma. Julieta F. Wasan; Fr. Gilbert S. Billena; Jennifer F. Meneses; Deaconess Rubylin G. Litao; Judge Cleto Villacorta; Rey Claro Casambre; Rural Missionaries of the Philippines Sisters' Association in Mindanao.

[377] Petition in G.R. No. 252767, pp. 36-37.

[378] Id. at 39-40.

[379] Id. at 40-41.

[380] Id. at 48-50.

[381] Id. at 49-50.

[382] Id. at 51-52.

[383] Id. at 56-57.

[384] Id.

[385] Id. at 63.

[386] Id. at 64.

[387] Id. at 78.

[388] Id. at 76-85.

[389] Id.

[390] Id. at 81, 85-90.

[391] Id. at 91-93.

[392] General Assembly of Women for Reforms, Integrity, Equality, Leadership, and Action (GABRIELA), Inc., Gertrudes R. Libang, Joan May E. Salvador, Emerenciana A. De Jesus, Mary Joan A. Guan, Marivic V. Gerodias, Lovely V. Ramos, Leonara O. Calubaquib, Monica Anne "Monique" E. Wilson, and Silahis M. Tebia.

[393] Petition, G.R. No. 252728, p. 29.

[394] Id. at 31.

[395] Id. at 32.

[396] Id.

[397] Id. at 33.

[398] Id. at 33-34.

[399] Id. at 35-39.

[400] Id. at 39-51.

[401] Id. at 51-55.

[402] Id. at 55-56.

[403] Id. at 56-59.

[404] Id. at 59-62.

[405] Id. at 63.

[406] Id. at 61-65.

[407] Consolidated Comment, pp. 28-33.

[408] Id. at 39-40.

[409] Id. at 24-27.

[410] Supplemental Comment, pp. 40-42, 44-47.

[411] Id. at 65-67.

[412] Supra note 407 at 30-38.

[413] Id. at 41-50.

[414] Id. at 62-68.

[415] Supplemental Comment, pp. 48-54.

[416] Id. at 55-68.

[417] Id. at 68-70.

[418] Id. at 75-77.

[419] Id. at 78-81.

[420] Id. at 82-93.

[421] Id. at 94-99.

[422] Id. at 119-121.

[423] Id. at 100-108.

[424] Id. at 150-166, 214-217.

[425] Id. at 105-106.

[426] Id. at 101, 107-108.

[427] Id. at 108.

[428] Id. at 108-109.

[429] Id. at 112.

[430] Id.

[431] Id.

[432] Id. at 112-116.

[433] Id. at 116-117.

[434] Id. at 117-118.

[435] Id. at 151.

[436] Id. at 119-120.

[437] Id. at 79-80.

[438] Id. at 13-14, 119-122, 174-175.

[439] Id. at 122-123.

[440] Id. at 124-126.

[441] Id. at 127-131.

[442] Id. at 132-134.

[443] Id. at 134-142.

[444] Id. at 142-149.

[445] Id. at 128.

[446] Id. at 129.

[447] Id. at 128-129.

[448] Id. at 192.

[449] Id. at 167-193.

[450] Id. at 179.

[451] Id. at 196.

[452] Id. at 201-203.

[453] Id. at 209-213.

[454] Id. at 223.

[455] See pages 3-5 of this Opinion.

[456] See Ichong v. Hernandez, 101 Phil. 1155 (1957). While the Court's disquisition in Ichong v. Hernandez involved only the police power of the state, the characterization of police power as being an inherent power of the state, which is not granted but, in fact, limited only by the Constitution applies in equal measure to eminent

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domain and taxation:

It has been said that police power is so far-reaching in scope, that it has become almost impossible to limit its sweep. As it derives its existence from the very existence of the State itself, it does not need to be expressed or denned in its scope; it is said to be co-extensive with self-protection and survival, and as such it is the most positive and active of all governmental processes, the most essential, insistent and illimitable. Especially is it so under a modern democratic framework where the demands of society and of nations have multiplied to almost unimaginable proportions; the field and scope of police power has become almost boundless, just as the fields of public interest and public welfare have become almost all-embracing and have transcended human foresight. Otherwise stated, as we cannot foresee the needs and demands of public interest and welfare in this constantly changing and progressive world, so we cannot delimit beforehand the extent or scope of police power by which and through which the State seeks to attain or achieve public interest or welfare. So it is that Constitutions do not define the scope or extent of the police power of the State; what they do is to set forth the limitations thereof. The most important of these are the due process clause and the equal protection clause. (Id. at 1163-64).

[457] Id.

[458] National Transmission Corp. v. Oroville Development Corp., 815 Phil. 91, 103 (2017).

[459] Pepsi-Cola Bottling Co. of the Philippines, Inc. v. Municipality of Tanauan, Leyte, 161 Phil. 591, 601-602 (1976).

[460] Gerochi v. Department of Energy, 554 Phil. 563, 579 (2007).

[461] Ichong v. Hernandez, supra note 456.

[462] Art. II of the Revised Penal Code provides:

Article II. Justifying circumstances. - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression.
Second. Reasonable necessity of the means employed to prevent or repel it.
Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the revocation was given by the person attacked, that the one making defense had no part therein.

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this Article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

4. Any person who, in order to avoid an evil or injury, does not act which causes damage to another, provided that the following requisites are present;

First. That the evil sought to be avoided actually exists;
Second. That the injury feared be greater than that done to avoid it;
Third. That there be no other practical and less harmful means of preventing it.

5. Any person who acts in the fulfillment of a duly or in the lawful exercise of a right or office.

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

[463] Ichong v. Hernandez, supra note 456. It must also be stated that Ichong v. Hernandez further provides that the equal protection clause, along with the due process clause, limits the police power of the state.

[464] Secretary of Justice v. Lantion, 379 Phil. 165 (2000); While Light Corp. v. City of Manila, supra note 149 (2009).

[465] Secretary of Justice v. Lantion, id.; White Light Corp. v. City of Manila, id.

[466] Merriam-Webster defines terrorism as "the systematic use of terror especially as a means of coercion."

(Merriam-Webster. terrorism (undated) at https://www.merriam-webster.com/dictionary/terrorism) Collins Dictionary defines terrorism as "the use of violence, especially murder and bombing, in order to achieve political aims or to force a government to do something." (Collins Dictionary, terrorism (undated) at https://www.collinsdictionary.com/dictionary/english/terrorism)

The Office of the United Nations High Commissioner for Human Rights defines terrorism as "acts of violence that target civilians in the pursuit of political or ideological aims." (Office of the United Nations High Commissioner for Human Rights. Fact Sheet No. 32 entitled "Human Rights, Terrorism and Counter-terrorism" (undated) at https://www.ohchr.org/documents/publications/factsheet32en.pdf)

[467] The international community has yet to adopt a uniform definition of terrorism. In Fact Sheet No. 32 entitled "Human Rights, Terrorism and Counter-terrorism," the Office of the United Nations High Commissioner for Human Rights stated that "[t]errorism is commonly understood to refer to acts of violence that target civilians in the pursuit of political or ideological aims." It underscored the manner in which terrorism has been defined in international declarations or resolutions, to wit:

In 1994, the General Assembly's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes" and that such acts "are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them."

Ten years later, the Security Council, in its resolution 1566 (2004), referred to "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act". Later that year, the Secretary-General's High-level Panel on Threats, Challenges and Change described terrorism as any action that is "intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act" and identified a number of key elements, with further reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004).

The General Assembly is currently working towards the adoption of a comprehensive convention against terrorism, which would complement the existing sectoral anti-terrorism conventions. Its draft article 2 contains a definition of terrorism which includes "unlawfully and intentionally" causing, attempting or threatening to cause: "(a) death or serious bodily injury to any person; or (b) serious damage to public or private property, including a

place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) damage to property, places, facilities, or systems..., resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act." (accessed through https://www.ohchr.org/documents/publications/factsheet32en.pdf)

The Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 defines the crime of terrorism in the following manner:

Article 3

Terrorist offences

1) Member States shall take the necessary measures to ensure that the following intentional acts, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation, are defined as terrorist offences where committed with one of the aims listed in paragraph 2:

> (a) attacks upon a person's life which may cause death;
> (b) attacks upon the physical integrity of a person;
> (c) kidnapping or hostage-taking;
> (d) causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
> (e) seizure of aircraft, ships or other means of public or goods transport;
> (f) manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons;
> (g) release of dangerous substances, or causing fires, Hoods or explosions, the effect of which is to endanger human life;
> (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
> (i) illegal system interference, as referred to in Article 4 of Directive 2013/40/EU of the European Parliament and of the Council (19) in cases where Article 9(3) or point (b) or (c) of Article 9(4) of that Directive applies, and illegal data interference, as referred to in Article 5 of that Directive in cases where point (c) of Article 9(4) of that Directive applies;
> (j) threatening to commit any of the acts listed in points (a) to (i).

2) The aims referred to in paragraph 1 are:

> (a) seriously intimidating a population;
> (b) unduly compelling a government or an international organisation to perform or abstain from performing any act;
> (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

Meanwhile, the Australian Criminal Code Act 1995, as amended, defines terrorism in the wise:

Part 5.3—Terrorism
Division 100—Preliminary
100.1 Definitions

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(1) In this Part:

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terrorist act means an action or threat of action where:

(a) the action falls within subsection (2) and does not fall within subsection (3); and
(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
(c) the action is done or the threat is made with the intention of:
(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
(ii) intimidating the public or a section of the public.

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(2) Action falls within this subsection if it:

(a) causes serious harm that is physical harm to a person; or
(b) causes serious damage to property; or
(c) causes a person's death; or
(d) endangers a person's life, other than the life of the person taking the action; or
(e) creates a serious risk to the health or safety of the public or a section of the public; or
(f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
(i) an information system; or
(ii) a telecommunications system; or
(iii) a financial system; or
(iv) a system used for the delivery of essential government services; or
(v) a system used for, or by, an essential public utility; or
(vi) a system used for, or by, a transport system.

(3) Action falls within this subsection if it:

(a) is advocacy, protest, dissent or industrial action; and
(b) is not intended:
(i) to cause serious harm that is physical harm to a person; or
(ii) to cause a person's death; or
(iii) to endanger the life of a person, other than the person taking the action; or
(iv) to create a serious risk to the health or safety of the public or a section of the public.

[468] Transcript of Stenographic Notes (TSN) of the Oral Arguments - En Banc held on February 2, 2021 (p. 59):

ASSOCIATE JUSTICE CARANDANG:
Don't you think terrorism is a very, very grave crime against national security and even a crime against peoples' security and life that before they actually have to do any terroristic act, the state has the right to know the information beforehand through a surveillance ordered by the Court of Appeals?

CONGRESSMAN COLMENARES:
Well, Your Honor, yes, we recognized the fact that terrorism is a grave and serious concern, Your Honor. However, the Court has mentioned so many decisions that it's not the question of expediency that interest must be compelling state interest even, must be narrowed down, tailored narrowly by the law, and any important compelling interest, if the respondents wishes to do that, must be in consonance with the Constitution, Your Honor. So even if they claim yes, it's very important, it cannot be said, Your Honor, that because it's important

and of serious concern the fundamental rights of others can be violated because of the state interest at hand, Your Honor. The Court will surely strike down a law that just because using the concern or the gravity of the crime, will violate fundamental rights, Your Honors.

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Transcript of Stenographic Notes (TSN) of the Oral Arguments - En Banc held on February 16. 2021 (pp. 43-44):

ASSOCIATE JUSTICE CAGUIOA:
These international obligations in effect acknowledge that terrorism is a global reality that transcends borders and requires the cooperation of all states, correct?

ATTY. URSUA:
That is correct, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:
And the Philippines being a member of the UN must play its role in the overall effort to curb this problem, correct?

ATTY. URSUA:
Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:
It's not merely a domestic issue but an international one, correct?

ATTY. URSUA:
That is correct, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:
So we can agree that this objective or state policy is not only laudable but in fact, essential?

ATTY. URSUA:
That is correct, Your Honor.

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Transcript of Stenographic Notes (TSN) of the Oral Arguments - En Banc held on February 16, 2021 (pp. 117-118; 120):

ATTY. URSUA:
Let me just say, Your Honor, that all of us petitioners believe that lighting terrorism is a noble cause. And we believe that we should fight against terrorism. Our problem, Your Honor, is, in the light against terrorism, our government has chosen to pass a law that violates constitutional rights and also its international human rights obligations, that's our problem, Your Honor....

ASSOCIATE JUSTICE LAZARO-JAVIER:
Alright.

ATTY. URSUA:
...there are other ways of lighting against terrorism.

ASSOCIATE JUSTICE LAZARO-JAVIER:
Alright, but how to light terrorism is a political question. It is not you, not me, not this Court, which will decide the means by which to light terrorism. It belongs to Congress and to the President, who are duly elected

representatives of the people. Subject of course to certain requirements.
Alright, so, do you have statistics so far on how many bombings have we had since 1971 to 2019?

ATTY. URSUA:
No, Your Honor.

ASSOCIATE JUSTICE LAZARO-JAVIER:
...do you have?

ATTY. URSUA:
No, Your Honor.

ASSOCIATE JUSTICE LAZARO-JAVIER:
Okay, I'll give it to you, it's seventy-eight (78). From 1971 to 1991, those that have been reported and are known, alright. And thousands of lost lives and thousands of injured. Okay, so where there is a clash between one's right to unrestrained liberty on one hand, and the right of the general public to safety and protection on the other, which one should be prioritized by the State?

ATTY. URSUA:
Your Honor, with due respect, Your Honor, we do not believe that this is a case of unrestrained liberty in conflict with the interest of the state.

ASSOCIATE JUSTICE LAZARO-JAVIER:
No, I am, I have not reached that point yet, my question is, there are no facts yet in my question...

ATTY. URSUA:
Yes, Your Honor, sorry, Your Honor...

ASSOCIATE JUSTICE LAZARO-JAVIER:
It's just a plain question between choosing, the state choosing between one's right to unrestrained liberty on one hand, and the right of the general public to safety and protection on the other. Which one should be prioritized by the state?

ATTY. URSUA:
Definitely, Your Honor, the right of the general public...

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ASSOCIATE JUSTICE LAZARO-JAVIER:
Alright, and so the quelling of terrorism and the punishment of terrorist are compelling and legitimate interest of the public in general, yes, Professor?

ATTY. URSUA:
Yes, Your Honor.

ASSOCIATE JUSTICE LAZARO-JAVIER:
Okay. To serve these ends, this end rather, the means employed should be reasonably necessary...

ATTY. URSUA:
Yes.

ASSOCIATE JUSTICE LAZARO-JAVIER:
...to attain the objective sought and not to be unduly offensive upon individuals.

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ATTY. URSUA:
Yes, Your Honor.

[469] Id.

[470] The Court stressed the rationale behind this in Estrada v. Sandiganbayan, supra note 85:

Preliminarily, the whole gamut of legal concepts pertaining to the validity of legislation is predicated on the basic principle that a legislative measure is presumed to be in harmony with the Constitution. Courts invariably train their sights on this fundamental rule whenever a legislative act is under a constitutional attack, for it is the postulate of constitutional adjudication. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch — the legislature.

If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance. Every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality.

[471] See Ichong v. Hernandez, supra note 456 at 1178.

[472] 1987 CONSTITUTION, Art. II, Sec. 2.

[473] See Sec. 6 and Sec.7, Presidential Decree No. 1296, February 7, 1978; Sec. 5 and Sec. 6, Batas Pambansa Blg. 881, December 3, 1985.

[474] Sanchez v. COMELEC, 199 Phil. 617 (1982); Dibaratun v. COMELEC, 625 Phil. 206 (2010).

[475] Id. at 625, citing 1973 CONSTITUTION, Art. XII (c), Sec. 2(1).

[476] Dibaratun v. COMELEC, supra note 474 at 213, citing 1987 CONSTITUTION, Art. IX (c), Sec. 2(1).

[477] See Nacionalista Party v. Comelec, 85 Phil. 158, 213 (1949); Ututalum v. COMELEC, 122 Phil. 880 (1965); Janairo v. COMELEC, 129 Phil. 418 (1967).

[478] Jardiel v. COMELEC, 209 Phil. 534, 545 (1983).

[479] Sec. 2 defines a subversive organization as any "association, organization, political party, or group of persons organized for the purpose of overthrowing the Government of the Republic of the Philippines or for the purpose of removing from the allegiance to said government or its laws, the territory of the Philippines or any part thereof, with the open or covert assistance or support of a foreign power or the open or covert support from a foreign source any association, group or person whether public or private, by force, violence, terrorism, arson, assassination, deceit or other illegal means shall be considered and is hereby declared a subversive organization."

[480] Presidential Decree No. 1835, Sec. 2.

[481] In re Umil v. Ramos, 279 Phil. 266 (1991).

[482] People v. Johnson, 401 Phil. 734, 743 (2000). According to Justice Mendoza, "there is little question that

such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel."

[483] This view has been maintained all the way to People v. O'Cochlain, G.R. No. 229071, December 10, 2018. However, in his dissenting opinion, Justice Leonen pointed out that as public safety is the justification for airport security checks, there must be reasonable belief of the existence of the threat in order for such warrantless search to be considered reasonable. The presumption of reduced expectation of privacy at airports is not conclusive.

[484] Supra note 69. This was an as-applied challenge raised by David who were arrested pursuant to General Order No. 5.

[485] Id. at 741-742 and 796.

[486] Proceedings of the International Conference on the Repression of Terrorism, Geneva, November 1st to 16th, 1937, p. 186.

[487] UNDOC A/RES/51/210, 17 December 1996; UNDOC A/RES/71/151, 13 December 2016.

[488] UNDOC A/57/37, 28 January-1 February 2002. Annex II adopted the following definition:

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.

2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of this article.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

4. Any person also commits an offence if that prison:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of this article; (b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of this article; or (c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

[489] Id., Art. 2(2), (3) and (4).

[490] Id., par. 2.

[491] Namely, Art. 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters); Article 134 (Rebellion or Insurrection); Article 134-a (Coup d'Etat), including acts committed by private persons; Article 248 (Murder); Article 267 (Kidnapping and Serious Illegal Detention); Article 324 (Crimes Involving Destruction).

[492] Namely, Presidential Decree No. 1613 (The Law on Arson); Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990); Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968); Republic Act No. 6235 (Anti-Hijacking Law); Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and, Presidential Decree No. 1866, as amended (Decree Codifying (he Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives).

[493] Sec. 3 of the USA.

[494] UN Doc. A/RES/51/210, 16 January 1997, par. 3 and UN Doc. S/RES/1456 (2003), 20 January 2003, par. 2-3.

The instruments are (1) Convention on Offences and Certain Other Acts Committed on Board Aircraft, 704 United Nations, Treaty Series (UNTS) 220 (1963); (2) Convention for the Suppression of Unlawful Seizure of Aircraft, 860 UNTS 105 (1970); (3) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 974 UNTS 174 (1971); (4) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1035 UNTS 167 (1977); (5) International Convention against the Taking of Hostages, 1316 UNTS 205 (1979); (6) Convention on the Physical Protection of Nuclear Material, 1456 UNTS 124 (1979); (7) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation 1589 UNTS 474 (1988); (8) Convention for (he Suppression of Unlawful Acts against the Safety of Maritime Navigation 1678 UNTS 201 (1992); (9) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, SUA/CONF/I6/Rev.2, Registration No. 29004, 14 October 2005; (10) Convention on the Marking of Plastic Explosives for the Purpose of Detection, 2212 UNTS 374 (1991).

[495] Id., par. 6.

[496] The Philippines is a part to the following instruments: Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, in force in the Philippines on 16 January 2004; International Convention for the Suppression of Terrorist Bombings, in force on 5 February 2004; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, in force on 5 April 2004; and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, in force on 5 April 2004. It is not clear whether the Philippines is part to the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

[497] Sec. 81 (b)[12] and [14].

[498] Sec. 39 and Sec. 41.

[499] It penalizes a conspirator as principal (Sec. 4). and accomplice (Sec. 5) and an accessory (Sec. 6).

[500] It punishes hi-jacking under Sec. 3(f)[4] and piracy under Sec. 3(1)[5].

[501] Republic Act No. 10168 (June 18, 2012).

[502] 2178 UNTS 197; effective 10 April 2002, after ratification by 132 states.

[503] Id., Art. 2 (a). The annex lists the same treaties enumerated in R.A. No. 10168.

[504] Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 558.

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[505] Id., par. 61.

[506] People v. Salcedo, 667 Phil. 765 (2011).

[507] Sanchez v. COMELEC, supra note 474.

[508] People v. Janjalani, 654 Phil. 148, 166 (2011).

[509] Supra note 4 at 60-62, 280.

[510] Id.

[511] UN Doc. A/59/565, 2 December 2004, par. 11.

[512] Id., Report of the High-level Panel on Threats, Challenges and Change, par. 164(d), p. 49.

[513] Id. at 45.

[514] See Sec. 4 to Section 10.

[515] R.A. No. 10697, An Act Preventing the Proliferation of Weapons of Mass Destruction by Managing the Trade in Strategic Goods, the Provision of Related Services, and for other Purposes, 13 November 2015.

[516] Under Art. 25, Chapter V of the UN Charier, member-states bound themselves to "accept and carry out the decisions of the Security Council." Under Art. 39, Chapter VII, the Security Council has the power to makes decisions regarding threats to peace and the measures to be taken to maintain or restore peace. Under Art. 41, the Security Council may decide to adopt non-military measures and require member-states to implement them.

[517] UN Doc. S/RES/1373, 28 September 2001, par. 1(b).

[518] UN Doc. S/RES/1624, 14 September 2005, par. 1(a). Compliance with Resolution No. 1624 is monitored in UN Doc. S/2016/50, 28 January 2016.

[519] UN Doc. S/ S/RES/2341, 13 February 2017, par. 3.

[520] UN Doc. S/RES/2178, 24 September 2014, par. 8.

[521] See UN Doc. S/RES/1540, 28 April 2004, pars. 1-3; UN Doc. S/RES/1822, 30 June 2008, par. 1.

[522] Directive (EU) 2017/541, 15 March 2017, 10th Preambular Clause, Art. 5 and Art. 21.

[523] Id., Art. 5. Several European countries have criminalized glorification. See Council of Europe, Thematic Factsheet: Hate Speech, Apology Of Violence, Promoting, Negationism and Condoning Terrorism: The Limits to the Freedom of Expression, July 2018.

[524] United Nations Office on Drugs and Crime, The Use of the Internet for Terrorist Purposes (U.N., 2012), pp. 16, 128 and 135.

[525] UNSC Resolution No. 1267 (1999), No. 1333 (2000), No. 1373 (2002), No. 1390 (2002), No. 1455 (2003), No. 1526 (2004), No. 1566 (2004), No. 1617 (2005), and No. 1735 (2006).

[526] UNSC Resolution No. 1267, pars. 3 and 4. The committee is composed of all the UNSC members and supported by analytical and monitoring team.

[527] Id., pars. 1-2 and 4.

[528] UNSC Resolution No. 1373, p. 1.

[529] Id., par. 2.

[530] Id., par. 1.

[531] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, pars. 114-117.

[532] Id. See also Reparation for Injuries Suffered in the Service of the United Nations [1949] ICJ Rep 174, p. 178.

[533] Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962: I.C.J. Reports 1962, pp. 151, 175-176.

[534] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory [2004] ICJ, pars. 120 and 134.

[535] Supra note 504.

[536] Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, Libyan Arab Jamahiriya / United Kingdom, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 9, par. 22.

[537] Id., par. 36.

[538] UN Doc. S/RES/1506, 12 September 2003.

[539] UN Doc. S/RES/731, 21 January 1992, par 3.

[540] UN Doc. S/RES/748, 31 March 1992, pars. 4 and 5.

[541] UN Doc. S/RES/2368, 20 July 2017, pars. 47 and 97 and Annex I. The official name of the Counter-Terrorism Council is the "Security Council Committee established pursuant to resolution 1373 (2001)."

[542] See U.S. Department of Commerce, International Trade Administration, Interim Rule to 15 CFR Part 385. "Revision of Foreign Policy Controls on Exports to Syria, Iraq, Libya, and the People's Democratic Republic of Yemen." 45 F.R. 33955; May 21, 1980; U.S. Department of Stat. Secretarial Determination No. 84-3. "Determination Pursuant to Section 6(i) of the Export Administration Act of 1979—Iran." 49 F.R. 2836; January 23, 1984; Executive Order 13067 (November 3, 1997 (50 U.S.C. 1701 F.R. 59989); Executive Order 13400 (April 26, 2006; 71 F.R. 25483); and Executive Order 13412 (October 13, 2006; 71 F.R. 61369). Sudan's designation was rescinded in 2020. It is notable that the UNSC vetoed a US draft resolution extending the designation of Iran as a state sponsor of terrorism.

[543] See, for example, E.O. 13400 of Apr 26, 2006 which designated Sudan a state sponsor of terrorism and declared that "all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in."

[544] The list is compiled by the UNSC Counter-Terrorism Committee Executive Directorate (CTED) and can be found at https://www.un.org/securitycouncil/ctc/content/security-council-resolutions.

[545] See Sections 2 and 3, 2003 RP-US Non-Surrender Agreement, Exchange of Notes No. BFO-028-03 7 13 May 2003; Executive Order No. 162, Implementing and Giving Effect to UNSC Resolution 253 (1968),

December 20, 1968.

[546] Tañada v. Angara, 338 Phil. 546, 593 (1997).

[547] Vinuya v. Romulo, 633 Phil. 538, 581-582 (2010); Almonte v. People, G.R. No. 252117, July 28, 2020.

[548] R.A. No. 10168, supra note 365; Republic Act No. 11521, An Act Further Strengthening the Anti-Money Laundering Law, Amending for the Purpose Republic Act No. 9160 29 January 2021; R.A. No. 10697, supra note 515.

[549] Memorandum Part I, pp. 68-71.

[550] Id. at 35-37.

[551] Art. 26 of VCLOT in full provides: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

[552] See e.g. Pangilinan v. Medialdea, G.R. No. 240954, March 16, 2021.

[553] 396 Phil. 623 (2000).

[554] Id. at 661-662.

[555] International Law Commission, Responsibility of States for Internationally Wrongful Acts, United Nations General Assembly Reso. No. 56/83, 12 December 2001, available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

[556] Sanchez v. COMELEC, supra note 474 at 625-632.

[557] People v. Salcedo, supra note 506.

[558] People v. Janjalani, 654 Phil. 148, 168 (2011).

[559] U.S. State Department, COUNTRY REPORTS ON TERRORISM 2017 (Bureau of Counterterrorism), pp. 60-62, 80.

[560] Supra note 69.

[561] Id. at 741-742 and 796.

[562] Effective July 15, 2007.

[563] Sec. 3 of the HSA.

[564] As early as 1921, the Court had already declared in Borromeo v. Mariano (41 Phil. 322 [1921]) that "the cardinal rule of statutory construction requires the court to give effect to the general legislative intent if that can be discovered within the four corners of the Act."

[565] 136 Phil. 244 (1969).

[566] Id. at 252-253.

[567] Manalo v. Sistoza (371 Phil. 165 [(1999]), the Court relied on the Declaration of Policy in R.A. No. 6975 (the Department of the Interior and Local Government Act of 1990) to bolster its finding that "the police force is different from and independent of the armed forces and the ranks in the military are not similar to those in the Philippine National Police."

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In Executive Secretary v. Southwing Heavy Industries, Inc. (518 Phil. 103, 120 [2006]), the Court held that the purpose of R.A. No. 8800 or the Safeguard Measures Act is found in its declaration of policy. On this basis, the Court concluded that "[t]here are thus explicit constitutional and statutory permission authorizing the President to ban or regulate importation of articles and commodities into the country."

In Garcia v. Judge Drilon (712 Phil. 44, 90-91 [2013]), the Court referred to the Declaration of Policy of R.A. No. 9262 (the Anti-Violence Against Women and Their Children Act of 2004) to determine whether the distinction between men and women is germane to its purpose.

In Bagumbayan-VNP Movement, Inc. v. COMELEC (782 Phil. 1306, 1321 [2016]), the Court found that the Commission on Elections' act of rendering inoperative the Voter Verification Paper Audit Trail feature of the vote-counting machines ran contrary to the stated policy of Republic Act No. 8436, as amended by Republic Act No. 9369, since the law considered a policy of the state that the voles reflect the genuine will of the People.

[568] Genuino v. De Lima, 829 Phil. 691, 724 (2018).

[569] Sec. 2, ATA.

[570] Implementing Rules and Regulations of Republic Act No. 11479, otherwise known as "Anti-Terrorism Act of 2020", promulgated on October 14, 2020.

[571] For instance, petitioners in Coordinating Council for People's Development and Governance, Inc., represented by Vice-President Rochelle M. Porras v. President Rodrigo R. Duterte (G.R. No. 253242) argue that the preliminary order of proscription under Sections 26 and 27 of the ATA is unconstitutional because the probable cause determination is based on a future event, which may or may not happen, since it is issued in order to prevent the commission of terrorism. There is, as yet, no actual crime. Thus, such determination could never be based on facts or physical evidence. (Petition, G.R. No. 252585, pp. 56-67.)

[572] Transcript of the February 3, 2019 Senate Deliberations, pp. 10-26.

Transcript of the August 13, 2019 Senate Deliberations, pp. 47-48:

x x x x

THE CHAIRPERSON (SEN. LACSON): Thank you, Secretary Honasan.

Actually, our definition, at least in our version, is culled from several definitions from other jurisdictions, pinagsama-sama. We consolidated, and most of them are similar naman in most aspects. So we came up with our own definition of a terrorist act or terrorism based on what we gathered from the definitions of other jurisdictions like Australia, United States, France, Singapore, marami, even during international conventions, and most of these inputs also came from security officials so pinaghalo-halo namin.

Sponsorship Speech of Senator Panfilo Lacson during the October 2, 2019 Senate Deliberations, pp. 29-30.

[573] Used by U.S. Supreme Court Justice Potter Steward to describe his threshold test for obscenity in Jacobellis v. Ohio, 378 U.S. 184 (1964).

[574] Transcript of the January 21, 2020 Senate Deliberations, pp. 14-15:

Senator Drilon: x x x Now, in international law, there is yet no precise definition of terrorism, is that correct?
Senator Lacson: That is correct, Mr. President. As a matter of fact, there are at least 10 definitions.

Senator Drilon: I am sorry, Mr. President?
Senator Lacson: There are at least 10 definitions of terrorism, Mr. President.

Senator Drilon: From my readings, there are over a hundred definitions of what constitutes terrorism.
Senator Lacson: There are over 109 definitions. I stand corrected, Mr. President.

x x x x

In Terrorism - The Definitional Problem (36 Case W. Res. J. Int'l L. 375 (2004) Available at: https://scholarlycommons.law.case.edu/jil/vol36/iss2/8), Schmid, A. stated the "Controversial Issues regarding the Definition of Terrorism" as follows:

> 1. "Whether or not the term "terrorism" should apply to the actions of Governments/States in the same way that it applies to the actions of non-State groups.
>
> 2. Whether or not one should differentiate between terrorism and the rights of peoples to self-determination and to combat foreign occupation.
>
> 3. Whether or not to include activities of national armed forces in the exercise of their official duties and during armed conflicts if these are "governed" by or "in conformity with" international law.
>
> 4. Whether or not to include the activities of national armed forces related to their potential use of nuclear weapons (since atomic weapons are almost by definition terrifying).
>
> 5. The issue of the relationship of the comprehensive convention to existing and future counter-terrorism treaties." (citation omitted)

He stated that "[t]hese are the principal contentious issues within the United Nations which stand in the way of arriving at a universal definition of terrorism. The two main issues that obstruct progress are, however, 'state terrorism' and the 'struggle for national liberation' - both of them related to the Palestinian question and to the question of Kashmir." (Alex Schmid, Terrorism - The Definitional Problem, 36 Case W. Res. J. Int'l L. 375 (2004) Available at: https://scholarlycommons.law.case.edu/jil/vol36/iss2/8)

[575] Sponsorship Speech of Senator Panfilo Lacson during the October 2, 2019 Senate Deliberations, pp. 27, 32:

Senator Lacson:

x x x x

As a responsible member of the international community, there is a clear need for us to amend the Human Security Act in order to more effectively implement relevant United Nations Security Council resolutions, meet international and regional standards on anti-terrorism laws; and fulfill state obligations as a United Nations member state. We need a legal framework for anti-terrorism that is clear, concise, balance[d], and rational which is the very backbone of this measure under consideration.

x x x x

At this point, Mr. President, allow me to discuss in detail the transnational nature of terrorism. As a responsible member of the community of nations, we are duty-bound to improve upon our laws towards ensuring that we are able to implement United Nations Security Council resolutions, meet international standards, and fulfill state obligations with the United Nations. x x x

[576] A forward-looking, preventive and well-funded criminal justice strategy against terrorist violence requires a comprehensive system of substantive offences, investigative powers and techniques, evidentiary rules and international cooperation. The goal is to proactively integrate substantive and procedural mechanisms to reduce the incidence and severity of terrorist violence, and to do so within the strict constraints and protections of the criminal justice system and the rule of law. There can be significant accompanying challenges, however,

especially for less well-resourced States, to implement all the recommended measures for law enforcement and criminal justice systems together with the requisite levels of technical capacity.

Criminal justice systems have approached these challenges differently, depending on their legal tradition, their level of development, their relative institutional sophistication and their own cultural circumstances. In some instances, a perceived urgent need to respond to a specific threat has led States to improvise new criminal justice approaches, which risk contravening recognized international human rights instruments and normative standards. Furthermore, there is scope for strengthening the capacity and effectiveness of national legal and criminal justice systems in many States to cooperate at the international level with a variety of rule of law-based counter-terrorism initiatives. This has resulted in additional stress being placed on the already limited capacity of many criminal justice systems and has perhaps weakened or compromised their ability to function within basic rule of law and human rights principles." (United Nations Office on Drugs and Crime. E4J University Module Series: Counter-Terrorism, Module 4: Criminal Justice Responses to Terrorism (July 2018) at https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/criminal-justice-responses.html)

[577] See Transcript of the November 27, 2018 Senate Deliberations, pp. 5-6; Transcript of the August 13, 2019 Senate Deliberations, pp. 31-33; and People of the Philippines v. Nur A. Supian, et al., Criminal Case No. 1305, Regional Trial Court of Taguig City, Branch 70.

[578] In defining Terrorism, Sec. 3 of the HSA listed the following predicate crimes:

a.

Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);

b.

Article 134 (Rebellion or Insurrection);

c.

Article 134-a (Coup d'Etat), including acts committed by private persons;

d.

Article 248 (Murder);

e.

Article 267 (Kidnapping and Serious Illegal Detention);

f.

Article 324 (Crimes Involving Destruction), or under

(1)

Presidential Decree No. 1613 (The Law on Arson);

(2)

Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);

(3)

Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968);

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(4)

Republic Act No. 6235 (Anti-Hijacking Law);

(5)

Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,

(6)

Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

[579] Merriam-Webster Dictionary, common sense (undated) at https://www.merriam-webster.com/dictionary/common%20sense.

[580] Cambridge Dictionary. common sense (undated) at https://dictionary.cambridge.org/us/diclionary/english/common-sense.

[581] Jeremiah 5:21 (King James Version): "Hear now this, O foolish people, and without understanding, which have eyes, and see not, which have ears, and hear not."

[582] Congressman Aniag, Jr. v. COMELEC, 307 Phil. 437, 448-449 (1994), citations omitted.

[583] Pestilos v. Generoso, 746 Phil. 301, 317 (2014), citations omitted.

[584] "To be sure, this argument has long been in disuse for there can be no escape from the reality that all powers are susceptible of abuse. The mere possibility of abuse cannot, however, infirm per se the grant of power to an individual or entity. To deny power simply because it can be abused by the grantee is to render government powerless and no people need an impotent government. There is no democratic government that can operate on the basis of fear and distrust of its officials, especially those elected by the people themselves. On the contrary, all our laws assume that our officials, whether appointed or elected, will act in good faith and will regularly perform the duties of their office. Such a presumption follows the solemn oath that they took after assumption of office, to faithfully execute all our laws." (Garcia v. COMELEC, 297 Phil. 1034, 1057 [1993]).

[585] Issue No. VI through No. X, Memorandum Cluster I and II, p. 4.

[586] Memorandum Cluster I and II, p. 22.

[587] Id. at 23-24.

[588] Id. at 31-32, 34-35, 37, 39.

[589] Id. at 31-32.

[590] Id. at 32-33.

[591] Id.

[592] Id. at 34.

[593] Id. at 35.

[594] Id. at 35-36.

[595] Id.

[596] Id. at 37-38.

[597] Id. at 38.

[598] Id. at 39.

[599] Id. at 40.

[600] Id. at 41. See also Petition, G.R. No. 252585, p. 38.

[601] Id.

[602] Id. at 30-31.

[603] Memorandum for Public Respondents, Vol. 2, pp. 282-283.

[604] Id. at 284-287.

[605] People v. Nazario, supra note 86.

[606] Spouses Imbong v. Ochoa, Jr., supra note 104 at 197-198.

[607] Ermita-Malate Hotel and Motel Operators Association, Inc. v. Hon. City Mayor of Manila, supra note 18 at 324-325; Celdran v. People, supra note 90.

[608] People v. Siton, supra note 89.

[609] Dans. Jr. v. People, 349 Phil. 434, 462-463 (1998).

[610] People v. Dela Piedra, supra note 87 at 47-55.

[611] Gallego v. Sandiganbayan, 201 Phil. 379, 382 (1982).

[612] Representative Legman v. Hon. Medialdea, 812 Phil. 179, 283-288 (2017); People v. Morato, 295 Phil. 211, 218-219 (1993).

[613] People v. Dela Piedra, supra note 87 at 52-53. In Romualdez v. Sandiganbayan, supra note 96 at 280-286, the Court applied the same test in a facial challenge based on vagueness but which challenge was later held to be inappropriate.

[614] Atty. Valera v. Office of the Ombudsman, 570 Phil. 368, 390 (2008).

[615] Judge Leynes v. Commission on Audit, 463 Phil. 557, 573 (2003).

[616] This unofficial copy is available at https://cdasiaonline.com/laws/52260?s_params=TmPWyTYRbbGDw24Pr-v6.

[617] This official copy is available at https://www.officialgazette.gov.ph/downloads/2020/06jun/20200703-RA-11479-RRD.pdf.

[618] Roldan v. Villaroman, 69 Phil. 12, 19 (1939).

[619] Supra note 281 at 109 and 111.

[620] Id. at 110.

[621] Id. at 110.

[622] Id. at 111.

[623] See People v. Solar, G.R. No. 225595, August 6, 2019.

[624] People v. Claro, 808 Phil. 455, 464-465 (2017), citations omitted.

[625] See People v. Macaraig, 810 Phil. 931, 937 (2017), citations omitted.

[626] United States v. Paguirigan, 14 Phil. 450, 451 (1909). See also Ladaga v. Mapagu, 698 Phil. 525 (2012) where the Court held that the threat must be actual rather than merely a supposition.

[627] See People v. Viñas, G.R. No. 234514, April 28, 2021.

[628] Lejano v. People, 652 Phil. 512, 737 (2010).

[629] Salonga v. Hon. Paño, 219 Phil. 402, 425-426 (1985).

[630] People v. Mora, G.R. No. 242682, July 1, 2019.

[631] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977.

[632] Id. at Art. 5, Art. 9, Art. 22, Art. 60 and Art. 79.

[633] Supra note 281 at 139.

[634] See id. at 94-95.

[635] Civil Service Commission v. Joson, Jr., 473 Phil. 844, 858 (2004).

[636] Phil. International Trading Corp. v. COA, 635 Phil. 447, 454 (2010), citations omitted.

[637] Commissioner of Internal Revenue v. Sec. of Justice, 799 Phil. 13, 28 (2016), citations omitted.

[638] National Tobacco Administration v. COA, 370 Phil. 793, 808 (1999), citations omitted.

[639] Chavez v. Judicial and Bar Council, 691 Phil. 173, 200 (2012).

[640] Memorandum for Public Respondents, Vol. 2, pp. 308-340.

[641] People v. Damaso, 287 Phil. 601, 610 (1992).

[642] See, generally, Pilapil, Jr. v. Cu, G.R. Nos. 228608 & 228589, August 27, 2020. Sec also People v. O'Cochlain, G.R. No. 229071, December 10, 2018; People v. Chua Ho San, 367 Phil. 703 (1999). In Acosta v. Ochoa, the Court held that consent to a warrantless search should not be in a pro forma Consent of Voluntary Presentation for Inspection form which does not indicate the scope, frequency, and execution of the inspection, as such gaps in the form means that those signing it are "incapable of intelligently waiving their right [against] the unreasonable search of their homes" (G.R. Nos. 211559, 211567, 212570 & 215634, October 15, 2019).

[643] People v. Chua, 418 Phil. 565, 575 (2001).

[644] PLDT Company v. Alvarez, 728 Phil. 391, 420 (2014).

[645] Revised Philippine National Police Operational Procedures PNPM-DO-DS-3-2-13, p. 2.

[646] Santos v. Pryce Gases, Inc., 563 Phil. 781, 795 (2007).

[647] In her dissenting opinion in Lagman v. Medialdea, Chief Justice Sereno equated surveillance to search.

[648] Sec. 5, Republic Act No. 11313, April 17, 2019.

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[649] Republic Act No. 10173, August 15, 2012, as implemented by the Philippine National Privacy Commission (NPC) through Advisory No. 2020-04, November 16, 2020.

[650] Sps. Hing v. Choachuy, Sr., 712 Phil. 337, 348-349 (2013). The Court initially applied Section 3, Article III of the Constitution even when the party that installed the CCTV was not a state agent but rather a private person.

[651] Sec. 1 and Sec. 3, Republic Act No. 4200, June 19, 1965.

[652] Sec. 7.

[653] Sec. 4 and Sec. 15, Republic Act No. 10175, September 12, 2012.

[654] Gaanan v. IAC, 229 Phil. 139, 146 (1986).

[655] Sec. 3(m).

[656] Sec. 3.

[657] Atty. Capuchino v. Apolonio, 672 Phil. 287, 298 (2011). An attempt on good faith to catch wrongdoing was considered not an excuse to wiretap.

[658] Sec. 4.

[659] Sec. 16.

[660] Sec. 15.

[661] Sec. 3(m) and Sec. 15.

[662] A.M. No. 17-11-03-SC, August 15, 2018.

[663] Sec. 5.4.

[664] Sec. 18.

[665] Sec. 6.9. Footnote 37 of the Rules states that one possible exception is the voluntary surrender of the unit.

[666] Zulueta v. Court of Appeals, 324 Phil. 63, 68 (1996).

[667] Vivares v. St. Theresa's College, 744 Phil. 451, 463-464 (2014).

[668] In the Matter of the Petition for Writ of Habeas Corpus/Data v. De Lima, G.R. Nos. 215585 & 215768, September 8, 2020.

[669] Disini, Jr. v. The Secretary of Justice, supra note 91 at 129-137.

[670] Kilusang Mayo Uno v. Director-General, NEDA, 521 Phil. 732, 758 (2006).

[671] Subido Pagente Certeza Mendoza and Binay Law Offices v. CA, 802 Phil. 314, 360 (2016).

[672] Social Justice Society (SJS) v. Dangerous Drugs Board, 591 Phil. 393, 415 (2008).

[673] Morfe v. Mutuc, supra note 18 at 436-437.

[674] See discussion of the practices of various states such as Canada, Australia, of United Nations Office on Drugs and Crime, Current Practices in Electronic Surveillance in the Investigation of Serious and Organized Crime, United Nations 2009, citing Title 18 Chap 119 § 2518(7) US Code; Surveillance Devices Act 2004 (Australia) s 28: Criminal Code (Canada) s 184.4.

[675] Genuino v. De Lima, supra note 568 at 716.

[676] Leave Division, OAS, OCA v. Heusdens, 678 Phil. 328, 339-340 (2011), the Court identified the following: 1) HSA; 2) The Philippine Passport Act of 1996; 3) Anti-Trafficking in Persons Act of 2003; 4) The Migrant Workers and Overseas Filipinos Act of 1995; 5) The Act on Violence against Women and Children; 6) Inter-Country Adoption Act of 1995.

[677] Silverio v. Court of Appeals, 273 Phil. 128, 132 (1991).

[678] Philippine Association of Service Exporters, Inc. v. Hon. Drilon, 246 Phil. 393, 404-405 (1988).

[679] Supra note 568.

[680] UNDOC S/RES/2178 (2014), 24 September 2014.

[681] Id. at 4.

[682] Id. at 4-5.

[683] Sec. 1, Rule on Precautionary Hold Departure Order, A.M. No. 18-07-05-SC, September 16, 2018.

[684] Id.

[685] OCA Circular No. 39-97, June 19, 1997.

[686] Defensor-Santiago v. Vasquez, 291 Phil. 664, 680 (1993).

[687] Dimatulac v. Hon. Villon, 358 Phil. 328, 361-362 (1998).

[688] UNSC Resolution 2178 reads: "The Security Council ... Acting under Chapter VII of the United Nations Charier ... 5. Decides that Member States shall, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities."

[689] Hon. Binay v. Hon. Domingo, 278 Phil. 515, 521 (1991).

[690] See Subsidiary Organs of the United Nations Security Council, United Nations 2021, pp. 4-5.

[691] Paragraphs 1 and 2.

[692] See paragraphs 1-2.

[693] Id., paragraphs 6-7. See UNDOC S/2019/998, 13 July 2020, Technical guide to the implementation of Security Council Resolution 1373 (2001) and other relevant resolutions.

[694] See paragraph 4.

[695] Guidelines of the Committee for the Conduct of its Work, last updated 5 September 2018, available at https://www.un.org/sccuritycouncil/sites/www.un.org.securitycouncil/files/guidelines_of_the_committee_for_the_conduct__of_its_work_0.pdf.

[696] UNDOC S/RES/2368, 20 July 2017, paragraphs 1-8, 50-59 and 60-80.

[697] Guidelines, supra note _. See Sections 4, 6, and 7.

[698] UNDOC S/RES/2368, supra note, paragraphs 60-80.

[699] Code No. QDe.001, available at https://scsanctions.un.org/9vpuuen-al-qaida.html.

[700] See narrative summary at https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries/entity/abu-sayyaf-group.

[701] Code No. QDe.001, available at https://scsanctions.un.org/vbj8hen-all.html.

[702] See Technical guide, id., paragraphs 56-67.

[703] UNSC Resolution No. 1373, paragraph 1(a).

[704] Id., paragraph 1(b).

[705] Id., paragraph 1(c).

[706] Id., paragraph 1(d).

[707] Id., paragraph 2(e).

[708] Id., paragraph 2(f).

[709] UNDOC S/RES/1730, 19 December 2006, paragraphs 1-8.

[710] See, For example, Case C-79/1 5 P, Council of the European Union v. Hamas, 16 July 2017.

[711] See, for example, US-Israel Counter - Terrorism Cooperation Accord, 30 April 1996, 7 US Department of State Dispatch 19, 225-226.

[712] Phil. International Trading Corp. v. COA, 635 Phil. 447, 454 (2010), citations omitted.

[713] Mactan-Cebu International Airport Authority v. Urgello, 549 Phil. 302, 322 (2007), citations omitted.

[714] Phil. International Trading Corp. v. COA, supra note 712, at 458, citations omitted.

[715] The Office of the Solicitor General (OSG) v. Court of Appeals, 735 Phil. 622, 628 (2014), citations omitted.

[716] Morfe v. Mutuc, supra note 18 at 432-433, citations omitted.

[717] Perez v. Phil. Telegraph and Telephone Co., 602 Phil. 522, 538 (2009), citations omitted; see also Stanley v. Illinois, 405 U.S. 645 (1972), citations omitted.

[718] Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974), citations omitted.

[719] Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961).

[720] See Morrissey v. Brewer, 408 U.S. 471 (1972).

[721] 41 Phil. 188, 193-194 (1971), citations omitted.

[722] See Boddie v. Connecticut, 401 U.S. 371 (1971), citations omitted.

[723] Soplente v. People, 503 Phil. 241, 242 (2005), citing Samuel Butler.

[724] Estrada v. Sandiganbayan, supra note 85 at 338.

[725] See Dissenting Opinion of Justice Antonio T. Carpio in Southern Luzon Drug Corporation v. Department of Social Welfare and Development, 809 Phil. 315, 388 (2017), citing City Gov't. of Quezon City v. Hon. Judge

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Ericta, 207 Phil. 648, 654 (1983).

[726] See Serrano v. Gallant Maritime Services, Inc., 601 Phil. 245, 298 (2009), citations omitted.

[727] Cf. Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service, 726 Phil. 104, 122 (2014), citations omitted.

[728] Marcos v. Sec. Manglapus, 258 Phil. 479, 503-504 (1989).

[729] Churchill and Tail v. Rafferty, 32 Phil. 580, 604 (1915), citations omitted.

[730] Case v. Board of Health, 24 Phil. 250, 281 (1913), citing Crowley v. Christensen, 137 U.S. 86, 89 (1890).

[731] Homeowners' Association of the Phils., Inc. v. The Municipal Board of the City of Manila, 132 Phil. 903, 907 (1968).

[732] Estrada v. Escritor, 455 Phil. 411, 582 (2003), citations omitted.

[733] Executive Secretary v. Court of Appeals, 473 Phil. 27, 60-62 (2004), citations omitted.

[734] In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected (Vivo v. Philippine Amusement and Gaming Corporation, 721 Phil. 34, 43 [2013]).

[735] Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds representing, involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as amended (November 15, 2005).

[736] See Monteverde v. Generoso, 52 Phil. 123, 127 (1928); Salao v. Santos, 67 Phil. 547, 550 (1939).

[737] A and others v. Secretary of State for the Home Department [2004] UKHL 56 (Belmarsh Cases); Charkaoui v. Canada (Minister of Citizenship and Immigration), 2007 SCC 9; Rasul v. Bush, 542 U.S. 466 (2004), Hamdan v. Rumsfeld, 548 U.S. 557 (2006), Boumediene v. Bush, 553 U.S. 723 (2008), and Adnan Farhan Abdul v. Obama, President of U.S., et al., Order Nr. 11-1027, Order List: 567 U.S., 11 June 2012, p. 7. In these cases, the detainee had limited access to evidence, information and documents relating to the charges against them. Right to confrontation of the witnesses against them was also limited to the point that mere intelligence report coming from a government source would suffice.

[738] Hong v. Aragon, G.R. No. 209797, September 8, 2020.

[739] Cabrera v. Marcelo, 487 Phil. 427, 440 (2004).

[740] Translation of the Penal Code in force in the Philippines Royal Decree of September 4, 1884 (Washington, Government Printing Office, 1900).

[741] In U.S. v. Figueroa, 23 Phil. 19, 21 (1912), the accused had committed larceny and was detained without authorization for almost 24 hours. In contrast, in U.S. v. Braganza, 10 Phil. 79, 80 (1908), there was arbitrary detention because the accused detained a person not by reason of a crime.

[742] Art. 125, Revised Penal Code, Act No. 3815 [December 8, 1930].

[743] Art. 125 of Act No. 3815, as amended by, Act No. 3940 [November 29, 1932].

[744] Article 125 of Act No. 3815, as amended by R.A. No. 1083 [June 15, 1954].

[745] Presidential Decree No. 1404, [June 9, 1978].

[746] 206 Phil. 466, 497-498 (1983).

[747] Sec. 1, Executive Order No. 272 [July 25, 1987].

[748] Sec. 18.

[749] Sec. 412, Patriot Act, 115 STAT. 272.

[750] Chapter II, Internal Security Act.

[751] Terrorism Act 2006 (Disapplication of Section 25) Order 2008. UK derogated from the liberty provision in European Convention on Human Rights when the European Court of Human Rights declared that a pre-charge detention of more than four days violates the convention. Under the 2001 law, the period of detention was indefinite.

[752] Terrorism (Preventative Detention) Act 2006 (WA).

[753] Anti-Terrorism Act 2015.

[754] Leviste v. Alameda, 640 Phil. 620, 635 (2010).

[755] See also Rule 11.2(b), ATA IRR.

[756] A. and Others v. the United Kingdom (Application no. 3455/05), Judgment of 19 February 2009, European Court of Human Rights, pars. 203-204. In this case, the detainee was subjected to a "closed materials" system of hearing where only courts have access to the material while the detainee may only have access to materials that have been filtered by the court. In some instances, access by the court is through an in-camera session.

[757] See Sayo v. Chief of Police, 80 Phil. 859, 867 (1948).

[758] MR. SARMIENTO: I wish to propose an amendment to the amendment of the honorable Vice-President. He is for the charging of the accused within five days. My submission, Madam President, is that five days is too long. Our experience during martial law was that torture and other human rights violations happened immediately after the arrest, on the way to the safe houses or to Camp Aguinaldo, Fort Bonifacio or Camp Crame. I repeat, five days is too long, Madam President. As a matter of fact, under the Revised Penal Code, and, of course, the honorable Vice-President is an expert on criminal law, we have the 6-9-18 formula — 6 hours, 9 hours, 18 hours within which to charge and bring the accused to judicial authorities. Of course, during martial law, the 6-9-18 formula was increased under P.D. No. 1404. So I wish to suggest that we reduce the period of five days to THREE days as a compromise. That would be 72 hours, Madam President. Actually, it is still quite long.
Will the honorable Vice-President yield to my amendment?

THE PRESIDENT: What does Commissioner Padilla say?
MR. PADILLA: Madam President, I have no particular conviction on the number of days or number of hours. That was suggested by a few Commissioners in conference yesterday. It is true that under Article 125 of the Revised Penal Code which penalizes the delaying of the transmittal or delivery of the person arrested to the judicial authorities, the period is based on the gravity of the offense and this is punishable by the same penalties as

those for arbitrary detention in Article 124 of the Code and the delay in the release under Article 126. But this provision is made to apply when there is a suspension by the President of the privilege of the writ of habeas corpus. So it covers a different situation from that contemplated in the Revised Penal Code. The Rules of Court, Rule 113, Section 6 thereof, also allows arrest without warrant under three situations. However, that is also subject to the period for delivery of the arrested person to the judicial authorities, which means to the courts through the fiscal.

With regard to the proposed amendment to our amendment which is to reduce the period of five working days to "THREE" working days, I have no particular objection, Madam President." (Records of the Constitutional Commission No. 044, July 31, 1986)

[759] Section 1, A.M. No. 07-9-12-SC, September 25, 2007.

[760] 589 Phil. 1 (2008).

[761] Id. at 36-37.

[762] Navia v. Pardico, 688 Phil. 266, 279 (2012).

CONCURRING AND DISSENTING OPINION

PERLAS-BERNABE, J.:

The present consolidated petitions — thirty-seven (37) in total — assail the constitutionality of Republic Act No. (RA) 11479,[1] otherwise known as the Anti-Terrorism Act of 2020 (ATA), for its alleged violation of numerous constitutional rights and liberties, as well as the doctrine of separation of powers. The petitioners argue that the law is void on its face under the vagueness/overbreadth standards, among others, and as such, tainted with grave abuse of discretion, rendering it null in its entirety.

The ponencia accepted the facial challenge, but only with respect to certain facts and circumstances relative to Sections 4 to 6 (with respect to training), 8 to 10 (with respect to membership under the third paragraph), 12 (with respect to training and expert advice or assistance as forms of material support), 25 to 28 (with respect to designation and proscription), and 29 (on detention) of the ATA. The delimitation proceeded from the view that pursuant to prevailing Philippine jurisprudence, facial challenges on legislative acts are permissible only: if they curtail the right to freedom of expression and its cognate rights. Utilizing this framework, the majority then found the following portions of the law unconstitutional: (1) the clause "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" found in the proviso of Section 4; and (2) the second paragraph of Section 25.

First off, I fully concur with the ponencia's delimited facial challenge framework. Considering the present status of our jurisprudence on facial challenges (which until overturned in the proper case therefor remains good law), as well as the already complex nature of the issues accepted by the Court in these permissible facial challenges, the majority's approach is — to my mind — a prudent and practical exercise of discretion that justifies a refusal to adjudicate all other issues raised by the petitioners that do not relate to said rights, or those that are too speculative and raise genuine questions of fact. I caution, however, that this delimitation does not - as it should not - preclude subsequent constitutional challenges that may present appropriate factual situations that can more sharply address the unresolved issues raised against the other provisions of the law. Further, it does not - as it should not - preclude a doctrinal shift by this Court of its present framework on facial challenges which may be undertaken in a future case, but not in this already complex case riddled with already complicated issues.

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Anent the procedural matters, I likewise fully agree that petitioners, except for petitioners in G.R. No. 253118 (Balay Rehabilitation Center, Inc. v. Duterte) and UDK 16663 (Yerbo v. Offices of the Honorable Senate President and the Honorable Speaker of the House of Representatives), have sufficiently complied with the requisites for the Court's exercise of its judicial power. Based on the assertions traversed by the ponencia, I am convinced that petitioners have shown credible and imminent threat of injury to their rights that may result from the law's implementation. Similarly, I find that the accepted issues in this case raise serious and genuine concerns affecting freedom of expression and its cognate rights that justify this Court's immediate action.

My concurrence with the said framework as well as the ponente's views on most of the prominent substantive issues consequently traversed in the ponencia pursuant thereto, on the one hand, and my dissent against the majority's ruling upholding the validity of the phrase "organized for the purpose of engaging in terrorism" found in the third paragraph of Section 10, as well as the third mode of designation found under the third paragraph of Section 25 of the ATA, on the other, are forthwith explicated in this Opinion.

I. Facial and as-applied challenges, and the propriety of the ponencia's delimited framework.

In concept, a facial challenge contends that a government law, rule, regulation, or policy is unconstitutional as written, or on its face, or on the very text of the policy itself.[2] It is typically described as "a head-on attack on the legislative judgment, an assertion that the challenged statute violates the Constitution in all, or virtually all, of its applications x x x."[3] Thus, it may result in invalidating the law in its entirety based on its wording (on its face) often after a consideration of all or almost all of its possible unconstitutional applications beyond the particular circumstances of a petitioner.[4]

Facial challenges are often raised using the void-for-vagueness and overbreadth standards. Under the vagueness standard, a statute is rendered void if it "'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,' [and because] it encourages arbitrary and erratic arrests and Convictions x x x."[5] Meanwhile, the overbreadth standard leads to a finding of unconstitutionality if a statute indiscriminately and unnecessarily broadly sweeps, thereby invading the area of protected freedoms.[6]

These common tests notwithstanding, there have been cases where the Court employed the strict scrutiny test in ostensible facial challenge cases, such as in Ople v. Torres,[7] White Light Corporation v. City of Manila,[8] Serrano v. Galant Maritime Services, Inc.,[9] and Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City.[10] Under the strict scrutiny test, a statute would pass constitutional muster only if it is: (1) necessary to achieve a compelling State interest; and (2) the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.[11]

In contrast to a facial challenge, an as-applied challenge contends that a government law, rule, regulation, or policy is unconstitutional as applied to a particular activity/ies.[12] It "concedes that the statute may be constitutional in many of its applications, but contends that it is not so under the particular circumstances of the case."[13] Because of its nature as specifically tailored only to a particular and specific set of facts and rights, an as-applied challenge may result in invalidating the statute only as-applied to the petitioner. This is accomplished by carving out an exception for the petitioner's case from the application of the statute, or severing or removing the unconstitutional application (i.e., unconstitutional application in the petitioner's case) from the constitutional application.[14]

In the Philippine context, the first explicit use of the term "facial challenge" in our jurisprudence can be traced to the Opinion of Associate Justice Vicente V. Mendoza (Justice Mendoza) in the case of Cruz v. Secretary of Environment[15] - a case involving a petition for prohibition and mandamus filed by Isagani Cruz and Cesar Europa directly before the Court assailing the constitutionality of certain provisions of RA No. 8371, otherwise

known as the "Indigenous Peoples Rights Act" (IPRA). Noting that petitioners therein lacked standing and filed the suit "only to settle what they believe to be the doubtful character of the law in question," Justice Mendoza voted to dismiss the petition because "were [the Court] to assume jurisdiction and decide wholesale the constitutional validity of the IPRA," and declare it void on its face, would not only run counter to "the established rule that a party can question the validity of a statute only if, as applied to him, it is unconstitutional."[16] It would also "[upset] the balance of power among the three branches of the government and erecting, as it were, x x x the Supreme Court, as a third branch of Congress, with power not only to invalidate statutes but even to rewrite them."[17] Evidently seeking to limit, if not curtail, further attempts by litigants in directly assailing before the Court — and the Court in deciding wholesale - the constitutional validity of any law based only on an alleged "doubtful character of the law in question," he posited that facial challenges to statutes are allowed only when they operate in the area of freedom of expression because of the "'chilling' effect on freedom of expression," viz.:

> The only instance where a facial challenge to a statute is allowed is when it operates in the area of freedom of expression. In such instance, the overbreadth doctrine permits a party to challenge the validity of a statute even though as applied to him it is not unconstitutional, but it might be if applied to others not before the Court whose activities are constitutionally protected. Invalidation of the statute "on its face" rather than "as applied" is permitted in the interest of preventing a "chilling" effect on freedom of expression.[18]

Justice Mendoza reiterated this position in his Opinion[19] in Estrada v. Sandiganbayan,[20] which the ponencia therein adopted. Quoting the observations of Justice Mendoza, the Court explained that a facial challenge "is allowed to be made to a vague statute and to one which is overbroad because of possible 'chilling effect' upon protected speech."[21] The rationale for this principle was provided in the following manner:

> The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.[22] (underscoring and emphasis supplied; citations omitted)

In said case, the Court, however, instructed that the foregoing concepts do not apply to penal statutes considering that these laws have "general in terrorem effect resulting from their very existence, and, if a facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct."[23] Further, considering that, among others, an "'on its face' invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected[,]"[24] the Court cautioned that a facial challenge is a "'manifestly strong medicine,' to be employed 'sparingly and only as a last resort,' and is generally disfavored."[25]

The Court, in the succeeding cases of Romualdez v. Sandiganbayan[26] Spouses Romualdez v. Commission on Elections,[27] and Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council (Southern Hemisphere),[28] reiterated that penal statutes cannot be the subject of facial invalidation. In Southern Hemisphere, the Court reminded that a facial challenge is allowed in free speech cases "to avert the 'chilling effect' on protected speech, the exercise of which should not at all times be abridged."[29]

However, the Court eventually clarified this prohibition against the application of facial challenges to penal statutes in Disini v. Secretary of Justice (Disini),[30] declaring that the same is true only when the penal statutes do not encroach upon free speech rights, thus:

> When a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable. The inapplicability of the doctrine must be carefully delineated. As Justice Antonio T. Carpio explained in his dissent in Romualdez v. Commission on Elections, "we must view these statements of the Court on the inapplicability of the overbreadth and vagueness doctrines to penal statutes as appropriate only insofar as these doctrines are used to mount 'facial' challenges to penal statutes not involving free speech."[31]

Only a few months after the promulgation of Disini, the Court once more employed the facial challenge in the case of Spouses Imbong v. Ochoa (Spouses Imbong),[32] under a seemingly expanded version of the facial analysis.

At this juncture, it deserves clarification that while Spouses Imbong states that this Court "has expanded [the] scope [of facial challenges] to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights," the ponencia cannot be faulted in concluding that the phrase "other fundamental rights" pertains only to rights that are cognate to free speech, similar to religious freedom. To recount, Imbong only states that:

> In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights. The underlying reason for this modification is simple. x x x[33] (underscoring supplied; citations omitted)

Notably, such pronouncements should be read in relation to the context in which they were made. In the immediately preceding paragraph, the Court provided a brief discussion of US jurisprudence, which enumerated what these "fundamental rights" include. Thus:

> In United States (US) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only protected speech, but also all other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.[34] (emphases and underscoring supplied; citations omitted)

Based on the foregoing, it may be reasonably argued that the Philippine law "modification" to the concept of facial challenges under US Constitutional Law is only with reference to the withholding of the application of facial challenges to strictly penal statutes. Nonetheless, with respect to the expansion in scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights, the term "fundamental rights" was not explicitly interpreted in Spouses Imbong to include all other constitutional rights. Thus, the phrase "fundamental rights" ought to pertain to the same character as the immediately preceding term "religious freedom" found in the same "but also" clause. This, in turn, is consistent with the fundamental rights covered under the US Constitutional Law, such as "freedom of the press and peaceful assembly." If Spouses Imbong intended to truly expand the scope of facial challenges to all other fundamental rights, then the Court should have clearly specified or provided examples of what these other rights are, for ample guidance.

One may argue that the Court, in Spouses Imbong, actually took cognizance of other constitutional rights in a facial challenge, such as the right to life and to equal protection, as when it tackled the other issues raised by some of therein petitioners. However, in my view, this supposed expansion, if anything, remains to be ambiguous.

To highlight this ambiguity, there has been no categorical qualification or abandonment by the Court in Spouses

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Imbong of the well-entrenched Southern Hemisphere dictum that facial challenges in free speech cases are presently justified "by the aim to avert the 'chilling effect' on protected speech, the exercise of which should not at all times be abridged." If indeed a doctrinal shift was meaningfully intended, then the Court ought to have lucidly explained its reasons relative to the established Southern Hemisphere rule.

Thus, with these uncertainties, the ponencia is justified in restrictively interpreting the phrase "other fundamental rights" in Spouses Imbong as to cover only free speech and its cognate rights.

In any event, subsequent cases after Spouses Imbong have continued to echo the Southern Hemisphere framework on facial challenges.

For one, in SPARK v. Quezon City,[35] the Court rejected the invocation of the overbreadth doctrine, considering that petitioners therein have not claimed any transgression of their rights to free speech or any inhibition of speech-related conduct. The Court stated the ruling in Southern Hemisphere that "the application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases."[36] Even later, in Falcis III v. Civil Registrar General,[37] the Court similarly pronounced that "a facial challenge requires a showing of curtailment of the right to freedom of expression, because its basis is that an overly broad statute may chill otherwise constitutional speech."[38]

Based on the foregoing discussions, it is thus apparent that prevailing jurisprudence, at the time the present consolidated petitions were filed, still restrict the operation of facial challenges to cases infringing on the freedom of expression and its cognate rights. This rule remains "good law" up until the Court clearly and unmistakably modifies or overturns the same once the appropriate opportunity arrives to re-examine its bearings. As this case is already riddled with numerous complicated issues upon the submission of a staggering 37 petitions, prudence and practicality dictate that the Court should refrain from adding another layer of complexity in the disposition of the instant petitions.

Hence, for these reasons, I fully concur with the ponencia's circumscribed but balanced approach in resolving this case. Besides, as the ponencia also explains, the other issues raised in these petitions against the other provisions of the law outside of the accepted issues "are too speculative and raise genuine questions of fact that require submission of concrete evidence x x x"[39] and therefore, cannot be resolved even outside the delimited facial challenge framework. Evidently, the actual case and controversy/ripeness requisite for the exercise of judicial power still precludes the Court from resolving these other arguments of petitioners that patently raise conjectural or theoretical questions.[40]

II. Section 4 and its proviso.

On the substantive merits, I likewise concur with the ponencia in upholding the validity of Section 4[41] of the ATA, but invalidating the clause "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" found in the proviso.

Again, under our prevailing jurisprudence, facial challenges are proper only when raised against statutes that infringe on freedom of expression and its cognate rights. Because of this jurisprudential limitation, the present facial challenge against Section 4 of the ATA can only be entertained with respect to the proviso that evidently affects and relates to the freedom of expression. As can be gleaned from its text, Section 4 of the ATA consists of two (2) parts, the first of which relates to pure conduct that has nothing to do with expression. It enumerates the varied acts that could manifestly result to the destruction of life, limb, or property (i.e., acts intended to cause death or serious bodily injury to any person, or endangers a person's life, or extensive damage or destruction to a government or public facility, public place or private property, etc.), as well as the purposes (i.e., to intimidate the

general public or a segment thereof, create an atmosphere or spread a message of fear, etc.) which must indispensably accompany the acts in order for the same to be penalized as terrorism. The second part, on the other hand, is the proviso which explicitly relates to and affects expression and related expressive conduct. Within the context of the free speech submissions, these two (2) parts must be conjointly passed upon as they are substantially related to — and hence, cannot be simply extricated from - one another.

At this juncture, it must be borne in mind that the Court is authorized to employ the various aids to statutory construction in order to draw out the proper interpretation of Section 4 so that the legislative will may be reflected in its implementation and operation. Under our constitutional scheme, the Supreme Court is the ultimate guardian of the Constitution, and as such, has the distinguished but delicate power and duty of testing the validity of legislative acts for their conformity with the Constitution.[42] Notably, aside from the interrelation of Section 4's two parts, based on the entire law's structure, it is further apparent that the numerous provisions of the ATA depend for their operation on the definition provided in Section 4. Clearly, therefore, Section 4 plays a central and crucial role in the operation and implementation of the ATA for which a clarifying interpretation is essential.

Section 4's main part complies with substantive due process; presumption of constitutionality prevails.

As a general rule in constitutional law, a statute enjoys the presumption of constitutionality. In its most basic sense, the presumption means that courts, in passing upon the validity of a law, will afford some deference to the act of co-equal branches of the government pursuant to the separation of powers principle.[43] Thus, before a law may be struck down as unconstitutional, courts must be certain that there exists a clear and unequivocal breach of the constitution, and not one that is speculative or argumentative.[44] But, if any reasonable basis may be conceived which supports the statute, the same should be upheld.[45] It therefore places a heavy burden on the assailant to prove beyond reasonable doubt that the act is incompatible with the constitution. Verily, to doubt is to sustain.[46]

Petitioners essentially argue that Section 4 of the ATA violates the constitutional right to substantive due process and freedom of expression. Thus, it was incumbent upon petitioners in this case to clearly prove the alleged unequivocal breach or conflict with the Constitution.

Substantive due process requires that the law itself, not merely the procedures by which the law would be enforced, is fair, reasonable, and just. "It demands the intrinsic validity of the law in interfering with the rights of the person to life, liberty or property."[47] In penology, case law states that due process requires the terms of a penal statute to "be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties."[48] As once remarked by eminent constitutionalist Fr. Joaquin Bernas, "due process requires not only that the accused be informed of the offense he is charged with [as contained in the Information] but also that he must be able to understand what the law commands and prohibits."[49] The requirement stems from the principle that penal laws are construed strictly against the State and liberally in favor of the accused.[50] Accordingly, it is incumbent upon Congress to "provide a precise definition of forbidden acts."[51]

Despite these key premises, the due process clause does not impose any "constitutional or statutory duty to the legislature to define each and every word in an enactment, as long as the legislative will is clear, or at least, can be gathered from the whole act x x x."[52] "A criminal statute is not rendered uncertain and void because general terms are used therein."[53] "As long as the law affords some comprehensible guide or rule that would inform those who are subject to it what conduct would render them liable to its penalties, its validity will be sustained[;]"[54] otherwise, the Court will not hesitate to strike down the provision.

Applying these precepts, I also find that the main part of Section 4 sufficiently contains comprehensible standards that would enable its subjects to know what conduct would render them liable to its penalties. Thus, it complies with constitutional substantive due process requirements. Allow me, however, to expound upon the following points:

First, the acts sought to be penalized under the main part of Section 4 of the ATA must be indispensably accompanied by any of the six (6) listed purposes. More importantly, the acts and purposes must be characterized by the severity and gravity of the damage or destruction caused or projected to be caused by the act committed.[55]

A perusal of the deliberations reveals, that the legislature not only intended for the purposes to accompany and qualify the acts enumerated under subsections (a) to (e) of Section 4. More significantly, they intended to punish the various acts enumerated under the main part of Section 4 only in their most serious forms, characterized by the gravity or magnitude of their resulting or intended effects. In fact, interspersed across the main part are terms that evidently qualify the nature of the punishable acts as envisioned by Congress. For example, subsections (b) and (c) employ the term "extensive" to qualify the gravity of the intended damage or interference. On the other hand, the adjective "seriously", was used to qualify the character of the purposes "to destabilize or destroy the fundamental political, economic, or social structures of the country" and "undermine public safety" such that the resolve to destabilize or destroy fundamental structures or undermine public safety are shown to be genuine and grave.

Meanwhile, the addition of the phrase "nature and context" to further qualify the purposes leads to a reasonable conclusion that the legislature intended the same severity of damage across all six (6) listed purposes,[56] and thus, must be understood in this context.[57] Accordingly, since the law intended the purposes to accompany and qualify the acts enumerated under subsections (a) to (e), it can be concluded that any criminal act short of the gravity and severity that the legislature intended cannot he categorized as terrorism under Section 4. In fact, as clarified during the Senate deliberations, the distinction between the crime of terrorism under the ATA and ordinary crimes will depend on the intent and purpose of the act,[58] as determined from the acts done and their effect, context, and implication.[59]

To further clarify each of the penalized acts, it can be gleaned that the phrase "engages in acts intended to" in subsections (a), (b), and (c), refers to acts that cause or result in the damage or destruction of a person's life or limb, or of property. On the other hand, the phrase "endangers a person's life" in subsection (a) can be construed as nothing more than a restatement of the contemplated scenarios of "death or serious bodily injury" found in the same provision, as evident from the co-sponsor's speech during the deliberations,[60] and thus precludes the inclusion of innocent conduct or mere thought within the acts punishable as terrorism. Meanwhile, the extensive destruction caused to "government or public facility, public place, or private property" under subsection (b) can be read similarly with the extensive interference with or destruction to "critical infrastructure" under subsection (c) to refer to damage or destruction that is so severe as to debilitate key governmental functions, as may be seen from the sponsor's explanation[61] and following the definition of critical infrastructure under Section 3 (a) of the ATA, which would thus separate it from the ordinary crime of arson.[62]

Second, while not all of the terms used in the main part of Section 4 of the ATA have been defined in the law, their meaning can be discerned from common usage, as well as case law.

Moreover, it can be observed that even prior to the enactment of the Human Security Act (HSA) and the ATA, the Omnibus Election Code (OEC) already employed the term "terrorism" in several of its provisions.[63] While the OEC does not itself define "terrorism,"[64] case law[65] shows that the character of the acts considered as

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terrorism under our election laws is not significantly different from the character of the terrorist acts envisioned under the ATA. In either situation, the acts considered as terrorism are characterized by serious or grave violence, threat, and/or intimidation (in addition to fraud that evidently bears particular relevance only to election terrorism).

Third and last, the ATA's definition of terrorism is consistent with international instruments. In fact, the law's sponsor pointed out during the deliberations that the proposed definition of terrorism is consistent with the United Nations (UN)'s proposed Comprehensive Convention on International Terrorism (Proposed Convention)[66] and is comparable with the anti-terrorism laws of other Association of Southeast Asian Nations (ASEAN) countries. It can also be noted that the terms used in Section 4 of the ATA also bear similarities with those used in defining terrorist offenses under the Directive (EU) 2017/541 of The European Parliament and of The Council (15 March 2017) on combating terrorism.[67] In fact, the definition of terrorism under Section 4 appears to be in parallel with the definition of terrorist acts in various international instruments in that: (1) the latter require the performance or commission of acts (overt acts) which are: (a) generally considered as offenses under the domestic or national laws,[68] or (b) specified crimes or acts that could rightfully be considered as crimes under domestic law or under International Humanitarian Law,[69] or (c) acts without lawful authority;[70] and (2) majority of the definitions also require that the acts or offenses are coupled with or qualified by any or a combination of the following aim, intent, or purpose: (a) intimidating a population;[71] (b) compelling a government or an international organization to do or to abstain from doing any act;[72] (c) causing substantial damage to property or to the environment;[73] (d) causing death or serious bodily injury;[74] (e) causing extensive destruction of such a place where such destruction results in or is likely to result in major economic loss;[75] and (f) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.[76]

In fine, in order for an act to be punishable under Section 4 of the ATA, it must: (i) indispensably be accompanied by any of the enumerated purposes, and (ii) be characterized by gravity and severity of the resulting or intended effects, which is determined by the case's nature and context. Accordingly, subject to the ponencia's clarifying and narrowing construction, I agree that there is no constitutional infirmity presented in these cases enough to warrant the striking down of Section 4's main part. I, however, find it apt to mention that the definitive application of the various instances mentioned in Section 4 must undergo judicial scrutiny upon the proper ripe case filed therefor so as to allow jurisprudence on this relatively new - if not, barely illuminated - legal subject to evolve.

The "not intended" clause in Section 4's proviso is invalid; presumption of unconstitutionality was not overcome.

With respect to laws regulating speech based on its content, the presumption of constitutionality is reversed. Case law settles that content-based restrictions on speech bear a heavy presumption of unconstitutionality[77] and are subject to strict scrutiny.[78] Accordingly, it was incumbent upon the government, in this case, to prove that the proviso complies with the constitutional standards.

Freedom of expression is considered as the foundation of a free, open, and democratic society.[79] It is an indispensable condition to the exercise of almost all other civil and political rights.[80] Thus, it is given a preferred status that stands on a higher level than substantive economic freedom or other liberties.[81] In its essence, the right to free expression involves the freedom to disseminate ideas and beliefs, regardless of its subject and tenor,[82] and includes the entire range of communication, from vocal or verbal expressions to expressive conduct or symbolic speech that incorporates both speech and non-speech elements, including inaction.[83]

Because of the fundamental role that freedom of expression plays in our democratic society, particularly the vital necessity of a free exchange of ideas for society to thrive, the Constitution mandates that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances."[84] In this regard, the "government lacks the power to restrict expression because of its message, its ideas, its subject matter, or its content"[85] and "may not be prohibited merely because the ideas are themselves offensive to some of their hearers"[86] or "simply because society finds the idea itself offensive or disagreeable,"[87] or constitutes as "sharp attacks on government and public officials."[88] For these reasons, a governmental action that restricts speech comes to this Court bearing a heavy presumption against its constitutional validity.[89]

Over time, however, the Court has carved out narrow and well-defined exceptions to the rule on restrictions upon the content of speech.[90] These exceptions are borne out of the recognition that some types of speech may be injurious to the equal right of others or those of the community or society, and thus, may be subjected to regulation by the State under its pervasive police power.[91] The few well-defined and narrow areas where the exceptions are said to apply include pornography, advocacy of imminent lawless action, danger to national security, false or misleading advertisement, and libel.[92] Outside of these limited categories, the expression is protected and are not subject to prior restraint.[93]

Furthermore, it is settled that statutes regulating speech based on its content are subject to the strictest scrutiny.[94] The approach requires the existence of a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society, and a direct causal link between the restriction imposed and the injury to be prevented.[95] In addition, the restriction must be reasonably and narrowly drawn to fit the regulatory purpose, with the "least restrictive means among available, effective alternatives"[96] undertaken.[97] Accordingly, the government action will only be sustained if the government shows a compelling interest and the restraint is necessary to protect such interest. But even in such a case, the restraint shall be narrowly drawn - if "readily susceptible" to such a construction[98] - to the extent necessary to protect or attain the compelling State interest;[99] otherwise, the statute must be struck down as unconstitutional.

Reinforcing the right to freedom of expression is the constitutional guarantee against deprivation of liberty without due process of law. The conception of liberty embraces the right to freedom of expression. Thus, pursuant to due process, the extent and limits of the permissible restriction on expression must be sufficiently and clearly expressed so as to give persons of ordinary intelligence fair notice that their contemplated speech is forbidden by the statute and to preclude arbitrary law enforcement. Because of the due process requisite and the constitutional guarantee against government intrusion on speech, the "standards of permissible statutory vagueness are strict[er] in the area of free expression."[100] Thus, a statute may be properly invalidated when it infringes on free speech and expression despite an attempt to narrowly construe it. Indeed, the uncertainty as to the scope of a law's proscriptions will have a chilling effect on expression that must be guarded against by the reasonable specificity of the subject regulation. If the law is unreasonably ambiguous, speech will be unduly chilled.

Parenthetically, even in those well-defined areas where content-based restrictions on speech are permissible, the regulation can be constitutionally challenged on the grounds that a "substantial amount of protected speech is prohibited or chilled in the process."[101] A statute that fails to draw distinction between constitutionally protected and unprotected expressions may be struck down for impermissibly overreaching and intruding upon the freedoms guaranteed by the free speech rights as secured by the due process clause.[102] For these reasons, it has been held that "the usual doctrines as to the separability of constitutional and unconstitutional applications of statutes may not apply where their effect is to leave standing a statute patently capable of many unconstitutional applications, threatening those who validly exercise their rights of free expression with the expense and

inconvenience of criminal prosecution."[103]

Finally, it should be emphasized that, as held in Chavez v. Gonzales,[104] a content-based restriction on expression shall be permitted only when it is shown that "words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the lawmaker has a right to prevent x x x."[105] Known as the clear and present danger (CPD) rule, which case law recognizes as the applicable test for determining the validity of limitations on freedom of expression,[106] it has since undergone several modifications.[107] Its latest iteration, enunciated in Brandenburg v. Ohio (Bradenburg)[108] which has been equally recognized in our jurisdiction,[109] refined the rule by limiting its application to expression where there is imminent lawless action,[110] viz.: "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Thus, under the Brandenburg doctrine, advocating for the use of force or violating the law is protected, unless it is (i) directed to inciting or producing, (ii) imminent lawless action, and (iii) is likely to incite or produce such action.[111] In this situation, the burden to show the existence of a grave and imminent danger that would justify adverse action lies on the government.[112] Moreover, the proof of such imminence must be objective and convincing, not subjective or conjectural.[113]

Applying the foregoing principles to this case, I affirmingly conclude that the "not intended" clause constitutes as an impermissible content-based restraint on expression that cannot be saved by a narrowing construction. For reference, it reads:

> Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety. (emphasis supplied)

Irrefragably, "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights" are not included in the definition of terrorism (as found in Section 4's main part), and hence, shall not be considered as terrorist acts. These are constitutionally protected exercises of the right to freedom of expression which occupy a preferred position in the hierarchy of civil liberties."[114] However, it is apparent that the "not intended" clause qualifies and essentially contradicts said recognition. When read together, the protected expressions of advocacy, protest, and other similar exercises of civil and political rights are not included from the definition of terrorism only when they are "not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety." Thus, when perceived to have any of these intended effects, the protected expressions shall be punished as terrorist acts. Considering that it seeks to penalize expression based on its content, the "not intended" clause is subject to a heavy presumption of unconstitutionality and strict scrutiny. As elaborated below, I find that while the State has a compelling interest to prevent and penalize terrorism, the restriction on the exercise of the right to freedom of expression under this provision is not necessary nor reasonably and narrowly drawn to protect said interest.

For one, the "not intended" clause fails to provide sufficient standards to distinguish between the expressions expressly excluded by the proviso from the definition of terrorism, and those which it considers as terrorist acts punishable under Section 4 of the ATA. Notably, intent is a state of mind, and therefore subjective. Thus, in order to be intelligibly deciphered, the law must provide the parameters by which to draw out this intent. The "not intended" clause, however, falls short of the due process requisite of reasonable specificity since it simply provides that said exercises of civil and political rights are punishable as terrorism when accompanied by any of the enumerated intent (i.e., to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety). This deficiency in the stated parameters, therefore, effectively creates a

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situation where these protected exercises of the freedom of expression can be penalized as terrorism. But, as the law's sponsor clarified and explained during the deliberations, they can never be considered as terrorism in the course of their exercise.[115]

Moreover, the "not intended" clause evidently excluded the required standards of direct causal link, imminence and likelihood under the Brandenburg doctrine, and thus, reduced the level of protection given to expressions which the legislative intended. Thus, rather than clarifying the scope of Section 4, the "not intended" clause instead blurs the line between protected expressions and punishable actions. Given its vague contours, the "not intended" clause's regulation on speech not only impermissibly spills and overreaches into constitutionally protected expressions; it also runs the risk of chilling the exercise of this right for vagueness reasons.[116] An ordinary citizen has no fair guidance as to whether or not his expression, such as a tweet of frustration or criticism against the government, may be conceived by law enforcement agents as intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety. In the end, the speech is chilled by the fear of apprehension or prosecution.

For another, the "not intended" clause fails to provide sufficient standards to distinguish the expressions it seeks to penalize under Section 4 from the expressions penalized under other provisions of the law overtly penalizing expressions, i.e., Section 5 (threat to commit terrorism), Section 8 (proposal to commit terrorism), and Section 9 (inciting to commit terrorism), as well as under Sections 6 and 12 (with respect to training). If the expression referred to in the "not intended" clause falls within those categories where prior restraint on speech is permitted, then they rightfully fall under any of these other provisions which overtly penalize expressions.

In sum, the absence of ascertainable standards for inclusion and exclusion under the proviso's "not intended" clause is precisely what offends due process.[117] When the statute provides no guidance for limiting its coverage, such as when "Congress has sent inconsistent signals as to where the new line or lines should be drawn,"[118] the Court must decline such narrowing construction. In such a situation, the Court must not hesitate to strike down the offending provision, as the ponencia rightfully did in this case.

Sections 5, 8, and 9.

Sections 5, 8, and 9[119] of the ATA are likewise susceptible to a facial challenge, considering that they overtly target expression. Nonetheless, I also discern that these provisions are valid content-based restraints on expression and are, therefore, constitutional, as ruled by the ponencia.

To reiterate, statutes which penalize expression based on their content, such as Sections 5, 8, and 9 of the ATA, are subject to the strictest scrutiny[120] and a heavy presumption of unconstitutionality.[121] Moreover, it must be established that the expression sought to be restrained is: (i) directed to inciting or producing, (ii) imminent lawless action, and (iii) likely to incite or produce such action[122] pursuant to the Brandenburg standards.[123] Accordingly, in order that expression can be constitutionally proscribed, it must have been intended to produce a certain effect,[124] and must have a direct and unmistakable causal link to the criminal conduct;[125] the mere fact that "an audience may take 'serious offense' to particular expression"[126] is not sufficient to conclude that the expression is "likely" to produce the lawless action. Applying these parameters, Sections 5, 8, and 9 of the ATA are sufficiently clear and narrowly-tailored to meet a compelling state interest.

In particular, there is a compelling state interest in prohibiting and penalizing threat, proposal, and inciting to commit terrorism. Communication that can directly and unmistakably lead to or aid terrorist activities raises grave and serious international concern because it creates an atmosphere or a particular state of mind in the audience conducive to the commission of criminal acts.[127] For these reasons, and more, the criminalization of one or several forms of such expressions are made in various international instruments.[128] In fact, the prevention and

deterrence of incitement to terrorism in the interest of protecting national security and public order are legitimate grounds for limiting the freedom of expression under Article 19, Paragraph 3 of the International Covenant on Civil and Political Rights. They are also consistent with Article 20, paragraph 2 of the same Covenant, which requires States to prohibit any "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."[129] On the other hand, proposal and threat to commit terrorism are considered as unprotected expression[130] since they involve the communication of some illegal or violent activity which the state has a compelling interest to prevent. Finally, it can be observed that the ATA is not the first law that seeks to penalize these kinds of expressions where content-based restraint is permissible as the Revised Penal Code[131] is replete with provisions that penalize proposal, inciting, and threat. As with these provisions, the ATA simply recognizes the fact that certain expressions must give way to the equal rights and liberties of others - that evidently include the rights to life and property, as well as security which the law's sponsor noted.[132]

In the same vein, these provisions are narrowly tailored and are the least restrictive means to achieve the compelling State interest above-mentioned. For one, the ATA itself provides the elements for the crime of proposal to commit terrorism, viz.: the person (i) has decided to commit terrorism and (ii) proposes its execution to another or other person/s. As correctly observed by the ponencia, the phrase "decided to commit" is an important element of proposal under Section 8 that the State must indispensably prove — apart from the proposal aspect — in order to convict a person under its provisions. Considering that penal laws are construed in favor of the accused and strictly against the State, the latter must therefore prove beyond reasonable doubt that the accused "decided to commit" terrorism separately from the second element of proposal. Without this decision element, proof of the proposal alone, even if indisputably shown, cannot support a conviction.

Meanwhile, U.S. case law has defined threats as "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals," even if the speaker does not "actually intend to carry out the threat."[133] In U.S. v. Paguirigan,[134] the Court has emphasized that threat under our penal laws is characterized by a "deliberate purpose of creating in the mind of the person threatened the belief that the threat will be carried into effect" as determined from the surrounding circumstances; otherwise, the crime committed is not threat but simply misdemeanor. Based on these characterizations, it is clear that the threat, which criminal law penalizes contemplates of serious, genuine, and intentional expressions calculated to put the hearer or listener into fear, irrespective of whether the intended unlawful violent act is actually carried out. Thus, as the ponencia correctly held, the threat contemplated under Section 5 of the ATA includes only those that appears "credible" - as in fact expressly reflected under Rule 4.5 of the IRR - which must be determined based on the surrounding circumstances.

On the other hand, with respect to incitement to commit terrorism, a joint declaration of experts on freedom of expression, as well as the UN Secretary General, explains that "incitement should be understood as 'a direct call to engage in terrorism, with the intention that this will promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring.'"[135] The UN Secretary General also recommended that states prosecute incitement to terrorism only if it "directly encourages the commission of a crime, is intended to result in criminal action, and is likely to result in criminal action" in order for States to comply with international protection of freedoms of expression.[136] Moreover, it can be noted that under international law, incitement per se is generally punishable only where it leads to the commission of the substantive or target crime,[137] as it is considered merely as a mode of responsibility.[138] In this accord, for incitement to be thus penalized, the following factors must be considered: (a) causal connection of the incitement to the substantive crime in that it must have contributed significantly to the commission of the latter; (b) intentional act or awareness by the person of the substantial likelihood that the substantive crime will be

committed; and (c) intent to bring about the crime incited or instigated.[139] Noticeably, as the ponencia perceived, Rule 4.9 of the ATA's Implementing Rules and Regulations (IRR) articulates these parameters in characterizing inciting to terrorism, and thus, further supports the conclusion that the law is narrowly tailored.

Finally, it can be observed that the legislature[140] intended these provisions to operate only within the confines of the intent-purposes parameters of Section 4 of the ATA, as well as for the clear and present danger rule - as already modified by the Brandenburg standards — and the relevant jurisprudence to guide the courts in their interpretation.[141] It should also be borne in mind that the necessity and proportionality requirements attached to content-based restrictions are deemed incorporated in the application of these Sections, such that mere propaganda or advocacy must be distinguished from those expressions that are clearly intended to incite, propose, or threaten acts of terrorism.

For all these reasons, the ineluctable conclusion is that in order for an expression to be penalized under Sections 5, 8, and 9 of the ATA, it is necessary that the expression is shown to have a direct, unmistakable, and immediate causal link to the intended terrorist act, as enumerated under Section 4 of the ATA, and that it is intended to promote, induce, or commence terrorism, and is likely to produce such action.[142] To note, the circumstances surrounding each case must be considered,[143] such as the words used and the context in which they were used[144] from which the intent can be inferred; and that the accused is shown to have transmitted the communication for the purposes of issuing a threat, proposal, or incitement, or with knowledge that the communication will be viewed as such.[145] Together, these factors should provide sufficient guidance to the courts, as well as the relevant law enforcement agencies and personnel in the implementation and application of these provisions of the ATA.

Sections 6 and 12.

I also recognize that Sections 6 and 12 of the ATA are susceptible to a facial challenge but only insofar as they penalize "training" and "expert advice or assistance." Indeed, as defined in the ATA and in the U.S. case of Holder v. Humanitarian Law Project[146] (Holder), as well as ordinary usage, these terms include communication or expressions which are protected under the right to freedom of expression, and the more specific intellectual liberty guarantee under the right to academic freedom, found under Section V, Article XIV of the Constitution.[147] As content-based restrictions on speech, these provisions are therefore, subject to strict judicial scrutiny[148] and die heavy presumption of unconstitutionality.[149] Based on these parameters, I find that with respect to training and expert advice or assistance, the ponencia correctly upheld the validity of Sections 6 and 12 of the ATA. I explain further.

Under the first prong of strict scrutiny, compelling state interest evidently exists in prohibiting and penalizing the provision of training and expert advice and assistance for the commission of terrorism. These are preventive measures that have been introduced in the law precisely for the purpose of preventing terrorism at its early stages, as emphasized by the law's sponsor throughout the legislative deliberations.[150] But more than preventing terrorist acts, penalizing support to terrorist activities, such as training and expert advice or assistance, can help prevent legitimizing terrorist groups, including their respective causes and agenda. As held in Holder,[151] "material support" is a valuable resource by definition that helps lend legitimacy to foreign terrorist groups which makes it easier for them to persist, recruit members, and raise funds — all of which facilitate more terrorist attacks.[152] Lastly, it should be recognized that the adoption of these preventive measures is consistent with the states' obligations "to prevent the commission of terrorist acts" provided in [UNSCR] No. 1373 (2001)[153] of the United Nations Security Council (UNSC). Verily, the devastating human cost of terrorism, in addition to its debilitating impact on our social, economic, and political structures, calls for proactive measures that ensure that terrorist acts are thwarted at the onset.

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Furthermore, under the second prong of strict scrutiny, these provisions are narrowly drawn and are the least restrictive means to achieve the compelling State interest.

Section 3 (k) of the ATA defines training as the "giving of instruction or teaching designed to impart a specific skill in relation to terrorism as defined hereunder, as opposed to general knowledge." Based on this definition, it is clear that, in order to be punishable under Section 6 of the ATA, the training must involve the transfer of specific information or competence calculated to enable the trainee to perform a particular task or function that can facilitate the commission of terrorism. To my mind, the statement that the instruction or teaching must be "designed to impart a specific skill in relation to terrorism" "as opposed to general knowledge" sufficiently clarifies and narrows its coverage to the type of expression that the State has the right to restrain. Accordingly, training under Sections 6 and 12 shall be punishable only when the following elements concur: (i) the training is with the purpose of committing terrorism; (ii) the training is intentionally designed to impart a skill in relation to terrorism; and (iii) the skill imparted has specific relation to a projected act of terrorism, not mere general knowledge. Absent any one of these, any information or skill taught or imparted shall be considered as mere general knowledge that is expressly excluded from the law's operation.

The above interpretation on training is equally applicable to expert advice or assistance since both involve the giving of information or instruction; thus, the foregoing elements must concur for expert advice or assistance to be punishable. Additionally, it should be recognized that Section 12 of the ATA provides the element of knowledge that the individuals or groups of persons receiving the material support are "committing or planning to commit terrorism" as defined under Section 4. Thus, in order to penalize a person under Section 12 for providing material support in the form of training and/or expert advice or assistance, the State must sufficiently prove that the person knew that the recipient individuals or groups of persons are "committing or planning to commit terrorism."

For another, it must be recognized that the term support under Section 12 of the ATA is explicitly qualified by the word material. To my mind, this qualification is relevant for it betrays an intention to limit Section 12's coverage to only those acts that play an essential, relevant, and significant role in the planning or commission of terrorism. In fact, as explained in Holder,[154] "material support" refers only to a valuable resource that helps lend legitimacy to foreign terrorist groups and which makes it easier for them to persist, recruit members, and raise funds — all of which facilitate more terrorist attacks.[155] In this context, therefore, it should be clear that advice or assistance given in a professional capacity - including those given by lawyers and medical practitioners - which is not directly related to the planning or commission of terrorism is not covered by Section 12. Significantly, the exclusion of legal and medical advice or assistance from Section 12's coverage was explicitly guaranteed by the law's sponsor during the deliberations.[156]

Finally, the training and/or expert advice or assistance covered by these provisions should be read together with the Brandenburg standards.[157] Thus, it must be adequately demonstrated that the training or expert advice or assistance is (i) directed to inciting or producing, (ii) imminent lawless action, and (iii) is likely to incite or produce such action[158] before it can be penalized under Sections 6 and 12 of the ATA.

Section 10.

For similar reasons, I assent that Section 10[159] of the ATA is susceptible to a facial challenge insofar as it penalizes membership or association in a terrorist organization, found under the third paragraph thereof. As case law holds, the right to freedom of association is deemed cognate of the right to freedom of expression because it represents an effective mechanism whereby other rights, such as freedom of thought, conscience, religion or belief, and expression, are exercised.[160] As such, it is likewise considered as a preferred freedom[161] expressly guaranteed under Section 8, Article III of the Constitution, as well as under the right to liberty of

Section 1, Article III, and under Section 4, Article III, all of the Constitution.[162] Accordingly, any state action which may have the effect of curtailing its exercise is subject to the closest scrutiny.[163]

Applying these parameters, I find that the validity of the third paragraph of Section 10 of the ATA must be upheld, except for the phrase "organized for the purpose of engaging in terrorism," which clause was unfortunately upheld by the majority in this case.

First, there are sufficient and compelling reasons to restrain the exercise of the freedom to associate with respect to terrorist organizations. Membership lends moral aid and psychological encouragement to the organization.[164] In the context of terrorism, it is a form of support that helps lend legitimacy to the terrorist group thereby allowing it to persist and facilitate more terrorist attacks. As such, it has been held that "when membership is accepted or retained with knowledge that the organization is engaged in an unlawful purpose, the one accepting or retaining membership with such knowledge makes himself a party to the unlawful enterprise in which it is engaged."[165] For these reasons, penalizing and prohibiting membership in terrorist groups is considered as a necessary and reasonable measure to prevent and curtail terrorism. As explained by the law's sponsor, this is one of the several counter-terrorism measures introduced in the ATA for the purpose of preventing terrorism at its early stages.[166]

Second, with the exception of the phrase "organized for the purpose of engaging in terrorism" the third paragraph of Section 10 of the ATA contains sufficiently clear and well-defined parameters to distinguish punishable from protected associations; hence, they are neither vague nor overbroad.

As can be deciphered from the third paragraph of Section 10 of the ATA, there are three (3) separate but interrelated elements that must concur in order for membership to be punishable thereunder, namely: (1) "voluntarily and knowingly join [ing] [the] organization, association, or group of persons"; (2) "knowing that [the] organization, association, or group of persons"; (3) is proscribed under Section 26, designated by the UNSC as a terrorist organization, or organized for the purpose of engaging in terrorism. As earlier stated, penal laws are construed in favor of the accused and strictly against the State; hence, the latter must prove each of these elements beyond reasonable doubt.

Based on the foregoing, I conclude that the first two (2) instances of punishable membership under Section 10 are sufficiently clear and narrowly tailored as to preclude any arbitrary finding of membership, and are thus valid. Indeed, as the ponencia properly explained, the membership penalized under these two instances are limited to knowing membership, as distinguished from nominal membership, because of the scienter or knowledge[167] element (in addition to the voluntariness element) which attaches both to the joining of the organization, association or groups of persons, and to the nature or status of said organization either as proscribed under Section 26 or designated by the UNSC.[168] As the Court similarly found in People v. Ferrer,[169] these elements of voluntarily and knowingly joining and knowledge of the organization's status as a terrorist sufficiently circumscribe the law's operation as they betray the legislative intent[170] to criminalize only those voluntary and knowing membership.

Moreover, with respect to the second element, the person's knowledge of the nature or status of the organization, association, or groups of persons under the first two instances can be readily determined, considering that the procedure for proscription and UNSC designation can be found in the ATA and relevant international instruments, respectively. Hence, the person's knowledge of said nature or status can be ascertained from the circumstances surrounding the proscription or UNSC designation, as well as from the actual declaration of the status of the organization as a terrorist.

In contrast to the foregoing, the person's knowledge of the nature or status of the organization under the third instance of punishable membership, covered by the phrase organized for the purposes of engaging in terrorism,

cannot be rationally determined, considering that the law is completely silent with respect to the parameters for the determination of the organization's status as a terrorist.

To note, the majority view, as articulated in Chief Justice Alexander G. Gesmundo's (Chief Justice Gesmundo) opinion, propounds that the phrase is in fact clear, considering that Section 10 should be read in relation to Section 4, such that the phrase should cover only those organizations whose purpose is to engage in any of the five types of overt acts under the latter Section.[171] For this reason, the phrase "organized for the purposes of engaging in terrorism" was upheld.

I disagree. Plainly, the contentious phrase "organized for the purposes of engaging in terrorism" is unreasonably vague since it fails to provide sufficient guidance, on its face, whether or not the group covered by the third instance of membership needs to first commit or first attempt to commit any terrorist act to be deemed as "organized" for such purpose. As such, an ordinary person, much more law enforcement officers, may unwittingly construe the same to mean that a mere purported intent to commit terrorism in the future is already sufficient to consider a group as having been "organized" for purpose of engaging in terrorism. More importantly, even the legislative deliberations fail to provide any clarification since the law's sponsor simply leaves the matter up to the evidence.[172] Thus, the vagueness of this phrase leaves much to the discretion of the law enforcement officers which could very well lead to an arbitrary finding of terrorist membership under Section 10 of the ATA.

In fine, the phrase "organized for the purposes of engaging in terrorism" is impermissibly vague and as such, constitutes an unconstitutional regulation on the freedom of association, which is a cognate right of speech. Thus, I dissent against the majority's ruling upholding its validity.

III. Designation and proscription: Sections 25, 26, 27, and 28.

As it has been with the provisions tackled in this discourse, the sections of the ATA dealing with designation and proscription can also be subject to a facial analysis in view of their significant and consequential impact on the exercise of the right to freedom of expression and its cognate rights. The broad and amplified scope of these counterterrorism measures may undeniably lead to the stilling of legitimate dissent and concerted civil actions. For these reasons, the relevant case law on content-based regulations on expression justifies a largely similar treatment for assessing the constitutional validity of the provisions on designation and proscription. While they are not regulations on expression per se, their highly deterrent effect almost equally restrains the exercise of the right as much as a content-based regulation on expression and association and should thus, be subject to the strictest scrutiny.

Applying these parameters, it is apparent that a compelling State interest underlies both designation and proscription. It is undeniable that these counterterrorism measures are not only intended to forestall possible terrorist activities of foreigners within Philippine jurisdiction or against Philippine nationals abroad, as well as to cooperate with global efforts against international terrorist groups who are known to operate across territorial borders pursuant to our international obligations under UNSCR No. 1373.[173] They are also impelled by the general considerations of law enforcement, public order, and public safety — all of which are State interests of a compelling nature and are therefore lawful subjects of state action. Moreover, these are accepted counterterrorism measures recognized by other jurisdictions which therefore, reinforce the reasonableness of these measures.[174]

I further find that designation, through automatic adoption of the UNSC listing, and the proscription measures are reasonable and narrowly tailored to meet the foregoing State interests. Particularly, with respect to designation through automatic adoption by the Anti-Terrorism Council (ATC) of the designation or listing made by the UNSC, I agree that there are adequate standards and rigorous procedures for listing (as well as delisting) under pertinent issuances of the UNSC and the UN Sanctions Committee. These issuances include UNSC Resolution

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(UNSCR) No. 1373[175] and UNSCR No. 1555 (2004),[176] which enumerate the reprehensible acts connected to terrorism; the Guidelines of the Committee for the Conduct of its Work[177] of the UN Sanctions Committee, which is tasked with the maintenance and updating of the list, and which Guidelines contain the procedure for delisting; and UNSCR No. 2368 (2017),[178] which established a procedure for the review of delisting requests. Other similar resolutions have been passed by the UNSC further refining the corpus of authorities governing the maintenance, updating, and implementation of the consolidated list.

Moreover, the adoption of the Consolidated List is enjoined by our binding obligations under UNSCR No. 1373 which the UNSC issued pursuant to its powers under the UN Charter.[179] While this resolution does not explicitly mandate States to automatically adopt the said List of terrorists and terrorist groups, the consolidated list may be taken as a form of an implementing measure adopted and enforced by the UNSC to maintain and restore international peace and security against terrorist threats which states are obligated to undertake under UNSCR No. 1373 and subsequent UNSC resolutions.[180] Considering that the measures for the implementation of these obligations are left for each state to determine and depend on their respective legal regimes, the determination of the appropriate mechanisms to comply with our international obligations under said Resolutions remains in the discretion of the political branches of our government. Evidently, Congress, as the seat of police power in our system of government, considered the automatic adoption of the UNSC Consolidated List as an effective means of protecting the state from foreign terrorists. Indeed, as made clear in this case, terrorism has become a global threat and, as such, involves international terrorist groups who are known to operate across territorial borders. Thus, regardless of the wisdom of this decision, it cannot be denied that the adoption of the UNSC Consolidated List is bolstered by practical considerations especially given the country's limited resources and logistical intelligence.

Meanwhile, with respect to proscription, it is observed that the ATA, in fact, provides extensive and rigorous requirements and procedures that afford the respondent due process prior to proscription. As outlined in the ponencia, proscription passes a thorough screening process that requires the coordinated action and consensus of the Department of Justice, the ATC, and the National Intelligence Coordinating Agency even prior to its initiation which thus, maximizes the verification of relevant information and draws from the particular and peculiar expertise of these executive agencies. More significantly, the proceedings are also commenced before the higher-level collegiate court (i.e., the Court of Appeals), and are circumscribed by the Rules of Court and prevailing jurisprudence, as well as the relevant procedural rules to be promulgated that will specifically govern proscription proceedings.

Further, in allowing the issuance of a preliminary order of proscription, the ATA requires that the order be supported by an application which is duly verified and sufficient in form and substance, and be based on a judicial finding of probable cause that the issuance of said order is necessary to prevent the commission of terrorism. Finally, Section 26 of the ATA explicitly requires that the respondent be given due notice and the opportunity to be heard which thus, ensures that the potential proscriptee is given the chance to air its side and present countervailing evidence. In fine, all these requisites and rigorous procedures, including the heightened level of scrutiny on the part of the court which squares with the explanations made by the law's sponsor,[181] should preclude possible abuse by State authorities and exclude flimsy evidence in the proscription of organizations, associations, or groups of persons as terrorists.

In contrast, designation under the second and third modes are constitutionally problematic, considering that it: (1) is broadly tailored; (2) lacks reasonable safeguards against misuse and abuse; and (3) is not the least restrictive means to accomplish the compelling State purposes behind them.

To elucidate, the designation under the second and third modes grants the ATC wide and unbridled discretion in

determining whether a suspected person or group may be designated as terrorists or organized for the purpose of terrorism within the law's contemplation. It also fails to provide reasonable safeguards, including speedy remedies, against erroneous designations. Moreover, it does not indicate the quantum of evidence upon which a valid designation under these modes may rest. The probable cause standard also appears to be foreign to the concept of designation because executive determination of probable cause is generally associated with the filing of an Information in court. Thus, it cannot be simply construed to apply to the designation process.

Further, these modes do not afford the potential designee the opportunity to be heard and present countervailing evidence in their favor. Together, these generalized parameters under the law may lead to weak and baseless findings based on mere suspicion and questionable evidence, thereby virtually granting the ATC unbridled discretion in designating any suspected person or organization as terrorists. They not only make the foregoing police power measures offensive to the constitutional requirement of substantive due process under a strict scrutiny analysis, but they also unduly invade the sensitive spheres of protected liberties including the freedom of expression.

Finally, there are other suitable alternatives which may equally aid law enforcement agencies in the apprehension of suspected terrorists and terrorist groups that are far less intrusive and potentially injurious to protected rights. These include the adoption of an internal watchlist by law enforcement agencies or the maintenance of an agency database to monitor potential terrorist threats, as well as proscription. All told, the designation measures under the second and third modes are arbitrarily and broadly tailored, and fail the strict scrutiny test. As such, I vote to strike them down as unconstitutional.

Notably, while the ponencia appropriately struck down the second mode of designation (to which I concur), the majority of the Court, through Chief Justice Gesmundo's opinion, regrettably arrived at a different conclusion with respect to the third mode of designation under Section 25 of the ATA. As postulated by the majority, the third mode of designation under Section 25, when read with the law's IRR, allegedly provides sufficient substantive, procedural, and evidentiary criteria to inform any person or entity of the basis of designation. Thus, the majority held that the third mode of designation is a valid means of preventing or cutting off financial and logistical support to a terrorist act and enable the detection and prevention of any impending terrorist attack and hence, constitutional.

Nonetheless, as I already extensively discussed above, and even by the ponente, the third mode of designation is not narrowly tailored to achieve its compelling State interest. It is also plagued with the absence of reasonable safeguards against misuse and abuse due to its failure to specify the proper evidentiary standard upon which a valid designation under this mode may rest. There are likewise no proper remedies available to curb the ATC's unbridled discretion in its application. Truth be told, there are really no appreciable substantial disparities between the second and third modes of designation insofar as their constitutional infirmities are concerned; hence, it is quite perplexing how a different ruling was reached with respect to the third mode of designation despite the striking down of the second mode. Therefore, I dissent against the majority's disposition relative to the third mode of designation.

IV. Detention: Section 29.

In similar fashion, Section 29 of the ATA is susceptible to a facial challenge. Indeed, the threat of arrest without a judicial warrant and prolonged detention may undoubtedly chill and stifle the free exercise of expression and its cognate rights which the Court must promptly address. Under this lens, I further find that Section 29 of the ATA must be sustained, but subject, however, to the Court's clarifying and narrowing construction, as expressed in the pertinent discussions of the ponencia.

Controversially, Section 29 of the ATA is one of the counterterrorism measures which the State introduced in the exercise of its police power to respond to the ever-evolving problem of terrorism and to prevent and disrupt future terrorist acts.[182] As will be highlighted in the subsequent discussions, one of the major premises of petitioners' arguments rests on their interpretation that Section 29 unlawfully carves out additional exceptions to Section 5, Rule 113 of the Rules of Court,[183] and thus, unduly expands the permissible exceptions to the guarantee against unreasonable seizures.[184] As such, they argue that it unavoidably stifles the exercise of free speech rights. Given these allegations, I find it appropriate that the validity of Section 29 is tested under the most exacting standards of strict scrutiny and overbreadth, similar to the ATA's provisions on designation and proscription.[185] Once more, pursuant to the strict scrutiny standard, Section 29 of the ATA would pass constitutional muster only if it is: (1) necessary to achieve a compelling State interest; and (2) the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.[186] On the other hand, the provision would be struck down as unconstitutional for overbreadth if it achieves a governmental purpose by means that are unnecessarily broad and thereby invade the area of protected freedoms.[187] In determining overreach, the Court must necessarily assess the limits of the provision's constitutional application. The alleged unconstitutional expansion of the permissible exceptions to the guarantee against unreasonable seizures which will thereby chill expression evidently raises overbreadth concerns that must be addressed by the Court.[188]

Ultimately, however, the Court is not precluded from employing the various aids to statutory construction to properly interpret the provisions of Section 29 so that the legislative will may accurately be reflected in its enforcement and implementation. And, if found susceptible to a construction that would separate its constitutional from unconstitutional applications, then the same cannot be rendered invalid.

At the onset, it is imperative to point out that Section 29 of the ATA contemplates a valid warrantless situation. As can be gleaned from its provisions, Section 29 requires two (2) actions before a person can be detained for a period of fourteen (14) calendar days from the arrest: first, the ATC issues an authority in writing; and second, the law enforcement agent or military personnel has lawfully taken into custody a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the ATA. Applying the basic statutory construction rule that statutes should be construed in a way that "gives it the greater chance of surviving the test of constitutionality,"[189] there is no justifiable reason to suppose that Section 29 provides for an "executive warrant of arrest" or a warrantless arrests based on mere suspicion of the ATC. Rather, the proper reading is that a person may be arrested without a warrant pursuant to Section 29 but only under any of the instances contemplated in Rule 9.2. of the IRR, which mirrors Section 5, Rule 113 of the Rules of Court.

Additionally, it must be emphasized that Section 29 begins with the phrase "The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding x x x" This is significant as it immediately establishes that Section 29 — at its core — is not an arrest provision that prescribes a new standard for warrantless arrests but rather, only seeks to carve out an exception to the periods provided in Article 125 of the RPC, which punishes the delay in the delivery to the proper judicial authorities of persons who have been detained for some legal ground beyond the period specifically provided therein. Thus, in the words of the ponencia, "the subject matter of Section 29 is really the extended detention period, and not the grounds for warrantless arrest, which remains as those instances provided by Section 5, Rule 113."[190]

Perceptibly, the law's IRR reflects the foregoing interpretation as it fills in the details for its proper implementation in harmony with prevailing standards. Particularly, Rule 9.1. requires the submission by the arresting officer of a sworn statement "stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person"[191] before the ATC can issue a written authorization. It also requires the ATC to state in the written authorization said relevant circumstances that

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justified the arrest. In both, the circumstances relate to the instances of valid warrantless arrests enumerated under Section 5 of Rule 113, as reflected in Rule 9.2. of the law's IRR.

For the same reasons, I am also not convinced that Section 29 of the ATA authorizes warrantless arrests based on mere suspicion. Under prevailing rules and jurisprudence, probable cause remains the applicable standard in valid warrantless arrests situations.[192] As case law holds, it is the existence of probable cause that "objectifies the reasonableness of the warrantless arrest, in compliance with the constitutional mandate against unreasonable arrests."[193] Parenthetically, this Court has, in some cases, also referred to the person arrested as a "suspect" even when the warrantless arrest was validly made pursuant to probable cause.[194] Thus, the use of the term "suspect" in Section 29 does not in any way downgrade said standard to mere suspicion, but rather, merely describes the person arrested as one who has not yet been charged in court.[195]

Probable cause is defined as "an actual belief or reasonable grounds of suspicion."[196] The grounds of suspicion are said to be reasonable when "the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested."[197] The instances of valid warrantless arrests include those found under Section 5, Rule 113 of the Rules of Court; as earlier intimated, these have been substantially mirrored under Rule 9.2. of the IRR of the ATA.[198]

Pertinently, Section 5 (a) of Rule 113, otherwise known as an arrest of a suspect in flagrante delicto, requires the concurrence of two (2) elements, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer.[199] The requirement that the officer is "present" signifies that the overt acts of the crime must take place within the sensory perception, especially sight or hearing, of the arresting officer.[200] Thus, under the situations covered by Section 5 (a), immediate action is required "to suppress the breach of public order and to prevent further breaches then and there."[201]

On the other hand, Section 5 (b), Rule 113 of the Rules of Court, also known as hot pursuit arrests, requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer has personal knowledge of facts or circumstances indicating that the accused had committed it.[202] The phrase "has just been committed" connotes that the time interval between the actual commission of the crime and the arrival of the arresting officer must be brief,[203] such that the effects or corpus of the crime which has just been committed are still visible. Meanwhile, the phrase "personal knowledge of facts and circumstances" on the part of the arresting officer refers to "events or actions within the actual perception, personal evaluation or observation of the police officer at the scene of the crime."[204]

Under both situations covered by Section 5 (a) and 5 (b), Rule 113 of the Rules of Court, the officer's personal knowledge of (i) the fact of the commission of an offense, and (ii) facts or circumstances indicating that the person to be arrested has committed the offense is essential. Under Section 5 (a), the officer himself/herself witnesses the crime and the commission thereof by the person to be arrested; while in Section 5 (b), the officer knows for a fact that a crime has just been committed[205] and perceives actions or events at the scene that connects the person to be arrested to the visible effects or corpus of the crime.[206] In both situations, it is the officer's personal knowledge, drawn from overt acts constitutive of a crime, that becomes the basis of the probable cause requirement for warrantless arrests. This personal knowledge carries with it a sense of immediacy that "acts as a safeguard to ensure that the police officers have gathered the facts or perceived the circumstances within a very limited time frame" and not from a subsequent exhaustive investigation.[207]

Given the arresting officer's limited timeframe in the determination of probable cause when operating on the

ground, inherent limitations certainly inure in said determination in warrantless arrests situations.[208] This is especially so when it comes to the ascertainment of the complex crime of terrorism, which is a situation of utmost exigency given its potential grave consequences and wide-scale disastrous nature. Officers on the ground do not always possess classified information or intelligence and yet are called to immediately act upon a suspect's unlawful activities. Thus, based on the standards for warrantless arrests, the officer may apprehend the suspect and later on, detain him or her for a longer period upon the determination of the ATC that the act committed is actually an act of terrorism under the ATA. This determination and the consequent license to prolong detention is embodied in the written authorization of the ATC. As intended, the authority of the ATC under Section 29 of the ATA is confined to the determination of whether or not the period of detention should be extended to fourteen (14) days — and not to the determination of whether an arrest should be made. At the risk of belaboring the point, if the written authority is issued, the ATC confirms that the person was arrested for the commission of a terrorist act which thus calls for the longer 14-day detention period. If it does not, then the arresting officer shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the RPC — the prevailing general rule.[209] Since terrorists have "become more clandestine and sophisticated in executing their attacks," the ATC certainly would be in a better position to make such determination as it is mandated to "[establish and maintain comprehensive database information systems on terrorism, [terroristic] activities, and counterterrorism operations." In every instance, however, law enforcement agents must ensure the proper observance of the rights of detainees and endeavor to secure them against possible abuses.

Furthermore, I reckon that Section 29 of the ATA does not run afoul of Section 18, Article VII of the Constitution,[210] which provides that a person apprehended shall be judicially charged within three (3) days during the suspension of the privilege of the writ of habeas corpus. Aside from the fact that the said constitutional provision specifically applies in cases of invasion or rebellion when the public safety requires it, the same also does not contain any express prohibition on Congress with respect to the possibility of imposing longer periods of detention in a situation where the privilege of the writ of habeas corpus is not suspended, which is a matter of legislative wisdom and policy. It is therefore error to use Article VII, Section 18 as legal basis to clip the power of Congress to formulate novel policies that would respond to other threats on national security, as it has done in the enactment of the ATA.

Significantly, Section 29 also does not render inutile the inherent Commander-in-Chief powers of the President, considering that it does not affect, much less limit, the President's exercise of discretion in determining whether the privilege of the writ of habeas corpus must be suspended. Section 29 neither negates any of the President's residual powers to address terroristic threats or attacks as Commander-in-Chief. Even with the passage of the ATA, the standards for the suspension of the said privilege remains to be the presence of circumstances provided under paragraph 1, Section 18, Article VII of the Constitution. Again, Section 29 of the ATA only pertains to the extended detention period relative to Article 125 of the RPC.

Notably, the constitutional deliberations show that the situation covered by Article 125 of the RPC and Section 18, Article VII of the Constitution are different, to wit:

> MR. PADILLA: Madam President, I have no particular conviction on the number of days or number of hours. That was suggested by a few Commissioners in conference yesterday. It is true that under Article 125 of the Revised Penal Code which penalizes the [delay] of the transmittal or delivery of the person arrested to the judicial authorities, the period is based on the gravity of the offense and this is punishable by the same penalties as those for arbitrary detention in Article 124 of the Code and the delay in the release under Article 126. But this provision is made to apply when there is a suspension by the President of the privilege of the writ of habeas corpus. So it covers a different situation from that contemplated in the Revised Penal Code. The Rules of Court, Rule 113, Section 6 thereof, also allows arrest without warrant under three situations.

> However, that is also subject to the period for delivery of the arrested person to the judicial authorities, which means to the courts through the fiscal.[211] (emphasis and underscoring supplied)

Since Section 29 serves only as an exception to the periods provided under Article 125 of the RPC, it should be understood to operate in the ordinary context where the privilege of the writ of habeas corpus is not suspended. When the privilege of the writ is suspended under the parameters of Section 18, Article VII of the Constitution, the three-day period operates.

As well, I recognize that the extended detention period provided under Section 29 of the ATA constitutes reasonable and narrowly-tailored counterterrorism measures designed to protect public safety and national security from the ever-evolving problem of terrorism. Indeed, as the provision itself explicitly provides, Section 29 only operates when a person has been lawfully arrested without a judicial warrant for violating Sections 4 to 12 of the ATA; and, considering the Court's ruling that Section 4 excludes protests, advocacies, dissents, and other exercises of political and civil rights, this provision should no longer result in an impermissible chilling effect on expression.[212] Besides, the enactment of the fourteen-day period of detention was borne from the experience of our law enforcement agencies and was agreed to be the reasonable time needed for the gathering of evidence for the purpose of the inquest proceedings for terror crimes.[213] Absent any showing of grave abuse of discretion, the Court should respect the wisdom of Congress in this crucial matter.

Moreover, it is apparent that the law itself, as well as its IRR, provides numerous safeguards to protect the detainee's right during the period of detention.[214] These include the requirement that other relevant agencies be informed of the arrestee's detention, including the Commission on Human Rights as well as the judge of the trial court nearest the place of apprehension or arrest within forty-eight (48) hours therefrom. They also provide punishment for any failure to comply with these requirements. In addition, Section 29 does not preclude the detainee from availing of the remedies against warrantless arrests under Section 5, Rule 113 of the Rules of Court, as well as the other remedies available under our law and rules, including the remedy of the writ of habeas corpus - which must still be adjudged based on the facts surrounding the warrantless arrest itself, and not on the basis merely of the ATC's written authority.

Meanwhile, with respect to the miscellaneous issues discussed in the ponencia that were not featured in this Opinion,[215] allow me to express my full concurrence in support of its reasons, to which I find no impelling need to add more. Overall, I take this opportunity to laud the ponente for eruditely, prudently, and competently handling this sensationally complex case constituting 37 petitions, which - despite some divergence in views - nonetheless reflects the Court's holistic effort to strike a deft balance between all the institutional and societal values involved.

A Final Word.

The issue of terrorism is both critical and complicated. It requires a multi-sectoral and balanced approach to address and combat its ever-growing threat to lives, property, freedoms, and our way of life. Law enforcement measures are just one of the means to address this problem. While several of its provisions are upheld, subject to the Court's judicious construction, it is hoped that in the implementation of the ATA, the rule of law prevails. Indeed, at all times, respect for human rights must be upheld;[216] otherwise, the courts, in the exercise of the judicial branch's constitutional mandate, will not hesitate to wield the heavy hand of justice against any abusive enforcement. Further, upon the proper cases that are ripe for adjudication, courts are also not precluded from assessing the application of the ATA to arrive at the statute's proper interpretation against concrete facts and circumstances that were not included herein. In this regard, the jury is still out there against the possible applications of the ATA as jurisprudence evolves in the course of its existence.

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IN VIEW OF THE FOREGOING, I vote to PARTIALLY GRANT the petitions. For the reasons herein discussed, the following provisions of the ATA are unconstitutional:

(1)

the clause "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" found in the proviso of Section 4;

(2)

the phrase "organized for the purpose of engaging in terrorism" found in the third paragraph of Section 10; and

(3)

the second and third paragraphs of Section 25 on designation.

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[1] Entitled "AN ACT TO PREVENT, PROHIBIT AND PENALIZE TERRORISM, THEREBY REPEALING REPUBLIC ACT No. 9372, OTHERWISE KNOWN AS THE 'HUMAN SECURITY ACT OF 2007,'" approved on July 3, 2020.

[2] See Hudson, David L. Jr., Facial Challenges, The First Amendment Encyclopedia <https://www.mtsu.edu/first-amendment/article/954/facial-challenges> (last visited December 21, 2021).

[3] See Krcit, Alex, Making Sense of Facial and As-Applied Challenges, September 27, 2009, 18 William & Mary Bill of Rights Journal 657 (2010), Thomas Jefferson School of Law Research Paper No. 1478984 <https://ssrn.com/abstract-l478984> (last visited December 21. 2021). See also <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1168&context=wmborj> (last visited December 21, 2021).

[4] See Hudson, David L. Jr., Facial Challenges, The First Amendment Encyclopedia <https://www.mtsu.edu/first-amendment/article/954/facial-challenges> (last visited December 21, 2021).

[5] Papachristou v. City of Jacksonville, 405 U.S. 156 (1972). See also Kolender v. Lawson, 461 U.S. 352 (1983) and Lanzetta v. New Jersey, 306 U.S. 451 (1939).

[6] See Shelton v. Tucker, 364 U.S. 479 (1960); and NAACP v. Alabama, 377 U.S. 288 (1964).

[7] 354 Phil. 948 (1998).

[8] 596 Phil. 444 (2009).

[9] 601 Phil. 245 (2009).

[10] 815 Phil. 1067 (2017).

[11] See id. at 1116; citing Disini, Jr. v. Secretary of Justice, 121 Phil. 28, 98 (2014).

[12] See Hudson, David L. Jr., As-applied Challenges, The First Amendment Encyclopedia <https://www.mtsu.edu/first-amendment/article/892/as-applied-challenges> (last visited December 21, 2021). See also Fallon, Richard H. Jr., Facial Challenges, Saving Constructions, and Statutory Severability, Texas Law Review, Vol. 99, Issue 2, p. 228 <https://texaslawreview.org/facial-challenges-saving-constructions-and-statutory-severability/> and <https://texaslawreview.org/wp-content/uploads/2020/12/Fallon.Printer.pdf> (last visited December 21, 2020).

[13] See Kreit, Alex, Making Sense of Facial and As-Applied Challenges, September 27, 2009, 18 William & Mary Bill of Rights Journal 657 (2010), Thomas Jefferson School of Law Research Paper No. 1478984 <https://ssrn.com/abstract=1478984> (last visited December 21, 2021). See also Sandefur, Timothy, The Timing of Facial Challenges, Akron Law Review, Vol. 43, Issue 1, Article 2 <http://ideaexchange.uakron.edu/akronlawreview/vol43/issl/2> (last visited December 21, 2021).

[14] See Hudson, David L. Jr., Facial Challenges and As-applied Challenges, The First Amendment Encyclopedia <https://www.mtsu.edu/first-amendment/article/954/facial-challenges> and <https://www.mtsu.edu/first-amendment/article/892/as-applied-challenges> (last visited December 21, 2021).

[15] Cruz v. Secretary of Environment, 400 Phil. 904 (2000).

[16] Id.

[17] Id.

[18] Id.

[19] Note that while Justice Mendoza stated that "the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing 'on their faces' statutes in free speech cases or, as they are called in American Law, First Amendment cases[,]" he likewise declared that "strict scrutiny is used today to test, the validity of laws dealing with the regulation of speech, gender, or race and facial challenges are allowed for this purpose." (See Estrada v. Sandiganbayan, 421 Phil. 290, 431 & 428 [2001].)

[20] Id.

[21] Id. at 430.

[22] Id.

[23] Id; emphasis supplied.

[24] Id. at 432; citations omitted.

[25] Id. at 433; citations omitted.

[26] 479 Phil. 265 (2004).

[27] 576 Phil. 357 (2008).

[28] 646 Phil. 452(2010).

[29] Id. at 489; citing Section 4, Article III of the 1987 CONSTITUTION.

[30] Supra note 11.

[31] Id. at 121.

[32] 732 Phil. 1 (2014).

[33] Id. at 126.

[34] Id. at 125.

[35] Supra note 10.

[36] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 28 at 490.

[37] G.R. No. 217910, September 3, 2019.

[38] See id.

[39] Ponencia, p. 80.

[40] Note that courts are barred from rendering advisory opinions (see Belgica v. Ochoa, 721 Phil. 416 [2016]). See also Garcia v. Executive Secretary, 602 Phil. 64 (2009); and Falcis III v. Civil Registrar General, supra note 37.

The bar on advisory opinions can be traced to the 1793 "Correspondence of the Justices" involving the queries sent by Secretary of State Thomas Jefferson, of then newly-formed US government led by President George Washington, to US Supreme Court Chief Justice Jay and his fellow Justices. The questions concerned America's obligations to the warring British and Wrench powers under its treaties and international law. Jefferson's letter requested "in the first place, their opinion, whether the public may, with propriety, be availed of their advice on these questions?" The Jay Court refused to answer reasoning that "it would be improper for them to answer legal questions 'extrajudicially' in light of '[t]he Lines of Separation' between the branches and 'their being in certain Respects checks on each other.'" (See Advisory Opinions and the Influence of the Supreme Court over American Policymaking Harvard Law Review, 2011 <https://harvardlawreview.org/wp-content/uploads/pdfs/vol124_advisory_opinions.pdf> [last visited December 21, 2021].) See also Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1992); citing Chief Justice Jay's response to Jefferson's Letter in the Letter of August 8, 1793, 3 Johnston, Correspondence and Public Papers of John Jay (1891), 489. See further <https://constitutional.congress.gov/browse/essay/artIII_S2_C1_2_3/> (last visited December 21, 2021).

[41] Section 4. Terrorism. - Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:

(a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;

(b) Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private, property;

(c) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;

(d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and

(e) Release of dangerous substances, or causing fire, floods or explosions when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code": Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

[42] See Escabarte v. Heirs of Benigno Isaw, G.R. No. 208595, August 28, 2019, 915 SCRA 325 335-339; citing

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Alonzo v. Intermediate Appellate Court, 234 Phil. 267 (1987).

[43] See Joint Ship Manning Group, Inc. v. Social Security System, G.R. No. 247471, July 7, 2020; citing Lim v. People, 438 Phil. 749, 755 (2002); La Union Electric Cooperative, Inc. v. Judge Yaranon, 259 Phil. 457, 466 (1989); and Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, 487 Phil. 531, 674 (2004).

[44] See City of Cagayan de Oro v. Cagayan Electric Power & Light Co., Inc., G.R. No. 224825, October 17, 2018, 884 SCRA 1, 24. See also Joint Ship Manning Group, Inc. v. Social Security System, id.

[45] See Joint Ship Manning Group, Inc. v. Social Security System, id.

[46] See Joint Ship Manning Group, Inc. v. Social Security System, id.; and City of Cagayan de Oro v. Cagayan Electric Power & Light Co. Inc., supra note 44.

[47] Rama v. Moises, 802 Phil. 29, 59 (2016). See also Pimentel III v. Commission on Elections (COMELEC), 571 Phil. 596, 631 (2008); citing City of Manila v. Laguio, Jr., 495 Phil. 289 (2005).

[48] People v. Dela Piedra, 403 Phil. 31, 47 (2001). "The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning." "A criminal statute that 'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,' or is so indefinite that 'it encourages arbitrary and erratic arrests and convictions,' is void for vagueness." (See id. at 47-48.)

[49] Bernas, Joaquin, The 1987 Constitution of the Republic of the Philippines: A Commentary.

[50] See People v. Purisima, 176 Phil. 186, 201 (1978). In Idos v. Court of Appeals, 357 Phil. 198, 206 (1998), the Court stated that to constitute a crime, an act "must come clearly within both the spirit and letter of the [penal] statute."

[51] See People v. Purisima, id. at 208.

[52] Perez v. LPG Refillers Association of the Philippines, Inc., 558 Phil. 177, 180-181 (2007); citing Estrada v. Sandiganbayan, supra note 19, at 347-348.

[53] Id. See also United States v. Petrillo, 332 U.S. 1 (1947). In United States v. National Dairy Products Corp., 372 U.S. 29 (1963), the US Supreme Court held that "[t]he delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases." In cases where the statute's application is constitutionally doubtful, a "limiting construction could be given to the statute by the court responsible for its construction x x x." "The strong presumptive validity that attaches to an Act of Congress has led this Court to hold many times that statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language." Note that this case differentiated the approach to vagueness between cases arising under the First Amendment and those which do not.

[54] Estrada v. Sandiganbayan, supra note 19, at 344. See also Kolender v. Lawson, supra note 5. See further Hing, Bill, Immigration Law and Social Justice, 2nd Edition, which reads: "In that sense, the doctrine is a corollary of the separation of powers—requiring that Congress, rather than the executive or judicial branch, definite what conduct is sanctionable and what is not."

[55] "Research conducted on the effect of terrorist attacks on victims has revealed that acts of terrorist violence often produce high proportions of significantly affected victims, i.e. that they tend to be at the higher end on the scale of effects." <https://www.unodc.org/e4j/en/terrorism/module-14/key-issues/effects-of-terrorism.html> (last

visited December 21, 2021).

[56] The other five (5) purposes under the ATA are: (i) "to intimidate the general public or a segment thereof;" (ii) to "create, an atmosphere or spread a message of fear;" (iii) "to provoke or influence by intimidation the government or any international organization;" (iv) "create a public emergency;" and (v) "seriously undermine public safety."

[57] Appearing twice in the purposes is the term "intimidate." The first purpose is to "intimidate the general public or a segment thereof" while the third purpose is to "provoke or influence by intimidation the government or any international organization." To "provoke" which is ordinarily understood as simply to "stimulate or give rise to (a reaction or emotion, typically a strong or unwelcome one) in someone" must be read together with "intimidation" or intimidate, which in ordinary parlance means "to frighten" especially "to compel or deter by or as if by threats." <https://www.encyclopedia.com/humanities/dictionaries-thesauruses-pictures-and-press-releases/provoke-0> and <https://merriam-webster.com/dictionary/intimidate> (last visited November 14, 2021).

[58] See Senate Deliberations, Records. Vol. I, dated January 21, 2020, January 22, 2020, January 28, 2020, and February 3, 2020.

[59] See Senate Deliberations Records. Vol. I, Session No. 47, January 28, 2020, p. 15.

[60] See Senate Deliberations, Records, Vol. I, Session No. 32, November 5, 2019, p. 50.

[61] See Senate Deliberations, Records, Vol. I, Session No. 44, January 21, 2020, p. 16.

[62] "[T]here are two (2) categories of the crime of arson: 1) destructive arson, under Art. 320 of the Revised Penal Code, as amended by Republic Act No. 7659 [punishable by reclusion perpetua]; and 2) simple arson, under Presidential Decree No. 1613 [punishable by prision mayor]." Destructive arson is characterized as a heinous crime committed by "malicious[ly] burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other military, government or commercial establishments by any person or group of persons" with an "inherent or manifest wickedness, viciousness, atrocity and perversity." On the other hand, simple arson involves the malicious burning of "public and private structures" and contemplates "crimes with less significant social, economic, political and national security implications than Destructive Arson." (See Buebos v. People, 573 Phil. 347, 364-365 [2008]; citation omitted.)

[63] See Sections 6, 68, and 261 (e) of the OEC.

[64] Parenthetically, the term "terrorism" was also mentioned in the now-repealed Presidential Decree (PD) No. 1736 entitled "Amending Presidential Decree Numbered Eight Hundred Eighty-Five, Otherwise Known As The Revised Anti-Subversion Law, As Amended" (September 12, 1980), which amended PD No. 885 entitled "Outlawing Subversive Organizations, Penalizing Membership Therein And For Other Purposes" (February 3, 1976); PD No. 1835 entitled "Codifying the Various Laws on Anti-Subversion and Increasing the Penalties for Membership in Subversive Organizations" (January 16, 1981) which outlawed the Communist Party of the Philippines as organized conspiracy for the purpose of overthrowing the Government of the Republic of the Philippines by, among others, force, violence, or terrorism, and penalized the act of conspiring with any other person for the purpose of over-throwing the Government of the Republic of the Philippines by the use of, among others, terrorism; PD No. 1975, amending PD No. 1835; as well as in Executive Order (EO) No. 167, Series of 1987 (May 5, 1987), repealing P.D. No. 1835. While these repealed likewise did not define terrorism, similar observations can be made with regard to the character of the destruction or damage sought to be penalized.

[65] For example, see Diangka v. COMELEC, 380 Phil. 859 (2000), wherein the acts considered as election terrorist acts include stealing of the ballots, ballot boxes, and other election paraphernalia using threats and intimidation, as well as the indiscriminate firing in the air of firearms near the location of several election precincts during election day. See also Abayon v. HRET, 785 Phil. 683 (2016); Vera v. Avelino, 77 Phil. 192 (1946); Sanchez v. COMELEC, 199 Phil. 617 (1982); and Tan v. COMELEC, 463 Phil. 212 (2003).

[66] See <https://www.ilsa.org/Jessup/Jessup08/basicmats/unterrorism.pdf> (last visited December 21, 2021).

[67] See <https://eur-lex.europa.cu/legal-content/en/TXT/?uri=CELEX:32017L0541> (last visited December 21, 2021).

[68] See the 1937 League of Nations draft convention for the prevention and punishment of terrorism, which defines terrorism as "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public" <https://dl.wdl.org/11579/service/11579.pdf> (last visited December 21, 2021); 1998 Cairo Arab Convention, which defines terrorist offence as "[a]ny [offense] or attempted [offense] committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law" <https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf> (last visited December 21, 2021); UN GA Resolution 49/60, which defines terrorism as "[c]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable x x x" <https://undocs.org/en/A/RES/49/60> (last visited December 21, 2021); DIRECTIVE (EU) 2017/541 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (2017) <https://eur-lex.europa.cu/legal-content/en/TXT/?uri=CELEX:32017L0541> (last visited December 21, 2021); ASEAN Convention on Counter Terrorism (2007) <https://ascan.org/?static_post=ascan-convention-on-counter-terrorism> (last visited December 21, 2021); International Convention for the Suppression of the Financing of Terrorism (New York 1999) <https://www.un.org/law/cod/finterr.htm> (last visited December 21, 2021); the Convention on the Physical Protection of Nuclear Material, adopted in Vienna on October 26, 1979 <https://www.iaca.org/sites/default/files/infcirc274.pdf> (last visited December 21, 2021) as well as the Amendment thereto (Vienna 2005) <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280478876> (last visited December 21, 2021); and the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safely of Maritime Navigation, done at London on October 14, 2005 <https://www.refworld.org/docid/49f58c8a2.html> (last visited December 21, 2021).

[69] See UNSCR 2170 Adopted by the Security Council on August 15, 2014, which impliedly defined or considered the following acts as terrorist acts: Kidnapping and hostage-taking; terrorist acts of the Islamic State in Iraq and the Levant (ISIL) and its violent extremist ideology; gross, systematic and widespread abuses of human rights and violations of international humanitarian law by the ISIL; indiscriminate killing and deliberate targeting of civilians; numerous atrocities, mass executions and extrajudicial killings, including of soldiers; persecution of individuals and entire communities on the basis of their religion or belief; kidnapping of civilians; forced displacement of members of minority groups; killing and maiming of children; recruitment and use of children; rape and other forms of sexual violence; arbitrary detention; attacks on schools and hospitals; destruction of cultural and religious sites; obstructing the exercise of economic, social and cultural rights, including the right to education; and widespread or systematic attacks directed against any civilian populations because of their ethnic or political background, religion or belief which may constitute a crime against humanity <https://www.undocs.org/S/RES/2170%20(20l4)> (last visited December 21, 2021). See also Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970

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<https://www.unodc.org/pdf/crime/terrorism/Commonwealth_Chapter_3.pdf> (last visited December 21, 2021).

[70] See Convention on the Physical Protection of Nuclear Material (1979); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1988); Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Rome 1988); International Convention for the Suppression of Terrorist Bombings (New York 1997; International Convention for the Suppression of the Financing of Terrorism, (New York 1999) <https://www.un.org/law/cod/finterr.htm> (last visited December 21, 2021); International Convention for the Suppression of Acts of Nuclear Terrorism (New York 2005); Amendment to the Convention on the Physical Protection of Nuclear Material, done at Vienna on 8 July 2005 <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280478876> (last visited December 21, 2021); Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at London on 14 October 2005 <https://www.refworld.org/docid/49f58c8a2.html> (last visited December 21, 2021); and Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on 14 October 2005 and <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/SUA-Treaties.aspx> (last visited December 21, 2021).

[71] See Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; International Convention for the Suppression of the Financing of Terrorism; Comprehensive Convention on International Terrorism; Directive (EU) 2017/541 of the European Parliament and of the Council; EU Council Framework Decision; UNSCR 1566; UN GA Resolution 49/60; 1998 Cairo Arab Convention; and 1937 League of Nations draft convention for the prevention and punishment of terrorism.

[72] See Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; International Convention for the Suppression of Acts of Nuclear Terrorism; International Convention for the Suppression of the Financing of Terrorism; International Convention Against the Taking of Hostages; Comprehensive Convention on International Terrorism; Directive (EU) 2017/541 of the European Parliament and of the Council; EU Council Framework Decision; and UNSCR 1566.

[73] See International Convention for the Suppression of Acts of Nuclear Terrorism; and 1998 Cairo Arab Convention.

[74] See International Convention for the Suppression of Acts of Nuclear Terrorism; International Convention for the Suppression of Terrorist Bombings; and UNSCR 1566.

[75] See International Convention for the Suppression of Terrorist Bombings.

[76] See Directive (EU) 2017/541 of the European Parliament and of the Council; and EU Council Framework Decision.

[77] See Chavez v. Gonzales, supra note 78; Social Weather Stations, Inc. v. COMELEC, 409 Phil. 571, 584 (2001); and Iglesia ni Cristo v. Court of Appeals, 328 Phil. 893, 928 (1996). See also United States v. Alvarez, 567 U.S. 709 (2012); R.A.V. v. St. Paul, 505 U.S. 377 (1992); and United States v. Stevens, 559
U.S. 460 (2010).

[78] See Chavez v. Gonzales, id.; and Nicolas-Lewis v. Comelec, G.R. No. 223705, August 14, 2019, 913 SCRA

515, 552. See also Keyishian v. Board of Regents, 385 U.S. 589 (1967); United States v. Alvarez, id.; United States v. Stevens, id. See further Congressional Research Service, Terrorism, Violent Extremism, and the Internet: Free Speech Considerations, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited December 21, 2021).

[79] See Associate Justice Antonio T. Carpio's (Justice Carpio) Opinion in Chavez v. Gonzales, id. at 235.

[80] See Justice Carpio's Opinion in Chavez v. Gonzales, id. at 235-236. Sec also Diocese of Bacolod v. COMELEC, 751 Phil. 301, 355 (2015) where the Court stated that "[s]peech may be said to be inextricably linked to freedom itself as '[t]he right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.'"

[81] See Chavez v. Gonzales, id. at 195.

[82] See Justice Carpio's Opinion in Chavez v. Gonzales, id. at 236. See also Thornhill v. Alabama, 310 U.S. 88 (1940); citing The Continental Congress (Journal of the Continental Congress, 1904 ed., Vol. I, pp. 104, 108) in its letter sent to the Inhabitants of Quebec (October 26, 1774), where it was held: "The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them whereby oppressive officers are ashamed or intimidated into more honourable and just modes of conducting affairs. x x x Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." (emphases and underscoring supplied)

[83] See Diocese of Bacolod v. COMELEC, supra note 81, at 355-356.

[84] See Section 4, Article III of the 1987 Constitution.

[85] See Brown v. Entertainment Merchants Association, 564 U.S. 786 (2011); citing Ashcroft v. American Civil Liberties Union, 535 U.S. 564, 573 (2002). See also United States v. Alvarez, supra note 78; and R.A.V. v. St. Paul, supra note 78.

[86] See Matal v. Tam, No. 15-1293, June 19, 2017; citing Street v. New York, 394 U.S. 576, 592 (1969). See also Chavez v. Gonzales, supra note 78, at 197-198 which declared: "Freedom of speech and of the press x x x belongs as well - if not more — to those who question, who do not conform, who differ. The ideas that may be expressed under this freedom are confined not only to those that are conventional or acceptable to the majority. To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of the unorthodox view, though it be hostile to or derided by others; or though such view 'induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.' To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us." (Emphases supplied; citations omitted).

[87] See Matal v. Tam, id.; citing Texas v. Johnson, 491 U.S. 397, 414 (1989). See also Salonga v. Paño, 219 Phil. 402 (1985).

[88] See Watts v. U.S., 394 U.S. 705 (1969). See also Winters v. New York, 333 U.S. 507, 510 (1948).

[89] See Chavez v. Gonzales, supra note 78, at 204; and Social Weather Stations, Inc. v. COMELEC, supra note 78. See also United States v. Alvarez, supra note 78; R.A.V. v. St. Paul, supra note 78; and United States v. Stevens, supra note 78.

[90] See Justice Carpio's Opinion in Chavez v. Gonzales, id. at 237. See also ponencia in Chavez v. Gonzales, id. at 198-201; and MVRS Publications, Inc. v. Islamic Da'Wah Council of the Philippines, Inc., 444 Phil. 230 (2003). See further Brown v. Entertainment Merchants Association, supra note 86; United States v. Stevens, supra note 78; Chaplinsky v. New Hampshire, 315 U.S. 568 (1942); Cohen v. California, 403 U.S. 15 (1971); and United States v. Alvarez, supra note 78.

[91] See Chavez v. Gonzales, supra note 78, at 199. The Court therein also held: "For freedom of expression is not an absolute, nor is it an 'unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.'"

[92] See Justice Carpio's Opinion in Chavez v. Gonzales, supra note 78, at 237. See also Soriano v. Laguardia, 605 Phil. 43, 97 (2009).

[93] See Justice Carpio's Opinion in Chavez v. Gonzales, id.

[94] See Chavez v. Gonzales, id. at 206. See also Keyishian v. Board of Regent, supra note 79; United States v. Alvarez, supra note 78; United States v. Stevens, supra note 78; and Congressional Research Service, Terrorism, Violent Extremism, and the Internet: Free Speech Considerations, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited December 21, 2021).

[95] See United States v. Alvarez, id.

[96] See id.

[97] Sec Chavez v. Gonzales, supra note 78, at 207; and Nicolas-Lewis v. COMELEC, supra note 79, at 592.

[98] See Reno v. American Civil Liberties Union, 521 U.S. 844 (1997). See also Smith v. Goguen, 415 U.S. 566 (1974), where the US Supreme Court held the assailed statute unconstitutionally vague because of the "absence of any ascertainable standard for inclusion and exclusion" such that it "offends the Due Process Clause." See further Baggett v. Bullitt, 377 U.S. 360 (1964).

[99] See Justice Carpio's Opinion in Chavez v. Gonzales, supra note 78, at 240.

[100] Keyishian v. Board of Regent, supra note 79.

[101] See Congressional Research Service, Terrorism, Violent Extremism, and the Internet: Free Speech Considerations, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited December 21, 2021).

[102] See Brandenburg v. Ohio, 395 U.S. 444 (1969).

[103] See Smith v. California, 361 U.S. 147 (1959). See also U.S. v. Harriss, 347 U.S. 612 (1954).

[104] Supra note 78.

[105] Id. at 212; citing Eastern Broadcasting Generation (DYRE) v. Dans, 222 Phil. 151, 157 (1985).

[106] See id. at 214; citing Eastern Broadcasting Generation (DYRE) v. Dans, id. See also Primicias v. Fugoso, 80 Phil. 71 (1948); American Bible Society v. City of Manila, 101 Phil. 386 (1957); Cabansag v. Fernandez, 102 Phil. 152 (1957); Navarro v. Villegas, G.R. No. L-31687, February 26, 1970; Imbong v. Ferrer, 146 Phil. 30 (1970); Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc., 151-A Phil. 656 (1973); and Anti-Bases Coalition v. Bagatsing, 210 Phil. 457 (1983), among others.

[107] Established in Schenck v. United States (249 U.S. 47 [1919]) by Justice Oliver Wendell Holmes: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to

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create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity or degree." It was revised in Dennis v. United States (341 U.S. 494 [1951]), where the US Supreme Court, through J. Vinson adopting the test as announced by Judge Learned Hand in the lower court (in Masses Publishing Co. v. Patten, 244 F. 535 [S.D.N.Y. 1917], rev'd., 246 F. 24 (2d Cir. 1917)), held that "[i]n each case, [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."

[108] See Brandenburg v. Ohio, supra note 103; citing Noto v. United States, 367 U.S. 290, 297-298 (1961). See also Alexander Tsesis, Terrorist Speech on Social Media, Vanderbilt Law Review, Vol. 70:2 (2017), p. 653 <https://cdn.vanderbilt.edu/vu-wp0/wp-content/uploads/sites/89/2017/03/21162555/Terrorist-Speech-on-Social-Media.pdf> (last visited December 22, 2021); and Laura K. Donahue, Terrorist Speech and the Future of Free Expression, Georgetown University Law Cardozo Law Review Vol. 27:1 (2005), p. 249; citing Watts v. U.S., 394 U.S. 705 (1969) <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2352&context=facpub> (last visited December 22, 2021), which point out that the First Amendment protection includes patently offensive, disrespectful, and obnoxious speech, including political support of heinous terror speech that poses no danger, expresses no intentional menace, nor is coordinated with any designated terrorist organization.

[109] See Justice Carpio's Opinion in Chavez v. Gonzales, supra note 78; and Nicolas-Lewis v. COMELEC, supra note 79. See also MVRS Publications, Inc. v. Islamic Da'Wah Council of the Philippines, supra note 91.

[110] See Justice Carpio's Opinion in Chavez v. Gonzales, id. at 241-242; and Nicolas-Lewis v. COMELEC id. at 586.

[111] See Brandenburg v. Ohio, supra note 103, as recognized in our jurisprudence in Salonga v. Paño, supra note 88; and MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc., supra note 91.

[112] See Chief Justice Claudio S. Teehankee, Sr.'s Separate Opinion in Reyes v. Bagatsing, 210 Phil. 457, 478 (1983).

[113] See id.

[114] See The Diocese of Bacolod v. COMELEC, supra note 81, at 366; citing Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc, supra at 676. See also Justice Carpio's Opinion in Chavez v. Gonzales, supra note 78, at 245; and Adiong v. COMELEC, G.R. No. 103956, March 31, 1992; citing New York Times Co. v. Sullivan, 376 U.S. 254, 11 L. Ed. 686 (1964).

[115] See Senate Deliberations, Records, Vol. I, Session No. 45, January 22, 2020, pp. 7-9. See also Senate Deliberations, Records, Vol. I, Session No. 47, January 28, 2020, particularly pp. 17-19 which read:

> Senator Lacson. As pointed out by the honorable lady senator from Pstnay during her interpellations, iyong legitimate exercise ay may labor strike, and the laborers ay nagkaroon ng violence, hindi sila maka-cover dito. Kasi legitimate exercise of freedom of expression or nag-e-express sila ng dissent. Kung iko-cover pa rin natin sila, medyo lalong magiging wayward.
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> x x x x
>
> Senator Lacson. For clarity and for emphasis, Mr. President, para lamang malinaw. This is one of the safeguards. Kasi if we do not include that proviso, I am sure the gentleman will be interpellating along that line. Bakit kulang? That is why we deemed it wise na i-qualify na lamang natin na hindi kasama iyong legitimate exercise of the freedom of expression, et cetera.
>
> x x x x

> Senator Lacson. Those expressing dissent in the exercise of their freedom of expression. Kung mag-result regardless of who initiated, that could be initiated by their act of expressing their freedom of dissent or expression na nag-result sa violence, then they should not be covered under the definition of a terrorist act because, again, babalik na naman tayo sa intent and purpose. (emphases and underscoring supplied)

[116] See Reno v. American Civil Liberties Union, supra note 99; Baggett v. Bullitt, supra note 99; Keyishian v. Board of Regents, supra note 79.

[117] See Smith v. Goguen, supra note 99.

[118] See Reno v. American Civil Liberties Union, supra note 99.

[119] Section 5. Threat to Commit Terrorism. - Any person who shall threaten to commit any of the acts mentioned in Section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years.

Section 8. Proposal to Commit Terrorism. - Any person who proposes to commit terrorism as defined in Section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years.

Section 9. Inciting to Commit Terrorism. - Any person who, without taking any direct part in the commission of terrorism, shall incite others to the execution of any of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end, shall suffer the penalty of imprisonment of twelve (12) years.

[120] See Chavez v. Gonzales, supra note 78, at 206; Nicolas-Lewis v. COMELEC, supra note 79; MVRS Publications, Inc. v. Islamic Da'Wah Council of the Philippines, Inc., supra note 91. See also Keyishian v. Board of Regent, supra note 79; United States v. Alvarez, supra note 78; United States v. Stevens, supra note 78. See further Congressional Research Service, Terrorism, Violent Extremism, and the Internet: Free Speech Considerations, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited November 14, 2021).

[121] See Social Weather Stations, Inc. v. COMELEC, supra note 78; and Iglesia ni Cristo v. Court of Appeals, supra note 78. See also United States v. Alvarez, id.; R.A.V. v. St. Paul, supra note 78; United States v. Stevens, id.

[122] See Brandenburg v. Ohio, supra note 103; citing Noto v. United States, supra note 109. See also Tsesis, Alexander, Terrorist Speech on Social Media, Vanderbilt Law Review, Vol. 70:2 (2017), p. 653 <https://cdn.vanderbilt.edu/vu-wp0/wp-content/uploads/sites/89/2017/03/21162555/Terrorist-Speech-on-Social-Media.pdf> (last visited November 14, 2021); and Donahue, Laura K., Terrorist Speech and the Future of Free Expression, Georgetown University Law Cardozo Law Review Vol. 27:1 (2005), p. 249; citing Watts v. U.S., 394 U.S. 705 (1969) <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2352&context=facpub> (last visited November 14, 2021).

[123] See Brandenburg v. Ohio, supra note 103, as recognized in our jurisprudence in Salonga v. Paño, supra note 88; and MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc., supra note 91.

[124] See Donahue, Laura K., Terrorist Speech and the Future of Free Expression, Georgetown University Law Cardozo Law Review Vol. 27:1 (2005), p. 248 <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2352&context=facpub> (last visited November 14, 2021).

[125] See United States v. Williams, 553 U.S. 285 (2008).

[126] See Congressional Research Service, Terrorism, Violent Extremism, and the Internet: Free Speech

Considerations, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited November 14, 2021).

[127] See Seyed Ali Ehsankhah, Incitement in International Criminal Law, International Journal of Humanities and Cultural Studies, January 2016, p. 512 <www.ijhcs.com/> (last visited November 14, 2021); and Yael Ronen, Incitement to Terrorist Act and International Law, Leiden Journal of International Law, September 2010, pp. 654-657 <https://www.researchgate.net/publication/231996872_Incitement_to_Terrorist_Acts_and_International_Law/link/55e0034708aecbla7cclcbb4/download> (last visited November 14, 2021).

[128] See <https://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf> (last visited November 14, 2021). These include: (i) the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Unlawful Seizure Convention); (ii) the 1979 International Convention against the Taking of Hostages (Hostages Convention); (iii) U.N. Security Council Resolution No. 1624; (iv) the 1980 Convention on the Physical Protection of Nuclear Material (Nuclear Materials Convention); (v) the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (Diplomatic agents Convention); (vi) 1979 Convention on the Physical Protection of Nuclear Material; (vii) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (as well as the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf); (viii) International Convention for the Suppression of Acts of Nuclear Terrorism; (ix) Amendment to the Convention on the Physical Protection of Nuclear Material; (x) Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; and (xi) Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

[129] See UNODC, The Use of the. Internal for Terrorist Purposes, p. 6 <https://www.unodc.org/documents/frontpage/Use_of_Internet__for_Terrorist_Purposes.pdf> (last visited November 14, 2021).

[130] See Congressional Research Service, Terrorism, Violent Extremism, and the Internet: Free Speech Considerations, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited November 14, 2021). This was also argued by Associate Solicitor General Galandines (in response to Justice Lopez's question) during the May 4, 2021 Oral Arguments.

[131] See Articles 115, 118, 136, 138, 142, 282, 283, 285, and 356 of the RPC.

[132] See Senate Deliberations, Records, Vol. I, Issue No. 47, January 28, 2020, p. 23.

[133] See Virginia v. Black, 538 U.S. 343 (2003); citing Watts v. U.S., 394 U.S. 705 (1969). See also Colorado in the interest of R.D. (No. 17SC116,2020 CO 44), involving threats made online, particularly in Twitter. See also Martin H. Redish and Matthew Fisher, Terrorising Advocacy and the First Amendment: Free Expression and the Fallacy of Mutual Exclusivity, Fordham Law Review, Vol. 86, Issue 2 (2017), pp. 573-574; citing Virginia v. Black, 538 U.S. 343 (2003) <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5442&context=flr> (last visited November 14, 2021); Congressional Research Service, Terrorism, Violent Extremism, and the Internet: Free Speech Considerations, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited November 14, 2021), likewise citing Virginia v. Black, id.; and Alexander Tsesis, Terrorist Speech on Social Media, Vanderbilt Law Review, Vol. 70:2 (2017) <https://cdn.vanderbilt.edu/vu-wp0/wp-content/uploads/sites/89/2017/03/21162555/Terrorist-Speech-on-Social-Media.pdf> (last visited November 14, 2021).

[134] 14 Phil. 450 (1909); citing U.S. v. Sevilla, 1 Phil. 143 (1902); and U.S. v. Simeon, 3 Phil. 388 should be

688 (1904); emphasis supplied.

[135] See Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-Terrorism Fact Sheet No. 32, pp. 43; citing "International mechanisms for promoting freedom of expression," joint declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression (21 December 2005). See also UN Secretary-General's Report on The Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, UN DOc. A/63/337, paragraph 61 <https://unispal.un.org/UNISPAL.NSF/0/549DE4D8937F3459852574DE0052C973> (last visited November 14, 2021).

[136] See UN Secretary-General's Report on The Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, UN DOc. A/63/337, paragraph 62 <https://unispal.un.org/UNISPAL.NSF/0/549DE4D8937F3459852574DE0052C973> (last visited November 14, 2021).

[137] See Wibke Kristin Timmermann, Incitement in International Criminal Law, International Review of the Reel Cross, Vol. 88, No. 864, December 2006 <https://www.icrc.org/en/doc/assets/files/other/irrc_864_timmermann.pdf> (last visited November 14, 2021); and Eric De Brabandere, The Regulation of Incitement to Terrorism in International Law, in: Hennebel, L. & Tigroudja, H. (Eds.), Balancing Liberty and Security: The Human Rights Pendulum, pp. 221-240, Nijmegen: Wolf Legal Publishers <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1992987> (last visited November 14, 2021).

It has been noted that while most of the states reporting under Resolution 1624 (2005) declare that they already criminalize incitement to violence or incitement to offences in general, "it is not clear whether these criminal provisions concern incitement as an inchoate offence, as conceived in the resolution, or as a form of complicity". The Second Report of the Counter-Terrorism Committee, for example, noted that "many States indicate that they address the problem of incitement through widely recognized accessory offences such as aiding, abetting, participating and soliciting." See Yael Ronen, Incitement to Terrorist Act and International Law, Leiden Journal of International Law, September 2010, pp. 652-653 <https://www.researchgate.net/publication/231996872_Incitement_to_Terrorist_Acts_and_International_Law/link/55e0034708aeebla7cclcbb4/download> (last visited November 14, 2021).

Note that under international law, the only instance where incitement is punishable regardless and independent of the commission of the substantive crime, and is therefore considered as an inchoate offense, is in connection with the crime of genocide and only when the same is direct and public (sec Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide (Geneva Convention on Genocide), as well as Article 2 (3) (c) of the Statute of the International Tribunal for Rwanda (UN Security Council Resolution No. 955 (1994)) and Article 25 (3) (e) of the Rome Statute of the International Criminal Court. See also Wibke Kristin Timmermann, Incitement in International Criminal Law, International Review of the Red Cross, Vol. 88, No. 864, December 2006 <https://www.icrc.org/en/doc/assets/files/other/irrc_864_timmermann.pdf> (last visited November 14, 2021); Yael Ronen, Incitement to Terrorist Act and International Law, Leiden Journal of International Law, September 2010, pp. 652-653 <https://www.researchgate.net/publication/231996872_Incitement_to_Terrorist_Acts_and_International_Law/link/55e0034708accbla7cclcbb4/download> (last visited November 14, 2021); and Eric De Brabandere, The Regulation of Incitement to Terrorism in International Law, in: Hennebel, L. & Tigroudja, H. (Eds.), Balancing Liberty and Security: The Human Rights Pendulum, pp. 221-240, Nijmegen: Wolf Legal Publishers

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1992987> (last visited November 14, 2021).

[138] See Eric De Brabandere, The Regulation of Incitement to Terrorism in International Law, in: Hennebel, L. & Tigroudja, H. (Eds.), Balancing Liberty and Security: The Human Rights Pendulum, pp. 221-240, Nijmegen: Wolf Legal Publishers <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1992987> (last visited November 14, 2021).

[139] See Wibke Kristin Timmermann, Incitement in International Criminal Law, International Review of the Red Cross, Vol. 88, No. 864, December 2006 <https://www.icrc.org/cn/doc/assets/files/other/irre_864_timmermann.pdf> (last visited November 14, 2021).

[140] See Senate Deliberations, Records, Vol. I, Session No. 45, pp. 10-11; and Senate Deliberations, Records, Vol. I, Session No. 47, January 28, 2020, pp. 14-17.

[141] See Senate Deliberations, Records, Vol. I, Session No. 47, January 28, 2020, p. 24.

[142] See United States v. Williams, supra note 126. See also Dr. Bibi van Ginkel, Incitement to Terrorism: A Matter of Prevention or Repression?, ICCT Research Paper, August 2011, p. 15 <https://www.icct.nl/app/uploads/download/file/ICCT-Van-Ginkel-Incitement-To-Terrorism-August-2011.pdf> (last visited November 14, 2021).

Likewise see Yael Ronen, Incitement to Terrorist Act and International Law, Leiden Journal of International Law, September 2010, p. 669 <https://www.researchgate.net/publication/231996872_Incitement_to_Terrorist_Acts_and_International_Law/link/55e0034708aecbla7cclcbb4/download> (last visited November 14, 2021); citing Prosecutor v. Nahinma, Trial Judgment, Case No. ICTR-99-52-T, 3 December 2003.

[143] See Colorado in the interest of R.D., No. 17SC116, supra note 134, which provided the following factors to consider in determining whether a statement made online constitutes a true threat, viz.:

> In determining whether a statement is a true threat, a reviewing court must examine the words used, but it must also consider the context in which the statement was made. Particularly where the alleged threat is communicated online, the contextual (actors courts should consider include, but are not limited to: (1) the statement's role in a broader exchange, if any, including surrounding events; (2) the medium or platform through which the statement was communicated, including any distinctive conventions or architectural features; (3) the manner in which the statement was conveyed (e.g., anonymously or not, privately or publicly); (4) the relationship between the speaker and recipient(s); and (5) the subjective reaction of the statement's intended or foreseeable recipient(s).

[144] See Colorado in the interest of R.D., No. 17SC116, supra note 134.

[145] See Elonis v. United States, 575 U.S. _ (2015).

[146] 561 U.S. 1, 130 S. Ct. 2705 (2010). In this case, the validity of 18 U.S. C. §2339B of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) which penalizes the provision of material support or resources to foreign terrorist organizations was facially challenged on the ground that it violates the right to due process and freedom of expression. The assailed law defines material support with the ATA's definition ofmatcrial support under Section 3 (e).

[147] See Ateneo de Manila University v. Capulong, 294 Phil. 654, 672-673 (1993), which declared: "'Academic freedom,' the term as it evolved to describe the emerging rights related to intellectual liberty, has traditionally been associated with freedom of thought, speech, expression and the press; in other words, with the right of

individuals in university communities, x x x to investigate, pursue, discuss and, x x x 'to follow the argument wherever it may lead,' free from internal and external interference or pressure." (emphasis supplied)

[148] See Chavez v. Gonzales, supra note 78, at 205. See also Keyishian v. Board of Regents, supra note 79; United States v. Alvarez, supra note 78; United States v. Stevens, supra note 78; and Congressional Research Service, Terrorism, Violent Extremism, and the Internet: Free Speech Considerations, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited November 14, 2021).

[149] See Social Weather Stations, Inc. v. COMELEC, supra note 78, at 584-585; and Iglesia ni Cristo v. Court of Appeals, supra note 78. See also United States v. Alvarez, id.; R.A.V. v. St. Paul, supra note 78; and United States v. Stevens, id.

[150] See Senate Deliberations, Records, Vol. 1, Issue No. 47, January 28, 2020, p. 27.

[151] 561 U.S. 1, 130 S. Ct. 2705 (2010).

[152] See also the following international instruments that call on States to take effective measures to penalize training and providing material resources support to terrorism: (i) UNSC Resolution No. 2178 (2014), September 24, 2014; (ii) Articles 2 and 3 of the EU COUNCIL FRAMEWORK DECISION 13 JUNE 2002 <https://eur-lex.europa.cu/legal-content/EN/TXT/PDF/?uri=CELEX:02002F0475- 20081209&from=EN> (last visited November 14, 2021); (iii) Articles 4, 7, and 8 of the DIRECTIVE (EU) 2017/541 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA 9 <https://cur-lex.europa.cu/legal-content/cn/TXT/?uri=CELEX:32017L0541> (last visited November 14, 2021).

[153] UNSCR No. 1373 obliges states to, among other: "[r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts," "[t]ake the necessary steps to prevent the commission of terrorist acts," and "[e]nsure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws." See <https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf> (last visited November 14, 2021); also <https://www.unodc.org/pdf/crime/terrorism/explanatory_englisb2.pdf> (last visited November 14, 2021).

[154] 561 U.S. 1, 130 S. Ct. 2705 (2010).

[155] Id.

[156] See Senate Deliberations, Records, Vol. I, Issue No. 47, January 28, 2020, p. 22:

Senator Pimentel. The phrase "MATERIAL SUPPORT" is being explained or defined. There is this phrase "EXPERT ADVICE." Natakot lamang po ako sa mgapanero/panera, Mr. President. Is legal advice...

Senator Lacson. Of course not, Mr. President. Even an advice coming from a doctor cannot be covered. It should be in relation to perpetrating an act of terrorism. (emphases supplied)

[157] See Brandenburg v. Ohio, supra note 103, as recognized in our jurisprudence in Salonga v. Paño, supra note 88, at 426; and MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc., supra note 91, at 256-257.

[158] See Brandenburg v. Ohio, id.; citing Noto v. United States, 367 U.S. 290, 367 U.S. 297-298 (1961). See also Alexander Tsesis, Terrorist Speech on Social Media, Vanderbilt Law Review, Vol. 70:2 (2017), p. 653 <https://cdn.vanderbilt.edu/vu-wp0/wp-content/uploads/sites/89/2017/03/21162555/Terrorist-Speech-on-Social-

Media.pdf> (last visited November 14, 2021); and Laura K. Donahue, Terrorist Speech and the Future of Free Expression, Georgetown University Law Cardozo Law Review Vol. 27:1 (2005), p. 249; citing Watts v. U.S., 394 U.S. 705 (1969) <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2352&context=facpub> (last visited November 14, 2021).

[159] Section 10. Recruitment to and Membership in a Terrorist Organization. — Any person who shall recruit another to participate in, join, commit or support terrorism or a terrorist individual or any terrorist organization, association or group of persons proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

The same penalty shall be imposed on any person who organizes or facilitates the travel of individuals to a state other than their state of residence or nationality for the purpose of recruitment which may be committed through any of the following means:

(a)

Recruiting another person to serve in any capacity in or with an armed force in a foreign state, whether the armed force forms part of the armed forces of the government of that foreign state or otherwise;

(b)

Publishing an advertisement or propaganda for the purpose of recruiting persons to serve in any capacity in or with such an armed force;

(c)

Publishing an advertisement or propaganda containing any information relating to the place at which or the manner in which persons may make applications to serve or obtain information relating to service in any capacity in or with such armed force or relating to the manner in which persons may travel to a foreign state for the purpose of serving in any capacity in or with such armed force; or

(d)

Performing any other act with the intention of facilitating or promoting the recruitment of persons to serve in any capacity in or with such armed force.

Any person who shall voluntarily and knowingly join any organization, association or group of persons knowing that such organization, association or group of persons is proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of imprisonment of twelve (12) years.

[160] See Peralta v. COMELEC, 172 Phil. 31, 53 (1978); and Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach, by the Organization for Security and Co-operation in Europe Vienna, February 2014, p. 55 <https://www.osce.org/files/f/documents/1/d/111438.pdf> (last visited November 14, 2021). See also NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460-61 (1958). See further <https://cfnhri.org/human-rights-topics/freedom-of-expression-association-and-peaceful-assembly/> (last visited November 14, 2021).

[161] See People v. Ferrer, 150-C Phil. 551 (1972); citing Kovacs vs. Cooper, 336 U.S. 77 (1949); Vera v. Arca,

138 Phil. 369 (1969).

[162] See Vera v. Arca, id.

[163] See NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460-61 (1958). See also Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach by the Organization for Security and Co-operation in Europe Vienna, February 2014, p. 55 <https://www.osce.org/files/f/documents/1/d/111438.pdf> (last visited November 14, 2021).

[164] See People v. Ferrer, supra note 162, 578; citing Frankfeld vs. United States, 198 F 2d. 879 (4th Cir. 1952).

[165] Id.

[166] See Senate Deliberations, Records, Vol. I, Issue No. 47, January 28, 2020, p. 27 and Senate Deliberations, Records, Vol. I, Issue No. 44, January 21, 2020, pp. 27-28.

[167] See Black's Law Dictionary, Eight Edition (2004), p. 888, which defines "knowing" as "having or showing awareness or understanding; well-informed; deliberate, conscious." Knowingly, on the other hand, is defined as "consciously; willfully; subject to complete understanding of the facts or circumstances." <https://legaldictionary.thefreedictionary.com/Knowingly> (last visited November 14, 2021) and doing something "with full awareness of what one is doing" (see <https://www.merriam-webster.com/thesaurus/knowingly> (last visited November 14, 2021).

[168] Ponencia, p. 131.

[169] See supra.

[170] See Senate Deliberations, Records, Vol. I, dated February 3, 2020, p. 31.

[171] See Senate Deliberations, Records, Vol. I, Issue No. 47, January 28, 2020, pp. 24-28.

[172] See Chief Justice Alexander G. Gesmundo's Opinion, pp. 156-158.

[173] Ponencia, p. 155.

[174] See for example the "Immigration & Nationality Act," "Antiterrorism and Effective Death Penalty Act of 1996", "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism", and the "International Emergency Powers Act." Meanwhile, an analogous mode of proscription may similarly be found in the United Kingdom's (UK) "Terrorism Act of 2000" and Singapore's "Terrorism (Suppression of Financing) Act of 2003."

[175] Dated September 8, 2001. See <https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf> (last visited November 14, 2021).

[176] Dated July 29, 2004. See <http://unscr.com/en/resolutions/doc/1555> (last visited November 14, 2021).

[177] Dated September 5, 2018. See <https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/guidelines_of_the_committee_for_the conduct_of_its_work.pdf> (last visited November 14, 2021).

Note that based on these Guidelines, an inclusion in the consolidated list involves a rigorous screening process which feature, among others: (i) multilateral consensus; (ii) written and detailed reports; (iii) narrative summaries; (iv) consultations with member stales and recognized law enforcement agencies; (v) consideration of objections from member states; (vi) the need for supporting evidence; and (vii) accurate and positive identification.

[178] Dated July 20, 2017. See <http://unscr.com/en/resolutions/doc/2368> (last visited November 14, 2021).

[179] See Articles 24 and 25, and Chapter VII of the UN Charter.

[180] See also UNSCR No. 1989 dated June 17, 2011. <https://www.undocs.org/S/RES/1989%20(2011)> (last visited November 14, 2021); and UNSCR No. 1268 <https://www.un.org/securitycouncil/sanctions/1267> (last visited November 14, 2021).

[181] See Senate Deliberations, Records, Vol. I, Session No. 45, January 22, 2020, pp. 13-14.

[182] Ponencia, p. 212.

[183] See Petitioner's Memorandum for Cluster II Issues, pp. 50-51.

[184] Petitioners' Memorandum for Cluster V Issues, pp. 19-20.

[185] Designation and proscription: Sections 25, 26, 27, and 28 of the ATA. See Ponencia, p. 155.

[186] Samahan ng mga Progresibong Kabataan v. Quezon City, supra note 0, at 1116; citing Disini, Jr. v. Secretary of Justice, supra note 11, at 97-98.

[187] Romualdez v. Sancliganbayan, supra note 26, at 281; citing the Separate Opinion of Mr. Justice Vicente V. Mendoza in Estrada v. Sandiganbayan, supra note 19, at 430 which cited NAACP v. Alabama, supra note 6, and Shelton v. Tucker, supra note 5.

[188] Associate Justice Japar B. Dimaampao, however, submits that the void-for-vagueness doctrine should have been applied, "considering that petitioners have impugned Section 29 for transgressing the right to due process." He notes that "due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." Accordingly, Section 29 should be struck down for being patently vague. (See Justice Dimaampao's Opinions, pp. 4 and 5).

[189] Ponencia p. 199; citing San Miguel Corp. v. Avelino, 178 Phil. 47 (1979).

[190] Ponencia p. 200.

[191] Italics supplied.

[192] See Pestilos v. Generoso, 746 Phil. 301, 311 (2014), which held that even as early as the Philippine Bill of 1902, "probable cause" has been the threshold for the issuance of an arrest warrant as in its Section 5, to wit: "[t]hat no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized."

[193] Id. at 332.

[194] See for example: People v. Muleta, 368 Phil. 451 (1999); Miguel v. People, 814 Phil. 1037 (2017); and People v. Goyena, G.R. No. 229680, June 6, 2019.

[195] Ponencia, p. 205.

[196] People v. Doria, 361 Phil. 595, 632 (1999); People v. Tudtud, 458 Phil. 752, 773 (2003); Pestilos v. Generoso, id. at 317; Aparente v. People, 818 Phil. 935, 944 (2017); emphasis supplied.

[197] People v. Doria, id.; People v. Tudtud, id.; Pestilos v. Generoso, id.; Aparente v. People, id.

[198] Ponencia, p. 195.

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[199] Sindac v. People, 794 Phil. 421, 429-430 (2016).

[200] See Justice Florentino P. Feliciano's (Justice Feliciano) Dissenting Opinion in In the Matter of the Petition for Habeas Corpus of Umil v. Ramos, 279 Phil. 266, 324-325 (1991).

[201] See id.

[202] Sindac v. People, supra at 430.

[203] See Justice Feliciano's Dissenting Opinion in In the Matter of the Petition for Habeas Corpus of Umil v. Ramos, supra at 326.

[204] Pestilos v. Generoso, supra at 330-331.

[205] Sindac v. People, supra at 430.

[206] See J. Feliciano's Dissenting Opinion in In the Matter of the Petition for Habeas Corpus of Umil v. Ramos, supra at 325-326.

[207] Pestilos v. Generoso, supra at 330-331.

[208] See Pestilos v. Generoso, id. at 208.

[209] See ponencia, pp. 207-208.

[210] Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, The President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of al least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or ollenses inherent in or directly connected with the invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall he judicially charged within three days, otherwise he shall he released. (emphases supplied)

[211] See Records of the Constitutional Commission, No. 44 dated July 31, 1986

<https://www.officialgazette.gov.ph/1986/07/31/r-c-c-no-44-thursday-july-31-1986/> (last visited December 16, 2021).

[212] Ponencia, pp. 211-215.

[213] See Senate Deliberations, Records, Vol. I, Session No. 45, January 22, 2020, p. 22 and Senate Deliberations, Records, Vol. I, Session No. 47, January 28, 2020, p. 29.

[214] See Sections 30, 31, 32, and 33 of the ATA, as well as Rules 9.3. to 9.5. of the IRR.

[215] Ponencia, pp. 218-219.

[216] According to the United Nations Development Programme Report on "Journey to Extremism in Africa Drivers, Incentives and the Tipping for Recruitment," misconduct of security forces has been identified as a "direct trigger for recruitment in the final stages of the journey to extremism" Therefore, security forces must respect human rights and must operate within the rule of law in order to counter terrorism effectively and achieve sustainable and lasting peace. See <https://unitar.org/sustainable-development-goals/peace/our-portfolio/counter-terrorism> (last visited November 14, 2021).

CONCURRING AND DISSENTING OPINION

"The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact."

— Justice Robert Jackson,
Dissenting Opinion in Terminiello v. City of Chicago[1]

"Iba't iba ang katuwiran ng too sa lipunan
Ngunit ang kailangan lang tayo'y huwag
magtulakan
O kayraming suliranin, oras-oras dumarating
Dahil di kayang lutasin hindi na rin pinapansin
Subalit kung tutuusin, iisa ang dahilan
Kaibigan, ayaw nilang umusog nang kahit konti"

— Gary Granada, Kahit Konti

LEONEN, J.:

The tolerance, openness, and the quality of dissent in a society defines its democracy.

If we are true to this spirit, then we must acknowledge that the freedoms of speech, of expression, and of the press, along with their cognate rights, are skewed toward those who do not hold power and are not part of the hegemony of the status quo.

Yet, as in all life, that is not all. There are always other considerations that produce a continuing dialectical balance.

Those who sit on the high bench must acknowledge that while this Court jealously guards against the intolerance of some of those in power, unlike the political departments created by our Constitution, some cases brought before us may not equip us with the facts to give us the confidence to form a justified and true belief. This is especially true as governments around the world continue to grapple with the phenomenon of terrorism.

Terrorism is different from armed conflict or ordinary crimes. It may prey on the disenchantment felt by many, brought about by the dominant economic, cultural, ideological, and political systems that cause it. Its methods, too, can be more surreptitious. Recruitment can happen as easily as when one watches internet videos, magnified by the algorithms designed to amplify dopamine rush, and therefore maximize advertising for those who own these platforms. Execution can be aided and accelerated by the dark side of our digital spaces. We are witness to terrorism's dire consequences to innocent lives, which may happen with the act of one person, or incongruous or isolated groups and cells, all manifesting their allegiance to the nefarious prejudices of an organization they may have just encountered virtually.

Terrorism is a global phenomenon that cannot be addressed solely on the palliative end. States have to be proactive to prevent it, while being careful that in doing so, they do not infringe on the fundamental rights that empower the sovereign people. States will have to come to terms with how their own hegemonies have excluded others, encrusting hatred and blindness to humanity and propelling acts of terrorism.

To this end, there has not yet been one clear definitive and effective solution to terrorism. Deadly attacks continue. Intelligence agencies spend tremendous amounts of resources and energy to disrupt potential acts of terrorism. Innocent civilians continue to be maimed, to be killed.

In resolving these cases, this Court has to tread carefully with understanding, compassion, and reason. Constitutional text derives its most effective meaning when read within the context of the entire Constitution, together with contemporary circumstances, advised but not straightjacketed by judicial doctrines sufficient during their times and always with a view to achieving the ideals of social justice. We cannot make decisions based on some perceived notion of original intent, whether it is of those who sat to write the words in their historical context or some recreated notion of those who voted during the past plebiscites. These notions inform legal argument, but they do not always reveal a better construction for the present; they do not guarantee social justice and meaningful freedoms.

Thirty-seven Petitions were filed before this Court, questioning the constitutionality of Republic Act No. 11479, or the Anti-Terrorism Act of 2020. They mainly assail the law's validity for violating due process rights, claiming that several of its provisions are vague and overbroad.[2]

I join the majority in striking down some of the provisions on a facial challenge using the modality of overbreadth and strict scrutiny.

Section 4, which defines and identifies what comprises terrorism, is valid—except for the clause that qualifies its proviso. The proviso notably does not treat as terrorism the exercises of civil and political rights, such as "advocacy, protest, dissent, stoppage of work, industrial or mass action" so long as they "are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."

This clause is overbroad, imposing prior restraint on the exercise of fundamental rights. It imposes a burden on the actors to prove that their expressions of advocacy and dissent are not terrorism. It chills the exercise of civil and political rights, all the while giving unbridled license to law enforcers to construe expressions of advocacy,

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protest, and dissent as acts of terrorism.

Section 25, which provides three modes of designating terrorist persons and groups, is unconstitutional for offending due process rights. Unlike the ponencia, I submit that all three modes are invalid and must be struck down.

Section 29, which grants authority to extend detention up to 14 days, is likewise unconstitutional. It gives the Anti-Terrorism Council full discretion to authorize law enforcement agents or military personnel to arrest and detain a suspect, without a limit on how this authority can be exercised. An attempt by an implementing rule to fill this gap cannot cure the law's defect. Worse, Section 29 encroaches on the judicial prerogative of issuing arrest warrants by authorizing an administrative agency to issue a written authorization to the same effect without any prior hearing.

The carte blanche provided under Section 29 becomes even more concerning since Sections 5 and 8 respectively punish a mere threat to commit terrorism and proposal to commit terrorist acts. The Anti-Terrorism Council possesses unilateral authority to interpret what constitutes dangerous speech. It may also authorize the immediate or prolonged detention of a citizen, or both. A person suspected of threatening or proposing to commit terrorism under Sections 5 and 8 may be detained based merely on an overzealous interpretation of a law enforcer.

I flag the vagueness of the crime of proposal to commit terrorism. But while it borders on the unconstitutional, like the other provisions challenged, we must await an actual case to fully understand the necessity of the reach of law enforcement, far into the preparatory phases of the fatal acts of terrorism balanced by its propensity to chill the legitimate exercise of free speech and other fundamental rights.

As an exception to the requirements of justiciability, a facial challenge allows a suit assailing a law's validity even if the litigant has not yet been directly injured by its application,[3] as the law is unconstitutional per se.[4] It deviates, from the justiciability requirement of actual case and controversy because it allows judicial review even without actual, concrete facts.[5]

While generally disfavored, it is nonetheless an exceptional approach that can be used to strike down any curtailment of free speech. The exercise of free speech and expression, especially those that involve political participation and dissent, is essential in our democratic space. Even deviations from justiciability requirements are permitted if only to safeguard these fundamental rights.

However, mere allegation of a violation of these rights is not sufficient. Litigants must still clearly show the facts demonstrating the basis for a facial challenge.

I

This Court's judicial power is inscribed in Article VIII, Section 1 of the Constitution, which states:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Inherent in this Court is the power of judicial review, that competence to declare a law, ordinance, or treaty as unconstitutional or invalid.[6] The general rule, however, is that the issue of a statute's constitutionality will be decided only if "it is directly and necessarily involved in a justiciable controversy and is essential to the protection

of the rights of the parties concerned."[7]

The recent case of Pangilinan v. Cayetano[8] is instructive:

> Separation of powers is fundamental in our legal system. The Constitution delineated the powers among the legislative, executive, and judicial branches of the government, with each having autonomy and supremacy within its own sphere. This is moderated by a system of checks and balances "carefully calibrated by the Constitution to temper the official acts" of each branch.
>
> Among the three branches, the judiciary was designated as the arbiter in allocating constitutional boundaries. Judicial power is defined in Article VIII, Section 1 of the Constitution as:
> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

A plain reading of the Constitution identifies two instances when judicial power is exercised: (1) in settling actual controversies involving rights which are legally demandable and enforceable; and (2) in determining whether or not there has been a grave abuse of discretion amounting to a lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

In justifying judicial review in its traditional sense, Justice Jose P. Laurel in Angara v. Electoral Commission underscored that when this Court allocates constitutional boundaries, it neither asserts supremacy nor annuls the legislature's acts. It simply carries out the obligations that the Constitution imposed upon it to determine conflicting claims and to establish the parties' rights in an actual controversy:

> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.

The latter conception of judicial power that jurisprudence refers to as the "expanded certiorari jurisdiction" was an innovation of the 1987 Constitution:

> This situation changed after 1987 when the new Constitution "expanded" the scope of judicial power[.]
>
> ....
>
> In Francisco v. The House of Representatives, we recognized that this expanded jurisdiction was meant "to ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government.'" Thus, the second paragraph of Article VIII, Section 1 engraves, for the first time in its history, into black letter law the "expanded certiorari jurisdiction" of this Court, whose nature and purpose had been provided in the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion.
>
> ....

Tañada v. Angara characterized this not only as a power, but as a duty ordained by the Constitution:

> It is an innovation in our political law. As explained by former Chief Justice Roberto Concepcion, "the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duly to pass judgment on matters of this nature."
>
> As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government. (Emphasis supplied, citations omitted)

Despite its expansion, judicial review has its limits. In deciding matters involving grave abuse of discretion, courts cannot brush aside the requisite of an actual case or controversy. The clause articulating expanded certiorari jurisdiction requires a prima facie showing of grave abuse of discretion in the assailed governmental act which, in essence, is the actual case or controversy. Thus, "even now, under the regime of the textually broadened power of judicial review articulated in Article VIII, Section 1 of the 1987 Constitution, the requirement of an actual case or controversy is not dispensed with."[9] (Emphasis supplied, citations omitted)

This Court's power of judicial review cannot be loosely invoked. Litigants must show that the following requisites of justiciability are met: (1) that there is an "actual case or controversy"; (2) that there is "standing or locus standi", (3) that "the constitutionality was raised at the earliest opportunity"; and (4) that "the constitutionality is essential to the disposition of the case or its lis mota."[10]

I (A)
The most crucial among these requisites is the existence of an actual case or controversy.[11] Whether judicial power is exercised in a traditional or expanded sense, its existence is indispensable.[12]

An actual case or controversy is defined as "one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution."[13] It is that which is "ripe for determination," and not conjectural or anticipatory such that this Court's decision "would amount to an advisory opinion."[14] A controversy is justiciable if the issues are concrete, including the legal relationships between opposing parties.[15] In Information Technology Foundation of the Philippines v. Commission on Elections:[16]

> It is well-established in this jurisdiction that "... for a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice.... Courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging." The controversy must be justiciable — definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[17] (Citations omitted)

An actual case or controversy arises when there is a real conflict of rights or duties that arise from actual facts properly established in court through evidence or judicial notice.[18] Speculation and imagination cannot substitute for proof of actual facts in adjudication:

> Without the necessary findings of facts, this court is left to speculate leaving justices to grapple within the

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> limitations of their own life experiences. This provides too much leeway for the imposition of political standpoints or personal predilections of the majority of this court. This is not what the Constitution contemplates. Rigor in determining whether controversies brought before us are justiciable avoids the counter majoritarian difficulties attributed to the judiciary.
>
> Without the existence and proper proof of actual facts, any review of the statute or its implementing rules will be theoretical and abstract. Courts are not structured to predict facts, acts or events that will still happen. Unlike the legislature, we do not determine policy. We read law only when we are convinced that there is enough proof of the real acts or events that raise conflicts of legal rights or duties. Unlike the executive, our participation comes in after the law has been implemented. Verily, we also do not determine how laws are to be implemented.
>
> The existence of a law or its implementing orders or a budget for its implementation is far from the requirement that there are acts or events where concrete rights or duties arise. The existence of rules do[es] not substitute for real facts.[19]

The existence of actual facts must be clearly shown to determine if "there has been a breach of constitutional text."[20] Without an actual case or controversy, this Court's decision is reduced to a mere advisory opinion on a legislative or executive action. This academic exercise is inconsistent with this Court's constitutional role as the final arbiter.[21] As early as in Angara v. Electoral Commission,[22] this Court has limited the power of judicial review to actual cases and controversies:

> Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very lis mota presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[23]

This requirement is grounded on the principle of separation of powers,[24] which precludes this Court from encroaching on the policy-making powers of the legislative and executive branches of government:

> Preliminarily, the whole gamut of legal concepts pertaining to the validity of legislation is predicated on the basic principle that a legislative measure is presumed to be in harmony with the Constitution. Courts invariably train their sights on this fundamental rule whenever a legislative act is under a constitutional attack, for it is the postulate of constitutional adjudication. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch — the legislature.
>
> If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance. Every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality.[25] (Citation omitted)

Consistently, this Court has refused to take cognizance of cases that do not involve actual cases and controversies.

In Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,[26] this Court declined to rule on the constitutionality of Republic Act No. 9372, or the Human Security Act of 2007, for lack of actual facts. It noted that the petitioners' claims of sporadic surveillance and red-tagging were not credible threats of prosecution. Thus, it held that a resolution of the petitions would only result in an advisory opinion, which is beyond its function. It explained:

> The Court is not unaware that a reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be sufficient facts to enable the Court to intelligently adjudicate the issues.
>
> ....
>
> Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.
>
> The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.[27] (Emphasis in the original, citations omitted)

in Republic v. Roque,[28] this Court dismissed the declaratory relief petitions that again challenged the provisions of the Human Security Act for their failure to allege "facts indicating imminent and inevitable litigation":

> Pertinently, a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. Corollary thereto, by "ripening seeds" it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead. The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.
>
> A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the Southern Hemisphere cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA 9372 against them. In other words, there was no particular, real or imminent threat to any of them.[29] (Citations omitted)

In Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment,[30] we held that there was no actual case since there were no actual facts from which we could determine the constitutionality of the assailed issuances. The petitioners merely alleged violations of workers' rights without establishing what laws were violated, and how the respondents' actions transgressed these rights.[31]

Similarly, in Falcis v. Civil Registrar General[32] this Court also declined to resolve the petition for failing to present an actual case, among other grounds. Regardless of the case's novelty, we held that we cannot exercise

judicial review if there is no conflict of rights presented:

> This Court's constitutional mandate does not include the duty to answer all of life's questions. No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable."
>
> This Court does not issue advisory opinions. We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests. If this Court were to do otherwise and jump headlong into ruling on every matter brought before us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing:
>
> ....
>
> As this Court makes "final and binding construction[s] of law[,]" our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system, bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.
>
> ....
>
> It is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned. The judiciary interprets and applies the law. "It does not formulate public policy, which is the province of the legislative and executive branches of government." Thus, it does not — by the mere existence of a law or regulation — embark on an exercise that may render laws or regulations inefficacious.
>
> Lest the exercise of its power amount to a ruling on the wisdom of the policy imposed by Congress on the subject matter of the law, the judiciary does not arrogate unto itself the rule-making prerogative by a swift determination that a rule ought not exist. There must be an actual case, "a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."[33]

In National Federation of Hog Farmers, Inc. v. Board of Investments,[34] this Court refused to draw the constitutional line separating Filipino citizens' privileges from those of foreigners, absent an actual case. We reiterated:

> [A] conflict must be justiciable for this Court to take cognizance of it. Otherwise, our decision will be nothing more than an advisory opinion on a legislative or executive action, which "is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law."[35] (Citation omitted)

In Pangilinan, this Court emphasized the need to exercise restraint in cases without justiciable controversies:

> We reiterate that courts may only rule on an actual case. This Court has no jurisdiction to rule on matters that are abstract, hypothetical, or merely potential. Petitioners' fear that the President may unilaterally withdraw from other treaties has not transpired and cannot be taken cognizance of by this Court in this case. We have the duty to determine when we should stay our hand, and refuse to rule on cases where the issues are speculative and theoretical, and consequently, not justiciable.
>
> Legislative and executive powers impel the concerned branches of government into assuming a more proactive role in our constitutional order. Judicial power, on the other hand, limits this Court into taking a passive stance. Such is the consequence of separation of powers. Until an actual case is brought before us by the proper parties at the opportune time, where the constitutional question is the very lis mota, we cannot act on an issue, no matter how much it agonizes us.[36]

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Litigants seeking judicial review from this Court must clearly prove an actual case or controversy.[37] The case cannot be merely imagined. There must be a real and substantial controversy resulting in concrete legal issues susceptible of judicial adjudication.[38]

Courts are not sanctioned to divine facts that have not yet transpired. We do not create policies. As a rule, this Court only steps in after a law has been implemented, real acts have been done, and events have occurred.[39]

I (B)
Another parameter of justiciability is legal standing or locus standi: one's "right of appearance in a court of justice on a given question."[40] This ensures that one seeks a concrete relief from the courts.[41]

To meet this requirement, a litigant must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged."[42] "Interest" means material interest, and not mere incidental interest.[43]

Provincial Bus Operators discusses the import of locus standi:

> The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:
> A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.[44] (Citations omitted)

Without legal standing, this Court cannot assure that concrete adverseness "which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[45]

II
Of course, while litigants must always strive to satisfy the requisites of judicial review, exceptional cases abound. This Court may still resolve the issue of a statute's constitutionality, despite not meeting all the requirements of justiciability, when the alleged violation is "demonstrably and urgently egregious" and the "facts constituting the violation are uncontested or established on trial."[46]

In Parcon-Song v. Parcon,[47] this Court held that a case may still be resolved when the statute being assailed is susceptible of a facial challenge, or when it involves violations of constitutional rights:

> There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it.[48]

A facial challenge involves "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may

cause others not before the court to refrain from constitutionally protected speech or activities."[49] Facial challenge or an "on its face"[50] invalidation of a law is a recognized exception to the requirement of actual case or controversy. In Estrada v. Sandiganbayan:[51]

> Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected. It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts.[52] (Emphasis supplied, citations omitted)

Though lacking an actual case, a facial challenge is allowed to prevent the possibility of the law from harming persons that did not come to court. It is distinguished from an "as-applied" challenge,[53] which only considers "extant facts affecting real litigants."[54]

Nonetheless, precisely due to its lack of an actual case, and it being a "manifestly strong medicine,"[55] a facial challenge is only used as a last resort, and only applicable to free speech cases.

Freedom of expression is one of the fundamental principles of a democratic government. It is an indispensable condition of nearly every other form of freedom, thus standing on a higher level than substantive economic freedom and other liberties.[56] Article III, Section 4 of the Constitution states:

> SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

The importance placed on free expression and its cognate rights is explained in Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Company, Inc.:[57]

> (3) The freedoms of expression and of assembly as well as the right to petition are included among the immunities reserved by the sovereign people, in the rhetorical aphorism of Justice Holmes, to protect the ideas that we abhor or hate more than the ideas we cherish; or as Socrates insinuated, not only to protect the minority who want to talk, but also to benefit the majority who refuse to listen. And as Justice Douglas cogently stresses it, the liberties of one are the liberties of all; and the liberties of one are not safe unless the liberties of all are protected.
>
> (4) The rights of free expression, free assembly and petition, are not only civil rights but also political rights essential to man's enjoyment of his life, to his happiness and to his full and complete fulfillment. Thru these freedoms the citizens can participate not merely in the periodic establishment of the government through their suffrage but also in the administration of public affairs as well as in the discipline of abusive public officers. The citizen is accorded these rights so that he can appeal to the appropriate governmental officers or agencies for redress and protection as well as for the imposition of the lawful sanctions on erring public officers and employees.
>
> ....
>
> In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority "gives these liberties the sanctity and the sanction not permitting dubious intrusions."[58] (Citations omitted)

In ABS-CBN Broadcasting Corporation v. Commission on Elections,[59] this Court stated that free expression consists in "the liberty to discuss publicly and truthfully any matter of public interest without prior restraint."[60] It explained:

> The freedom of expression is a means of assuring individual sell-fulfillment, of attaining the truth, of securing participation by the people in social and political decision-making, and of maintaining the balance between

> stability and change. It represents a profound commitment to the principle that debates on public issues should be uninhibited, robust, and wide open. It means more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, or to take refuge in the existing climate of opinion on any matter of public consequence.[61] (Citations omitted)

Free expression means more than the right to manifest approval of existing political beliefs and economic arrangements. It includes the freedom to discuss "the thought we hate, no less than the thought we agree with."[62] It is a precondition for one to enjoy other rights, such as the right to vote, freedom to peaceably assemble, and freedom of association. Free expression is essential to ensure press freedom.[63] It protects minorities against majoritarian abuses perpetrated through the framework of democratic governance while simultaneously benefitting the majority that refuses to listen.[64] It would best serve its high purpose when it "induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."[65]

Owing to the cherished status that free speech enjoys in the hierarchy of rights, any form of regulation deserves even more than a long, hard look.

One of the analytical tools to test whether a statute that regulates free speech can be invalidated is the overbreadth doctrine.[66] Under the overbreadth doctrine, a law is void when it unnecessarily sweeps broadly and invades on the area of protected freedoms to further a governmental purpose.[67] The law casts too wide a net in its looseness and imprecision such that it is susceptible to many interpretations, including sanctions on the legitimate exercise of one's fundamental rights.[68]

The overbreadth doctrine posits that any "possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes."[69] In Estrada:

> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or prescribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a stature drawn with narrow specificity."[70] (Citations omitted)

It is easy to see why overbroad laws should be struck down: They give off a "chilling effect" on free speech and expression. These fundamental rights sit at the core of our democracy, so delicate and protected, that the "threat of sanctions may deter their exercise almost as potently as the actual application of sanctions."[71]

Yet, as will be discussed later, the chilling effect cannot be invoked for mere convenience. As David v. Macapagal-Arroyo[72] teaches, a facial overbreadth challenge "is the most difficult challenge to mount successfully, since the challenger must establish that there can be no instance when the assailed law may be valid."[73]

II (A)

The overbreadth doctrine is of American origin. In the early case of Thornhill v. Alabama,[74] a former employee had been convicted for being in a picket line so close to the business establishment of his former employer. On appeal, the United States Supreme Court invalidated the statute that criminalized loitering or picketing for its overbreadth and sweeping proscription against the freedom to discuss labor disputes.

As it was in Thornhill, a facial overbreadth challenge can only be applied in examining penal laws that touch on free speech. This Court has consistently refused to apply such challenges in any other penal statutes.

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In Estrada, this Court said that the overbreadth doctrine cannot be made to apply to the Anti-Plunder Law as it does not involve free speech. The rationale of the doctrine is absent in criminal laws, which generally have an in terrorem effect—that is, because of its very existence, a facial challenge may well prevent the State "from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech."[75]

This rule was reiterated in Romualdez v. Sandiganbayan,[76] where the overbreadth doctrine was not deemed appropriate to test the validity of the Anti-Graft and Corrupt Practices Act.[77] Since the object of a penal legislation is not speech, but conduct, the specific provision may only be assailed as applied to the context of the challenger.[78]

Likewise, in Spouses Romualdez v. Commission on Elections,[79] a facial challenge was not allowed in assailing the Omnibus Election Code and the Voter's Registration Act. In a subsequent Resolution, this Court seemingly expanded the scope of a facial challenge to statutes on religious freedom and other fundamental rights.[80]

In David v. Macapagal-Arroyo,[81] the overbreadth doctrine was not applied to Presidential Proclamation No. 1017 where a plain reading of which is not directed against speech or speech-related conduct, but against lawless violence, insurrection, and rebellion, all of which are not protected by the Constitution.

In Southern Hemisphere, this Court tightened the doctrine by categorically ruling that a penal law is not susceptible to a facial challenge because by its nature, it bears an in terrorem effect, to deter socially harmful conduct. This Court found that the Human Security Act, the predecessor of the Anti-Terrorism Act, penalizes conduct, not speech.[82] The incidental element of speech in the overt act that is penalized in Human Security Act does not change what the law prohibits:

> Almost every commission of a crime entails some mincing of words on the part of the offender like in declaring to launch overt criminal acts against a victim, in haggling on the amount of ransom or conditions, or in negotiating a deceitful transaction. An analogy in one U.S. case illustrated that the fact that the prohibition on discrimination in hiring on the basis of race will require an employer to take down a sign reading "White Applicants Only" hardly means that the law should be analyzed as one regulating speech rather than conduct.
>
> Utterances not elemental but inevitably incidental to the doing of the criminal conduct alter neither the intent of the law to punish socially harmful conduct nor the essence of the whole act as conduct and not speech. This holds true a fortiori in the present case where the expression figures only as an inevitable incident of making the element of coercion perceptible.
> [I]t is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was, in part, initiated, evidenced, or carried out by means of language, either spoken, written, or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.

Certain kinds of speech have been treated as unprotected conduct, because they merely evidence a prohibited conduct. Since speech is not involved here, the Court cannot heed the call for a facial analysis.[83] (Citations omitted)

However, in Disini v. Secretary of Justice,[84] this Court allowed a pre-enforcement and facial review of the Cybercrime Prevention Act.[85] The majority partially invalidated portions of the law such as Section 5 in relation to Section 4(c)(3) on unsolicited commercial communications and Section 19 on restricting access to computer data for violating freedom of expression, among others. I added in my opinion that the pre-enforcement and facial review of a penal law is "not only allowed but essential: when the provision in question is so broad that

there is a clear and imminent threat that actually operates or it can be used as a prior restraint of speech."[86]

Here, the 37 Petitions questioned the constitutionality of several provisions of the Anti-Terrorism Act based on the alleged violations of various rights, such as the right to privacy[87] and right to travel,[88] among others. However, petitioners were unable to present concrete facts that show these supposed violations to warrant a judicial review of the challenged provisions. Ruling on the entirety of the Anti-Terrorism Act without an actual case or controversy is an encroachment on the policy-making powers of the legislature and executive.

With these in mind, I agree with the ponencia that the facial examination of the Anti-Terrorism Act should only be limited to the provisions that relate to the exercise of free expression and its cognate rights.

Parenthetically, with the decision of the majority in these cases, Disini has been revisited and accordingly modified. I concur with this direction as this has been my position ever since.

II (B)
Notably, Thornhill allowed a facial overbreadth review of a penal law even if the defendant has a personal and direct standing in assailing the validity of his conviction.[89] The United States Supreme Court said:

> The section in question must be judged upon its face.
>
> The finding against petitioner was a general one. It did not specify the testimony upon which it rested. The charges were framed in the words of the statute and so must be given a like construction. The courts below expressed no intention of narrowing the construction put upon the statute by prior state decisions. In these circumstance[s], there is no occasion to go behind the face of the statute or of the complaint for the purpose of determining whether the evidence, together with the permissible inferences to be drawn from it, could ever support a conviction founded upon different and more precise charges. "Conviction upon a charge not made would be sheer denial of due process." The State urges that petitioner may not complain of the deprivation of any rights but his own. It would not follow that on this record petitioner could not complain of the sweeping regulations here challenged.
>
> There is a further reason for testing the section on its face. Proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas. The cases when interpreted in the light of their facts indicate that the rule is not based upon any assumption that application for the license would be refused or would result in the imposition of other unlawful regulations. Rather it derives from an appreciation of the character of the evil inherent in a licensing system. The power of the licensor against which John Milton directed his assault by his "Appeal for the Liberty of Unlicensed Printing" is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure comments on matters of public concern. It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it. A like threat is inherent in a penal statute, like that in question here, which does not aim specifically at evils within the allowable area of state control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship. An accused, after arrest and conviction under such a statute, does not have to sustain the burden of demonstrating that the State could not constitutionally have written a different and specific statute covering his activities as disclosed by the charge and the evidence introduced against him. Where regulations of the liberty of free discussion are

> concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression.[90] (Emphasis supplied, citations omitted)

Adiong v. Commission on Elections[91] captured the framework in Thornhill. This Court struck down a portion of an overbroad Commission on Elections resolution prohibiting the posting of electoral materials in any place, including private vehicles. It examined the regulation's effect not only on the petitioner, who was a senatorial candidate, but also on an individual's freedom to express their preference through the use of their property and convince others to agree with them.[92]

However, the Philippine overbreadth doctrine appears to have departed from its origins in Thornhill. The doctrine has since evolved to become an exception to the locus standi requirement, as it allows individuals to appear before the court on a third-party standing. This function of the overbreadth doctrine was explained in this wise:

> Prof. Erwin Chemerinsky, a distinguished American textbook writer on Constitutional Law, explains clearly the exception of overbreadth to the rule prohibiting third-party standing in this manner:
> The third exception to the prohibition against third-party standing is termed the "overbreadth doctrine." A person generally can argue that a statute is unconstitutional as it is applied to him or her; the individual cannot argue that a statute is unconstitutional as it is applied to third parties not before the court. For example, a defendant in a criminal trial can challenge the constitutionality of the law that is the basis for the prosecution solely on the claim that the statute unconstitutionally abridges his or her constitutional rights. The overbreadth doctrine is an exception to the prohibition against third-party standing. It permits a person to challenge a statute on the ground that it violates the First Amendment (free speech) rights of third parties not before the court, even though the law is constitutional as applied to that defendant. In other words, the overbreadth doctrine provides that: "Given a case or controversy, a litigant whose own activities are unprotected may nevertheless challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court."[93] (Emphasis supplied)

Thus, as I said in Disini, the current rule on the requirements to mount a facial overbreadth challenge of a penal statute that touches on free speech:

> While as a general rule penal statutes cannot be subjected to facial attacks, a provision in a statute can be struck down as unconstitutional when there is a clear showing that there is an imminent possibility that its broad language will allow ordinary law enforcement to cause prior restraints of speech and the value of that speech is such that its absence will be socially irreparable.
>
> This, therefore, requires the following:
>
> First, the ground for the challenge of the provision in the statute is that it violates freedom of expression or any of its cognates;
>
> Second, the language in the statute is impermissibly vague;
>
> Third, the vagueness in the text of the statute in question allows for an interpretation that will allow prior restraints;
>
> Fourth, the "chilling effect" is not simply because the provision is found in a penal statute but because there can be a clear showing that there are special circumstances which show the imminence that the provision will be invoked by law enforcers;
>
> Fifth, the application of the provision in question will entail prior restraints; and
>
> Sixth, the value of the speech that will be restrained is such that its absence will be socially irreparable. This will necessarily mean balancing between the state interests protected by the regulation and the value of the

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> speech excluded from society.[94]

The overbreadth doctrine is currently designed to prevent a chilling effect, which deters persons not before the court from exercising fundamental freedoms. In invoking this doctrine, litigants may come to court on behalf of third parties who might have been cowered in silence by the overbroad scope of the law.[95] This mechanism would "remove that deterrent effect on the speech of those third parties."[96]

Nonetheless, our rule on third-party standing is clear:

> Standing jus tertii will be recognized only if it can be shown that the party suing has some substantial relation to the third party, or that the third party cannot assert his constitutional right, or that the right of the third party will be diluted unless the party in court is allowed to espouse the third party's constitutional claim.[97]

In Imbong v. Ochoa,[98] I dissented from the majority that allowed the facial review of the Responsible Parenthood and Reproductive Health Act,[99] a social legislation without the requisite standing. The litigants failed to allege the basis of the violation of the free exercise of their religion. They also failed to show how the regulation is repugnant to the right allegedly violated, and that there is no other interpretation and application of the regulation that can be had to sustain its application. All of these must be established because judicial deference and restraint are integral to the rule of law:

> It is not the Supreme Court alone that can give the full substantive meaning of the provisions of the Constitution. The rules that aid in reshaping social reality as a result of the invocation and interpretation of constitutional provisions should be the product of the interrelationship of all constitutional organs.
>
> This case presents us with an opportunity to clearly define our role. We have the power to declare the meanings of constitutional text with finality. That does not necessarily mean that we do not build on the experience of the other departments and organs of government. We are part of the constitutional design that assures that the sovereign people's will is vetted in many ways. Deference to the outcome in legislative and executive forums when there is no "actual case or controversy" is also our constitutional duty.
>
> Judicial deference implies that we accept that constitutional role that assures democratic deliberation to happen in political forums. It proceeds from an understanding that even as we labor and strive for wisdom, we will never be the repository of all of it. Our status as members of this court is likewise no blanket license to impose our individual predilections and preferences. Contrary to an esteemed colleague, our privileges do not include such judicial license.
>
> The judicial temperament is one that accepts that wisdom is better achieved by the collective interaction of the constitutional bodies. We have no unbounded license to simply act when we want to. That judicial temperament ensures the Rule of Law.[100]

In Executive Secretary v. Court of Appeals,[101] although this Court recognized the third-party standing of an association on behalf of its member recruitment agencies, it refused to grant its plea for injunction against the enforcement of the Migrant Workers and Overseas Filipinos Act,[102] specifically on the prohibition on illegal recruitment. This Court did not give credence to a mere invocation of fear of possible prosecution. There must be a showing of competent evidence of the perceived threat and irreparable injury it would suffer through the law's enforcement:

> The fear or chilling-effect of the assailed penal provisions of the law on the members of the respondent does not by itself justify prohibiting the State from enforcing them against those whom the Stale believes in good faith to be punishable under the laws:
> ... Just as the incidental "chilling effect" of such statutes does not automatically render them unconstitutional, so the chilling effect that admittedly can result from the very existence of certain laws on the statute books

> does not in itself justify prohibiting the State from carrying out the important and necessary task of enforcing these laws against socially harmful conduct that the State believes in good faith to be punishable under its laws and the Constitution.
>
> ....

The possibility that the officers and employees of the recruitment agencies, which are members of the respondent, and their relatives who are employed in the government agencies charged in the enforcement of the law, would be indicted for illegal recruitment and, if convicted sentenced to life imprisonment for large scale illegal recruitment, absent proof of irreparable injury, is not sufficient on which to base the issuance of a writ of preliminary injunction to suspend the enforcement of the penal provisions of Rep. Act No. 8042 and avert any indictments under the law. The normal course of criminal prosecutions cannot be blocked on the basis of allegations which amount to speculations about the future.

There is no allegation in the amended petition or evidence adduced by the respondent that the officers and/or employees of its members had been threatened with any indictments for violations of the penal provisions of Rep. Act No. 8042. Neither is there any allegation therein that any of its members and/or their officers and employees committed any of the acts enumerated in Section 6(a) to (m) of the law for which they could be indicted. Neither did the respondent adduce any evidence in the RTC that any or all of its members or a great number of other duly licensed and registered recruitment agencies had to stop their business operations because of fear of indictments under Sections 6 and 7 of Rep. Act No. 8042. The respondent merely speculated and surmised that licensed and registered recruitment agencies would close shop and stop business operations because of the assailed penal provisions of the law. A writ of preliminary injunction to enjoin the enforcement of penal laws cannot be based on such conjectures or speculations. The Court cannot take judicial notice that the processing of deployment papers of overseas workers have come to a virtual standstill at the POEA because of the assailed provisions of Rep. Act No. 8042. The respondent must adduce evidence to prove its allegation, and the petitioners accorded a chance to adduce controverting evidence.[103] (Citations omitted)

In Southern Hemisphere, this Court held that a reasonable certainty of a perceived threat, by itself, is not sufficient to mount a constitutional challenge. Sufficient facts must be established. Purely hypothetical or anticipatory grounds will not allow this Court to intelligently rule on the controversy:

> The Court is not unaware that a reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be sufficient facts to enable the Court to intelligently adjudicate the issues.
>
> Very recently, the US Supreme Court, in Holder v. Humanitarian Law Project, allowed the pre-enforcement review of a criminal statute, challenged on vagueness grounds, since plaintiffs faced a "credible threat of prosecution" and "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." The plaintiffs therein filed an action before a federal court to assail the constitutionality of the material support statute, 18 U.S.C. A§2339B (a) (1), proscribing the provision of material support to organizations declared by the Secretary of State as foreign terrorist organizations. They claimed that they intended to provide support for the humanitarian and political activities of two such organizations.
>
> Prevailing American jurisprudence allows an adjudication on the merits when an anticipatory petition clearly shows that the challenged prohibition forbids the conduct or activity that a petitioner seeks to do, as there would then be a justiciable controversy.
>
> Unlike the plaintiffs in Holder, however, herein petitioners have failed to show that the challenged provisions of RA 9372 forbid constitutionally protected conduct or activity that they seek to do. No demonstrable threat

> has been established, much less a real and existing one.[104] (Citations omitted)

The overbreadth doctrine is inseparable from chilling effect. It is an inherent assumption in the overbreadth doctrine that "[an individual] will understand what a statute prohibits and will accordingly refrain from that behavior, even though some of it is protected."[105]

Thus, to allow litigants on a third-party standing to raise a facial overbreadth challenge, they must demonstrably show the tendency of the law to produce a chilling effect; that "[t]he possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred[.]"[106]

Chilling effect, however, must be qualified. It is not a convenient justification to allow a litigant to invoke third-party standing. It also involves a substantive aspect, as to how an overbroad law violates the litigant's personal rights. The fact of chilling effect as an additional requirement for facial review is necessary, since even the hegemonic sectors of the society can themselves invoke, if not feign, chilling effect to protect and entrench their interests and continue to exclude marginalized interests.

We must be vigilant in the foundations of our assumptions and clarify that it is not sufficient to merely invoke chilling effect. We have to examine the interests that a litigant represents, and whether they can demonstrate why they should be allowed to raise the interests of those not before this Court.

This is especially so since the State has a legitimate interest in prosecuting crimes and deterring socially harmful conduct. Thus, litigants who challenge laws by claiming a chilling effect on their speech must clearly show how the penal law deters them from the lawful exercise of their rights. They must show that they themselves are also chilled in exercising their rights.

I highlighted in Disini how the doctrine of chilling effect has been transplanted in our jurisprudence but remained abstract in its application. In determining chilling effect, the "totality of the injurious effects of the violation to private and public interest"[107] must be carefully calibrated:

> We rule that not every violation of a law will justify straitjacketing the exercise of freedom of speech and of the press. Our laws are of different kinds and doubtless, some of them provide norms of conduct which even if violated have only an adverse effect on a person's private comfort but does not endanger national security. There are laws of great significance but their violation, by itself and without more, cannot support suppression of free speech and free press. In fine, violation of law is just a factor, a vital one to be sure, which should be weighed in adjudging whether to restrain freedom of speech and of the press. The totality of the injurious effects of the violation to private and public interest must be calibrated in light of the preferred status accorded by the Constitution and by related international covenants protecting freedom of speech and of the press.[108]

Redefining chilling effect becomes more relevant in the context of the right to dissent. Almost 30 years since Adiong introduced the chilling effect, this Court has transplanted and accepted the underlying assumption of the overbreadth doctrine without examining its basis and rationale. It has so loosely, so abstractly applied the concept of chilling effect.

This Court should not only be wary of the limits of our functions vis-a-vis those of its co-equal branches. Under a strongman leadership and a culture of violence, this Court has to be more vigilant in protecting fundamental liberties at the core of democracy. In protecting marginalized and minority groups, a scrutiny of actual facts is more compelling. This Court has to understand their interests and filter the "unempirical and outmoded, even if sacrosanct, doctrines and biases."[109]

This Court cannot apply the overbreadth analysis without the litigant showing the law's demonstrably and

urgently egregious tendency to produce a chilling effect. We cannot truly understand the interests of those we seek to protect and those who are not before this Court. Thus, I propose the following:

First, we require the litigant raising a chilling effect to establish the basis of its underlying assumption through demonstrable facts. In raising third-party standing, litigants are in a better position to inform this Court of the basis of the chilling effect on the interest that they seek to represent. Otherwise, we will be forced to guess on the extent of the chilling effect on those not before this Court, using only our personal convictions and biases, in carving out unconstitutional parts of the law. Again, this Court cannot do this without violating the constitutional order.

Second, we have to look at the interests of those who claim the existence of chilling effect. This Court has to be careful not to allow those who subscribe to the hegemony to invoke the chilling effect on the weak and marginalized who are not before us.

Finally, we should also look at the effect of the assailed statute on the litigant and examine their personal interest in the controversy. As discussed, the origins of the overbreadth doctrine in Thornhill do not preclude this Court from looking at the litigant's personal interests. After all, due process dictates that one has a right not to be governed by invalid laws. The injury-in-fact of the challenger can strengthen the claims of chilling effect on the exercise of rights of third parties. This is a concession. In taking up the cudgels for those who cannot assail the regulation themselves, the litigant already shows a low propensity of being chilled in the exercise of one's rights.

Here, petitioners are members of civil society with diverse interests and from different backgrounds. They include former justices of this Court, incumbent legislators, journalists, lawyers, teachers, civil society organizations, influencers, student leaders, members of different religious communities, and individuals from marginalized sectors, such as women, youth, and indigenous peoples. Almost all 37 Petitions assail the constitutionality of the Anti-Terrorism Act, which, they claim, tramples on their public rights.[110]

Petitioners were able to demonstrably show the imminence of the threat in the Anti-Terrorism Act's enforcement against the exercise of their civil and political rights.

The following narratives of petitioners are relevant. They do not merely invoke the existence of chilling effect. They acknowledge, through their experiences, the imminence of the threat that the assailed law poses. These inconveniences may not be as readily felt by an ordinary citizen who, in the face of threats, may simply refrain from exercising their civil and political rights.

Before the Anti-Terrorism Act was enacted, an information for conspiracy to commit sedition was filed against petitioner Fr. Albert Alejo, who has been critical of the government.[111] He was not alone in this, as other petitioners were also subjected to relentless red-tagging sponsored by the government: members of the Anti-Terrorism Council, officials of the National Task Force to End Local Communist Armed Conflict, other state agents, and no less than the President himself.[112]

Subsequent developments after the filing of the Petitions demonstrate the imminent threats that petitioners will be subjected to under the regime of the Anti-Terrorism Act. The bank accounts of petitioner Rural Missionaries of the Philippines[113] had allegedly been frozen.[114] by the Anti-Money Laundering Council for its supposed involvement in financing terrorism. The same is true for petitioner Gabriela, Inc.,[115] which has allegedly been the focus of a financial investigator initiated by the national security adviser in relation to its supposed terrorism financing.[116] For petitioner Rey Claro C. Casambre, he already suffered direct injury after being designated by the Anti-Terrorism Council as a terrorist.[117] Further, petitioners Carlos Isagani T. Zarate,[118] Renato Reyes, Jr.,[119] Broderick S. Pabillo,[120] Gabriela, Inc., et al.,[121] Beverly Longid,[122] Ramon Guillermo, et

al.,[123] and Philippine Misereor Partnership, Inc.,[124] alleged that they have been labeled as "terrorists" in various official government documents.

All these petitioners validly raise a facial overbreadth challenge of the provisions of the Anti-Terrorism Act.

III

This Court is tasked with harmonizing the people's fundamental freedom of expression vis-a-vis the State's constitutional duty to preserve national security and protect life, liberty, and property from terrorism.[125]

The right to dissent and protest flows from free expression. In the face of a State policy that threatens the people's right to express their opinions, whether it is against the hegemony, this Court has the duty to protect this fundamental freedom and its cognate rights.[126]

Yet, as with all other freedoms, free expression and its corollary right to dissent are not absolute.[127] They "may be regulated to some extent to serve important public interests, [with] some forms of speech not being protected."[128] Even as these freedoms are integral to a free society, they must be limited when they go beyond mere expression of views and become acts that threaten society. This distinction is basic to understanding the democratic process.[129]

Thus, regulations on free expression can be constitutionally permissible. In examining such regulation, it is important to distinguish whether it is content-based and content-neutral.

Content-neutral regulation is "merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well-defined standards," regardless of the content of the speech.[130]

Meanwhile, a regulation is content-based if it restricts the speech or expression's subject matter.[131] It constitutes prior restraint, which curtails speech or expression in advance of its actual utterance, dissemination, or publication.[132] A content-based regulation bears a heavy presumption of unconstitutionality,[133] and to be valid, any form of prior restraint must be narrowly tailored and least restrictive to achieve a compelling State interest.[134]

Prior restraint tends to discourage the people to voice out their opinions, especially views that have social and political value. Thus, to uphold the validity of the regulation that imposes it, the State must prove that its interest outweighs the people's freedom of expression.[135] The governmental action will be upheld only if the speech sought to be restrained presents a clear and present danger of bringing a substantive evil that the State must prevent. The danger must be characterized as grave and imminent.

This Court generally exercises judicial restraint on issues of constitutionality, but a regulation that allegedly poses a threat to fundamental rights will warrant the highest level of scrutiny. In Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas:[136]

> Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.
>
> But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict. A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.[137] (Emphasis

> supplied, citations omitted)

As explained in Samahan ng mga Progresibong Kabataan v. Quezon City,[138] this Court has established the three tests of judicial scrutiny in reviewing assailed statutes:

> Philippine jurisprudence has developed three (3) tests of judicial scrutiny to determine the reasonableness of classifications. The strict scrutiny test applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the rational basis test applies to all other subjects not covered by the first two tests.[139] (Emphasis in original, citations omitted)

Here, the Anti-Terrorism Act contains content-based regulations that penalize one's exercise of freedom of expression when it goes against the government. Some provisions tend to punish future actions or events based on preconceived notions, instead of punishing based on an act that has concretely transpired. They would effectively discourage protests, assemblies, and public gatherings, hindering public dialogue and interfering with the democratic rights of speech and expression.

Seeing as what is at stake here are fundamental freedoms, the strict scrutiny test applies. And, to withstand this test, it must be shown that the Anti-Terrorism Act advances compelling State interest and that it is narrowly tailored for that purpose.[140]

Even in the hierarchy of rights, free expression rests on a higher plane. Prior restraint on protected speech will only be valid if they pass the governing jurisprudential test. Two tests in determining the validity of restrictions in the exercise of free speech have been recognized:

> These are the 'clear and present danger' rule and the 'dangerous tendency' rule. The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be 'extremely serious and the degree of imminence extremely high' before the utterance can be punished. The danger to be guarded against is the 'substantive evil' sought to be prevented...
>
> ....
>
> The 'dangerous tendency' rule, on the other hand, ... may be epitomized as follows: If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent.[141] (Citations omitted)

This Court had previously applied either test to resolve free speech challenges. Recently, however, we have generally adhered to the clear and present danger test,[142] under which speech may be restrained when there is "substantial danger that the speech will likely lead to an evil the government has a right to prevent."[143]

In the early case of Cabansag v. Fernandez,[144] this Court described the clear and present danger test:

> The question in every ease, according to Justice Holmes, is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that congress has a right to prevent. It is a question of proximity and degree.[145] (Citations omitted)

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As the test itself words it, the danger must not only be clear but also present. By clear, there must be "a causal connection with the danger of the substantive evil arising from utterance questioned." Meanwhile, "present" indicates the time element—imminent, immediate, not just possible "but very likely inevitable."[146]

The United States Supreme Court, in Brandenburg v. Ohio,[147] refined the applicability of the clear and present danger rule. There, the Ohio Supreme Court had convicted a leader of the infamous Ku Klux Klan under the Ohio Criminal Syndicalism Statute for, among others, advocating terrorism and violence to accomplish industrial or political reform and for "voluntarily assembl[ing]" to advocate for "criminal syndicalism."[148]

On appeal, the United States Supreme Court overturned the judgment, holding that "constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[149] It found that advocating illegal actions is not punishable unless such advocacy is aimed at "inciting or producing imminent lawless action and is likely to produce such action."[150]

In Iglesia ni Cristo v. Court of Appeals,[151] this Court traced the development of the test in the United States:

> It was Mr. Justice Holmes who formulated the test in Schenck v. US, as follows: "... the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." ... In Dennis [v. US], the components of the test were altered as the High Court adopted Judge Learned Hand's formulation that "... in each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." The imminence requirement of the test was thus diminished and to that extent, the protection of the rule was weakened. In 1969, however, the strength of the test was reinstated in Brandenburg v. Ohio, when the High Court restored in the test the imminence requirement, and even added an intent requirement which according to a noted commentator ensured that only speech directed at inciting lawlessness could he punished. Presently in the United States, the clear and present danger test is not applied to protect low value speeches such as obscene speech, commercial speech and defamation.[152] (Emphasis supplied, citations omitted)

While the Brandenburg test is not commonly utilized in this jurisdiction, it is a dominant test used for free speech cases in the US. Its adoption in the case at hand may prove a useful as it "seeks to give special protection to politically relevant speech."[153] The Brandenburg test has been applied to "speech that advocates dangerous ideas" and to "speech that provokes a hostile audience reaction[.]"[154]

In applying the Brandenburg test, a speech or expression is not constitutionally protected if the following are present: (1) directed to inciting or producing imminent lawless action; and (2) is likely to incite or produce such action.

The ponencia integrated the Brandenburg test in determining whether the assailed provisions of the Anti-Terrorism Act are unconstitutional or are a valid exercise of police power.[155] By stating that free speech does not permit the State to proscribe advocacy of the use of force—except where such advocacy is aimed at inciting, and is likely to incite or produce, imminent lawless action[156]—it adapted an imminence and an intent requirement.[157]

For now, I agree.

Considering that some of the assailed provisions may effectively proscribe speech as an incident to its goal of combatting terrorism, and insofar as these cases concern speech that purportedly advocates imminent lawless action and may endanger national security, I submit that the Brandenburg test is the appropriate test here.

IV

Out of the myriad of issues raised in the Petitions, this Court is constrained to rule on provisions of the Anti-Terrorism Act claimed to have violated the exercise of free expression and its cognate rights. These include the following provisions where the "chilling effect" on speech can be palpable, namely: (1) the definition of terrorism under Section 4; (2) proposal to commit terrorism under Section 8; (3) inciting to commit terrorism under Section 9; (4) recruitment to and membership in a terrorist organization under Section 10; (5) designation under Section 25; (6) proscription under Section 26; and (7) the power to issue a written authorization under Section 29. I will discuss these provisions in this order.

IV (A)

I agree with the ponencia that Section 4, which defines terrorism, is only partly unconstitutional. It states:

> SECTION 4. Terrorism. — Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:
>
> (a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;
>
> (b) Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property;
>
> (c) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;
>
> (d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and
>
> (e) Release of dangerous substances, or causing fire, floods or explosions
>
> when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code": Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

The ponencia deconstructs this provision into two parts.

The main part identifies the overt acts deemed as terrorism (actus reus), the intent of the overt acts (mens rea), and the imposable penalty.[158] These are the enumerated acts in Section 4(a) to (e), along with the first part of the last paragraph.

The second part is the proviso, which safeguards the exercise of civil and political rights, such as advocacy, protest, dissent, stoppage of work, or industrial or mass action, from being lumped together with the defined acts of terrorism—albeit with a catch. The proviso contains what the ponencia refers to as the "Not Intended Clause."

This "Not Intended Clause" qualifies the proviso—the exercise of civil and political rights is excluded from the scope of the law only if it is "not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."[159]

For clarity, I adopt the ponencia's deconstruction of Section 4.

For petitioners, the main part of Section 4 grants law enforcers the widest discretion by intentionally making the definition ambiguous[160] and failing to provide parameters in its operation.[161] They add that the proviso makes mere advocacy, protest, dissent, and other similar exercises punishable even without an overt act so long as there is a supposed criminal intent.[162]

Petitioners submit that the imprecision of Section 4's language allows enforcers to decide whether an act was committed with intent to cause death or serious bodily injury regardless of the outcome or context. They claim that enforcers are effectively given free rein to pursue their personal predilections and charge people as terrorists.[163] Accordingly, they aver that Section 4 disingenuously prohibits any form of dissent, chilling protected speech or assemblies.[164] They claim that people will be restrained from organizing mass actions and protests intended to criticize and demand accountability from the government given the threat that certain expressions might be considered serious risk to public safety.[165]

Respondents counter that merely alleging violations of fundamental rights and barely invoking a chilling effect do not automatically trigger this Court's exercise of judicial review.[166] They add that the Anti-Terrorism Act is a legitimate exercise of police power, implying a limitation on the Bill of Rights.[167] They posit that the law complies with the strict scrutiny test because the State has a compelling interest in protecting its citizens from terrorism,[168] while adopting the least restrictive means in its implementation.[169]

Respondents add that the law only regulates conduct and not speech.[170] On this note, they argue that making a conduct illegal has never been deemed an abridgment of freedom of speech or the press merely because the conduct was in part carried out by means of spoken, written, or printed language.[171] They claim that when an act is committed through written or oral communication and intended to cause imminent lawless action or endanger the national security with a clear intent to incite people to support or commit terrorism, what is being penalized is the conduct, not the incidental speech.

The ponencia upheld the main part of Section 4,[172] but struck down the "Not Intended Clause" for being vague and overbroad, as well as for failing the strict scrutiny test, I concur in this result, but I differ in the modes of inquiry through which the provision should be analyzed.

In upholding the validity of the main part of Section 4, the ponencia held that the first and second components of Section 4 provide a manifest link as to how or when the crime of terrorism is committed. It rejected any perceived vagueness in the definition of terrorism as a crime,[173] and held that the components of the main part of Section 4, taken together, create a definition of terrorism that is "general enough to adequately address the ever-evolving forms of terrorism, but neither too vague nor too broad as to violate due process or encroach upon the freedom of speech and expression and other fundamental liberties."[174]

To begin with, the main part of Section 4 does not even regulate speech, but conduct. Southern Hemisphere instructs that while a law punishes utterances incidental to a criminal conduct, this would not alter its intent to punish socially harmful conduct:

> Utterances not elemental but inevitably incidental to the doing of the criminal conduct alter neither the intent of the law to punish socially harmful conduct nor the essence of the whole act as conduct and not speech. This holds true a fortiori in the present case where the expression figures only as an inevitable incident of making the element of coercion perceptible.
> [I]t is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was, in part, initiated, evidenced, or carried out by means

> of language, either spoken, written, or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.

Certain kinds of speech have been treated as unprotected conduct, because they merely evidence a prohibited conduct. Since speech is not involved here, the Court cannot heed the call for a facial analysis.[175] (Citations omitted)

I thus concur with the ponencia that the main part cannot be assailed through a facial challenge:

> [T]he main part of Section 4 chiefly pertains to conduct. It is plain and evident from the language used therein that the enumeration refers to punishable acts, or those pertaining to bodily movements that tend to produce an effect in the external world, and not speech. The acts constitutive of the crime of terrorism under paragraphs (a) to (c) are clearly forms of conduct unrelated to speech, in contradistinction with the enumeration in the proviso, which are forms of speech or expression, or are manifestations thereof.[176]

Moreover, the main part of Section 4 does not suffer from any ambiguity. When the law is clear, free from doubt or ambiguity, there is no room for construction or interpretation. There can only be application, the words given a literal meaning. Verba legis non est recedendum. From the words of a statute, there should be no departure.[177]

It is easy to see why Congress cannot be too specific in its scope and definition of what it seeks to regulate. Flexibility in language is necessary for laws to withstand the test of time. In crafting laws, Congress is not required to define each word or to restrain its policy within the language of a law. Interpretating laws is part of judicial power. Thus, in Estrada, this Court held that it is not the inherent ambiguity of words that invalidates a statute:

> A statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them; much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act.[178]

The main part of Section 4 likewise passes the strict scrutiny test. It carries with it a compelling State interest, and the means to achieve that purpose have been narrowly tailored.

Indeed, the increasing complexity of terrorism is a reality that Congress has to address. It is an existential threat to the country and the community of nations. It is a matter of self-preservation that the State need not wait for terrorist acts to be consummated before acting on this existential threat. The general wording of the main part of Section 4 is valid to give our law enforcers and intelligence agencies the flexibility and proper tools in detection, dispersion, and disruption of terrorist attacks.

However, the same cannot be said for the "Not Intended Clause" of Section 4. Its plain reading shows that Congress does not only regulate conduct, but also speech and other protected forms of expression.

The "Not Intended Clause" qualifies that exercises of civil and political rights are excluded from the coverage of terrorism only if they are "not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."[179] Otherwise, the exercise of such rights will be deemed a terrorist act.

Thus, Congress imposed prior restraint on the exercise of one's civil and political rights. It requires one to prove the absence of intent to cause death or serious physical harm to a person, to endanger a person's life, or to create a

serious risk to public safety.

Respondents justify the intrusion by highlighting the necessity of protecting the nation against terrorism. They explain that it has "a real and direct impact on human rights, with devastating consequences on the enjoyment of the right to life, liberty and physical integrity of victims."[180] They add that there are sufficient safeguards found in the operation of the Anti-Terrorism Council and the other remedies that can prevent possible abuse in its implementation.[181]

They are clearly mistaken. As the ponencia correctly characterized, respondents want an arrest-now-explain-later scheme.[182] In adding the "Not Intended Clause," Congress did not merely create a general in terrorem effect. It guaranteed prior restraint on the exercise of "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights[.]" [183]

The lack of determinable standards to guide law enforcers in determining intent can easily be interpreted in a manner that infringes on freedom of expression. A person legitimately participating in a mass action can easily be arrested based on the law enforcer's subjective determination of their intent. Since intent can only be inferred from overt acts, they will only have to look at the manner in which the person exercises their freedom of expression. Any exercise of these civil and political rights will give any law enforcer probable cause to arrest those participating in these activities.

Prior restraint is more apparent when Section 4 is read with the other provisions of the Anti-Terrorism Act. Aside from having to justify the legitimate exercise of their fundamental rights, a person arrested based on suspicion is already exposed to the consequences of the law, such as surveillance,[184] the effects of designation[185] and proscription,[186] arrest and detention,[187] restriction on the right to travel,[188] and investigation, inquiry, examination, and possible freezing of bank deposits.[189] The provision is clearly in the nature of prior restraint, and respondents have the burden to overcome the presumption of its unconstitutionality. I agree with the ponencia that respondents failed in this regard.

IV (B)
The chilling effect of the "Not Intended Clause" on the exercise of fundamental rights is likewise undeniable.

In the overbroad language of the clause, terrorist acts now cover all expressions of civil and political rights. It has unnecessarily expanded a law enforcer's reach into protected freedoms. This clause gives law enforcers the unbridled license to construe these exercises of civil and political rights as acts of terrorism punishable under the law. In adding the clause, the safeguard provision has become impermissibly vague.

I agree with the ponencia's observation that the "Not Intended Clause" makes an ordinary person doubt if, in speaking out against the government, they may be branded as a terrorist and suffer the consequences of the law.[190]

Dissent is crucial in any democracy. If our country is to grow in a holistic manner, where economic and civil rights of every citizen are protected, dissident opinions must be permitted and encouraged. It is only through meaningful dialogue that our society can arrive at better ways of governance.[191] It is in our society's interest that citizens are able to demand a full discussion of public affairs.[192] It is in this context that this Court should guard against any curtailment of the people's right to participate in the free trade of ideas,[193] regardless of persuasion.

A person who does not break the law or encourage strife has a right "to differ from every other citizen and those in power and propagate what [they believe in]."[194] One theory behind this is that nonviolent manifestations of dissent may reduce the likelihood of violence. In Diocese of Bacolod v. Commission on Elections:[195]

> "[A] dam about to burst ... resulting in the 'banking up of a menacing flood of sullen anger behind the walls of restriction'" has been used to describe the effect of repressing nonviolent outlets. In order to avoid this situation and prevent people from resorting to violence, there is a need for peaceful methods in making passionate dissent. This includes "free expression and political participation" in that they can "vote for candidates who share their views, petition their legislatures to [make or] change laws, ... distribute literature alerting other citizens of their concerns[,]" and conduct peaceful rallies and other similar acts. Free speech must, thus, be protected as a peaceful means of achieving one's goal, considering the possibility that repression of nonviolent dissent may spill over to violent means just to drive a point.[196]

Dissent is not only essential to the full development of a person. It is the cornerstone of a democratic society.[197] After all, the majority may sometimes follow the wrong course. As Jean-Jacques Rosseau stated:

> [T]he general will is always in the right and always works for the public good; but it doesn't follow that the people's deliberations are always equally correct. Our will is always for our own good, but we don't always see what it is; the populace is never corrupted, but it is often deceived, and then—but only then—it seems to will something bad.[198]

This is relevant in any democratic system, which adheres to the rule of majority. While this system acknowledges every citizen's right to participate in the electoral process and in the ways our government is being run, it heavily favors conformity and discourages any contrary position.

In this context, majoritarianism is antithetical to—or at the very least preventive of the growth of—our democratic system[199] and the promise of due process and equality accorded by the law to all persons similarly situated.[200]

To equalize this unjust situation and advance social justice, the country sorely needs two things: first, a unified challenge to the domination of the rich and powerful; and second, a move toward empowering the marginalized sectors to exercise their right to express their opinions that may be contrary to the status quo. Among the vehicles through which these systemic reforms may be actualized is through safeguarding every citizen's exercise of their right to expression with political consequences, including dissents.[201]

Two scholars said it best: "If everybody follows the well-trodden path, no new paths will be created ... and the horizons of the mind will not expand";[202] "if our cities are to become habitable, our schools educational, our economy workable, and our goals for peace achievable, [the best minds] need to be free to let their thoughts carry them to strange places and strange ideas."[203]

Dissent should not be stifled. On the contrary, all forms of speech and expression that do not violate the law or encourage strife should be encouraged. It is unfortunate that, due to the realities of our imperfect democratic and majoritarian system, not everyone is able to participate and fully and freely exercise their political and civil rights.[204]

Protecting dissent is particularly relevant here, because the "Not Intended Clause" tends to penalize conduct on the basis of a perceived intention. Advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights that are perceived to be intended to cause death or serious physical harm to a person, endanger a person's life, or create a serious risk to public safety will legally be considered as terrorism.

Contrary to respondents' argument, the "Not Intended Clause" penalizes the exercise of speech and expression, particularly those that go against the interests of the government. Through this provision, law enforcers have unbridled authority to curtail the expression of civil and political rights. It is purely dependent on the subjective determination of the law enforcer. This intrudes upon a person's legitimate exercise of protected freedoms. The

danger in implementing the "Not Intended Clause" is that, even in the absence of actual overt acts, law enforcers are given unbridled discretion to categorize speech and expression that appear to be "intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."

As the Anti-Terrorism Act currently stands, law enforcers may conduct surveillance of suspects and intercept and record communications.[205] Depending on the outcome of this preliminary surveillance, an overeager law enforcer may readily and inaccurately conclude that a person, in the mere exercise of their right to free speech and expression, intended to cause death or serious physical harm to a person, endanger a person's life, or create a serious risk to public safety. Any legitimate dissent may already be perceived as amounting to terrorism. Effectively, a person is left with no safeguard.

Moreover, the "Not Intended Clause" ignores the inherent purpose of protests, mass demonstrations, and other forms of collective action. The minority and the marginalized engage in these exercises essentially to disrupt the status quo and cause some inconvenience to the ruling class to make their voices heard and their grievances addressed. These are legitimate exercises of the rights to expression and to peaceably assemble and petition the government for redress of grievances.

Mass demonstrations carry the collective struggles and realities of the poor and marginalized. In their plea for change, they may utter caustic words and speeches to unify their cause and empower their group. The possibility that "speech is likely to result in some violence or in destruction of property" is not enough to justify its suppression.[206]

It is only when such gathering stimulates a danger of such "character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest" that it loses its protection.[207] Absent such element, law enforcers are required to impose maximum tolerance during these events.[208]

However, as the ponencia noted, the "Not Intended Clause" does not have sufficient parameters despite its intrusion on fundamental freedoms.[209] Instead, law enforcers are given wide latitude, resorting only to their subjective interpretation of a person's state of mind while in the exercise of a constitutionally protected expression. As the ponencia pointed out, the exercise of these protected freedoms becomes a matter of defense, where the person arrested will have the burden of justifying their conduct as legitimate, instead of the law enforcer satisfying the requirements of probable cause before arresting a person without a warrant.

As former Associate Justice Consuelo Ynares-Santiago stated in her concurrence in David:

> [I]t cannot be gainsaid that government action to stifle constitutional liberties guaranteed under the Bill of Rights cannot be preemptive in meeting any and all perceived or potential threats to the life of the nation. Such threats must be actual, or at least gravely imminent, to warrant government to take proper action. To allow government to preempt the happening of any event would be akin to "putting the cart before the horse," in a manner of speaking. State action is proper only if there is a clear and present danger of a substantive evil which the state has a right to prevent. We should bear in mind that in a democracy, constitutional liberties must always be accorded supreme importance in the conduct of daily life. At the heart of these liberties lies freedom of speech and thought — not merely in the propagation of ideas we love, but more importantly, in the advocacy of ideas we may oftentimes loathe. As succinctly articulated by Justice Louis D. Brandeis:
> Fear of serious injury cannot alone justify suppression of free speech and assembly.... It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one.... But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy

> and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.[210]

Accordingly, the mere existence of the "Not Intended Clause" unnecessarily sweeps broadly and invades into the sacred ground of protected freedoms as it grants an oversimplified justification to law enforcers to suppress free speech, even in the absence of overt acts violative of the law. This preempts the legitimate exercise of the freedoms of speech and expression and effectively creates a prior restraint that chills the exercise of freedoms of expression and assembly. No other interpretation can save the "Not Intended Clause." On its face, it is repugnant to the guarantees of freedom of expression and its cognate rights.

IV (C)
Aside from Section 4, petitioners also assail other penal provisions that encroach on free speech and its cognate rights.

These provisions, dealing as they are with possible violations of fundamental rights, should be examined under the strict scrutiny test.

The first requirement, that there be a compelling State interest, is readily met by these assailed provisions. Surely, the preservation of national security is a purpose compelling enough to allow certain restrictions on particular privileges. However, the same cannot be said for the second requirement of narrowly tailored means.

Whether the penal provisions are the least restrictive means to effect the invoked State interest remains to be seen.[211] Such determination will vary per provision: Sections 8, 9, 10, 25, 26, and 29; accordingly, these penal provisions will be discussed below in succession.

The paramount importance of the right to dissent in a democratic society makes it necessary to ensure that government actions are founded on clear standards. Given that the ability to protest and publicly gather to express one's opinions are avenues to put forward political, social, or economic change, this Court must protect and uphold them.[212] The compelling State interest being protected in the Anti-Terrorism Act does not give unbridled authority to law enforcers to initiate criminal proceedings without satisfying the basic principles of law and due process.

The legislative intent found in Section 2 of the Anti-Terrorism Act clearly states that in defending national security and condemning terrorism, "the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution." It reads:

> SECTION 2. Declaration of Policy. — It is declared a policy of the State to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations.
>
> In the implementation of the policy stated above, the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution.
>
> The State recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military, and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. Such measures shall include conflict management and post-conflict peacebuilding, addressing the roots of conflict by building state capacity and promoting equitable economic development.

> Nothing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government. It is to be understood, however, that the exercise of the constitutionally recognized powers of the executive department of the government shall not prejudice respect for human rights which shall be absolute and protected at all times.[213] (Emphasis supplied)

The law was not intended to trample the people's fundamental rights, but only to ensure national security and protect the country from the real threat of terrorism. The first paragraph of Section 2 lays down the State policy to protect the country and its people from terrorism and its inimical effects to national security. This goes hand in hand with the State's commitment to uphold basic rights.

In implementing the law, law enforcers must find guidance from Section 2. Anything done in the context of the Anti-Terrorism Act must be based on the law; acts performed outside its intent, though disguised as one done under its authority, must be struck down as illegal.

Thus, in carrying out Sections 8, 9, 10, 25, 26, and 29 of the Anti-Terrorism Act, authorities must "uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution."[214] Accordingly, law enforcers may only apprehend a person when it is clear from their overt acts that they suggested or tried to convince a third person to commit one of the punishable acts the law seeks to prevent.

By overt acts, there must be a clear manifestation that the acts committed were made with the intent to propose or incite terrorism. Actus non facit reum, nisi mens sit rea—a crime cannot be committed if the actor's mind is without any criminal intent.[215] Without the criminal mind, there is no crime.[216] It is with the presence of both the actus reus or the criminal act, and mens rea or criminal intent, that a crime is born.[217] Accordingly, the mere act, without the intent to incite or produce lawless action, will not suffice. Rait v. People described the interplay between the two:[218]

> Overt or external act has been defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.[219] (Emphasis supplied, citations omitted)

Sections 8 and 9 of the Anti-Terrorism Act criminalize the proposal to commit or inciting to commit terrorism. They state:

> SECTION 8. Proposal to Commit Terrorism. — Any person who proposes to commit terrorism as defined in Section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years.
>
> SECTION 9. Inciting to Commit Terrorism. — Any person who, without taking any direct part in the commission of terrorism, shall incite others to the execution of any of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end, shall suffer the penalty of imprisonment of twelve (12) years.

These provisions prohibit speech or expression that aims to produce one of the enumerated acts of terrorism under Section 4, by either proposing such act or inciting one to participate in it. Under the Brandenburg test, a speech to be validly regulated must: (1) tend to incite or produce imminent lawless action; and (2) is likely to produce such action.[220] The lawless actions must be imminent or immediate; if it is for a future indefinite time, the speech will not be prohibited.[221]

In light of this standard, the law should not punish those that merely advocate a belief distinct or contrary to that of the government. A speech so offensive or coercive remains to be protected speech unless it can be identified

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that the intent behind it is truly to incite or produce one of the punishable acts of terrorism.[222] The determination of intent is made more significant by the nature of the acts of terrorism. They would seem like mundane tasks but are, in truth, preparatory acts aimed at setting in motion a larger terrorist attack. If it is made clear from one's actions that the intention is to cause another to commit an act that spreads widespread and extraordinary fear and panic,[223] then the actor must be apprehended.

It is not enough to penalize mere dissent against the government, no matter how impassioned. Instead, one's overt acts must clearly establish the intent to commence the criminal act, which must be discernible from the acts themselves.[224] In Rimando v. People,[225] this Court said that through an overt act, the act is removed from the realm of the equivocal and can be determined as an action committed to commence a criminal act. It held:

> The raison d'etre for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made. The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.[226] (Citation omitted)

On the other hand, when actions are vague, investigating past acts and background is needed to determine the actor's true intent. If one has an established criminal record or a record of participating in terrorist activities, it is but logical to associate their actions with such background and be more suspicious of their actions and the intentions behind them. The intent accompanying observable physical acts will determine whether the person's objective is merely to voice out opinions or to evoke emotion and a call of action to bear arms. Ultimately, a person cannot be apprehended under the Anti-Terrorism Act unless there is clear basis for their arrest.

Similarly, Section 10, which punishes the recruitment to and membership in a terrorist organization, must again be implemented in deference to the intent of the law as provided in Section 2, paragraph 2. Section 10 states:

> SECTION 10. Recruitment to and Membership in a Terrorist Organization. — Any person who shall recruit another to participate in, join, commit or support terrorism or a terrorist individual or any terrorist organization, association or group of persons proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.
>
> The same penalty shall be imposed on any person who organizes or facilitates the travel of individuals to a state other than their state of residence or nationality for the purpose of recruitment which may be committed through any of the following means:
>
> (a)
>
> Recruiting another person to serve in any capacity in or with an armed force in a foreign state, whether the armed force forms part of the armed forces of the government of that foreign state or otherwise;
>
> (b)
>
> Publishing an advertisement or propaganda for the purpose of recruiting persons to serve in any capacity in or with such an armed force;

(c)

Publishing an advertisement or propaganda containing any information relating to the place at which or the manner in which persons may make applications to serve or obtain information relating to service in any capacity in or with such armed force or relating to the manner in which persons may travel to a foreign state for the purpose of serving in any capacity in or with such armed force; or

(d)

Performing any other act with the intention of facilitating or promoting the recruitment of persons to serve in any capacity in or with such armed force.

Any person who shall voluntarily and knowingly join any organization, association or group of persons knowing that such organization, association or group of persons is proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of imprisonment of twelve (12) years.

Sections 8 and 9 only touch on the fundamental right of expression, but A Section 10 involves a right so intertwined with it: the fundamental right to peaceably assemble.[227] Together with the freedoms of speech, of expression, and of the press, this right enjoys primacy for being the very basis of a democratic society.[228]

However, like any right, it may be limited to prevent a "danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest."[229]

Section 10 penalizes a person for committing any of these three acts: (1) recruiting another to an organization proscribed under Section 26, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism; (2) organizing or facilitating the travel of individuals to a state other than their state of residence or nationality for the purpose of recruitment; and (3) voluntarily and knowingly joining an organization while knowing that the organization has been proscribed or designated.

Petitioners assail Section 10 for allegedly being vague and overbroad, and for tending to punish mere membership in an organization.

The ponencia only focused on the third paragraph, subjecting it to a facial challenge.[230] While I agree in the finding that the third paragraph—the prohibition against voluntarily and knowingly joining terrorist organizations—is a permissible restriction on the freedom of association,[231] this is not without exception, as will be discussed in the analysis under Sections 25 and 26. Moreover, I find it necessary to discuss the first two paragraphs of Section 10 as well.

Given that the right to peaceably assemble is a fundamental right, the same tests previously used will also apply here: the overbreadth doctrine and the strict scrutiny test.

In using the word "support" to regulate the freedom to peaceably assemble, Section 10 unnecessarily sweeps broadly and invades protected freedoms.[232] The act of supporting terrorism or a terrorist is not defined, making it susceptible to arbitrary execution by the authorities. More, the phrase "organized for the purpose of engaging in terrorism" is open to interpretation, which may lead to arbitrary arrests. Like Sections 8 and 9, the law enforcers must ensure that Section 10's implementation is within the bounds of basic human rights. Accordingly, for one to be apprehended, they must have done an overt act displaying their intent to support a terrorist or terrorist organization. The conclusion that a group is organized for the purpose of engaging in terrorism must be clear from these overt acts. An arrest based on mere suspicion or perception cannot be tolerated.

Applying the strict scrutiny test will show that while the first requirement of a compelling State interest is

fulfilled, the second requirement—that the effects of the provision are narrowly tailored for that purpose—has not been met. As shown above, the overbroad terms used leave the provision to more than one interpretation.

Thus, while Sections 8, 9 and 10 may survive the current constitutional challenge, in implementing it, the State must uphold basic rights and not overstep its authority. In my view, both border strongly upon a case for unconstitutionality in the proper case but not yet demonstrably so in this facial challenges as argued.

Section 10 is closely tied with Sections 25 and 26, which respectively provide rules on the designation and proscription of terrorist individuals or groups. Section 25 states:

> SECTION 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. — Pursuant to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, group of persons, organizations, or associations designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group.
>
> Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373.
>
> The ATC may designate an individual, group of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, groups of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act.
>
> The assets of the designated individual, groups of persons, organization or association above-mentioned shall be subject to the authority of the Anti-Money Laundering Council (AMLC) to freeze pursuant to Section 11 of Republic Act No. 10168.
>
> The designation shall be without prejudice to the proscription of terrorist organizations, associations, or groups of persons under Section 26 of this Act.

Section 25 provides three modes of designating terrorist individuals, groups of persons, organizations, or associations.

The first mode is through the automatic adoption by the Anti-Terrorism Council of the designation in the United Nations Security Council Consolidated List. The second is through the Anti-Terrorism Council's adoption of requests for designations made by other jurisdictions or supranational jurisdictions should the criteria under United Nations Security Council Resolution No. 1373 be met. The third is through designation by the Anti-Terrorism Council itself, upon its finding of probable cause that one commits, or is attempting, or conspires to commit the acts defined and penalized under Sections 4 to 12 of the Anti-Terrorism Act.

The ponencia declared only the second and third modes to be unconstitutional, but I go beyond it: all three modes should have been declared unconstitutional.

Designation carries substantial consequences: surveillance, bank inquiry, investigation, and freeze orders—all of which will be imposed before the entity tagged as terrorist could even exercise their freedom of expression and its cognate rights. This is tantamount to prior restraint to expression, including dissent. By its nature, dissent is already excluded from the hegemony of the majority. Subjecting it to prior restraint will only further silence those in the margins.

Thus, applying the strict scrutiny test and the overbreadth doctrine,[233] all three modes of designation must fail.

As identified in Section 2, the purpose of the Anti-Terrorism Act is "to protect life, liberty, and property from

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terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations." It is not disputed that the prevention and punishment of terrorism are compelling State interests.

However, since fundamental rights are at stake, the means employed by the State to achieve such interest must be shown to be "narrowly tailored, actually — not only conceptually — being the least restrictive means for effecting the invoked interest."[234]

None of the three modes meet this requirement.

The first mode indiscriminately adopts designations made in the United Nations Security Council Consolidated List. Per Section 10, voluntary membership in a group so designated by the United Nations Security Council as a terrorist group is punishable by a 12-year imprisonment. Thus, one may be imprisoned even for mere association with such groups. This is tantamount to the punishment of a status, claim, or expression.

While the second mode does not automatically adopt requests for designations made by other jurisdictions or supranational jurisdictions, but only does so if the criteria under United Nations Security Council Resolution No. 1373 are met, the ponencia aptly pointed out that "unbridled discretion is given to the [Anti-Terrorism Council] in granting requests for designation based on its own determination."[235]

The third mode, despite mentioning the finding of probable cause, does not provide standards in determining it. In both the second and third modes, the Anti-Terrorism Council is empowered to ultimately interpret the law and wield its power to stifle dissent.

Moreover, across all three modes of designation, Section 25 does not provide overt acts that may be clearly attributed to the members of designated groups who will be made to immediately suffer the consequences of the designation. Mere suspicion is not enough; overt acts must be specified. Without overt acts of terrorism, the law may be interpreted to punish mere dissenters.

Exposing dissenters to the immediate consequences of designation despite the absence of overt acts and without an opportunity to first contest the designation violates due process. For example, under Section 10 of the Anti-Terrorism Act, voluntary membership in a group so designated by the United Nations Security Council as a terrorist organization is punishable by imprisonment for 12 years. As the United Nations Security Council Consolidated List is automatically adopted, one may be deprived of liberty without being given an opportunity to confront evidence taken against them.

No less than our Constitution provides the clear and unmistakable rights to be protected in criminal prosecutions: the right to due process and the right to be presumed innocent. Article III, Section 14 provides:

> SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.

The designation of terrorist individuals, groups of persons, organizations, or associations—regardless of the mode—substantially invades the designated person's rights to be presumed innocent and to due process of law. Yet, the law would punish one for their status, claim, or expression.

Specific to the second and third modes, the Anti-Terrorism Council can arrogate upon itself judicial power. Section 25 allows an encroachment on the courts' power to determine the designated person's guilt or innocence, violating the doctrine of separation of powers. Under Section 45 of the Anti-Terrorism Act, the Anti-Terrorism Council is composed of: (1) the Executive Secretary, as Chairperson; (2) the National Security Adviser, as Vice Chairperson; (3) Secretary of Foreign Affairs; (4) Secretary of National Defense; (5) Secretary of the Interior and Local Government; (6) Secretary of Finance; (7) Secretary of Justice; (8) Secretary of Information and Communications Technology; and (9) Executive Director of the Anti-Money Laundering Council Secretariat as its other members. The Anti-Terrorism Council, which will exercise a judicial function, is primarily composed of the executive officials.

These flaws in Section 25 are contrary to the commitment of the State to uphold basic rights and fundamental liberties in Section 2.

On the matter of proscription, I concur with the ponencia in upholding its constitutionality. Section 26 states:

> SECTION 26. Proscription of Terrorist Organizations, Associations, or Group of Persons. — Any group of persons, organization, or association, which commits any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, or organized for the purpose of engaging in terrorism shall, upon application of the DO.I before the authorizing division of the Court of Appeals with due notice and opportunity to be heard given to the group of persons, organization or association, be declared as a terrorist and outlawed group of persons, organization or association, by the said Court.
>
> The application shall be filed with an urgent prayer for the issuance of a preliminary order of proscription. No application for proscription shall be filed without the authority of the ATC upon the recommendation of the National Intelligence Coordinating Agency (NICA).

Section 26 passes the strict scrutiny test. A compelling State interest of preventing terrorism exists, meriting the regulation of freedom of association; the means used to achieve that purpose, moreover, is the least restrictive.

Section 26 identifies two grounds to be declared "a terrorist and outlawed group of persons, and organization or association": first, for the commission of acts penalized under Sections 4 to 12; and second, for being organized for the purpose of engaging in terrorism.

As with the other provisions of the law, the provisions pertaining to proscription must be interpreted and enforced in keeping with Section 2 of the Anti-Terrorism Act. Before being made to suffer the consequences of proscription, the person or group of persons must be shown to have committed overt acts punishable by law.

This requirement of overt acts is met in the first ground for proscription, as it requires the commission of acts punished under Sections 4 to 12. The second ground involves a preparatory act: organizing for the purpose of engaging in terrorism. Here, law enforcers and courts must take care in ascertaining the intent to engage in terrorism. Association alone is not sufficient; other acts must clearly establish the intention to engage in terrorism. Where overt acts are inconclusive, the Department of Justice and the Court of Appeals must consider the history of the organization to aid in determining its true intent. For example, it is reasonable to associate with terrorism overt acts that are potentially terroristic if performed by a person or group of persons with a background of participating in terrorist activities.

The requirement of overt acts is necessary so as not to proscribe based on mere suspicion. Otherwise, proscription would risk curtailing dissent.

Section 26 does not violate due process rights either. Unlike designation, the process of proscription involves a judicial determination of probable cause before one is made to suffer the consequences attached to proscription.

Unlike the probable cause under the third mode of designation, it is the Court of Appeals that will make the determination under Section 26. Thus, the probable cause here is recognized in the Constitution, rules of procedure, and jurisprudence. The judicial determination of probable cause is key to affording due process, and must necessarily rest on whether overt acts that indicate an intent to commit terrorism exist.

Finally, Section 29 states:

> SECTION 29. Detention without Judicial Warrant of Arrest. — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforce men I agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period often (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.
>
> Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.
>
> The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities.
>
> The penalty of imprisonment often (10) years shall be imposed upon the police or law enforcement agent or military personnel who fails to notify any judge as provided in the preceding paragraph. (Emphasis supplied)

The first paragraph of Section 29 provides the following: (a) the warrantless arrest and detention of persons suspected of committing acts of terrorism under Sections 4 to 12; and (b) the Anti-Terrorism Council's power to issue a written authorization to extend the periods of detention for such a suspect. Petitioners thus assail Section 29 for violating the principle of separation of powers and the constitutional right against unreasonable searches and seizures.

Warrantless arrests should be read in conjunction with Article 125 of the Revised Penal Code, which provides the period within which a person must be delivered to the proper judicial authorities.[236] It penalizes public officers or employees who detain a person for a legal ground but fail to deliver them to the proper judicial authorities. This provision safeguards against abuses arising from confining one without letting them know of the nature and cause of the accusation against them and without letting them post bail.[237]

In upholding Section 29, the ponencia held that the provision does not grant power to the Anti-Terrorism Council to issue a warrant of arrest.[238] Because Section 29 assumes that an officer has "probable cause to believe that Sections 4 to 12 [were] violated"[239] and had already effected a warrantless arrest based on it,[240] it merely gives the Anti-Terrorism Council authority to extend the detention period, upon the lapse of which the filing of

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charges is rendered mandatory.[241] To the ponencia, Section 29 does not provide the grounds for warrantless arrest, which remain to be those instances provided by Rule 113, Section 5 of the Rules of Court.[242]

In other words, the ponencia ruled that the written authorization contemplated under Section 29 merely determines the period within which an enforcement officer may delay the delivery of a suspect.[243] If the Anti-Terrorism Council does not issue this written authorization, "the person arrested should be delivered to the proper judicial authority within 36 hours as provided under Article 125 [of the Revised Penal Code.]"[244] As such, the written authorization is only needed to justify a detention for a period longer than 36 hours.[245]

The ponencia upheld Section 29 based on the standards provided by Rule 9.1 of the law's Implementing Rules and Regulations[246] and on the law's own provisions that reiterate the rights of a person under custody.[247] It held:

> [W]hen Section 29 is harmonized with the provisions of the Implementing Rules and Regulations], it is clear that the contested written authority to be issued by the [Anti-Terrorism Council] is not in any way akin to a warrant of arrest. To be operative, there must have been a prior valid warrantless arrest of an alleged terrorist that was effected pursuant to Section 5, Rule 113 of the Rules of Court by the arresting officer applying for the written authority under Section 29.[248]

Based on these safeguards, the ponencia concluded that Section 29 is narrowly tailored and thus passes the strict scrutiny test.[249]

I disagree.

The Implementing Rules and Regulations cannot be used to supplement and fill the gaps in Section 29. "A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application."[250] To recall, Section 29 provides in part:

> [A]ny law enforcement agent or military personnel, who, having been duly authorized in writing by the [Anti-Terrorism Council,] has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4 [to 12] of this Act, shall, ... deliver said suspected person to the proper judicial authority[.][251] (Emphasis supplied)

Section 29 provides an instance when an enforcement officer does not incur liability in delaying the delivery of suspects; that is, when the Anti-Terrorism Council provides a written authorization. In other words, Section 29 gives the Anti-Terrorism Council leeway to extend the period within which the suspected terrorist must be charged before a law enforcer may be held criminally liable for delay in delivery of detained persons. While Congress can designate a period different from that provided in Article 125 of the Revised Penal Code, the problem with Section 29 is that the arrest is left to the discretion of the Anti-Terrorism Council.

In Abakada Gitro Party List v. Secretary of Finance:[252]

> Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate. It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented.[253] (Citations omitted)

Section 29 fails to provide sufficient standards for its implementation. In effect, it gives the Anti-Terrorism Council full discretion in authorizing law enforcement agents or military personnel to take a suspected terrorist into custody. Contrary to the ponencia's conclusion that the authority only applies to warrantless arrests, Section

29 did not provide guidelines limiting how and when this authority may be exercised. This is precisely why the Implementing Rules and Regulations was needed to fill this gap in the law.

Rule 9.1 of the Implementing Rules and Regulations states:

> Rule 9.1. Authority from ATC in relation to Article 125 of the Revised Penal Code
>
> Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (c) of Rule 9.2, has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period often (10) calendar days if it is established that (a) further detention of the person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.
>
> The AFC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.
>
> If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply.[254]

Rule 9.1 cannot cure the defect of Section 29.

I join Associate Justice Alfredo Benjamin Caguioa in his view that the last two paragraphs of Rule 9.1 introduced substantial amendments to Section 29 and are, therefore, ultra vires.[255] Rule 9.1 is an undue delegation of legislative power to the Anti-Terrorism Council since Section 29 is not complete in itself. Consequently, Section 29 is void, and it cannot be cured by the rules laid out seeking to enforce it. The attempted reconciliation of Section 29 with Rule 9.1 of the Implementing Rules and Regulations is improper. By seeking to supplant Section 29 with Rule 9.1, the executive department, through the Anti-Terrorism Council and the Department of Justice, encroached on Congress's lawmaking power.

Further, Section 29 encroaches on the judicial prerogative of issuing warrants of arrests, violating Article III, Section 2 of the Constitution. It authorizes an administrative agency to issue a written authority by which law enforcers will be allowed to detain persons suspected of committing offenses penalized under the Anti-Terrorism Act.[256]

Because one may be arrested under Section 29 without prior hearing and upon the Anti-Terrorism Council's sole discretion, the threshold typically required in obtaining an arrest warrant, probable cause, is conspicuously absent. An arrest may be based on a law enforcer or military personnel's mere suspicion that a person committed a terrorist act. Thus, a reading of Section 29 reveals that it deprives one's liberty without due process of law and tends to have a chilling effect.

After an arrest, Section 29 also empowers the Anti-Terrorism Council to extend the detention period without any hearing, so long as further detention is necessary to preserve terrorism-related evidence or complete the

investigation and prevent the commission of another terrorism. Thus, the law enforcer's suspicion that a person has committed terrorist acts, or is threatening or inciting to commit terrorist acts, can directly result not only in an arrest, but also in a prolonged detention. These grounds to extend the detention period are too broad and can be arbitrarily invoked in all cases intended to prevent the commission of offenses penalized under the Anti-Terrorism Act.

The carte blanche under Section 29 becomes more concerning as Sections 5 and 8 respectively punish one who merely threatens to commit terrorism and proposes to commit terrorist acts. Because threatening and proposing to commit terrorism do not involve direct participation in committing terrorism, the grounds on which a suspect may be immediately deprived of liberty becomes even broader because these offenses involve dangerous speech.

A person belonging to the marginalized sectors of society does not stand on an equal footing with a law enforcer. Because of Section 29, the Anti-Terrorism Council possesses unilateral authority to interpret what constitutes dangerous speech and to authorize a person's immediate detention, or prolong it if deemed fit. A person suspected of threatening or inciting to commit terrorism under Sections 5 and 8 may be detained simply based on an overzealous law enforcer's interpretation. This Court must be more vigilant in protecting the marginalized against the imminent threats of abuse of power that permeate the ranks of government—in stark contrast with the meager threshold of imminence and an intent requirement under the clear and present danger test, under which Section 29 may arguably pass constitutionality.

When a law is overbroad or vague such that one does not know whether their speech constitutes a crime, the law chills them into silence: altogether refusing to speak for fear for prosecution.[257]

The "Not Intended Clause" of Section 4, the entirety of Section 25, and Section 29 must be struck down. Through these provisions, law enforcers can freely apprehend persons based on mere perception. One may be labeled as a terrorist simply by voicing out contrarian opinions. The law becomes dependent on the individual mindsets of those executing it. This opens the doors to arbitrary implementation by overzealous law enforcers. Legitimate dissent may easily be perceived as an act of terrorism just because it opposes those in power. This is a clear threat to the exercise of fundamental rights.

V

The provisions of our Bill of Rights carry text that have survived for decades, but none of these rights are absolute and independent of a necessary dialectic interaction with reality. The meanings and categories implicit in their understanding should always be guided by their purpose in light of contemporary circumstances. After all, the Constitution is designed to enable, empower, and achieve social justice. It is not an instrument to recreate an imagined society of the past with its unexamined prejudices and misunderstandings of principle. The Constitution is not a suicide pact; it should not be construed to become anachronistic.

We live in a society where we have discovered that this Court's neutrality to allow all speech to be uninhibited, robust, and wide open could entrench the prejudice of the powerful. We live in a society where our digital platforms have shown that reckless, irrational words hurt and injure. We live in a society where philosophy has long understood that words in themselves not only perform, but could perform violently.

Words, kept isolated in the epistemic bubbles of our social media, can evolve into inhumane acts of sheer prejudice and terrorism.

The phenomenon of terrorism will interrogate our commitment to enhance and enable the best of human beings in a society. It will be fought in cases such as these, properly brought before this Court with sufficient epistemological confidence for us to decide where to draw the line that defines rationale and effective law

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enforcement and protection.

We expect that petitioners and others will act with no less than the same vigilance they have shown in these cases. Perhaps, with seasoned litigators assisting them, they will file the proper cases before the proper courts and, later with the right remedy, these cases will be properly laid before this same forum.

Until then, I concur with this Court's approach—a blend of action and caution. My dissent lies in the majority's application of this approach and some of the specific results reached by our voting.

ACCORDINGLY, I vote to PARTIALLY GRANT the Petitions. The following provisions of Republic Act No. 11479 are UNCONSTITUTIONAL:

(1)

Part of the proviso in Section 4 that states "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety";

(2)

Section 25, which provides the three modes of designation; and

(3)

Section 29, which provides for: (a) the warrantless arrest and detention of persons suspected of committing acts of terrorism under Sections 4 to 12; and (b) the authority of the Anti-Terrorism Council to issue written authorizations to extend the periods of detention for a person suspected of committing any of the acts under Sections 4 to 12.

I underscore, however, that the constitutionality of the other challenged provisions of Republic Act No. 11479 should await an actual case. The disposition of these present cases is without prejudice to the filing of a proper action by petitioners in the proper court based on some of their allegations of fact in their respective Petitions.

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[1] 337 U.S. 1 (1949).

[2] Ponencia, p. 48.

[3] Spouses Romualdez v. Commission on Elections, 576 Phil. 357 (2008) [Per J. Chico-Nazario, En Banc].

[4] Disini v. Secretary of Justice, 727 Phil. 28 (2014) [Per J. Abad, En Banc].

[5] Estrada v. Sandiganbayan, 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

[6] J. Leonen, Dissenting and Concurring Opinion in Disini v. Secretary of Justice, 727 Phil. 28 (2014) [Per J. Abad, En Banc].

[7] Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205, 244 (2018) [Per J. Leonen, En Banc].

[8] G.R. No. 238875, March 16, 2021, <https://elibrary.judiciaiy.gov.ph/thebookshelf/showdocs/1/67374> [Per J. Leonen, En Banc].

[9] Id.

[10] National Federation of Hog Farmers, Inc. v. Board of Investments, G.R. No. 205835, June 23, 2020

<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343> [Per J. Leonen, En Banc].

[11] Kilusang Mayo Uno v. Aquino III, G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

[12] Id.

[13] Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205, 244 (2018) [Per J. Leonen, En Banc].

[14] Imbong v. Ochoa, 732 Phil. 1, 123 (2014) [Per J. Mendoza, En Banc].

[15] Information Technology Foundation of the Philippines v. Commission on Elections, 499 Phil. 281 (2005) [Per J. Panganiban, En Banc].

[16] Id.

[17] Id. at 304-305.

[18] J. Leonen, Dissenting Opinion in Imbong v. Ochoa, 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

[19] Id.

[20] Id. at 245-246.

[21] National Federation of Hog Farmers, Inc. v. Board of Investments, G.R. No. 205835, June 23, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343> [Per J. Leonen, En Banc].

[22] 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

[23] Id. at 158-159.

[24] Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

[25] Estrada v. Sandiganbayan, 421 Phil. 290, 342-343 (2001) [Per J. Bellosillo, En Banc].

[26] 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

[27] Id. at 481-483.

[28] 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, En Banc].

[29] Id. at 305-306.

[30] 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

[31] Id.

[32] G.R. No. 217910, September 3, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744> [Per J. Leonen, En Banc].

[33] Id.

[34] G.R. No. 205835, June 23, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343> [Per J. Leonen, En Banc].

[35] Id.

[36] Pangilinan v. Cayetano, G.R. No. 238875, March 16, 2021 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67374> [Per J. Leonen, En Banc].

[37] Kilusang Mayo Uno v. Aquino III, G.R. No. 210500, April 2, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

[38] Id.

[39] J. Leonen, Dissenting Opinion in Imbong v. Ochoa, 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

[40] David v. Macapagal-Arroyo, 522 Phil. 705, 755 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[41] Falcis III v. Civil Registrar General, G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thcbookshelf/showdocs/1/65744> [Per J. Leonen, En Banc].

[42] Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

[43] Integrated Bar of the Philippines v. Zamora, 392 Phil. 618, 633 (2000) [Per J. Kapunan, En Banc].

[44] Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

[45] National Federation of Hog Farmers, Inc. v. Board of Investments, G.R. No. 205835, June 23, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343> [Per J. Leonen, En Banc].

[46] Parcon-Song v. Parcon, G.R. No. 199582, July 7, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66525> [Per J. Leonen, En Banc].

[47] Id.

[48] Id.

[49] Falcis III v. Civil Registrar General, G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744> [Per J. Leonen, En Banc].

[50] Estrada v. Sandiganbayan, 421 Phil. 290, 305 (2001) [Per J. Bellosillo, En Banc].

[51] 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

[52] Id. at 305-306.

[53] 400 Phil. 904 (2002) [Per Curiam, En Banc].

[54] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452, 489 (2010) [Per J. Carpio Morales, En Banc].

[55] Estrada v. Sandiganbayan, 421 Phil. 290, 356 (2001) [Per J. Bellosillo, En Banc].

[56] Nicolas-Lewis v. Commission on Elections, G.R. No. 223705, August 14, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65669> [Per J. Reyes, Jr., En Banc]; ABS-CBN Broadcasting Corporation v. Commission on Elections, 380 Phil. 780 (2000) [Per J. Panganiban, En Banc].

[57] 151-A Phil. 656 (1973) [Per J. Makasiar, First Division].

[58] Id. at 675-676.

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[59] 380 Phil. 780 (2000) [Per J. Panganiban, En Banc].

[60] Id. at 792.

[61] Id. at 792-793.

[62] Id. at 793.

[63] Emily Howie, Protecting the human right to freedom of expression in international law, 20 INTERNATIONAL JOURNAL OF SPEECH-LANGUAGE; PATHOLOGY, 12-15 (2017) <https://www.tandfonline.com/doi/rull/10.1080/17549507.2018.1392612> (last accessed on November 2, 2021).

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[65] Chavez v. Gonzales, 569 Phil. 155, 197 (2008) [Per C.J. Puno, En Banc].

[66] David v. Macapagal-Arroyo, 522 Phil. 705, 755 (2006) [Per J. Sandoval-Gutierrez, En Banc].

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[68] J. Puno, Concurring Opinion in Social Weather Stations, v. Commission on Elections, 409 Phil. 571 (2001) [Per J. Mendoza, En Banc], citing Redish, The Warren Court, the Burger Court and the First Amendment Overbreadth Doctrine, 78 Nw. U.L. Rev. 1035 (1983-4).

[69] Estrada v. Sandiganbayan, 421 Phil. 290, 353-354 (2001) [Per J. Bellosillo, En Banc].

[70] Id. at 353.

[71] J. Leonen, Dissenting and Concurring Opinion in Disini v. Secretary of Justice, 727 Phil. 28 (2014) [Per J. Abad, En Banc] citing National Association for the Advancement of Colored People v. Button, 371 U.S. 415, 431-433 (1963).

[72] 522 Phil. 705, 763 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[73] Id.

[74] 310 U.S. 88 (1940). See Richard Fallon, Jr., Making Sense of Overbreadth, 100 YALE L.J. 853 (1991).

[75] 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc]

[76] 479 Phil. 265 (2004) [Per J. Panganiban, En Banc].

[77] Republic Act No. 3019 (1960).

[78] Romualdez v. Sandiganbayan, 479 Phil. 265 (2004) [Per J. Panganiban, En Banc].

[79] 576 Phil. 357 (2008) [Per J. Chico-Nazario, En Banc].

[80] Spouses Romualdez v. Commission on Elections, 576 Phil. 357 (2009) [Per J. Chico-Nazario, En Banc].

[81] 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[82] 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

[83] Id. at 494-495.

[84] 727 Phil. 28 (2014) [Per J. Abad, En Banc].

[85] Republic Act No. 10175 (2012).

[86] J. Leonen, Dissenting and Concurring Opinion in Disini v. Secretary of Justice, 727 Phil. 28, 344 (2014) [Per J. Abad, En Banc].

[87] Petitioners' Memorandum (Cluster IV), pp. 33-39.

[88] Id. at 41-48.

[89] David M. Prentiss, The First Amendment Overbreadth Doctrine and the Nature of the Judicial Review Power, 25 NEW ENG. L. REV. 989 (1991).

[90] Thornhill v. Alabama, 310 U.S. 88, 96-98 (1940).

[91] G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, Jr., En Banc], citing Zwickler v. Koota, 19 L ed. 2d 444 (1967).

[92] Id.

[93] J. Carpio, Dissenting Opinion in Spouses Romualdez v. Commission on Elections, 576 Phil. 357 (2008) [Per J. Chico-Nazario, En Banc] citing Erwin Chemerinsky, CONSTITUTIONAL LAW 86 (2[nd] ed., 2002).

[94] J. Leonen, Dissenting and Concurring Opinion in Disini v. Secretary of Justice, 727 Phil. 28, 352 (2014) [Per J. Abad, En Banc].

[95] Id. citing Broadrick v. Oklahoma, 413 U.S. 601 (1973).

[96] David v. Macapagal-Arroyo, 522 Phil. 705, 777 (2006) [Per J. Sandoval-Gutierrez, En Banc].

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[98] 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

[99] Republic Act No. 10354 (2012).

[100] J. Leonen, Dissenting Opinion in Imbong v. Ochoa, 732 Phil. 1, 662-663 (2014) [Per J. Mendoza, En Banc].

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[106] Id. at 486.

[107] Chavez v. Gonzales, 569 Phil. 155, 219 (2008) [Per J. Puno, En Banc].

[108] Id.

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[110] Petitioners' Memorandum (Cluster I), p. 49.

[111] Petitioners' Memorandum, pp. 66-67.

[112] Id. at 72-73.

[113] Petitioner in G.R. No. 252767.

[114] Petitioners' Memorandum (Cluster I), p. 65.

[115] Petitioner in G.R. No. 252768.

[116] Id. at 66.

[117] Petitioners' Memorandum (Cluster I), p. 65.

[118] Petition for Certiorari and Prohibition, G.R. No. 252585, pp. 8-9.

[119] Petition for Certiorari and Prohibition, G.R. No. 252733, p. 38.

[120] Petition for Certiorari and Prohibition, G.R. No. 252767, pp. 18-19.

[121] Petition for Certiorari and Prohibition, G.R. No. 252768, pp. 18-26.

[122] Petition for Certiorari and Prohibition, G.R. No. 252904, p. 3.

[123] Petition for Certiorari and Prohibition, G.R. No. 253018, pp. 17-31.

[124] Petition for Certiorari and Prohibition, G.R. No. 253252, pp. 11-12.

[125] Republic Act No. 11479 (2020), sec. 2.

[126] University of Chicago Law School - Global Human Rights Clinic and International Network of Civil Liberties Organizations, Defending dissent: Towards state practices that protect and promote the right to promote the right to protest - Executive Summary, 2018, available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1011&context=ihrc> 2 (last accessed on November 2, 2021).

[127] Soriano v. Laguardia, 605 Phil. 43 (2009) [Per J. Velasco, Jr., En Banc].

[128] Id. at 96.

[129] Max M. Kampelman, Dissent, Disobedience, and Defense in a Democracy, 133 WORLD AFFAIRS 124-132 (1970).

[130] Newsounds Broadcasting Network, Inc. v. Dy, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].

[131] Id.

[132] J. Leonen, Dissenting Opinion in Nicolas-Lewis v. Commission on Elections, 529 Phil. 642 (2006) citing Chavez v. Gonzales, 569 Phil. 155 (2008) [Per J. Puno, En Banc].

[133] Chavez v. Gonzales, 569 Phil. 155, 206 (2008) [Per J. Puno, En Banc].

[134] Id.

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[135] J. Leonen, Separate Concurring Opinion in Nicolas-Lewis v. Commission on Elections, G.R. No. 223705, August 14, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65669> [Per J. Reyes, Jr., En Banc].

[136] 487 Phil. 531 (2004) [Per J. Puno, En Banc].

[137] Id. at 599-600.

[138] 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].

[139] Id. at 1113-1114.

[140] Sameer Overseas Placement Agency, Inc. v. Cabiles, 740 Phil. 403 (2014) [Per J. Leonen, En Banc].

[141] Cabansag v. Fernandez, 102 Phil. 152, 161-163 (2000) [Per J. Panganiban, En Banc].

[142] Chavez v. Gonzales, 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].

[143] Id. at 200.

[144] 102 Phil. 152 (1957) [Per J. Bautista Angelo, First Division].

[145] Id. at 163.

[146] In re Gonzales, 137 Phil. 471 (1969) [Per J. Fernando, En Banc].

[147] 395 U.S. 444(1969).

[148] Id.

[149] Id. at 447.

[150] Id.

[151] 328 Phil. 893 (1996) [Per J. Puno, En Banc].

[152] Id. at 932-933.

[153] MVRS Publications v. Islamic Da'wah Council of the Philippines, 444 Phil. 230, 257 (2003) [Per J. Bellosillo, En Banc].

[154] Iglesia ni Cristo v. Court of Appeals, 328 Phil. 893 (1996) [Per J. Puno, En Banc].

[155] Ponencia, p. 113.

[156] Salonga v. Paño, 219 Phil. 402 (1985) [Per J. Gutierrez Jr., En Banc].

[157] Iglesia ni Cristo v. Court of Appeals, 328 Phil. 893 (1996) [Per J. Puno, En Banc]. See Chavez v. Gonzalez, 569 Phil. 155 (2008) [Per J. Puno, En Banc].

[158] Ponencia, p. 83.

[159] Id.

[160] Petitioners' Memorandum (G.R. No. 252736), p. 99.

[161] Id. at 109.

[162] Id. at 115.

[163] Id. at 100.

[164] Id. at 109.

[165] Id. at 105.

[166] Respondents' Memorandum, p. 454.

[167] Id. at 487.

[168] Id. at 491 to 497.

[169] Id. at 498, 502-503.

[170] Id. at 498, 502-503, 527, and 534.

[171] Id. at 468.

[172] Ponencia, p. 89.

[173] Id. at 90.

[174] Id. at 91.

[175] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452, 494-495 (2010) [Per J. Carpio Morales, En Banc].

[176] Ponencia, p. 88.

[177] Dubongco v. Commission on Audit, G.R. No. 237813, March 5, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051> [Per J. J.C. Reyes, Jr., En Banc].

[178] Estrada v. Sandiganbayan, 421 Phil. 290, 347 (2001) [Per J. Bellosillo, En Banc].

[179] Republic Act No. 11479 (2020), sec. 4.

[180] Respondents' Memorandum, p. 497.

[181] Id. at 239-248, pars. 502-503.

[182] Ponencia, p. 110.

[183] Republic Act No. 11479 (2020), sec. 4.

[184] Republic Act No. 11479 (2020), sec. 16, par. 1.

[185] Republic Act No. 11479 (2020), sec. 25, par. 3.

[186] Republic Act No. 11479 (2020), sec. 26.

[187] Republic Act No. 11479 (2020), sec. 29, par. 1.

[188] Republic Act No. 11479 (2020), sec. 34, par. 1.

[189] Republic Act No. 11479 (2020), secs. 35 and 36.

[190] Ponencia, p. 111.

[191] Deepak Gupta, The Right to Dissent is the Most Important Right Granted by the Constitution: Justice Gupta, February 24, 2020, <https://thewire.in/law/right-to-dissent-constitution-justice-deepak-gupta> (last

accessed on November 2, 2021).

[192] Diocese of Bacolod v. Commission on Elections, 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[193] Id.

[194] Deepak Gupta, The Right to Dissent is the Most Important Right Granted by the Constitution: Justice Gupta, February 24, 2020, <https://thewire.in/law/right-to-dissent-constitution-justice-deepak-gupta> (last accessed on November 2, 2021).

[195] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[196] Id. at 363-364.

[197] Emily Howie, Protecting the human right to freedom of expression in international law, 20 20 INTERNATIONAL JOURNAL OF SPEECH-LANGUAGE Pathology 12 (2017), available at <https://www.tandfonline.com/doi/full/10.1080/17549507.2018.1392612> (last accessed on November 2, 2021).

[198] JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT 14 (2017) <https://www.earlymoderntexts.com/assets/pdfs/rousseau1762.pdf> (last accessed on November 2, 2021).

[199] Deepak Gupta, The Right to Dissent is the Most Important Right Granted by the Constitution: Justice Gupta, February 24, 2020, <https://thewire.in/law/right-to-dissent-constitution-justice-deepak-gupta> (last accessed on November 2, 2021).

[200] CONST., art. III, sec. 1.

[201] Diocese of Bacolod v. Commisssion on Elections, 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[202] Deepak Gupta, The Right to Dissent is the Most Important Right Granted by the Constitution-Justice Gupta, February 24, 2020, <https://thewire.in/law/right-to-dissent-constitution-justice-deepak-gupta> (last accessed on November 2, 2021).

[203] Max M. Kampelman, Dissent, Disobedience, and Defense in a Democracy, 133 WORLD AFFAIRS 124, 132 (1970).

[204] See Sian Herbert, Conflict analysis of The Philippines, 2019 <https://gsdrc.org/publicalions/conflict-analysis-or-the-philippines/ (last accessed on November 2, 2021); and Joseph Franco, The Philippines: The Moro Islamic Liberation Front - A Pragmatic Power Structure?, May 24, 2016, <https://cco.ndu.cdu/news/article/780183/chapter-7-the-philippines-the-moro-islamic-liberation-front-a-pragmatic-power-s/> (last accessed on November 2, 2021).

[205] Republic Act No. 11479 (2020), sec. 16.

[206] Primicias v. Fugoso, 80 Phil. 71 (1948) [Per J. Feria, En Banc].

[207] Reyes v. Bagatsing, 210 Phil. 457, 467 (1983) [Per C.J. Fernando, En Banc].

[208] In re Ilagan, 223 Phil. 561 (1985) [Per J. Melencio-Herrera, En Banc].

[209] Ponencia, p. 108.

[210] J. Ynares-Santiago, Concurring Opinion in David v. Macapagal-Arroyo, 522 Phil. 705, 817 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[211] Samahan ng mga Progresibong Kabataan v. Quezon City, 815 Phil. 1067, 1120 (2017) [Per J. Perlas-Bernabe, En Banc].

[212] Defending dissent: Towards state practices that protect and promote the right to promote the right to protest, 2018, available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1011&context=ihrc> (last accessed on November 2, 2021).

[213] Republic Act No. 11479 (2020), sec. 2.

[214] Id.

[215] People v. Moreno, 356 Phil. 231 (1998) [Per J. Panganiban, First Division]; Manahan, Jr. v. Court of Appeals, 325 Phil. 484 (1996) [Per J. Vitug, First Division]; Manzanaris v. People, 212 Phil. 190 (1984) [Per J. Escolin, En Banc].

[216] Valenzuela v. People, 552 Phil. 381 (2007) [Per J. Tinga, En Banc].

[217] Id.

[218] 582 Phil. 747 (2008) [Per J. Nachura, Third Division].

[219] Id.

[220] Brandenburg v. Ohio, 395 U.S. 444 (1969).

[221] Id.

[222] 137 Phil. 471 (1969) [Per J. Fernando, En Banc].

[223] Republic Act No. 9372 (2006), sec. 17.

[224] Id.

[225] 821 Phil. 1086 (2017) [Per J. Velasco, Jr., Third Division].

[226] Id. at 1099-1100.

[227] CONST., art. III, sec. 4.

[228] Bayan v. Ermita, 522 Phil. 201 (2006) [Per J. Azcuna, En Banc].

[229] Id.

[230] Ponencia, p. 129.

[231] Id. at 131.

[232] Adiong v. Commission on Elections, G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, Jr., En Banc], citing Zwickler v. Koota, 19 L ed. 2d 444 (1967).

[233] See Chavez v. Gonzales, 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].

[234] J. Leonen, Separate Opinion in Samahan ng mga Progresibong Kabataan v. Quezon City, 815 Phil. 1067, 1147-1148 (2017) [Per J. Perlas-Bernabe, En Banc].

[235] Ponencia, p. 169.

[236] In re Integrated Bar of The Philippines Pangasinan Legal Aid, 814 Phil. 440 (2017) [Per J. Mendoza, En Banc].

[237] Id.

[238] Ponencia, p. 203.

[239] Id. at 204.

[240] Id. at 204-206.

[241] Id.

[242] Id. at 205-206.

[243] Id.

[244] Id. at 205.

[245] Id.

[246] Id. at 203-204.

[247] Id.

[248] Id.

[249] Id. In their respective separate opinions, Chief Justice Alexander Gesmundo, Senior Associate Justice Estela Perlas-Bernabe, as well as Associate Justices Amy Lazaro-Javier, Rodil Zalameda, and Henri Inting, concurred in the foregoing stance.

[250] Amores v. House of Representatives Electoral Tribunal, 636 Phil. 600, 608 (2010) [Per J. Carpio Morales, En Banc].

[251] Republic Act No. 11479 (2020), sec. 29.

[252] 584 Phil. 246 (2008) [Per J. Corona, En Banc].

[253] Id. at 272.

[254] Id.

[255] J. Caguioa, Concurring and Dissenting Opinion, p. 97.

[256] Id. at 102.

[257] Spouses Romualdez v. Commission on Elections, 576 Phil. 357 (2008) [Per J. Chico-Nazario, En Banc].

CONCURRING AND DISSENTING OPINION

"The challenge to our liberties comes frequently not from those who consciously seek to destroy our system of government, but from men of goodwill—good men who allow their proper concerns to blind them to the fact that what they propose to accomplish involves an impairment of liberty."

- Justice William O. Douglas,

A Living Bill of Rights[1]

CAGUIOA, J.:

This case involves a statute that unapologetically encroaches on protected freedoms. Unlike most laws that were previously challenged before the Court, Republic Act (R.A.) No. 11479,[2] or the Anti-Terrorism Act of 2020 (ATA), unabashedly breaches fundamental liberties — as these breaches are plainly written in the law itself. Respondents do not refute this. They argue only that without the requisite intent to commit terrorism,[3] the exercise of civil and political rights remain unburdened.[4]

From the numerous and voluminous submissions of the parties, the issues in this case can be distilled down to the following questions:

(1)

Whether petitioners present an actual or justiciable controversy;

(2)

Whether a penal statute, such as the ATA, may be facially challenged;

(3)

Whether the ATA infringes fundamental rights guaranteed under the Constitution; and

(4)

Whether the ATA violates the principle of separation of powers.

The majority partially grants the petitions and declares as unconstitutional the following provisions of the ATA:[5] (1) the qualifying clause (denominated as the "Not Intended Clause" in the ponencia) in Section 4[6] that carved out an exception to the exercise of civil and political rights;[7] and (2) the second mode of designation in Section 25.[8] At the same time, the majority declares as constitutional a portion of Section 4[9] (as delineated by the ponencia), Sections 5,[10] 6,[11] 8,[12] 9,[13] 10,[14] 12,[15] the first[16] and third[17] modes of designation in Section 25, and Section 29.[18]

I join the majority in declaring unconstitutional the foregoing provisions of the ATA. I write this Separate Opinion to expound on my reasons for agreeing with the majority, my objections to the constitutionality of the third mode of designation and Section 29, and to dispute the unwarranted narrow application of facial challenges to cases involving free speech.

I.

The issues raised in the consolidated petitions warrant review under the Court's expanded certiorari jurisdiction.

Foremost, I agree with the ponencia that except for two (2) petitions challenging the ATA,[19] the requirements for judicial review were met.[20]

Petitioners invoke the Court's expanded certiorari jurisdiction under Section 1, Article VIII, of the 1987

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Constitution, which, although more expansive in scope, is still, in itself, an exercise of judicial power. As such, the following requirements of justieiability must still apply: (1) the existence of an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have legal standing or locus standi; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very lis mota of the case.[21] As stated at the outset, I agree that all four requirements have been established.

In the recent case of Pangilinan v. Cayetano[22] the Court reiterated that "[t]he clause articulating expanded certiorari jurisdiction requires a prima facie showing of grave abuse of discretion in the assailed governmental act which, in essence, is the actual case or controversy."[23] Thus, it is unnecessary for petitioners to, as the OSG submits, establish both a prima facie case of grave abuse of discretion and an actual case of controversy. Here, the opposing claims of petitioners and the OSG on whether the ATA violates the provisions of the Constitution, i.e., the provisions on fundamental rights, separation of powers, and undue delegation of legislative power, among others, constitute a prima facie case of grave abuse of discretion, which impels the Court to exercise its expanded certiorari jurisdiction.

The controversy before the Court is also ripe for adjudication. As held in Francisco, Jr. v. House of Representatives[24] (Francisco, Jr.) to satisfy the requirement of ripeness, "it is a prerequisite that something had by then been accomplished or performed by either branch before a court may come into the picture." Here, the enactment of the law which contains provisions that contravene the Constitution is enough for the Court to exercise judicial review.

The invocation of the political question doctrine is also unavailing. A political question is still justiciable when there are constitutional limits on the powers or functions conferred upon the political bodies, as with the Congress in this case. Thus, although the Court may not inquire upon the wisdom or policy behind the enactment of the ATA, it nevertheless has a beholden duty to ensure that the limits on the power of Congress have not been exceeded and the sanctity of the Constitution is upheld. This is accomplished through the Court's exercise of its expanded certiorari jurisdiction.

As well, petitioners have legal standing.

A party must generally show that (1) he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[25] Moreover, the injury claimed must be real, and not imagined, superficial, or insubstantial.[26]

I fully agree with the ponencia that petitioners were able to establish an actual or threatened injury as a result of the ATA's implementation.[27] The Anti-Terrorism Council (ATC), one of the respondents in several of the petitions, issued numerous resolutions[28] in the exercise of its authority to designate terrorist individuals, groups, organizations, or associations under Section 25. Among those designated by the ATC as a terrorist individual is Rey Claro Cera Casambre, a petitioner in G.R. No. 252767, who the ATC considers a member of the Communist Party of the Philippines (CPP).[29] This evidently demonstrates that the ATA is in full force and effect, and its consequences are neither imaginary nor speculative.

Furthermore, since the enactment of the ATA, several spokespersons of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) have issued statements that affiliate certain individuals — particularly, those who came before the Court to challenge the ATA — as members of a designated terrorist organization. Lt. Gen. Antonio Parlade, Jr. (General Parlade), prior to his resignation as spokesperson of the NTF-ELCAC,[30] called petitioner Carlos Zarate[31] (Zarate) and several others in his Facebook post as "CPP representatives and

colleagues, including NUPL."[32] In the same Facebook post, he stated that "individuals, groups, and organizations opposing [the ATA]"[33] have an agenda, and that while activism should be welcomed, only "legitimate activists"[34] should be protected.[35]

Another spokesperson of the NTF-ELCAC, Undersecretary Lorraine Badoy (Undersecretary Badoy), was likewise reported to have identified petitioner Zarate and the other representatives from the Makabayan Bloc as "high ranking party members of the [CPP]."[36] She even posted this statement on the Facebook page of the NTF-ELCAC.[37] She also called the League of Filipino Students[38] a "known front" of the CPP.[39]

The National Security Adviser, General Hermogenes Esperon, Jr., appears to share the same sentiments as the spokespersons of the NTF-ELCAC when he identified the "members from the Alliance of Concerned Teachers, Anakbayan, [Kilusang Mayo Uno], Bagong Alyansang Makabayan, GABRIELA, and several others" as allies of Jose Maria Sison.[40] Even Solicitor General Calida, in his opening statement during the oral arguments, insinuated that several of the petitioners are affiliated with the CPP.[41]

To reiterate, both General Esperon and Undersecretary Badoy were spokespersons of the NTF-ELCAC at the time they issued these statements.[42] The NTF-ELCAC, while a distinct and separate agency from the ATC, is mainly composed of the same members constituting the ATC — the primary agency tasked with the implementation of the ATA.[43] Meanwhile, General Esperon is a member of both the NTF-ELCAC and the ATC. It is thus reasonable to construe their statements as indicative of the manner by which the ATA will be enforced.

At this juncture, it bears emphasizing that membership in a terrorist organization,[44] or providing material support to terrorists,[45] are punishable acts under the ATA. Petitioners, having been accused to be associated with the CPP — a designated terrorist organization — are especially vulnerable to being prosecuted pursuant to these provisions. Furthermore, those who may not be considered "legitimate" activists or dissenters may be prosecuted for expressing views that are aligned with those identified as terrorists. As the fear of prosecution under the ATA is patently imminent, petitioners' claim of a credible threat of prosecution[46] was correctly given merit.[47]

At any rate, the Court had, in the past, relaxed the requirement of standing on the ground of transcendental importance. As will be discussed in further detail below, petitioners have demonstrated that the issues raised in the consolidated petitions are of transcendental importance, thereby justifying the liberal application of the legal standing requirement.

The question of constitutionality has also been raised at the earliest possible opportunity.

The earliest opportunity to raise a constitutional issue is in the pleadings before a competent court that can resolve the same, such that, if it was not raised in the pleadings before said competent court, it cannot be considered at the trial, and, if not considered in the trial, it cannot be considered on appeal.[48] Here, petitioners immediately filed their respective petitions directly with the Court to assail the constitutionality of the ATA right after the passage of said law. They did not institute any other proceedings before a court of competent jurisdiction where the constitutional issue could have been threshed out. The case before the Court is, in other words, the earliest opportunity for petitioners to raise the issue of the constitutionality of the ATA.

Finally, it is beyond cavil that the consolidated petitions before the Court center on the constitutionality of the ATA. The question of constitutionality is not raised merely as an ancillary argument, but the very issue for which the Court's exercise of its power of judicial review has been invoked. It is, therefore, the lis mota of the case.

Considering that the requirements for judicial inquiry have been met, I agree with the ponencia that thirty-five (35) of the consolidated petitions present a justiciable case before the Court.

II.

Petitioners' direct recourse to the Court is justified.

I also agree that the issues raised in the consolidated petitions warrant direct recourse to the Court.

In the case of Gios-Samar, Inc. v. Department of Transportation and Communications[49] (Gios-Samar), the Court discussed the general rule on the doctrine of hierarchy of courts and the recognized exceptions thereto. Gios-Samar emphasized that the Court may only take cognizance of cases brought before it by direct recourse if any of the exceptions enumerated in the case of The Diocese of Bacolod v. Commission on Elections[50] (Diocese) exists and if the nature of the question is purely legal. Stated otherwise, if the case filed directly before the Court raises factual issues, direct recourse to the Court is improper regardless of the invocation or existence of the recognized exceptions in Diocese. The factual issues must first be tried before the lower courts through the presentation of evidence.

The existence of questions of fact which are indispensable to the resolution of the legal issues was the basis of the dismissal of the petition in Gios-Samar. There, petitioner questioned the constitutionality of the bundling of the projects for the development, operations, and maintenance of several airports, and sought to enjoin respondents from bidding out the bundled projects. Invoking transcendental importance, petitioner therein filed its petition for prohibition directly with the Court. The Court in Gios-Samar found that "petitioner's arguments against the constitutionality of the bundling of the projects are inextricably intertwined with underlying questions of fact, the determination of which require the reception of evidence. The Court, however, is not a trier of facts. We cannot resolve these factual issues at the first instance."[51]

This is not the case in the present consolidated petitions.

To note, the Court's ruling in Gios-Samar merely reiterates that the Court will refuse to resolve legal issues, regardless of the allegation or invocation of compelling reasons, when there exists a need to determine a factual issue that is indispensable for their resolution. As reiterated time and again, the Court is not a trier of facts. However, said ruling does not serve as basis to preclude the Court from affording direct relief in cases where "serious and important reasons" necessitate the resolution of legal issues. This much is clear from the Court's subsequent ruling in Joint-Ship Manning Group, Inc. v. Social Security System[52] (Joint Ship).

In Joint Ship, petitioners therein assailed the validity of Section 9-B of R.A. No. 11199, otherwise known as the Social Security Act of 2018, which mandates compulsory Social Security System (SSS) coverage for Overseas Filipino Workers (OFWs). Section 9-B constitutes manning agencies as agents of their principals, and employers of sea-based OFWs; holds them jointly and severally liable with their principal with respect to civil liabilities arising from violation of R.A. No. 11199; and holds persons having direct control, management and direction of manning agencies criminally liable for any act or omission penalized thereunder.

Petitioners filed a Petition for Certiorari and Prohibition challenging Section 9-B for being violative of the requirements of substantive due process, and the principle of equal protection of laws. Speaking on the justiciability of the issues raised in the petition, the Court emphasized that the mere passage of the law does not per se justify a direct attack against its constitutionality. In addition, there must be an immediate or threatening injury to petitioners as a result of the challenged action.

Hence, in Joint Ship, the Court, speaking through Chief Justice Alexander Gesmundo, observed that petitioners tailed to allege that they already sustained or are immediately in danger of sustaining direct injury from R.A. No.

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11199. Nevertheless, the Court allowed petitioners to seek direct relief from the Court as the petition presented a case of first impression, and the issues involved public welfare and the advancement of public policy. The Court held:

> Nevertheless, the Court, through the years, has allowed litigants to seek from it direct relief upon allegation of "serious and important reasons." Diocese of Bacolod v. Commission on Elections [(Diocese)] summarized these circumstances in this wise:
> (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
>
> (2) when the issues involved are of transcendental importance;
>
> (3) cases of first impression;
>
> (4) the constitutional issues raised are better decided by the Court;
>
> (5) exigency in certain situations;
>
> (6) the filed petition reviews the act of a constitutional organ;
>
> (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]
>
> (8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

It must be clarified, however, that the presence of one or more of the so-called "serious and important reasons" is not the only decisive factor considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. Rather, it is the nature of the question raised by the parties in those "exceptions" that enables us to allow the direct action before the Court.

In this case, the Court finds that petitioners may seek direct relief because of the existence of two of the exceptions, particularly: (1) that this case is of first impression; and (2) that present issue involves public welfare and the advancement of public policy, or demanded by the broader interest of justice. The assailed law concerns the welfare of OFWs, the modern-day Filipino heroes, and the grant of social protection in their favor. For the first time, the social security membership and contributions of OFWs, specifically, the seafarers, are mandated by law. Indeed, the Court must ensure that this social security must be for the welfare of the seafarers and, at the same time, not unduly oppressive to other stakeholders, such as the manning agencies and foreign ship owners. Accordingly, the petition should be discussed on its substantive aspect.[53]

The issues raised in the consolidated petitions warrant the exact same treatment. On this score, I echo the ponencia's finding that the issues involved are of transcendental importance.[54] Moreover, the consolidated petitions raise genuine issues of constitutionality that must be addressed at the most immediate time. Thus, I agree that deviation from the strict application of the doctrine of hierarchy of courts is permitted, if not completely warranted, in the present case.

A. Transcendental Importance

In Francisco, Jr., the Court enumerated the determinants of transcendental importance as follows:

> There being no doctrinal definition of transcendental importance, the following determinants formulated by former Supreme Court Justice Florentine) P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory

> prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised. x x x[55]

Explicit in the above pronouncement is the Court's recognition that "transcendental importance" eludes definition. Contrary to respondents' posturing,[56] these determinants of transcendental importance are not to be taken as rigid enclosures within which all cases of transcendental importance must fit. The Court should not be emasculated by the determinants it recognized in earlier cases as these serve as mere guideposts rather than strict parameters that must be satisfied with exactitude in all cases. To illustrate, cases such as Imbong v. Ochoa, Jr.[57] (Imbong) and Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City[58] (SPARK) did not even mention these determinants despite the Court's recognition that these cases are of transcendental importance.

In fact, a closer scrutiny on the origin of these "determinants" would yield the realization that these factors were merely used in Justice Feliciano's Concurring Opinion in Kilosbayan, Inc. v. Guingona[59] as "considerations of principle" which justified the acceptance and exercise of jurisdiction by the Court in that particular case, thus:

> This is not, however, to say that there is somewhere an overarching juridical principle or theory, waiting to be discovered, that permits a ready answer to the question of when, or in what types of cases, the need to show locus standi may be relaxed in greater or lesser degree. To my knowledge, no satisfactory principle or theory has been discovered and none has been crafted, whether in our jurisdiction or in the United States. I have neither the competence nor the opportunity to try to craft such principle or formula. It might, however, be useful to attempt to indicate the considerations of principle which, in the present case, appear to me to require an affirmative answer to the question of whether or not petitioners are properly regarded as imbued with the standing necessary to bring and maintain the present petition.
>
> Firstly, the character of the funds or other assets involved in the case is of major importance. x x x
>
> A second factor of high relevance is the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government. x x x
>
> A third consideration of importance in the present case is the lack of any other party with a more direct and specific interest in raising the questions here being raised. x x x
>
> In the examination of the various features of this case, the above considerations have appeared to me to be important and as pressing for acceptance and exercise of jurisdiction on the part of this Court. It is with these considerations in mind that I vote to grant due course to the Petition and to hold that the Contract of Lease between the PCSO and PGMC in its present form and content, and given the present state of the law, is fatally defective.[60]

From the disquisition above, it is readily apparent that these determinants may only be used to point out the existence of transcendental importance in some cases. They were never meant to be a mechanical checklist that categorically determines the existence of transcendental importance in all cases. The absence of any or all of these determinants surely cannot deprive the Court from exercising its jurisdiction in cases where transcendental importance is undeniably present, such as the instant case.

To emphasize, a cursory assessment of the issues raised in the consolidated petitions clearly indicate that they are of transcendental importance.

The ATA was enacted in line with the State's policy "to protect life, liberty, and property from terrorism" with recognition that terrorism is "inimical and dangerous to the national security of the country and to the welfare of the people."[61] Ultimately, in enacting the ATA, the State seeks to protect itself, its country and its people, against terrorism, both on the national and international scale. In spite of these altruistic ideals, petitioners argue that the ATA violates several provisions of the Constitution.

To name a few, petitioners claim that the ATA violates: Article III, Section 1 on the right to due process; Article III, Section 2 on the right against unreasonable searches and seizure; Article III, Section 3 on the right to privacy of communication and correspondence; Article III, Section 4 on the right to freedom of speech and expression; Article III, Section 5 on the right to freedom of religion; Article III, Section 14 on the accused s right to be presumed innocent; and, Article VIII and Article VII on separation or powers. Some of the petitioners also allege that the ATA is violative of the State's international obligations.

At this juncture, Gios-Samar's discussion on the doctrine of hierarchy of courts as a filtering mechanism is worth noting, thus:

> I
>
> The doctrine of hierarchy of courts as a filtering mechanism
>
> The doctrine of hierarchy of courts operates to: (1) prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction; (2) prevent further over-crowding of the Court's docket; and (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.
>
> Strict adherence to the doctrine of hierarchy of courts is an effective mechanism to filter the cases which reach the Court. As ol December 31, 2016, 6,526 new cases were filed to the Court. Together with the reinstated/revived/reopened cases, the Court has a total of 14,491 cases in its docket. Of the new cases, 300 are raffled to the Court En Banc and 6,226 to the three Divisions of the Court. The Court En Banc disposed of 105 cases by decision or signed resolution, while the Divisions of the Court disposed of a total of 923 by decision or signed resolution.
>
> These, clearly, are staggering numbers. The Constitution provides that the Court has original jurisdiction over five extraordinary writs and by our rule-making power, we created four more writs which can be filed directly before us. There is also the matter of appeals brought to us from the decisions of lower courts. Considering the immense backlog facing the court, this begs the question: What is really the Court's work? What sort of cases deserves the Court's attention and time?
>
> We restate the words of Justice Jose P. Laurel in Angara that the Supreme Court is the final arbiter of the Constitution. Hence, direct recourse to us should be allowed only when the issue involved is one of law. x x x[62] (Emphasis and italics in the original)

Notwithstanding this, the Court also underscored in National Federation of Hog Farmers, Inc. v. Board of Investments[63] the importance of not filtering out cases of transcendental importance because this allows the Court to exercise its role of clarifying broad doctrines laid down in the past, viz.:

> Finally, this Court repeats a statement made in Gios-Samar:
> Critically, the nuances of the cases we find justiciable signal our philosophy of adjudication. Even as we try to filter out and dispose of the cases pending in our docket, this Court's role is not simply to settle disputes. This Court also performs the important public function of clarifying the values embedded in our legal order anchored on the Constitution, laws, and other issuances by competent authorities.
>
> As this Court finds ways to dispose of its cases, it should be sensitive to the quality of the doctrines it emphasizes and the choice of cases on which it decides. Both of these will facilitate the vibrant democracy and achievement of social justice envisioned by our Constitution.
>
> Every case filed before this Court has the potential of undoing the act of a majority in one (1) of the political and co-equal departments of our government. Our Constitution allows that its congealed and just values be

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> used by a reasonable minority to convince this Court to undo the majority's action. In doing so, this Court is required to make its reasons precise, transparent, and responsive to the arguments pleaded by the parties. The trend, therefore, should be to clarify broad doctrines laid down in the past. The concept of a case with transcendental importance is one (1) of them.
>
> Our democracy, after all, is a reasoned democracy: one with a commitment not only to the majority's rule, but also to fundamental and social rights.
>
> Even as we recall the canonical doctrines that inform the structure of our Constitution, we should never lose sight of the innovations that our fundamental law has introduced. We have envisioned a more engaged citizenry and political forums that welcome formerly marginalized communities and identities. Hence, we have encoded the concepts of social justice, acknowledged social and human rights, and expanded the provisions in our Bill of Rights.
>
> We should always be careful that in our desire to achieve judicial efficiency, we do not filter cases that bring out these values.
>
> This Court, therefore, has a duty to realize this vision. The more guarded but active part of judicial review pertains to situations where there may have been a deficit in democratic participation, especially where the hegemony or patriarchy ensures the inability of discrete and insular minorities to participate fully. While this Court should presume representation in the deliberative and politieal Jorums, it sliould not be blind to present realities.[64] (Emphasis supplied)

Indeed, if the purpose of the doctrine of hierarchy of courts is to act as a filtering mechanism to keep the Court's focus on more important matters, it goes without saying that this filtering mechanism should not mechanically and blindly filter out cases of transcendental importance, such as the instant case, which allow the Court to exercise its bounden duty to clarify doctrines that shape how our Constitution is interpreted.

B. Genuine Issues of Constitutionality

The consolidated petitions allege, among others, serious threats or violations of the constitutional rights to free speech and expression, due process, privacy, association and assembly, and the presumption of innocence. Such violations will result in the transgression of fundamental rights, disrupt the balance of power between co-equal branches of the government, and affect the State's capacity to comply with its international obligations, and fulfill its duty to protect its citizens, sovereignty, and borders against the perils of terrorism. Simply put, the legal issues presented herein will not only affect the lives of the public, but also the domestic and international affairs of the State. It is only appropriate that the legal issues in these consolidated petitions be resolved by the Court now.

The OSG argues that none of the exceptions invoked by petitioners can be appreciated to warrant direct resort to this Court, as the consolidated petitions raise factual issues which the Court cannot inquire into pursuant to Gios-Samar. In particular, the OSG claims that several petitioners[65] raise "factual matters and assumptions, most of which are about the alleged likelihood of 'red-baiting', 'terrorist-tagging', or 'red tagging' that will supposedly ensue upon the implementation of the [ATA]."[66] This argument lacks merit.

It is apt to reiterate the distinction between questions of fact and questions of law, thus:

> x x x A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such

> question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact. x x x[67] (Emphasis in the original)

Based on the foregoing parameters, it is clear that the substantive issues raise pure questions of law.[68]

Contrary to the OSG's assertions, the substantive issues do not present questions of fact. The resolution of these issues rests merely on what the Constitution and prevailing law provide, and does not require the examination of facts as established by evidence. In fact, the issue of red-baiting or red-tagging is immaterial to the resolution of these substantive issues. The Court only has to examine the assailed provisions of the ATA against the provisions of the Constitution and relevant jurisprudence. For instance, in determining whether Sections 5 to 14 of the ATA violate the fundamental rights enshrined in the Constitution and the constitutional prohibition against ex post facto laws and bills of attainder, the Court only has to refer to and apply said provisions in the Constitution and the corresponding case law. Unlike in Gios-Samar, the Court need not address any underlying factual questions before it can resolve the constitutional issues raised herein.

Clearly, the substantive issues raised here are pure questions of law which the Court may take cognizance of at the first instance, in view of the concurrence of special and important circumstances consistent with the Court's previous ruling in Joint Ship. Direct recourse to the Court on the grounds of transcendental importance and the existence of genuine issues of constitutionality is therefore proper in this case considering that there are no disputed facts, and the issues involved here are ones of law.

The Court is not unmindful of the May 17, 2021 statement to this Court of the esteemed amicus curiae, retired Associate Justice Francis H. Jardeleza, to the effect that all the petitions should be dismissed "due to the absolute dearth of facts in the present case record," viz.:

> Your Honors, my point is this. As for the matters of record, save for the petitions of Guring (sic.) and Ramos, and possibly of the three others in the Negros Occidental case, none, none of the petitioners in these cases has claimed direct, personal, or constitutional injury, or has alleged actual prosecution under the ATA, as to be entitled to relief. While a case for "pre-enforcement review" of a criminal statute is possible, the same is allowed solely on the grounds of vagueness. None, I repeat, none of the petitioners has sought to avail of this exception. I humbly submit that, following this Court's ruling in Southern Hemisphere Network vs. the Anti-Terrorism Council, all 37 petitions should be dismissed. This is of course, without prejudice to the continuation of all the other cases cited by the Solicitor General. In fact, if the Solicitor General is correct, there are three other cases, not before this Court, where there are other direct injury plaintiffs. I therefore agree with the Court's denial of the petition of Messrs. Guring (sic.) and Ramos.
>
> Your Honors, the Supreme Court is not a trier of facts. Cases presenting factual issues, such as the veracity of the allegations of torture of petitioners Gurung and Ramos, must first be tried, under the doctrine of hierarchy of courts, and following the rules of evidence before, first, the trial courts, and then on appeal, by the Court of Appeals. Petitioners cannot short-circuit this process by simply invoking the "transcendental or paramount" importance of their cases. This is the Court's clear ruling in GIOS-Samar vs. Department of Trade and Communications. Second, and for the avoidance, for the complete avoidance of doubt, the issues raised by petitioners against the ATA are, repeat, are very important. The ATA implicates civil liberties dear to all of us. There is, however, an absolute dearth of facts in the present case record, as of the moment, to support a ruling against the ATA, at this time. The ATA is an act of Congress that supports the presumption of constitutionality. I stress the word presumptively, for when, and if, constitutional lines are crossed, as borne out by the facts, we know, I know, where the Court's heart lies.[69] (Emphasis and underscoring supplied)

I respectfully differ with Justice Jardeleza's appreciation of the present petitions before the Court. I believe that not only is a pre-enforcement review of the ATA imperative in this case — especially since the vagueness of the

ATA provisions has been squarely raised as an issue, which is recognized by Justice Jardeleza as possible — but such review may be done by the Court precisely because the consolidated petitions only raise questions of law which the Court is competent to resolve.

Notwithstanding the foregoing, I find it imperative to stress that while I join the ponencia in finding that direct recourse to the Court in this particular case is proper, I take exception to the view that such direct recourse is warranted only insofar as is necessary to resolve the constitutional issues which delve into the effects of the assailed provisions on freedom of speech and its cognate rights. As will be explained in further detail below, I submit that the Court may take cognizance of facial challenges, such as the one mounted by petitioners herein, against criminal statutes that violate, impair, or otherwise regulate fundamental rights.

III.

Facial challenges vis-a-vis as-applied challenges.

The ponencia dedicates much of its discussions on the various applications of the facial and as-applied challenge in the U.S. Supreme Court (SCOTUS). The ponencia then points out that while the SCOTUS had, in its recent decisions, recognized facial challenges outside the First Amendment, this Court "has consistently adhered to the scope of facial challenges relative only to free speech cases."[70] On this basis, the ponencia proffers that this Court's ruling in Imbong did not unduly expand the area in which a facial challenge operates. The ponencia maintains that Imbong — in decreeing that statutes regulating free speech, religious freedom, "and other fundamental rights" may be the subject of a facial challenge — merely referred to the cognate rights of the freedom of expression.[71]

With due respect, I disagree.

A facial challenge has been characterized as "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."[72] On the other hand, an as-applied challenge has been described as an action involving "extant facts affecting real litigants."[73]

Whether a challenge is facial or as-applied often informs the outcome of an attack on the validity of a statute or regulatory measure. When confronted with a facial challenge, the Court does not waver in expressing its disfavor against challenges of this type — emphasizing the difficulty in mounting a facial challenge and describing the limited circumstances when it should be allowed. It is usual for the Court to reject facial challenges, especially when it concerns penal statutes such as the ATA. The rejection is grounded on a variety of reasons. First, the statute subject of the facial challenge does not regulate speech, only conduct.[74] Second, unlike an as-applied challenge where there are actual facts on which the Court could rule upon, the resolution of a facial attack requires the Court to speculate on the prospective application of the challenged statute.[75] Third, the facial invalidation of a challenged statute is "considered as 'manifestly strong medicine,' to be used 'sparingly and only as a last resort'."[76]

These justifications, oft-repeated in cases mounting facial challenges to a statute or regulatory measure, became well-entrenched standards in the Court's adjudication of constitutional issues. I respectfully submit, however, that the Court did not adhere to these standards as a manifest departure from the rulings of the SCOTUS recognizing facial challenges pursuant to rights other than freedom of expression.[77] Rather, the Court was mistaken in framing the resolution of facial challenges exclusively through the lens of justiciability, resulting in the swift

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denial of petitions on the pretext of prematurity.

Neither has the Court consistently adhered to its own rationale for disfavoring facial challenges. On several occasions, the fact that a facial challenge was mounted on a statute was not a significant consideration for the Court. In some cases, the Court deemed that the challenge was as-applied, but a facial analysis was used to uphold or strike down the measure. Thus, instead of illuminating the scope of a facial and as-applied challenge, the Court's rulings only serve to confuse.[78] On these premises, I submit that the Court again missed the opportunity to adopt a consistent and coherent framework for facial and as-applied challenges. I discuss below the reasons for abandoning the current principles governing facial challenges, which the majority unfortunately fails to appreciate.

A.

A facial challenge should not be limited to speech-regulating measures.

The ponencia declares that "the Court has not deviated from the principle that [a facial challenge] is permitted only when freedom of expression and its cognate rights are affected."[79] This is not accurate, for an examination of the relevant jurisprudence reveals the contrary.

In Estrada v. Sandiganbayan[80] (Estrada), former President Joseph E. Estrada challenged the constitutionality of R.A. No. 7080, otherwise known as the Plunder Law, for failing to provide a statutory definition of the terms describing the prohibited conduct. The petition therefore raised the vagueness and overbreadth of the Plunder Law, anchored on the violation of the right of the accused to be informed of the nature and cause of the accusation against him, and the fundamental right to due process.[81]

The Court categorically ruled against the law's alleged vagueness, deeming the text of the law sufficiently certain in describing the proscribed conduct. Ironically, however, Estrada further went on to state that "the allegations that the Plunder Law is vague and overbroad do not justify a facial review of its validity."[82] Adopting the Separate Opinion of then Associate Justice Vicente V. Mendoza (Justice Mendoza), the majority in Estrada stated that the vagueness doctrine as a ground for facial challenges, may only be applied to free speech cases, not criminal statutes. This pronouncement, albeit arguably a mere obiter,[83] later gained significance as the Court reiterated this principle in the succeeding cases involving the constitutionality of a penal law or a non-speech regulating measure.

Associate Justice Santiago M. Kapunan (Justice Kapunan) strongly dissented against the majority ruling in Estrada. Among the matters he particularly disagreed with was the submission of Justice Mendoza. Justice Kapunan pointed out the erroneous premise of adopting the principle that facial challenges may only be mounted when the right implicated concerns the freedom of expression:

> It has been incorrectly suggested that petitioner cannot mount a "facial challenge" to the Plunder Law, and that "facial" or "on its face" challenges seek the total invalidation of a statute. Citing Broadrick v. Oklahoma, it is also opined that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it is argued further that "on its face invalidation of statutes has been described as 'manifestly strong medicine,' to be employed 'sparingly and only as a last resort.'" A reading of Broadrick, however, shows that the doctrine involved therein was the doctrine of overbreadth. Its application to (he present case is thus

> doubtful considering that the thrust at hand is to determine whether the Plunder Law can survive the vagueness challenge mounted by petitioner. A noted authority on constitutional law, Professor Lockhart, explained that "the Court will resolve them (vagueness challenges) in ways different from the approaches it has fashioned in the law of overbreadth." Thus, in at least two cases, the U.S. courts allowed the facial challenges to vague criminal statutes even if these did not implicate free speech.
>
> In Kolender v. Lawson, petitioners assailed the constitutionality of a California criminal statute which required persons who loiter or wander on the streets to provide a credible and reasonable identification and to account for their presence when requested by a peace officer under circumstances that would justify a valid stop. The U.S. Supreme Court held that said statute was unconstitutionally vague on its face within the meaning of the due process clause of the Fourteenth Amendment because it encourages arbitrary enforcement by failing to clarify what is contemplated by the requirement that a suspect provide a "credible and reasonable identification." Springfield vs. Oklahoma on the other hand involved a challenge to a Columbus city ordinance banning certain assault weapons. The court therein stated that a criminal statute may be facially invalid even if it has some conceivable application. It went on to rule that the assailed ordinance's definition of "assault weapon" was unconstitutionally vague, because it was "fundamentally irrational and impossible to apply consistently by the buying public, the sportsman, the law enforcement officer, the prosecutor or the judge."[84] (Emphasis and underscoring supplied)

Immediately following Estrada, the Court in Romualdez v. Sandiganbayan[85] (Romualdez) was asked to rule on the constitutionality of Section 5 of R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act, for being vague and impermissibly broad. The Court reiterated that the vagueness and overbreadth doctrines only apply to free speech cases.

While Associate Justice Dante O. Tinga (Justice Tinga) concurred with the majority that the assailed provision does not suffer from the vice of vagueness, he raised serious objections against echoing the Estrada ruling. He found it "mystifying why the notion that the doctrine applies only to 'free-speech' cases has gained a foothold with this Court."[86] He then adamantly argued that a vagueness challenge on a penal law should not be denied simply by virtue of the fact that the law is criminal in nature and the challenge to the statute is characterized as a facial attack.[87]

Four (4) years later, the Court in Spouses Romualdez v. COMELEC[88] (Spouses Romualdez) was confronted with a vagueness challenge to Section 45(j) of R.A. No. 8189, or The Voter's Registration Act of 1996. Petitioners therein were charged under this provision, in relation to Section 10(g) and Section 10(j) of the same law, for allegedly making false or untruthful statements in their application for registration as new voters. According to petitioners, the assailed provision penalizes the violation of any of the provisions of R.A. No. 8189. As such, it failed to provide fair notice of the punishable conduct, in contravention of the due process clause and Section 14, Article III of the Constitution.

As in Estrada and Romualdez, the Court held that the facial invalidation of a law is not appropriate for criminal statutes. Reiterating his earlier opinion, Justice Tinga dissented in Spouses Romualdez and lamented that the majority failed to correct the Court's erroneous reading of American jurisprudence on the application of the void-for-vagueness doctrine as a tool for facially challenging the validity of penal statutes. He also called the attention of the majority against relying on Justice Mendoza's concurring opinion in Estrada. He pointed out that in the Resolution to the motion for reconsideration in Estrada, Justice Mendoza submitted another Separate Opinion, clarifying that the doctrines of strict scrutiny, overbreadth, and vagueness are not totally inapplicable to criminal statutes, viz.:

> Before discussing these cases, let it be clearly stated that, when we said that "the doctrines of strict scrutiny, overbreadth and vagueness are analytical tools for testing 'on their laces' statutes in free speech cases or, as

> they are called in American law, First Amendment cases [and therefore] cannot be made to do service when what is involved is a criminal statute," we did not mean to suggest that the doctrines do not apply to criminal statutes at all. They do, although they do not justify a facial challenge, but only an as-applied challenge, to those statutes. Parties can only challenge such provisions of the statutes as applied to them. Neither did we mean to suggest that the doctrines justify facial challenges only in free speech or First Amendment cases. To be sure, they also justify facial challenges in cases under the Due Process and Equal Protection Clauses of the Constitution with respect to so-called "fundamental rights." In short, a facial challenge, as distinguished from as-applied challenge, may be made on the ground that, because of vagueness or overbreadth, a statute has a chilling effect on freedom of speech or religion or other fundamental rights. But the doctrines cannot be invoked to justify a facial challenge to statute where no interest of speech or religion or fundamental freedom is involved, as when what is being enforced is an ordinary criminal statute like the Anti-Plunder law.[89] (Emphasis and underscoring supplied)

The Court's pronouncements in these cases readily show that its doctrinal ruling in Estrada, which limited the application of facial challenges to speech-regulating measures, was premised on a faulty interpretation of cases decided by the SCOTUS. Indeed, the SCOTUS only recently acknowledged in City of Los Angeles v. Patel[90] (Patel) that facial challenges may be brought under the Fourth Amendment against statutes authorizing warrantless searches. But even prior to Patel, the SCOTUS had allowed facial challenges pursuant to rights other than free speech. Aside from Kolender v. Lawson[91] (Kolender), facial challenges to non-speech regulating measures were resolved in Roe v. Wade[92] Chicago v. Morales[93] and Lanzetta v. New Jersey,[94] among others.[95] Justice Kapunan, in his dissent in Estrada, as well as Justice Tinga, in his separate opinions in Romualdez and Spouses Romualdez, pointed out the danger of adopting a mistaken reading of U.S. jurisprudence on facial challenges.

But even with these persuasive opinions, the Court has repeatedly echoed this doctrine. When the constitutionality of R.A. No. 9372, or the Human Security Act (HSA) — the predecessor statute of the ATA — was challenged "for being intrinsically vague and impermissibly broad," the Court ruled in Southern Hemisphere that there was no justiciable controversy. The Court further held that a facial invalidation of a criminal statute on the ground of vagueness and overbreadth is improper. If the vagueness challenge is pursuant to a claim of violation of due process, Southern Hemisphere dictates that this is allowable only in cases as-applied to a particular defendant.[96]

Then, in Disini v. Secretary of Justice[97] (Disini) the Court reiterated that penal'statutes have an inherent chilling effect, which by itself, does not justify an on-its-face invalidation of the law. Allowing facial challenges for this reason may prevent the State from enacting laws against socially harmful conduct. Disini emphasized that the only exception to this rule is when the assailed statute involves free speech.

In the recent case of Imbong, the Court described the SCOTUS's facial challenge as a "First Amendment Challenge." Although the Court continued to mischaracterize the nature of facial challenges decided by the SCOTUS,[98] the Court also significantly stated that unlike the SCOTUS, the scope of facial challenges in this jurisdiction was expanded "to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights":

> In United States (US) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only protected speech, but also all other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.
>
> In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit

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> with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights. The underlying reason for this modification is simple. For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution.
>
> Consequently, considering that the foregoing petitions have seriously alleged that the constitutional human rights to life, speech and religion and other fundamental rights mentioned above have been violated by the assailed legislation, the Court has authority to take cognizance of these kindred petitions and to determine if the RFI Law can indeed pass constitutional scrutiny. To dismiss these petitions on the simple expedient that there exist no actual case or controversy, would diminish this Court as a reactive branch of government, acting only when the Fundamental Law has been transgressed, to the detriment of the Filipino people.[99] (Additional emphasis and underscoring supplied)

Notably, the ponencia interprets this portion of the Imbong ruling differently. The ponencia opines that the phrase "other fundamental rights" was only made "in reference to freedom of expression and its cognate rights (such as religious freedom)."[100]

Regrettably, this reading of the ponencia is totally unwarranted and completely belied by a plain reading of the aforementioned portion of the decision in Imbong. The ponencia's position, to which the majority agrees, completely fails to consider that the petitioners in Imbong alleged serious violations of the equal protection clause, as well as their rights to life, speech, and privacy. They also alleged that the penal provisions of R.A. No. 10354, otherwise known as the Responsible Parenthood and Reproductive Health Act of 2012 (RH Law), should be struck down for being vague, in violation of their right to due process. The Court further found that there was an actual case or controversy "because medical practitioners or medical providers are in danger of being criminally prosecuted x x x for vague violations thereof, particularly public health officers who are threatened to be dismissed from the service with forfeiture of retirement and other benefits."[101] Clearly, a holistic reading of Imbong belies the majority position. The Court could not have referred only to the cognate rights of free speech when it ruled that the scope of facial challenges has been expanded to cover "other fundamental rights."

Furthermore, in my view, the Imbong ruling already signaled a momentous shift from the Court's limited application of facial challenges. It recognized that the expanded power of judicial review envisions a proactive Judiciary, and the Court should not simply dismiss facial challenges against penal statutes by the mere expedient that no person had yet been charged with a violation of said penal law. Whether a penal statute regulates speech or not does not have any material effect on the justiciability of the issue. A penal statute, when repugnant to the Constitution, becomes ripe for judicial review by its mere enactment:[102]

> x x x In the unanimous en banc case Tañada v. Angara, this Court held that when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. x x x[103] (Emphasis supplied)

Likewise, it bears noting that the Court's uneven application of rules on facial challenges stemmed from its misplaced reliance on Broadrick v. Oklahoma,[104] which involved a claim for facial overbreadth. But while the doctrines of vagueness and overbreadth are related, it is possible for either to operate on an entirely different

plane. As Justice Tinga explained in his Separate Opinion in Romualdez:

> A fundamental Haw, to my mind, in the analysis employed by the ponencia and some of the separate opinions in Estrada is the notion that the "vagueness" and "overbreadth" doctrines are the same and should be accorded similar treatment. This is erroneous.
>
> Mr. Justice Kapunan, in his dissenting opinion in Estrada, offers a correct distinction between "vagueness" and "overbreadth":
> A view has been proffered that "vagueness and overbreadth doctrines are not applicable to penal laws." These two concepts, while related, are distinct from each other. On one hand, the doctrine of overbreadth applies generally to statutes that infringe upon freedom of speech. On the other hand, the "void-for-vagueness" doctrine applies to criminal laws, not merely those that regulate speech or other fundamental constitutional right. x x x The fact that a particular criminal statute does not infringe upon free speech does not mean that a facial challenge to the statute on vagueness grounds cannot succeed.

This view should be sustained, especially in light of the fact that the "void for vagueness" doctrine has long been sanctioned as a means to invalidate penal statutes.[105]

Thus, if the vague statute purports to regulate speech and other forms of expression, the ambiguity "operates to inhibit the exercise of [those] freedoms."[106] This is the same as the "chilling effect" that results from the operation of an overbroad statute or regulation. It is in this sense that the vagueness and overbreadth doctrines are related. But while overbreadth is applicable only to free speech cases, this is not the case for the void-for-vagueness doctrine.

When a statute or regulation suffers from the vice of vagueness, it fails to provide "fair notice" of the prescribed or prohibited conduct.[107] A vague statute or regulation is then deemed primarily offensive to the right to due process because persons are not apprised of what conduct to avoid, while "law enforcers [are granted] unbridled discretion in carrying out its provisions and become an arbitrary flexing of the Government muscle."[108] As the Court ruled in People v. Dela Piedra:[109]

> Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. A criminal statute that "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," or is so indefinite that "it encourages arbitrary and erratic arrests and convictions," is void for vagueness. The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning.[110] (Emphasis and underscoring supplied)

The Court in SPARK even acknowledged the due process underpinnings of the vagueness doctrine, by citing Justice Tinga's Dissenting Opinion in Spouses Romualdez:

> Essentially, petitioners only bewail the lack of enforcement parameters to guide the local authorities in the proper apprehension of suspected curfew offenders. They do not assert any confusion as to what conduct the subject ordinances prohibit or not prohibit but only point to the ordinances' lack of enforcement guidelines. The mechanisms related to the implementation of the Curfew Ordinances arc, however, matters of policy that are best left for the political branches of government to resolve. Verily, the objective of curbing unbridled enforcement is not the sole consideration in a void for vagueness analysis; rather, petitioners must show that this perceived danger of unbridled enforcement steins from an ambiguous provision in the law that allows enforcement authorities to second-guess if a particular conduct is prohibited or not prohibited. In this regard, that ambiguous provision of law contravenes due process because agents of the government cannot reasonably decipher what conduct the law permits and/or forbids. In Bykofsky v. Borough of Middlelown, it was ratiocinated that:
> A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on ad

> hoc and subjective basis, and vague standards result in erratic and arbitrary application based on individual impressions and personal predilections.

As above-mentioned, petitioners fail to point out any ambiguous standard in any of the provisions of the Curfew Ordinances, but rather, lament the lack of detail on how the age of a suspected minor would be determined. Thus, without any correlation to any vague legal provision, the Curfew Ordinances cannot be stricken down under the void for vagueness doctrine.[111] (Emphasis and underscoring supplied; italics in the original)

It should be emphasized that the due process clause serves as a check against arbitrary State intrusions on the personal security of every individual.[112] While there are several provisions in the Constitution that guarantee this right, its protection is primarily embodied in Section 1, Article III, which imposes a positive obligation on the State to ensure that "[n]o person shall be deprived of life, liberty, or property without due process of law."[113]

Indeed, there is no question that Congress has plenary powers to legislate a penal law, including a more "responsive" statute to address the perils of terrorism. The soundness of this policy is clearly beyond the purview of the Court's judicial review. However, the due process clause guarantees that any restriction on the protected civil liberties should be within the bounds of fairness.[114] This, to my mind, is the appropriate lens through which a vagueness challenge should be assessed - i.e. whether the legislature transgressed the due process guarantee by failing to provide adequate notice of the forbidden conduct, or to establish minimal guidelines to govern law enforcement.[115]

In this respect, the Court has the correlative duty to guard against the arbitrary deprivation of liberty that could result from an ambiguous penal statute.[116] For this reason, it is incongruous to limit the application of the vagueness doctrine to cases involving free speech,[117] as this severely undermines the Court's role in safeguarding the right to due process. To my mind, the due process guarantee is as fundamental as the freedom of expression,[118] especially when penal statutes such as the ATA are involved.

Relatedly, a vague penal law, even if it does not involve speech, may also be facially challenged for violating the principle of separation of powers. As further explained below, in several SCOTUS cases, a landmark of which is Sessions v. Dimaya[119] (Sessions), the void-for-vagueness doctrine was held to be a corollary of, apart from the due process guarantee of notice, the principle of separation of powers. This is because the doctrine recognizes the exclusive duty of Congress to define the conduct proscribed by law.[120] Compared to a violation of the due process clause, a violation of the separation of powers as brought about by a vague law does not necessitate that individuals be deprived of life, liberty or property. The undue delegation of legislative powers effected by the mere passing of a vague law is sufficient to constitute a violation of the Constitution.

In his dissent in Sessions, Justice Clarence Thomas (Justice Thomas) questioned the use of the vagueness doctrine by the SCOTUS to invalidate a federal removal statute, as he deemed it unclear whether such statutes could violate the Due Process Clause. He opined that the vagueness doctrine is really a way to enforce the separation of powers - specifically the doctrine of non-delegation, which does not depend upon the requirements of due process. Hence, impermissible delegations violate the Vesting Clauses in the US Constitution and not just delegations that deprive individuals of life, liberty or property, thus:

> Instead of a longstanding procedure under Murray's Lessee, perhaps the vagueness doctrine is really a way to enforce the separation of powers—specifically, the doctrine of nondelegation. x x x ("Vague statutes have the effect of delegating lawmaking authority to the executive"). Madison raised a similar objection to the Alien Friends Act, arguing that its expansive language effectively allowed the President to exercise legislative (and judicial) power. x x x And this Court's precedents have occasionally described the vagueness doctrine in terms of nondelegation. x x x ("A vague law impermissibly delegates basic policy matters"). But they have not been consistent on this front.

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> I agree that the Constitution prohibits Congress from delegating core legislative power to another branch. x x x But I locate that principle in the Vesting Clauses of Articles I, II, and III—not in the Due Process Clause. ("[T]hat there was an improper delegation of authority . . . has not previously been thought to depend upon the procedural requirements of the Due Process Clause"). In my view, impermissible delegations of legislative power violate this principle, not just delegations that deprive individuals of "life, liberty, or property." x x x[121] (Emphasis supplied)

Logically, from a separation-of-powers perspective, a vague law is void upon its enactment. There need not be a "chilling effect" which, following the majority's reasoning, is confined only to free speech cases. Neither is there a need to prove that the law is void in all possible cases as, in fact, there can be no set of circumstances under which a law constituting an unconstitutional delegation of legislative functions may be valid. To emphasize, a vague law that violates the separation of powers among the three (3) branches of government is already unconstitutional in that respect; hence, there is no more need to determine the nature and character of the rights alleged to be actually or potentially violated by the law.

Conceptually, locating the constitutional foundation of the vagueness doctrine (due process or separation of powers) clarifies who the doctrine aims to protect. Due process protects individuals from deprivation of life liberty and property without fair notice, as well as against the "arbitrary flexing of government muscle."[122] On the other hand, the doctrine of separation of powers protects the public in general, by preventing the concentration of power in one branch of government, so that it cannot "[lord] its power over the other branches or the citizenry," as well as by providing checks and balances on each of said branches.[123] The separation of powers which, specifically, prevents undue delegation of legislative powers likewise protects the democratic process in that it ensures that every statute remains to be "the product of an open and public debate among a large and diverse number of elected representatives [of the people]."[124]

Again, in these lights, the mere existence in our statute books of a vague law that violates the principle of separation of powers already betrays the public and the democratic process that the principle aims to protect. There is already, in this sense, an injury to the public that gives rise to an actual controversy and a case "ripe" for determination by the courts. Any member of the public gains a standing to sue and it becomes absurd for the Court to observe an as-applied approach because all persons, regardless if they are parties to the case or not, are equally injured by the enactment of the unconstitutionally vague law.

B.

It is unnecessary to require actual harm in facial challenges against a penal statute on the grounds of vagueness or overbreadth.

In Southern Hemisphere, the Court held that the overbreadth doctrine must "necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation."[125] This conclusion follows from the chilling effect of an overbroad statute or regulation, which could deter aggrieved third parties from initiating a suit.[126]

While Southern Hemisphere applies to overbreadth challenges against a regulation involving speech, the same logic, in my view, should apply to the void-for-vagueness doctrine. The test for vagueness, as enunciated in Estrada, entails an examination of the text or language of the challenged statute:

> The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. It must be stressed, however, that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld — not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act, it would be impossible to provide all the details in advance as in all other statutes.[127] (Emphasis supplied)

As such, if the law is not "utterly vague on its face," or is merely couched in "imprecise language," it does not suffer from the vice of vagueness. Romualdez also instructs that there is nothing vague in a penal provision or statute that is able to answer the basic query "What is the violation?"[128] In several instances, as in Spouses Romualdez[129] and SPARK,[130] the Court remarked that petitioners were unable to point to a word or provision that allegedly does not provide fair warning of what is prohibited or required.

Evidently, by its very nature, it is unnecessary for the Court to await an actual, live case to determine whether a statute is vague on its face. Requiring petitioners to establish a constitutional violation — by demonstrating actual injury from the application of a vague statute — is irrelevant in a vagueness analysis. The statute or regulation remains to be the subject of the inquiry. Whether it violates the right to due process or the principle of separation of powers is answered by examining the face of the statute or regulation itself, not the facts presented by the parties.[131]

The respective petitioners in Estrada, Romualdez, and Spouses Romualdez challenged the constitutionality of the penal statutes under which they were charged, on the grounds of vagueness. Notably, even with extant facts involving actual parties, and the declaration that facial invalidation is inappropriate for penal statutes, the Court nonetheless resolved the issue of vagueness by looking at the very language of the laws themselves. The Court construed the natural, plain, and ordinary acceptation of the words of the law, and arrived at the meaning of the challenged penal statutes by examining the legislative intent. In all of these cases, the particular factual circumstances of the petitioners were not among the considerations of the Court.

Clearly, whether the ground invoked is vagueness or overbreadth, the Court must necessarily examine the validity of the law or regulation on its face. These tests are therefore unsuitable to an as-applied challenge, and the only essential consideration is the enactment of a statute or regulation inconsistent with the Constitution.

C.

The severability of statutes allows the Court to undertake a facial analysis without necessarily ruling on the wholesale invalidation of the law.

While I agree that the facial invalidation of a statute or provision should be sparingly decreed by the Court, a facial challenge does not preclude the partial invalidation of the challenged law. This holds especially true in laws that contain a separability provision, which creates a presumption that the provisions are severable. The Court explained in Tatad v. Secretary of the Department of Energy[132] (Tatad) as follows:

> We come to the submission that the provisions on 4% tariff differential, minimum inventory and predatory pricing are separable from the body of R.A. No. 8180, and hence, should alone be declared as unconstitutional. In taking this position, the movants rely heavily on the separability provision of R.A. No. 8180. We cannot affirm the movants for to determine whether or not a particular provision is separable, the courts should consider the intent of the legislature. It is true that the most of the time, such intent is expressed in a

> separability clause stating that the invalidity or unconstitutionality of any provision or section of the law will not affect the validity or constitutionality of the remainder. Nonetheless, the separability clause only creates a presumption that the act is severable. It is merely an aid in statutory construction. It is not an inexorable command. A separability clause does not clothe the valid parts with immunity from the invalidating effect the law gives to the inseparable blending of the bad with the good. The separability clause cannot also be applied if it will produce an absurd result. In sum, if the separation of the statute will defeat the intent of the legislature, separation will not take place despite the inclusion of a separability clause in the law.[133] (Emphasis supplied)

To recall, in Disini, the Court declared only certain provisions of the Cybercrime Prevention Act void, while other provisions were upheld. The Court further narrowed the application of some provisions by declaring them void only insofar as it is stated in the dispositive portion. The ruling in Imbong likewise declared specific provisions of the RH Law unconstitutional. Meanwhile, in this case, the majority proclaims only certain provisions of the ATA unconstitutional. Indeed, the Court has broad discretion on whether a partial invalidation would suffice even when a facial challenge is mounted against the statute. The wholesale invalidation of a law does not always proceed from a facial challenge.

On these premises, I submit that the distinction between a facial and as-applied challenge should be less relevant in the Court's consideration of a constitutional issue. While there may be cases that can benefit from the requirement of actual facts, it is inaccurate to characterize a facial challenge against a non-speech regulating measure as premature. Again, it must be emphasized that the ripeness of a facial challenge is not hinged on whether it regulates speech or not. The Court has an abundance of rules concerning justiciability. The presence of an actual case or controversy is therefore independently determinable from the grounds invoked by the parties to question the constitutionality of the statute or ordinance.

Finally, the Court should revisit its policy of skepticism over facial challenges that do not concern free speech. The nonchalant but categorical disapproval of a facial attack on a penal statute, on the ground that it is not a speech-regulating measure, is patently inconsistent with the role of the Court in the protection of fundamental freedoms. Purely procedural concerns should not serve as a pretext for the Court to evade its function in the system of checks and balances. When fundamental rights other than freedom of speech are violated by a law, this Court has the duty, to hold the legislature accountable.[134]

IV.

Propriety of the strict scrutiny test

The strict scrutiny test originated from the SCOTUS,[135] subsequently adopted in the country's legal system through the jurisprudence promulgated by the Court. Its modern iteration states that a piece of legislation will be upheld against a constitutional challenge only if it is necessary or narrowly tailored to promote a compelling governmental interest.[136]

The test has a wide application in constitutional law. The SCOTUS applied the test in cases involving challenges under the Equal Protection Clause to statutes that discriminate based on race or other suspect classifications.[137] It is also the baseline rule for assessing laws that regulate speech on the basis of content[138] and to challenge a statute on grounds of violations of the right to due process and equal protection of laws when the statutes restrict the exercise of fundamental rights.[139] The test also applies to statutes that impose substantial burdens on freedom of association and those that single out religiously motivated conduct for governmental regulation.[140]

In the Philippines, while the test is used primarily in equal protection cases,[141] the Court has also expanded its use, similar to the SCOTUS, to assess the validity of laws dealing with the regulation of speech, gender, or race,

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as well as other fundamental rights.[142]

As regards equal protection cases involving constitutional rights, the SCOTUS used the strict scrutiny test in determining the validity of a statute that regulated the exercise of a constitutional right of interstate movement in Shapiro v. Thompson.[143] The SCOTUS struck down a law where a State or District denied welfare assistance to residents who have not resided in the state or district for at least one year immediately preceding their application for assistance. In its analysis, the SCOTUS found that since the classification made by the statute touched on the constitutional right of interstate movement, a stricter standard was used to measure its constitutionality: a classification which penalizes the exercise of a constitutional right is unconstitutional, unless it is shown that it is necessary to promote a compelling governmental interest. The SCOTUS found that the law failed this test. It ruled:

> We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public.education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. x x x
>
> x x x x
>
> x x x But in moving from State to State or to the District of Columbia appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.[144] (Italics supplied)

Locally, the strict scrutiny test was also applied in a similar case involving the right to travel. In SPARK, the Court declared that since "the right to travel is a fundamental right in our legal system, guaranteed no less by our Constitution, [then] the strict scrutiny test [was] the applicable test."[145] The Court used the twin requirements of (a) the state having a compelling state interest; and (b) the means employed by the state in achieving the state interest was the least restrictive to constitutional rights (least restrictive means standard) or the most narrowly drawn to avoid conflicts to constitutional rights (narrowly drawn standard), in determining the constitutionality of certain curfew ordinances enacted by local governments. Ultimately, the Court declared the curfew ordinances unconstitutional for having failed the least restrictive means/narrowly drawn standards in the strict scrutiny test. The Court found that the curfew ordinances unduly restricted the minors' fundamental freedoms, and the ordinances failed to take into account "the reasonable exercise of the minors' rights of association, free exercise of religion, rights to peaceably assemble, and of free expression, among others."[146]

The validity of laws and regulations involving the right to vote had also been examined through the strict scrutiny test. In the case of Kabataan Party-List v. COMELEC,[147] the Court used the strict scrutiny test to determine the constitutionality of the mandatory biometrics registration for voters as a procedural requisite to be able to vote. The Court eventually ruled in favor of the law's constitutionality, as it found that the "assailed regulation on the right to suffrage was sufficiently justified as it was indeed narrowly tailored to achieve the compelling state interest of establishing a clean, complete, permanent and updated list of voters, and was demonstrably the least restrictive means in promoting that interest."[148]

The SCOTUS similarly used the test in determining the validity of a statute that regulated the right to vote in Kramer v. Union Free Sch. Dist. No. 15[149] In the said case, the SCOTUS struck down a statute imposing an additional requirement for participating in district and school board elections. The statute required that for a person to vote, the person should own or lease a real property, or is a parent or has custody of a child enrolled in the local public schools. Petitioner therein neither owned nor leased a property, nor had a child enrolled in the public school system; he was living in the house of his parents. In analyzing whether the law was unconstitutional,

the SCOTUS characterized the right to vote as preservative of other basic civil and political rights. Since the statute results in a discrimination in who may participate in political affairs or in the selection of public officials, the SCOTUS applied a close and exacting examination of the statute. The SCOTUS conducted this close and exacting examination by determining the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification:

> x x x The sole issue in this case is whether the additional requirements of § 2012 - requirements which prohibit some district residents who are otherwise qualified by age and citizenship Irom participating in district meetings and school board elections - violate the Fourteenth Amendment's command thai no State shall deny persons equal protection of the laws.
>
> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." X x x And, in this case, we must give the statute a close and exacting examination. "Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." X x x This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.[150] (Italics supplied)

The SCOTUS ruled that the classifications must be tailored so that the exclusion of a certain class is necessary to achieve an articulated state goal. As applied to the case, the SCOTUS found that the limitation imposed by the statute did not promote a compelling state interest as it permitted the inclusion of many persons who had, at best, a remote and direct interest, and excluded others that had a distinct and direct interest in school meeting decisions. Thus:

> Whether classifications allegedly limiting the franchise to those resident citizens "primarily interested" deny those excluded equal protection of the laws depends, inter alia, on whether all those excluded are, in fact, substantially less interested or affected than those the statute includes. In other words, the classifications must be tailored so that the exclusion of appellant and members of his class is necessary to achieve the articulated state goal. Section 2012 does not meet the exacting standard of precision we require of statutes which selectively distribute the franchise. The classifications in § 2012 permit inclusion of many persons who have, at best, a remote and indirect interest in school affairs and, on the other hand, exclude others who have a distinct and direct interest in the school meeting decisions.[151]

For claims of violation of the right to due process, the SCOTUS, in Washington v. Glucksberg[152] ruled that it is important to determine that what is at stake is a fundamental right, as the right to due process forbids the government from infringing on such fundamental right unless the infringement is narrowly tailored to serve a compelling state interest. Fundamental rights are those that are deeply rooted in the nation's history and tradition and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed.[153] As the SCOTUS ruled:

> Our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which arc, objectively, "deeply rooted in this Nation's history and tradition," x x x ("so rooted in the traditions and conscience of our people as to be ranked as fundamental"), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," x x x. Second, we have required in substantive-duc-proccss cases a "careful description" of the asserted fundamental liberty interest. X x x Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decision making," x x x that direct and restrain our exposition of the Due Process Clause. As we stated recently in

> Flores, the Fourteenth Amendment "forbids the government to infringe . . . 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." x x x[154]

The SCOTUS found that the right to assistance to commit suicide was not a fundamental right considering the nation's history; as in fact, such right has consistently and almost universally been rejected.[155] Given this, the SCOTUS merely used the rational basis test instead of the strict scrutiny test.

The SCOTUS further ruled that the statute banning and criminalizing assisted suicide was valid as the State had an interest in preserving the life of those that can still contribute to society and enjoy life,[156] protecting the integrity and ethics of the legal profession,[157] protecting the interests of vulnerable groups,[158] and that the "State may fear that permitting assisted suicide will start it down the path to voluntary and perhaps even involuntary euthanasia."[159]

Another fundamental right involved in cases where the strict scrutiny test was applied was the right to privacy, as illustrated in the cases of Ople v. Torres[160] (Ople), City of Manila v. Laguio, Jr.[161] (Laguio), and White Light Corp. v. City of Manila.[162] In Ople, the Court categorically said that: "[intrusions into the right [to privacy] must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions x x x [and] any law or order that invades individual privacy will be subjected by this Court to strict scrutiny."[163] In Laguio, the Court struck down as unconstitutional a city ordinance which banned, among others, karaoke bars, dance halls, motels, and inns for the purpose of promoting and protecting social and moral values of the community from the alarming increase of prostitution in the area. It then explained:

> Liberty in the constitutional sense not only means freedom from unlawful government restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is the beginning of all freedom—it is the most comprehensive of rights and the right most valued by civilized men.
>
> Indeed, the right to privacy as a constitutional right was recognized in Morfe, the invasion of which should be justified by a compelling state interest. Morfe accorded recognition to the right to privacy independently of its identification with liberty; in itself it is fully deserving of constitutional protection. Governmental powers should stop short of certain intrusions into the personal life of the citizen.[164] (Emphasis supplied)

For free speech cases, particularly content-based regulation of speech, the SCOTUS in United States v. Playboy Entertainment Group, Inc.,[165] struck down a statute that "required cable television operators who provide channels 'primarily dedicated to sexually-oriented programming' either to 'fully scramble or otherwise fully block' those channels or to limit their transmission to hours when children are unlikely to be viewing, set by administrative regulation as the time between 10 p.m. and 6 a.m."[166]

In determining the constitutionality of the statute, the SCOTUS used the strict scrutiny test as it ruled that when a statute regulates speech based on its content, it must be narrowly tailored to promote a compelling government interest.[167] The SCOTUS further ruled that "[w]hen the Government seeks to restrict speech based on its content, the usual presumption of constitutionality afforded congressional enactments is reversed. "Content-based regulations are presumptively invalid[.]"[168] The SCOTUS went on to explain that:

> This is for good reason. "[T]he line between speech unconditionally guaranteed and speech which may legitimately be regulated, suppressed, or punished is finely drawn." x x x Error in marking that line exacts an extraordinary cost. It is through speech that our convictions and beliefs are influenced, expressed, and tested. It is through speech that we bring those beliefs to bear on Government and on society. It is through speech that our personalities are formed and expressed. The citizen is entitled to seek out or reject certain ideas or influences without Government interference or control.[169]

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In ruling that the statute was unconstitutional, the SCOTUS ruled the "case involves speech alone; and even where speech is indecent and enters the home, the objective of shielding children does not suffice to support a blanket ban if the protection can be accomplished by a less restrictive alternative."[170]

For the SCOTUS, when a statute regulates speech by reason of content, special consideration or latitude is not given to the government, even if it characterizes the regulation merely as a burden rather than suppression, or that the speech is not important.[171] As the SCOTUS ruled:

> Basic speech principles are at stake in this case. When the purpose and design of a statute is to regulate speech by reason of its content, special consideration or latitude is not accorded to the Government merely because the law can somehow be described as a burden rather than outright suppression. We cannot be influenced, moreover, by the perception that the regulation in question is not a major one because the speech is not very important. The history of the law of free expression is one of vindication in cases involving speech that many citizens may find shabby, offensive, or even ugly. It follows that all content-based restrictions on speech must give us more than a moment's pause. If television broadcasts can expose children to the real risk of harmful exposure to indecent materials, even in their own home and without parental consent, there is a problem the Government can address. It must do so, however, in a way consistent with First Amendment principles. Here the Government has not met the burden the First Amendment imposes.[172]

Similar to the above, the Court also applies the strict scrutiny test to determine the constitutionality of a law that regulates speech on the basis of its content. In Soriano v. Laguardia,[173] the Court, citing Chavez v. Gonzales,[174] distinguished between content-neutral and content-based regulations of speech, and explained that "[a] content-based restraint is aimed at the contents or idea of the expression, whereas a content-neutral restraint intends to regulate the time, place, and manner of the expression under well-defined standards tailored to serve a compelling state interest, without restraint on the message of the expression. Courts subject content-based restraint to strict scrutiny."[175]

In Divinagracia v. Consolidated Broadcasting System, Inc.,[176] the Court was faced with the question of whether the National Telecommunications Commission (NTC) had the power to cancel certificates of public convenience (CPC) it had previously issued to broadcast media companies on the ground that the latter had violated the terms of their legislative franchises. While the question was, at first glance, a matter merely of determining the powers of an. administrative agency, the Court observed that a ruling on the matter has implications on the rights to free expression and a free press. The Court found that as it stood, broadcast stations, unlike print media, were already subjected to a regulatory framework that necessarily restrains their content. Newspapers, for instance, could publish their content daily without the restraint of having a government agency like the NTC possibly suspending their operations or imposing on them a fine because of their content. The possibility of the same government agency having the power to cancel a CPC would, therefore, be a possible death sentence to broadcast media's ability to exercise their constitutional rights to free speech, expression, and of the press. The Court then expounded:

> This judicial philosophy aligns well with the preferred mode of scrutiny in the analysis of cases with dimensions of the right to free expression. When confronted with laws dealing with freedom of the mind or restricting the political process, of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection, the Court has deemed it appropriate to apply "strict scrutiny" when assessing the laws involved or the legal arguments pursued that would diminish the efficacy of such constitutional right. The assumed authority of the NTC to cancel CPCs or licenses, if sustained, will create a permanent atmosphere of a less free right to express on the part of broadcast media. So that argument could be sustained, it will have to withstand the strict scrutiny from this Court.
>
> Strict scrutiny entails that the presumed law or policy must be justified by a compelling state or government

> interest, that such law or policy must be narrowly tailored to achieve that goal or interest, and that the law or policy must be the least restrictive means for achieving that interest. It is through that lens that we examine petitioner's premise that the NTC has the authority to cancel licenses of broadcast franchisees.[177] (Emphasis and underscoring supplied)

From the foregoing survey of domestic and foreign jurisprudence, the ponencia was, therefore, correct in its use of the strict scrutiny test in determining the constitutionality of the provisions of the ATA, considering that the provisions, directly or indirectly, regulate speech on the basis of its content, and have serious implications on the right to due process.

V.

Section 4, except the "Not Intended Clause" in its proviso, is constitutional

I likewise agree with the majority that Section 4, except the "Not Intended Clause" in the proviso, is constitutional. Only the proviso of Section 4 — i.e., "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety," — is rightly declared unconstitutional such that Section 4, as delineated by theponencia, would now state:

> SECTION 4. Terrorism. — Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:
>
> (a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;
>
> (b) Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property;
>
> (c) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;
>
> (d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and
>
> (e) Release of dangerous substances, or causing fire, floods or explosions
>
> when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code": Provided, That, terrorism as defined in this scetion shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights[.] , which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety. (Emphasis and strikethrough supplied.)

That said, I find the ponencia's framework, in reaching this conclusion, to be restrictive.

I agree with the ponencia's observation that Section 4 of the ATA consists of two parts: the main part and the proviso. The ponencia correctly observes that the main part, which enumerates the acts constituting terrorism, as

plainly worded, pertains to conduct only. There is, in this regard, no material difference between the ATA and its predecessor, R.A. No. 9372 or the HSA. What is only different this time is that the act committed under the ATA need not be an act punishable under any of the cited provisions of the Revised Penal Code (RPC), or under any of the enumerated special penal laws.[178]

Furthermore, under the HSA, the act committed should sow and create a condition of widespread and extraordinary fear and panic among the populace, for the purpose of coercing the government to give in to an unlawful demand. These elements are absent in the ATA, but notably, they were recast and broadened as any of the purposes of the predicate acts under the ATA. Hence, in a similar fashion to the HSA, the proscribed acts under the ATA should be for the purpose of creating an atmosphere or spreading a message of fear, or intimidating the general public or a segment thereof. In addition, the purposes of the predicate acts under the ATA may also be to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety.

Be that as it may, while the acts and purposes of terrorism have been expanded under the main part of Section 4 of the ATA, like the HSA, what is clearly regulated remains conduct and not speech or "spoken words." It is also well to point out that the main part of Section 4 of the ATA did away with the communicative component of the prohibition in the HSA, the lone purpose of which was coercing the government to give in to an unlawful demand. To recall, the Court in Southern Hemisphere ruled that any attempt at singling out or highlighting this communicative component cannot recategorize the unprotected conduct into a protected speech. The Court held so because before any of the qualifying phrases in the other elements of the crime, including its only purpose, can be triggered into operation, there must first be a predicate crime actually committed.[179]

Petitioners, to be fair, do not advance the same argument in the Southern Hemisphere case — that the acts contemplated under Section 4 of the ATA nevertheless have a communicative element to them and are thus, also speech-related. Rather, petitioners argue that speech is implicated because of the proviso and its qualifying clause (the "Not Intended Clause") in Section 4.

According to petitioners, "Section 4, together with Sections 6, 9, 10 and 12 of the ATA, directly punishes constitutionally-protected speech and conduct. Most egregious is Section 4 of the ATA which penalizes with life imprisonment 'exercises of civil and political rights' when committed with intent 'to cause death or serious physical harm to any person, to endanger a person's life, or to create a serious risk to public safety.'"[180] While petitioners are correct that the proviso pertains to and implicates speech and speech-related conduct, their fears that these are proscribed under Section 4 have been effectively abated with the majority's decision to excise the problematic qualifying phrase in the proviso. As it will now stand, the proviso in Section 4 will unqualifiedly exclude advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights from the definition of terrorism. Simply put, the main part will reach only permissibly regulated conduct, while the proviso will exclude constitutionally protected speech and speech-related conduct.

As mentioned earlier, the ponencia has delimited a facial analysis only to statutes that affect free speech and its cognate rights. As such, the ponencia is of the view that a facial challenge against the main part of Section 4 should not be entertained. Nonetheless, to guide the bench, bar, and public, the ponencia deems it prudent to clarify some of the alleged mistaken notions of petitioners with the main part of Section 4. Ultimately, therefore, and quite notably, what the ponencia has done is to conduct a facial analysis of the main part of Section 4 and concludes that it is neither vague nor overbroad. To this conclusion and the ponencia's explanation, I have no disagreement.

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However, as I had discussed earlier, I respectfully disagree with the ponencia's restrictive interpretation of when a facial challenge, particularly a void-for-vagueness challenge, of a penal statute may be had. Again, to my mind, a facial challenge is not limited to a statute that infringes only on free speech and.its cognate rights. Regardless of whether conduct or speech is involved, for so long as a fundamental right is implicated, a penal statute is always susceptible to a facial challenge.

Considering that petitioners have sufficiently demonstrated that the main part of Section 4 implicates one's fundamental rights to due process and equal protection for being vague, as well as the fundamental precept of separation of powers, the Court may conduct a facial analysis against the assailed provision.

A.

The main part of Section 4 of the ATA is not vague.

I agree with the majority that the main part of Section 4 is not impermissibly vague.

A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application.[181] It is repugnant to the Constitution because it violates due process for failure to accord persons fair notice of the conduct to avoid.[182] This principle of legality, reflected in the maxim nulla poena sine lege (no penalty without a law), provides that the criminal act must be legislated in advance, and not crafted ad hoc to capture a particular person's conduct.[183]

Furthermore, a vague statute is unacceptable because it gives law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[184] Only proper institutional actors — namely, legislatures — may define the content of the criminal law. Basic policy matters should not be impermissibly delegated to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications. Citizens should not have to run the risk, of violating laws that are effectively created on the spot by the enforcement decisions of police officers, or the courts.[185]

Thus, upon closer inspection, the vagueness doctrine rests on the twin constitutional pillars of due process and separation of powers.[186]

According to petitioners, the following provisions and terms under the main part of Section 4 are problematic:

- Section 4(a) is vague as the actus reus is unclear. It punishes so long as there is "intent" to "cause death or serious bodily injury to any person".

- Unconstitutional vagueness also taints the phrase "endangers a person's life" in Section 4(a) because "risk" of harm varies from person to person. "Endanger" means to put someone at risk of harm. However, "risk" of harm varies from person to person.

- Section 4(b) is vague as "extensive damage or destruction" has no ascertainable standards under the ATA.

- Section 4(c) is vague because the terms "extensive" and "interference" are not defined.

- Section 4 (d) is vague because it does not provide any standards that can narrow the scope of the prohibited acts because the phrase "of biological, nuclear, radiological or chemical weapons" exists independently of "weapons,

explosives".

- Section 4(e) does not define what "dangerous substances" consist of. Like in Johnson v. United States[187] (Johnson), Section 4(e) does not prescribe the magnitude and quality of danger a substance must possess to be considered "dangerous".[188]

In all of the foregoing, petitioners argue that law enforcers are effectively given a very wide discretion in the definition and determination of these allegedly vague terms in the course of enforcement. Petitioners add that while the phrase "when the purpose of such act, by its nature and context" aims to contextualize the coverage of the definition of terrorism, it requires a law enforcer to discern the "nature and context" of any person's act to determine whether the act was committed with any of the terroristic purposes provided by Section 4. However, "nature and context" are, by themselves, complicated concepts, and a law enforcer, who is trained neither in law nor psychology, cannot be expected to make a correct determination thereof.[189]

As jurisprudential support, petitioners notably cited the case of Johnson which struck down a statute found to be vague because of the lack of specific standards, which rendered its applicability as a matter of "guesswork and intuition." They also cite Kolender to argue that the vagueness of Section 4 impermissibly entrusted "lawmaking to the moment-to-moment judgment of the policeman on his beat."[190]

Indeed, Kolender acknowledges that the more important aspect of the vagueness doctrine "is not actual notice, but the other principal element of the doctrine — the requirement that a legislature establish minimal guidelines to govern law enforcement."[191] Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."[192] The problem of vagueness attendant in Kolender and Johnson (as well as in Sessions and Davis), however, is absent in this case.

To recall, in Kolender, the SCOTUS facially invalidated a criminal statute, § 647(e) of the California Penal Code Ann., which required persons who loiter or wander on the streets to provide a "credible and reliable" identification and to account for their presence when requested by a peace officer under circumstances that would justify a stop under the standards of Terry v. Ohio.[193] The SCOTUS held the statute as unconstitutionally vague by failing to clarify what was contemplated by the requirement that a suspect provide a "credible and reliable" identification. It contained no standard for determining what a suspect has to do in order to satisfy the requirement to provide a "credible and reliable" identification. As such, § 647(e) vested virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute and must be permitted to go on his way in the absence of probable cause to arrest. During the oral arguments, the appellants (police officers) did, in fact, confirm that a suspect violates § 647(e) unless "the officer [is] satisfied that the identification is reliable."[194]

Hence, whether an offender has violated the assailed statute in Kolender is a question that is entirely dependent on the subjective assessment of law enforcement. Again, it was brought to light during the oral arguments in said case that in giving examples of how suspects would satisfy the identification requirement, the police officers "explained that a jogger, who was not Cctrrying identification, could, depending on the particular officer, be required to answer a series of questions concerning the route that he followed to arrive at the place where the officers detained him, or could satisfy the identification requirement simply by reciting his name and address."[195] This highly subjective assessment, which can possibly lead to a capricious exercise by policemen, was the very same evil that the SCOTUS averted in the earlier cases of Coates v. City of Cincinnati[196] (Coates), Papachristou v. Jacksonville[197] (Papachristou), and Smith v. Goguen[198] (Smith).

Coates was the famous case involving a Cincinnati, Ohio ordinance which made it a criminal offense for "three or more persons to assemble . . . on any of the sidewalks . . . and there conduct themselves in a manner annoying to

persons passing by. . . ."[199] Besides ruling that the ordinance was a violation of the constitutional right of free assembly and association, the SCOTUS also found it unconstitutionally vague because it subjected the exercise of the right of assembly to an unascertainable standard. Conduct that annoys some people does not annoy others. As with Kolender, enforcing the assailed ordinance in Coates would entirely depend upon whether a policeman was annoyed. Thus, the SCOTUS concluded that the ordinance was vague not in the sense that it required a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct was specified at all.[200]

Similarly, in Papachristou, an archaic vagrancy ordinance deemed certain individuals[201] as vagrants and meted the punishment of fine or imprisonment upon their, conviction. The SCOTUS held the ordinance unconstitutionally vague not only for lack of fair notice, but also for encouraging arbitrary and erratic arrests and convictions. According to the SCOTUS, the ordinance made criminal activities which, by modern standards, were normally innocent and cast a large net to increase the arsenal of the police in the state's objective of crime prevention. Elaborating on the unfettered discretion the ordinance placed into the hands of the police, the SCOTUS relevantly expressed:[202]

> Those generally implicated by the imprecise terms of the ordinance — poor people, nonconformists, dissenters, idlers — may be required to comport themselves according to the lifestyle deemed appropriate by the Jacksonville police and the courts. Where, as here, there are no standards governing the exercise of the discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law. It furnishes a convenient tool for "harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure." x x x It results in a regime in which the poor and the unpopular are permitted to "stand on a public sidewalk . . . only at the whim of any police officer." x x x[203]

In Smith, the provision in question involved a flag-misuse statute that subjected to criminal liability anyone who "publicly . . . treats contemptuously the flag of the United States..."[204] The SCOTUS acknowledged that in a time of widely varying attitudes and tastes for displaying something as ubiquitous as the United States flag or representations of it, it could hardly be the purpose of the legislature to make criminal every informal use of the flag. However, the statutory language of the assailed provision failed to draw reasonably clear lines between the kinds of non-ceremonial treatment that were criminal and those that were not. Textually, the SCOTUS said, it was sufficiently unbounded to prohibit "any public deviation from formal flag etiquette..."[205] and thereby allowed policemen, prosecutors, and juries to pursue their personal predilections.[206]

As well, quite interestingly, the SCOTUS in Smith likewise noted the appellant's (sheriff) candid confession during the oral arguments before the Court of Appeals, to wit:

> "[A]s counsel [for appellant] admitted, a war protestor who, while attending a rally at which it begins to rain, evidences his disrespect for the American flag by contemptuously covering himself with it in order to avoid getting wet, would be prosecuted under the Massachusetts statute. Yet a member of the American Legion who, caught in the same rainstorm while returning from an 'America — Love It or Leave It' rally, similarly uses the flag, but does so regrettably and without a contemptuous attitude, would not be prosecuted." x x x Where inherently vague statutory language permits such selective law enforcement, there is a denial of due process.[207]

On the other hand, in this case, the interpellation of Associate Justice Rosmari D. Carandang to the OSG during oral arguments is illuminating. The following establishes the unequivocal standards apparent in Section 4 itself, in stark contrast with the damning admissions made by the concerned law enforcers in Kolender and Smith:

> ASSOCIATE JUSTICE CARANDANG:

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Okay. So, that's very, very clear. Consider this example ha? A man was carrying a grenade around Quiapo church while a mass was being held. A bystander shows he was carrying and shouted "Granada!" And this led to a hundred of people going into panic. He was then apprehended by the police. Now, based on the facts presented, can the man be prosecuted under Section 4 or can you cite a fact that proves that the purpose is to commit terrorism and the nature and context of such purpose? Simply a man holding a grenade.

ASSISTANT SOLICITOR GENERAL RIGODON:

Based, Your Honor, on the example, that is not sufficient to charge him with terrorism. Because there is no evidence as to what is his intent in carrying that grenade; and secondly, there is also no evidence as to the purpose for carrying that grenade, Your Honor.

ASSOCIATE JUSTICE CARANDANG:

Next question. If that guy would want really to throw the grenade just to kill his enemies whom he see there attending mass in Quiapo church, will he be punished under the anti-terrorism law or can he be punished under other special laws?

ASSISTANT SOLICITOR GENERAL RIGODON:

I think, based on the example, Your Honor, he can only be punished for either murder or homicide, Your Honor. Because it is not clear that the purpose is included in those which the law prohibits under the second paragraph of Section 4, Your Honor.

ASSOCIATE JUSTICE CARANDANG:

Okay. Since he was arrested in flagrante delicto, can the officer or the police officer or the government agent distinguish between, can he distinguish between terrorism and possession of hand grenade in that specific case? At that point in time that he was arrested, can the police officer distinguish?

ASSISTANT SOLICITOR GENERAL RIGODON:

No, Your Honor, because intent is a mental state of mind and therefore unless the police can secure as personal knowledge on what the specific intent of that person at that precise moment in time, it would not be possible to charge him or to apprehend him for violation of the terrorism law, Your Honor.

ASSOCIATE JUSTICE CARANDANG:

At most, initially?

ASSISTANT SOLICITOR GENERAL RIGODON:

Illegal possession of explosives, Your Honor.

ASSOCIATE JUSTICE CARANDANG:

Or maybe if he threw the bomb or the grenade, murder or whatever? Common crimes?

ASSISTANT SOLICITOR GENERAL RIGODON:

Yes, Your Honor.

ASSOCIATE JUSTICE CARANDANG:

So, you are in effect, admitting that from the example given, the enforcement officers are now given such a wide discretion in apprehending the suspects based only on his own perception of terrorism?

ASSISTANT SOLICITOR GENERAL RIGODON:

> Because the law requires, Your Honor, under a warrantless arrest that the apprehending officer must have personal knowledge. Therefore, if that police officer does not have personal knowledge on the intent of that person or the purpose of that person in carrying that grenade, then he cannot validly arrest him without a warrant for violation of Section 4 of the ATA, Your Honor. He can only apprehend him for violation of common crimes, Your Honor.[208]

The foregoing shows that, unlike the US cases discussed above, there is here no clear equivalent subjective assessment or unfettered discretion given to law enforcement to make arrests based on their personal predilections. This is so because — to underscore — the enumerated acts in the main part of Section 4 are not, and should not be, divorced from the purposes in the succeeding paragraph, as well as from the elements of "nature and context." As aptly noted by the ponencia:

> A textual review of the main part of Section 4 shows that its first and second components provide a clear correlation and a manifest link as to how or when the crime of terrorism is produced. When the two components of the main part of Section 4 are taken together, they create a demonstrably valid and legitimate definition of terrorism that is general enough to adequately address the ever-evolving forms of terrorism, but neither too vague nor too broad as to violate due process or encroach upon the freedom of speech and expression and other fundamental liberties.
>
> x x x x
>
> Thus, "nature" in Section 4 cannot be reasonably interpreted to mean "instinct, appetite, desire," "a spontaneous attitude," "external world in its entirety," because such definitions would render the word "nature" absurd in connection with the other terms in Section 4. Therefore, "nature," as used in Section 4, can only refer to the inherent character of the act committed. By a similar process of elimination, "context" can only refer to the interrelated conditions in which any of the acts enumerated in Section 4(a) to (e) was committed. These are the standards which law enforcement agencies, the prosecution, and the courts may use in determining whether the purpose of or intent behind any of the acts in Section 4(a) to (e) is to intimidate the public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, etc.[209] (Emphasis omitted)

Indeed, petitioners' insistence as to the lack of definition of the various terms employed in the main part, which allegedly makes them vague, deserves scant consideration. The rule is well-settled that a statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them.[210] In Estrada, the Court labelled as pure sophistry therein petitioner's rationalization that the Plunder Law was impermissibly vague and overbroad for its failure to provide the statutory definition of various terms. The Court held that there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act.[211]

It would be frivolous to claim that people of common intelligence will be confused as to whether their contemplated actions would fall under the main part of Section 4 or not. As plainly constructed, the main part sets out the acts which may constitute terrorism, defined by the intent behind them, the causes or effect they may lead to, and the purposes why they are carried out. Further to these, the nature and context of the offenses play an important part. All of these factors figure into the whole definition of the crime of terrorism. The apparent desire is to circumscribe the offense to unprotected conduct, but ensure, at the same time, that the ATA will remain flexible enough and enduring, in consonance with the ever-evolving nature of terrorism.

The need to balance out considerations of human rights and law enforcement is an old and familiar subject. In the craftsmanship of laws, this need is also a fixture. In dealing with such, Colten v. Kentucky[212] instructs that

"[t]he root of the vagueness doctrine is a rough idea of fairness. It is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited."[213] To be sure, "[t]here are areas of human conduct where, by the nature of the problems presented, legislatures simply cannot establish standards with great precision."[214]

In another case, U.S. v. Williams[215] (Williams) the SCOTUS shot down the void-for-vagueness challenge against a provision of a law which criminalized, in certain specified circumstances, the pandering or solicitation of child pornography. Specifically, the alleged vague and standardless phrases in the statute read: "in a manner that reflects the belief" and "in a manner . . . that is intended to cause another to believe."[216] The SCOTUS debunked the claims that these phrases left the public "with no objective measure to which behavior can be conformed."[217] The Court of Appeals, in invalidating the provision, relied on hypothetical cases which tried to paint a picture that it can cover innocent acts. The SCOTUS found it erroneous to rely on such hypothetical, so-called close cases. Close cases, according to the SCOTUS, can be imagined under virtually any statute. The problem that poses is addressed, not by the doctrine of vagueness, but by the requirement of proof beyond a reasonable doubt.[218] It further elucidated in this wise:

> What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is. Thus, we have struck down statutes that tied criminal culpability to whether the defendant's conduct was "annoying" or "indecent"—wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings. x x x
>
> There is no such indeterminacy here. The statute requires that the defendant hold, and make a statement that reflects, the belief that the material is child pornography; or that he communicates in a manner intended to cause another so to believe. Those are clear questions of fact. Whether someone held a belief or had an intent is a true-or-false determination, not a subjective judgment such as whether conduct is "annoying" or "indecent." Similarly true or false is the determination whether a particular formulation reflects a belief that material or purported material is child pornography. To be sure, it may be difficult in some cases to determine whether these clear requirements have been met. "But courts and juries every day pass upon knowledge, belief and intent—the state of men's minds—having before them no more than evidence of their words and conduct, from which, in ordinary human experience, mental condition may be inferred." x x x And they similarly pass every day upon the reasonable import of a defendant's statements—whether, for example, they fairly convey a false representation, see, e.g., 18 U. S. C. §1621 (criminalizing perjury), or a threat of physical injury, see, e.g., §115(a)(l) (criminalizing threats to assault federal officials). Thus, the Eleventh Circuit's contention that §2252A(a)(3)(B) gives law enforcement officials "virtually unfettered discretion" has no merit. x x x No more here than in the case of laws against fraud, conspiracy, or solicitation.[219] (Emphasis and underscoring supplied)

In this case, petitioners argue that the element of intent in the main part of Section 4, particularly with regard to the paragraph on "intent" to "cause death or serious bodily injury to any person," gives law enforcers free rein to charge people as terrorists by simply claiming that an act was committed with "intent," regardless of the outcome or context.[220] This argument has no leg to stand on. As explained in Williams, the question of possession of intent is one of fact or a true-or-false determination, and not one of subjective judgment. In the ultimate analysis, the nature and context of the conduct proscribed by Section 4 sufficiently provide fair notice of what acts are considered terrorism.

In relation further to the scienter requirement[221] of most of the provisions in the main part of Section 4, it is also well to point out that a scienter requirement may, in fact, mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed.[222] This makes sense because a

criminal statute that includes a criminal intent (or mens rea) requirement is less likely to encompass morally innocent conduct, and so more likely to accord with people's intuitions about what conduct is illegal.[223]

As likewise expounded in our own case in Valenzuela v. People,[224] which the ponencia also cited,[225] it is from the concurrence of the actus reus with the mens rea, as they find expression in the criminal statute, that the felony is produced:

> x x x As a postulate in the craftsmanship of constitutionally sound laws, it is extremely preferable that the language of the law expressly provide when the felony is produced. Without such provision, disputes would inevitably ensue on the elemental question whether or not a crime was committed, thereby presaging the undesirable and legally dubious set-up under which the judiciary is assigned the legislative role of defining crimes. Fortunately, our Revised Penal Code does not suffer from such infirmity. From the statutory definition of any felony, a decisive passage or term is embedded which attests when the felony is produced by the acts of execution. For example, the statutory definition of murder or homicide expressly uses the phrase "shall kill another," thus making it clear that the felony is produced by the death of the victim, and conversely, it is not produced if the victim survives.[226]

Again, under pain of repetition, aside from the above elements of actus reus or overt acts and mens rea or criminal intent, the purpose of the offense is also an element under the main part of Section 4, thereby mitigating further any vice of vagueness. The commission of direct, overt acts establishes the criminal intent of the accused. As with a common crime under the RPC, direct, overt acts have to always be present before an attempted crime of terrorism can be made. This is the import behind the phrase "regardless of the stage of execution" found in the main part of Section 4. The ATA merely seeks to punish the acts under the main part of Section 4 whether they will be in the attempted, frustrated or consummated stage. The commission of overt acts signals the beginning of an offense and gives rise to the "subjective phase" or that period occupied by the acts of the offender over which he has control - that period between the point where he begins and the point where the last act performed by the offender should result in the consummated crime. If between these two points the offender is stopped by reason of any cause outside of his own voluntary desistance, the subjective phase has not been passed and it is an attempt. If he is not so stopped but continues until he performs the last act, it is frustrated.[227]

Verily, petitioners are mistaken when they argue that the phrase "regardless of the stage of execution" weaponizes Section 4 to be wielded against any person who can be tagged as a terrorist even though that person has not presented any danger to society. Petitioners' argument that the phrase criminalizes mere thought and inception of an idea through said phrase is puerile. As succinctly put by the ponencia, "[n]o law can punish a man for what he thinks, imagines, or creates in his mind. Mental acts are not punishable even if they would constitute a crime had they been carried out. Mere intention producing no effect can never be a crime."[228] To this I add, in order to be punishable under the main part of Section 4, there must always be an overt act that shows the unavoidable connection, or the logical and natural relation of the cause of the act committed and its effect. Absent these, what obtains is an attempt to commit an indeterminate offense, which is not a juridical fact from the standpoint of the RPC, and certainly not from the ATA's either.[229]

Significantly, it is also well to point out that in maintaining that the phrase "regardless of the stage of execution" is impermissibly vague, petitioners argue that the proviso in Section 4 makes advocacy, protest, dissent, and other similar exercises punishable when there is allegedly some criminal intent behind them, without however requiring that the overt acts themselves manifest said intent in any way. Thus, petitioners conclude, lawful exercises of civil and political rights are made criminal when there is some supposedly illegal intent behind them regardless of whether this intent is translated into action. So, too, petitioners have notably cited hypothetical cases which involve exercises of speech and speech-related conduct in their attempt to demonstrate the alleged vagueness of Section 4. But considering that the ponencia has drawn a bright-line between the main part of Section 4 and its

proviso as being purely conduct and speech, respectively, coupled with the striking down of the "Not Intended Clause" in the proviso, petitioners are now left hard-pressed to maintain these arguments.[230]

I go back, at this juncture, to petitioners' citation of Johnson in asserting that Section 4, being standardless, renders its applicability a matter of "guesswork and intuition." The ruling in this U.S. case, as well as in the succeeding cases of similar nature, i.e., Sessions and Davis, concerns the validity of residual clauses in the statutes subject of said cases. Both Johnson and Davis involved statutes that increased prison sentences for offenders who were also convicted for or involved in a violent crime. In defining what constitutes a violent crime, there was an "elements clause" and a "residual clause", with the latter serving as a catch-all provision, encompassing any conduct that constitutes a serious risk. These respective residual clauses, in italics below, read as follows:

> In Johnson:
>
> The Armed Career Criminal Act of 1984 (ACCA) defines "violent felony" as follows:
>
> "any crime punishable by imprisonment for a term exceeding one year . . . that—
>
> "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> "(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another."[231]In Davis:
>
> x x x According to 18 U. S. C. §924 (c) (3), a crime of violence is "an offense that is a felony" and
>
> "(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> "(B) that by its nature, involves a substantial risk that physical force against the person or properly of another may be used in the course of committing the offense."[232]

Sessions, on the other hand, involved the eligibility for deportation of aliens found to have an aggravated felony conviction under the Immigration and Nationality Act (INA). The 1NA defines "aggravated felony" by listing numerous offenses and types of offenses, often with cross-references to federal criminal statutes. According to one item on that long list, an aggravated felony includes a "crime of violence" as defined in 18 U. S. C. §16. As with ACCA and 18 U. S. C. §924 (c) (3) in Johnson and Davis, 18 U. S. C. §16 defines a "crime of violence" in the following manner, with the residual clause again in italics:

> "(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> "(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

The SCOTUS in all three cases ruled that the residual clauses produced more unpredictability and arbitrariness than the due process clause tolerates. In all three cases, the statutes required the courts to use a framework known as the "categorical approach," as opposed to one that was case-specific. Under the categorical approach, a court assesses whether a crime qualifies as a violent felony "in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion."[233] The statutes, however, created grave uncertainty about how to estimate the "risk" posed by a crime because they tied the judicial assessment of said risk to a hypothesis about the ordinary case of the crime, or what usually happens when the crime is committed, not to real-world facts or statutory elements.[234] Thus, Johnson asked rhetorically, "How does one go about deciding what kind of conduct the "ordinary case" of a crime involves? A statistical

analysis of the state reporter? A survey? Expert evidence? Google? Gut instinct?"[235] On top of this, assessing "potential risk" seemingly required the judge to imagine how the idealized ordinary case of the crime would subsequently play out.[236]

The vagueness of the residual clauses was further compounded by the absence of a standard to determine what level of risk was substantial.[237] Sessions, it must be emphasized, held that the application of a substantial risk standard (or a serious potential risk in Johnson) to real-world conduct is constitutional. But given the categorical framework approach, or the application of the standard to a "judge-imagined abstraction," the problem of vagueness arises. Without a reliable way to discern what the idealized ordinary version of any offense looked like, no one could tell how much risk the offense generally posed. The combined indeterminacy on how to measure the risk posed by a crime, with the indeterminacy about how much risk it takes for the crime to qualify as a violent felony, rendered the residual clauses to be unpredictable and arbitrary.[238]

Significantly, the language of the statutes in Johnson, Sessions, and Davis required courts to look at the elements and the nature of the offense rather than at the particular facts relating to a petitioner's crime.[239] The meaning of "offense" was always used in the statutes in the generic sense, "say, the crime of fraud or theft in general,"[240] and not as something that can "refer to 'specific acts in which an offender engaged on a specific occasion.'"[241] This was evident, according to the SCOTUS, with the connection between the residual clauses and the elements clauses that always preceded them. Since the elements clauses always referred directly to generic crimes, the term "offense" is naturally expected to retain that same meaning in connection with the residual clauses. After all, "[i]n all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning."[242]

The problem that beset Johnson, Sessions, and Davis is absent in this case. Section 4 of the ATA does not textually require courts to employ a categorical approach framework. Section 4 of the ATA does not plainly employ generic terms or refer to generic crimes, but only specific acts an offender may be engaged in a specific occasion. Consequently, it does not require courts to imagine any idealized ordinary case, but rather to consider the underlying conduct of an offender or to ask about the specific way in which the offender committed a crime.[243] Corollary to this, the alleged vague terms used in the main part of Section 4, specifically "endangers a person's life," "extensive damage or destruction," "extensive interference," "seriously destabilize or destroy," and "seriously undermine," among others, may pass constitutional muster under the case-specific framework. Johnson, Sessions and Davis notably conceded that the unclear threshold of risk (serious potential risk or substantial risk) spelled out in the statutes, on its own, would not have violated the void-for-vagueness doctrine. The SCOTUS observed that many perfectly constitutional statutes use imprecise terms like "serious potential risk" or "substantial risk." The problem came from layering such a standard on top of the requisite "ordinary case" inquiry.[244]

B.

Section 4 is not overbroad.

Having established that Section 4 does not suffer from the vice of vagueness, I now turn to the petitioners' claim that the same provision is overbroad.

A statute or regulation is considered void for overbreadth when it offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to State regulations may not be achieved by means that sweep unnecessarily broadly and thereby invade the area of protected freedoms.[245] In

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order for an overbreadth challenge to succeed, the "overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep."[246] In measuring the substantiality of a statute's overbreadth, the ruling of the United States Court of Appeals, First Circuit in Magill v. Lynch[247] is instructive:

> x x x Measuring the substantiality of a statute's overbreadth apparently requires, inter alia, a rough balancing of the number of valid applications compared to the number of potentially invalid applications, x x x Some sensitivity to reality is needed; an invalid application that is far-fetched does not deserve as much weight as one that is probable. The question is a matter of degree; it will never be possible to say that a ratio of one invalid to nine valid applications makes a law substantially overbroad. Still, an overbreadth challenger has a duty to provide the court with some idea of the number of potentially invalid applications the statute permits. Often, simply reading the statute in the light of common experience or litigated cases will suggest a number of probable invalid applications. x x x[248]

Substantial overbreadth is not satisfied merely because a litigant can point to one or a few hypothetical fact patterns under which application of the statute would be unconstitutional.[249] Courts, rather, should consider a statute's application to real-world conduct after a demonstration, from the text of the law and from actual fact, that there is a realistic danger that the statute itself will significantly compromise recognized constitutional freedoms of parties not before the court.[250]

In demonstrating the alleged overbreadth of Section 4, petitioners have alleged the following supposed invalid applications of Section 4, to wit:

> x x x Consider for example two rallies held in Padre Faura: the first one was organized by a group assailing the validity of the ATA, while the second rally was held in support of the ATA. The anti-ATA rally was quickly dispersed allegedly on account of the danger posed by COVID-19, while the other rally was permitted to continue until the end. Both rallies are based on the same fundamental right of assembly under the Constitution, but each received a different treatment. The disparity is attributable to how law enforcers had interpreted the phrase "endangers a person's life" in Section 4(a). The ambiguity of the provision made possible the selective enforcement of the law.
>
> x x x Section 4(a) is over broad because it can penalize the exercise of the constitutional right to assembly as allegedly "endangering" a person's life. Suppose in the rally mentioned above, the people become highly emotional and there are unified cries for the President to step down, would this call be considered inciting to commit terrorism, and the assembly a mass action that creates a serious risk to public safety, hence terrorism? If there happens to be violence during the dispersal because of the heavy-handed manner by which law enforcers have treated the protesters, would law enforcers be guilty of terrorism as they have acted to endanger another person's life?
>
> x x x x
>
> x x x Section 4(b) is also overbroad because "extensive damage or destruction" is not limited to physical or material damage. It may technically include reputational damage to the Government. Thus, Section 4(b) can penalize legitimate criticism as "terrorism" because it may "extensively damage" the reputation of the Government. x x x
>
> x x x x
>
> x x x Section 4(c) also suffers from overbreadth. In failing to define the parameters of the term "interference," the prohibition can disingenuously cover any form of dissent, chilling constitutionally protected speech or assemblies to petition the government for redress of grievances. For example, advocacy in the defense of Philippine sovereignty in the West Philippine Sea may be considered as "interference" with a critical

> infrastructure as it strains the Government's diplomatic relations with China.[251] (Emphasis supplied)

These examples, however, are clearly forms of advocacy, protest, dissent, or exercises of civil and political liberties, which are exercises of free speech and expression. To reiterate, the ponencia has astutely made the delineation that the main part of Section 4 refers to conduct, while the proviso or the exception clause refers to speech and speech-related conduct, or symbolic speech. Indeed, the clause that "the purpose of such act, by its nature and context," especially when read along the proviso or exception clause, clearly circumscribes the definition of terrorism to acts or pure conduct that are constitutionally subject to regulation. In light of the ponencia's delineation, coupled with the ruling to nullify the qualifying phrase in the proviso, it can no longer be validly argued that Section 4 unnecessarily sweeps broadly and invades the protected area of freedom of speech and expression. As I had earlier stated, the proviso in Section 4 will now expressly and unqualifiedly exclude advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights from the definition of terrorism. Thus, the holding of the SCOTUS in the seminal case of Broadrick is apropos:

> It remains a "matter of no little difficulty" to determine when a law may properly be held void on its face and when "such summary action" is inappropriate. x x x But the plain import of our cases is, at the very least, that facial overbreadth adjudication is an exception to our traditional rules of practice and that its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from "pure speech" toward conduct and that conduct—even if expressive—falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct. Although such laws, if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect—at best a prediction—cannot, with confidence, justify invalidating a statute on its face, and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe. x x x To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep. It is our view that § 818 is not substantially overbroad and that whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied. x x x[252] (Emphasis and underscoring supplied)

VI.

Section 4, without the "Not Intended Clause," is not so vague as to violate the principle of separation of powers.

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in the framing of our Constitution. Each department of the government has exclusive cognizance of matters placed within its jurisdiction, and is supreme within its own sphere.[253] The legislative department has the power to legislate or make laws; the executive department possesses the power to execute or enforce laws; and the judicial department is in charge of interpreting and applying laws.[254]

As the powers are exclusive to each branch of government, the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law.[255]

Broadly speaking, there is a violation of the separation of powers principle when one branch of government unduly encroaches on the domain of another. SCOTUS decisions instruct that the principle of separation of

powers may be violated in two (2) ways: firstly, "[o]ne branch may interfere impermissibly with the other's performance of its constitutionally assigned function"; and "[alternatively, the doctrine may be violated when one branch assumes a function that more properly is entrusted to another." In other words, there is a violation of the principle when there is impermissible (a) interference with and/or (b) assumption of another department's functions.[256]

Hence, as I previously mentioned, a vague law which forces the judicial and executive branches of government to define it and consequently interfere with and/or assume the functions of the legislature is unconstitutional for violating the doctrine of separation of powers. A law that casts a net large enough to catch all possible offenders and leaves the courts to step inside and decide who could be rightfully detained substitutes the judicial for the legislative department.[257]

Sessions had the occasion to categorically declare that the void-for-vagueness doctrine is a corollary of the separation of powers principle which requires that the Congress - and not the executive or judicial branch - define the conduct proscribed by law, thus:

> "The prohibition of vagueness in criminal statutes," our decision in Johnson explained, is an "essential" of due process, required by both "ordinary notions of fair play and the settled rules of law." x x x The void-for-vagueness doctrine, as we have called it, guarantees that ordinary people have "fair notice" of the conduct a statute proscribes. x x x And the doctrine guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, prosecutors, juries and judges. x x x In that sense, the doctrine is a corollary of the separation of powers — requiring that Congress, rather than the executive or judicial branch, define what conduct is sanctionablc and what is not. x x x "[I]f the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, [it would] substitute the judicial for the legislative department" x x x.[258] (Emphasis supplied; citations omitted)

Justice Neil Gorsuch (Justice Gorsuch), in his separate opinion, extensively discussed this doctrine. Concurring that the INA's residual clause is unconstitutionally vague for the reasons identified in Johnson, Justice Gorsuch begins by saying that vague laws invite arbitrary power by leaving the people in the dark about what they demand and allowing prosecutors and courts to make it up. He concludes that the void for vagueness doctrine, if properly conceived, serves as an expression of due process and separation of powers principles under the American Constitution, as vague laws threaten to transfer legislative powers to the judiciary and the executive, thus:

> Although today's vagueness doctrine owes much to the guarantee of fair notice embodied in the Due Process Clause, it would be a mistake to overlook the doctrine's equal debt to the separation of powers. The Constitution assigns "[a]ll legislative Powers" in our federal government to Congress. It is for the people, through their elected representatives, to choose the rules that will govern their future conduct. x x x Meanwhile, the Constitution assigns to judges the "judicial Power" to decide "Cases" and "Controversies." That power does not license judges to craft new laws to govern future conduct, but only to "discer[n] the course prescribed by law" as it currently exists and to "follow it" in resolving disputes between the people over past events. x x x
>
> From this division of duties, it comes clear that legislators may not "abdicate their responsibilities for setting the standards of the criminal law," x x x by leaving to judges the power to decide "the various crimes includable in [a] vague phrase." x x x For "if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large[,] [t]his would, to some extent, substitute the judicial for the legislative department of government." x x x Nor is the worry only that vague laws risk allowing judges to assume legislative power. Vague laws also threaten to transfer legislative power to police and prosecutors, leaving to them the job of shaping a vague statute's contours through their enforcement decisions. x x x[259] (Emphasis supplied; citations omitted)

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Justice Gorsuch then goes on to explain the important and practical reason behind the proscription against undue delegation of legislative powers — that only the duly-elected representatives of the people craft statutes and make an act a crime, in accordance with the "hard business" of statutory enactment. He notes that a statute is a product of an open and public debate among a large and diverse number of elected representatives and concludes that because of these policies, the more important aspect of the vagueness doctrine is not the due process requirement of notice, but the preservation of the separation of powers, thus:

> These structural worries are more than just formal ones. Under the Constitution, the adoption of new laws restricting liberty is supposed to be a hard business, the product of an open and public debate among a large and diverse number of elected representatives. Allowing the legislature to hand off the job of lawmaking risks substituting this design for one where legislation is made easy, with a mere handful of unelected judges and prosecutors free to "condem[n] all that [they] personally disapprove and lor no better reason than [they] disapprove it." x x x Nor do judges and prosecutors act in the open and accountable forum of a legislature, but in the comparatively obscure confines of cases and controversies. x x x ("A vague statute delegates to administrators, prosecutors, juries, and judges the authority of ad hoc decision, which is in its nature difficult if not impossible to hold to account, because of its narrow impact"). For just these reasons, Hamilton warned, while "liberty can have nothing to fear from the judiciary alone," it has "every thing to fear from" the union of the judicial and legislative powers. x x x No doubt, too, for reasons like these this Court has held "that the more important aspect of vagueness doctrine 'is not actual notice, but . . . the requirement that a legislature establish minimal guidelines to govern law enforcement'" and keep the separate branches within their proper spheres.[260] (Emphasis supplied; italics in the original)

Sessions did not elaborate on the separation of powers aspect of the vagueness doctrine. It is in the subsequent case of Davis that the SCOTUS explicitly discussed and recognized the separation of powers underpinnings of the void-for-vagueness doctrine, through the ponencia, this time, of Justice Gorsuch:

> Our doctrine prohibiting the enforcement of vague laws rests on the twin constitutional pillars of due process and separation of powers, x x x Vague laws contravene the "first essential of due process of law" that statutes must give people "of common intelligence" fair notice of what the law demands of them. x x x Vague laws also undermine the Constitution's separation of powers and the democratic self-governance it aims to protect. Only the people's elected representatives in the legislature are authorized to "make an act a crime." x x x Vague statutes threaten to hand responsibility for defining crimes to relatively unaccountable police, prosecutors, and judges, eroding the people's ability to oversee the creation of the laws they are expected to abide. x x x[261] (Emphasis supplied)

In our jurisdiction, the Court has consistently emphasized that the vagueness doctrine is premised on due process considerations of fair notice.[262] Be that as it may, the Court in People v. Siton[263] notably began its discussion on the vagueness doctrine by recognizing the exclusive power of the legislature to define crimes and prescribe penalties therefor. Indeed, in cases raising the issue of vagueness, the Court almost always referenced the need to constrain law enforcement - a separation of powers issue. Our jurisprudence is replete with cases justifying the vagueness doctrine on the twin grounds of (1) violating the due process clause; and (2) giving the law's enforcers unbridled discretion.[264] As declared in Imbong:

> A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. x x x[265] (Emphasis supplied)

In other words, while the Court has rhetorically invoked due process, it has likewise implicitly integrated the

principle of separation of powers in justifying the doctrine of vagueness. In some cases, the role that separation of powers takes and the element of undue delegation of legislative powers are better articulated, thus:

> Verily, the objective of curbing unbridled enforcement is not the sole consideration in a void for vagueness analysis; rather, petitioners must show that this perceived danger of unbridled enforcement stems from an ambiguous provision in the law that allows enforcement authorities to second-guess if a particular conduct is prohibited or not prohibited. In this regard, that ambiguous provision of law contravenes due process because agents of the government cannot reasonably decipher what conduct the law permits and/or forbids. In Bykofsky v. Borough of Middletown, it was ratiocinated that:
> A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on ad hoc and subjective basis, and vague standards result in erratic and arbitrary application based on individual impressions and personal predilections.[266] (Emphasis supplied)

Hence, the main point in proscribing vague laws, apart from upholding the right to due process, is to preserve the sanctity of the separation of powers among the three (3) equal branches of government by preventing undue delegation of legislative powers. The doctrine ensures that legislation - that is, the making of a law[267] - is left to the legislative branch. It "guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, prosecutors, juries and judges."[268]

In his dissenting opinion in Spouses Romualdez, Justice Tinga observed that the integration of the separation of powers in the vagueness doctrine appears to have been first explicitly recognized in domestic case law by citing American Constitutional law jurists,[269] thus:

> Consider the lucid explanation of Gwither and Sullivan, which integrates the principles established by American jurisprudence on that point:
> "The concept of vagueness under the [freedom of expression clause in the] First Amendment [of the U.S. Constitution] draws on the procedural due process requirement of adequate notice, under which a law must convey 'sufficient definite warning as to the proscribed conduct when measured by common understanding and practices." Jordan v. DeGeorge, 341 U.S. 223 (1951) A law will be void on its face for vagueness if persons "of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. General Construction Co., 269 U.S. 385 (1926). One of the purposes of this requirement is to ensure fair notice to the defendant. But the ban on vagueness protect not only liberty, but also equality and the separation of executive from legislative power through the prevention of selective enforcement. See Smith v. Goguen (415 U.S. 566): "We have recognized that the more important aspect of the vagueness doctrine is not actual notice, but the other principal element of the doctrine — the requirement that legislatures set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement."[270] (Emphasis and underscoring supplied)

That said, in resolving issues of vagueness, the Court is tasked with construing a statute in a fairly possible way to save it from being unconstitutional. The SCOTUS notably pronounced in Davis that respect for due process and separation of powers demand that courts not construe criminal statutes to penalize conduct which they do not clearly proscribe in order to save Congress the trouble of writing a new law.[271] Jn other words, saving a vague statute through construction must not come at the expense of the doctrine of separation of powers and due process rights. When Congress passes a vague law, the role of the courts under the Constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again.[272]

In the end, the subject law in Davis was struck down as unconstitutionally vague because "even [if it] was possible to read the statute to impose additional punishment, it was impossible to say that Congress x x x intended that result, or that the law gave [defendants] fair warning that the x x x mandatory penalties of [the subject law] would apply to their conduct."[273]

On this score, I qualify the rather sweeping pronouncement in the ponencia that the Court can resort to the various aids to statutory construction, such as the legislative deliberations, to narrowly construe the terms of the ATA, and, thus, limit their application,[274] as a way to save them from being declared unconstitution.nl. I agree, but add that the law itself must not be so vague as to leave one to second-guess what the true intent of the legislature really is. The legislative intent must still be clearly discernible from the face of the statute and any judicial construction of the terms and provisions of the law must be in line with it. Otherwise, any attempt by the Court to save the law from unconstitutionality would amount to defining or crafting it in the guise of statutory construction and in violation of the doctrine of separation of powers.

In the case of the ATA, it is clear from the separability clause that Congress intended for the constitutional provisions of the law to survive, in the event that "any part or provision of this Act is declared unconstitutional or invalid."[275] As earlier pointed out in Tatad, however, it is also true that a separability clause only creates a presumption of severability, which is by no means absolute. The separability clause cannot be applied if it will produce an absurd result or will defeat the intent of the legislature.[276] Here, in the case of the ATA, no such absurdity or defeat of the legislative intent is attendant if the "Not Intended Clause" is struck down.

The main policy thrust of the ATA is to expand the definition of terrorism to make it more responsive to the present times, such that the act of terrorism need not be in pursuit of a political, religious, ideological, or social objective.[277] In deciding on this expansion, the legislature was guided by the experience of law enforcement in the implementation of the ATA's predecessor statute, the USA. Mindful of how expansive the definition of terrorism under the ATA may cover, the legislature then guaranteed that an act of terrorism is characterized — and hence, delimited — by its intent or purpose. This is clear from the plain language of Section 4 and from the legislative deliberations. The unbending intent is to exclude legitimate exercises of expression and dissent from the definition of terrorism. The following exchanges during the Senate deliberations are illuminating:

> Senator Drilon. x x x
>
> Now, let me cite some specific example[s] and try to draw an opinion from the good.sponsor. Currently, we see a lot of rallies, protests in Hong Kong. That kind of protests has led to the collapse of the economy of Hong Kong practically. The anti-government protests have gone on for six months and have really harmed the economy. Now, assuming for the sake of argument, that something similar happens here, would that act or the act of the protesters be considered as an act of terrorism because they are compelling the government to do something by force or intimidation?
>
> Senator Lacson. No, Mr. President. It will not be included because the fundamental rights are always respected even in this proposed measure.
>
> Senator Drilon. Yes, but suppose as in Hong Kong, there were instances of violence.
>
> Senator Lacson. But we are always bound by the purpose, Mr. President. If the purpose is enumerated, then...
>
> Senator Drilon. The purpose in Hong Kong is to force the Hong Kong government...
>
> Senator Lacson. To allow them to exercise their fundamental rights, their freedom, even to choose their leaders, to exercise suffrage. If that is the purpose, it does not constitute an act of terrorism, Mr. President.
>
> Senator Drilon. All right. Mr. President, it is good that we have this on record because this would guide us in attempting to make clearer the provisions here so that it does not lead to an overarching or overreach in terms of the exposure to crimes of terrorism.
>
> Senator Lacson. We are grateful that the gentleman is pointing this out, so that we can further enlighten our colleagues that such acts, no matter how violent, if the purpose is not as enumerated under the proposed

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measure, then those are not acts of terrorism.[278]

x x x x

Senator Hontiveros. x x x

x x x If, for example, a labor group threatens to strike or to conduct work stoppage, and said strike or work stoppage may be argued by some to result in major economic loss, even destroy the economic structure of the country, could members of this labor group be considered terrorists?

Senator Lacson. Mayroon pong proviso rito na basta legitimate exercise of the freedom of expression or mag-express ng dissent, Hindi po kasama rito, hindi mako-cover. Explicitly provided po iyan sa Section 4, iyong last paragraph po. Nandiyan.

Senator Hontiveros. Salamat po, Mr. President. Siyempre laging sasabihin ng labor group kung mag-i-strike or magwo-work stoppage na, "Ito legitimate expression namin."

Senator Lacson. If I may read for the record.

Senator Hontiveros. Yes, Mr. President.

Senator Lacson. "PROVIDED, THAT, TERRORIST ACTS AS DEFINED UNDER THIS SECTION SHALL NOT COVER LEGITIMATE EXERCISES OF THE FREEDOM OF EXPRESSION AND TO PEACEABLY ASSEMBLE, INCLUDING BUT NOT LIMITED TO ENGAGING IN ADVOCACY, PROTEST, DISSENT OR MASS ACTION WHERE A PERSON DOES NOT HAVE THE INTENTION TO USE OR URGE THE USE OF FORCE OR VIOLENCE OR CAUSE HARM TO OTHERS." Guaranteed po iyon, Mr. President.

Senator Hontiveros. Salamat po sa garantiyang iyan, Mr. President. Pero gaya po ng sinabi ko kanina, siyempre laging sasabihin ng ating mga kababayang manggagawa kapag nagwelga sila, kapag nag-work stoppage sila na ito ay legitimate expression, freedom of expression, at freedom of association iyong karapatan ng paggawa. Pero kung kunwari sa welga nila or work stoppage nila sasabihin ng Department of Labor and Employment, halimbawa, na dahil sa welgang ito o dahil sa work stoppage na ito ay magkakaroon ng serious or major economic loss, o kung sasabihin na ang work stoppage or welga na ito would actually destroy the economic structure of the country, kung ganoong klaseng claims ang gawin, puwede bang magamit Hong panukalang batas para ituring silang mga terorista?

Senator Lacson. Unang-una po, we are bound by the intent or motive, iyong purpose po, at saka kung wala naman pong violence na nangyari ay hindi naman po puwedeng makasuhan under this proposed measure.

Senator Hontiveros. Thank you, Mr. President. Indeed, the intent, very clearly articulated also in the bill, is important.

Lastly, on that question of violence, what if in the process of strike or work stoppage nagkaroon ng dispersal, nagkaroon ng karahasan? The good chairman of the Committee on Labor, Employment and Human Resources Development could cite a few examples of recent incidents na dininig nila sa komite. Kung magkaroon ng violence not instigated by the workers but in the course of the strike or work stoppage, could this bill be stretched to determine that they are terrorists?

Senator Lacson. Hindi po kasi, unang-una, hindi naman iyon ang intent. Ang intent ng mga nagprotesta, mga laborers ay mag-strike, mag-express ng kanilang sariling dissent o iyong expression ng kanilang pagprotesta sa puwedeng sabihin na nating mga bad labor practices. So, hindi po papasok dito sa probisyong ito. Malinaw po iyon.[279] (Italics omitted)

Hence, the construction given by the ponencia is in accordance with the legislative, intent as shown above and, therefore, does not amount to usurpation of legislative functions nor reduce Section 4, excepting the "Not

Intended Clause," to suffer from unconstitutional vagueness that violates the separation of powers doctrine.

Likewise, far from producing an absurd result, the construction of the ponencia conversely amplifies the intent of the legislature to protect the legitimate exercise of expression and dissent by defining the contours of Section 4. By making sure that speech and the exercise of civil and political rights are clearly and expressly excluded from the definition of terrorism, law enforcement and the courts would not have to guess as to the application of Section 4. For this purpose, even if the court were to strike down the "Not Intended Clause," the spirit of the ATA prevails and the rest of the provisions should subsist. Obviously, this would not be the case if the Court were to strike down the main part or the whole of Section 4.

VII.

The qualifying "Not Intended Clause" in the proviso in Section 4 is unconstitutional for being vague and overbroad, and for failing the strict scrutiny test.

A scrutiny of the original proviso in Section 4 readily reveals how it offers an insufficient and ineffective assurance that will allow protected speech and speech-related conduct to remain unpunished. Stating that terrorism "shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" is really nothing more than paying lip service and does not remove the threat of a chilling effect.

For one, respondents during oral arguments admitted that this proviso is a matter of defense. Respondents, through the OSG, confirmed during oral arguments that once the prosecution has established the commission of any of the acts mentioned in Section 4(a) to 4(e) and the purpose behind it, it becomes incumbent upon the accused to raise as a defense that they are merely exercising their civil or political rights.[280] Indeed, as worded, Section 4 provides that the prosecution has the burden to prove that the acts under Section 4(a) to 4(e) were committed with intent. However, to thereafter burden the accused to also prove that they are lawfully exercising their civil or political rights without intent to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety, renders the burden of proof required from the prosecution utterly inutile and illusory. This is tantamount to erroneously placing the burden of proof to the defendant all along, and is an impermissible shift in the burden of evidence.

Significantly, the burden to prove that the acts in question fall within the exception of Section 4 cannot be placed with the offender. The danger that this concept brings to the exercise of free speech has been recognized in the leading case of Speiser v. Randall[281] (Speiser). The assailed law in said case required claimants for a tax exemption, as a prerequisite to qualification, to sign a statement on their tax returns declaring an oath that they "do not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means, nor advocate the support of a foreign government against the United States in event of hostilities."[282] The SCOTUS found the law as a discriminatory denial of a tax exemption for engaging in speech; hence, a limitation on free speech. Consequently, the SCOTUS found it crucial to scrutinize the procedures by which California has sought to restrain speech.[283]

The oath in Speiser was part of a larger procedural scheme whereby the applicant was charged with the burden of demonstrating eligibility for the exemption by proving that he was not a person who advocated such violent overthrow.[284] In its analysis, the SCOTUS held that the allocation of the burden of proof in the case fell short

of the requirements of due process. It noted how the appellants had explained the principal feature of the procedure of the law as placing the affirmative burden of proof to the taxpayers:

> x x x [I]t is their burden to show that they are proper persons to qualify under the self-executing constitutional provision for the tax exemption in question—i.e., that they are not persons who advocate the overthrow of the government of the United States or the State by force or violence or other unlawful means or who advocate the support of a foreign government against the United States in the event of hostilities. . . . [T]he burden is on them to produce evidence justifying their claim of exemption. x x x
>
> x x x
>
> It is, of course, within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion, "unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Snyder v. Massachusetts, 291 U. S. 97, 105. "[O]f course the legislature may go a good way in raising . . . [presumptions] or in changing the burden of proof, but there are limits . . . . [I]t is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime." McFarland v. American Sugar Refining Co., 241 U. S. 79, 86. The legislature cannot "place upon all defendants in criminal cases the burden of going forward with the evidence . . . . [It cannot] validly command that the finding of an indictment, or mere proof of the identity of the accused, should create a presumption of the existence of all the facts essential to guilt. This is not permissible." Tol v. United States, 319 U. S. 463, 469. Of course, the burden of going forward with the evidence at some stages of a criminal trial may be placed on the defendant, but only after the State has "proved enough to make it just for the defendant to be required to repel what has been proved with excuse or explanation, or at least that upon a balancing of convenience or of the opportunities for knowledge the shifting of the burden will be found to be an aid to the accuser without subjecting the accused to hardship or oppression." Morrison v. California, 291 U. S. 82, 88-89. x x x[285]

In the same vein, in the famous case of New York Times v. Sullivan[286] (New York Times) the SCOTUS likewise placed the burden to the plaintiff, a public official, to prove that the offender had actual malice in making the defamatory statement against the plaintiffs official conduct. Government can only allow libel plaintiffs to recover damages as a result of such speech if and only if the speaker had "actual malice" — that is, the speaker must have known that the speech was false, or he must have been recklessly indifferent to its truth or falsity. This standard means that the speaker is protected against libel suits unless he knew that he was lying or he was truly foolish to think that he was telling the truth.[287]

To recall, the assailed rule of liability under the Alabama law on libel in New York Times provided that unless the defendant can discharge the burden of proving the truth of the facts upon which his or her fair comment is based, general damages are presumed and may be awarded without proof of pecuniary injury. In ruling against the validity of this truth-as-a-defense rule and the presumption created in favor of the plaintiff, the SCOTUS had in mind the danger of self-censorship if it were to rule otherwise. Thus:

> x x x A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to a comparable "self-censorship." Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defense as an adequate safeguard have recognized the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars. See e. g., Post Publishing Co. v. Hallam, 59 F. 530, 540 (C. A. 6th Cir. 1893); see also Noel, Defamation of Public Officers and Candidates. 49 Col. L. Rev. 875, 892 (1949). Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is, in fact, true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which "steer far wider of the unlawful zone." Speiser v. Randall, supra, 357 U.S. 526. The rule

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> thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments. The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice"— that is, with knowledge that it was false or with reckless disregard of whether it was false or not. x x x
>
> x x x x
>
> We hold today that the Constitution delimits a State's power to award damages for libel in actions brought by public officials against critics of their official conduct. Since this is such an action, the rule requiring proof of actual malice is applicable. While Alabama law apparently requires proof of actual malice for an award of punitive damages, where general damages are concerned malice is "presumed." Such a presumption is inconsistent with the federal rule. "The power to create presumptions is not a means of escape from constitutional restrictions," Bailey v. Alabama, 219 U. S. 219, 239; "the showing of malice required for the forfeiture of the privilege is not presumed but is a matter for proof by the plaintiff ...." x x x[288] (Emphasis supplied)

In the same manner, the SCOTUS likewise imposed as a requirement in criminal obscenity prosecutions that the offender was aware of the nature and character of the materials, and therefore had the knowledge of the unlawfulness of the act and had the intention to commit it.[289] In Smith v. California,[290] a bookseller in Los Angeles was convicted for violating a municipal ordinance "which [made] it unlawful 'for any person to have in his possession any obscene or indecent writing, [or] book...[i]n any place of business where...books...are sold or kept for sale.'" Since the definition of the offense in the ordinance did not include any requirement that the person charged have any knowledge of the contents of the book or material, the SCOTUS construed the ordinance as imposing "strict" liability.[291] It explained:

> x x x But the question here is as to the validity of this ordinance's elimination of the scienter requirement—an elimination which may tend to work a substantial restriction on the freedom of speech and of the press. Our decisions furnish examples of legal devices and doctrines, in most applications consistent with the Constitution, which cannot be applied in settings where they have the collateral effect of inhibiting the freedom of expression, by making the individual the more reluctant to exercise it. The States generally may regulate the allocation of the burden of proof in their courts, and it is a common procedural device to impose on a taxpayer the burden of proving his entitlement to exemptions from taxation, but where we conceived that this device was being applied in a manner tending to cause even a self-imposed restriction of free expression, we struck down its application. Speiser v. Randall, 357 U. S. 513. See Near v. Minnesota, supra, at 712-713. It has been stated here that the usual doctrines as to the separability of constitutional and unconstitutional applications of statutes may not apply where their effect is to leave standing a statute patently capable of many unconstitutional applications, threatening those who validly exercise their rights of free expression with the expense and inconvenience of criminal prosecution. Thornhill v. Alabama, 310 U. S. 88, 97-98. Cf. Staub v. City of Baxley, 355 U. S. 313. And this Court has intimated that stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser, Winters v. New York, 999 U. S. 507, 509-510, 517-518. x x x
>
> x x x x
>
> x x x By dispensing with any requirement of knowledge of the contents of the book on the part of the seller, the ordinance tends to impose a severe limitation on the public's access to constitutionally protected matter. For if the bookseller is criminally liable without knowledge of the contents, and the ordinance fulfills its purpose, he will tend to restrict the books he sells to those he has inspected; and thus the State will have imposed a restriction upon the distribution of constitutionally protected as well as obscene literature. It has been well

> observed of a statute construed as dispensing with any requirement of scienter that: "Every bookseller would be placed under an obligation to make himself aware of the contents of every book in his shop. It would be altogether unreasonable to demand so near an approach to omniscience." The King v. Ewart, 25 N. Z. L. R. 709, 729 (C. A.). And the bookseller's burden would become the public's burden, for by restricting him the public's access to reading matter would be restricted. If the contents of bookshops and periodical stands were restricted to material of which their proprietors had made an inspection, they might be depleted indeed. The bookseller's limitation in the amount of reading material with which he could familiarize himself, and his timidity in the face of his absolute criminal liability, thus would tend to restrict the public's access to forms of the printed word which the State could not constitutionally suppress directly. The bookseller's self-censorship, compelled by the State, would be a censorship affecting the whole public, hardly less virulent for being privately administered. Through it, the distribution of all books, both obscene and not obscene, would he impeded.[292] (Emphasis and underscoring supplied)

In the present case, respondents maintain that the prosecution has the burden to prove the case against the offender and that it would be only because of his or her defense that he or she has to prove, in turn, that the act in question falls under any of the exceptions in Section 4. The trouble with this procedure, however, lies in the fact that in order to prove the exception, the offender has to show that it was not his or her intent to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety, which is the very same thing the prosecution is (and should be) burdened with initially. The procedure under Section 4 therefore goes against the constitutional imperative to regard the right to free speech as inherent in every person, subject only to a valid regulation from the State. As aptly explained in Speiser:

> The vice of the present procedure is that, where particular speech falls close to the line separating the lawful and the unlawful, the possibility of mistaken factfinding—inherent in all litigation—will create the danger that the legitimate utterance will be penalized. The man who knows that he must bring forth proof and persuade another of the lawfulness of his conduct necessarily must steer far wider of the unlawful zone than if the State must hear these burdens. x x x[293] (Emphasis and underscoring supplied)

In sum, the reassurance proffered by the respondents that the coverage of what constitutes terrorism under the ATA will not include "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights" would be, as it is, betrayed by the very phrase "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" — as this clearly operates to carve out an exception to the said exceptions in the proviso of Section 4. Since the scienter requirement of the law is, by all accounts, ultimately reduced as the obligation of the offender to establish, the prohibition overreaches and casts a chilling effect on protected speech and expression.

To be sure, the reassurance of respondents as to how Section 4 would operate flies in the face of its plain language. In U.S. v. Stevens,[294] the SCOTUS shot down a parallel reassurance made by the US Government that the assailed law will only be construed to apply to constitutionally unprotected conduct. Thus:

> Not to worry, the Government says: The Executive Branch construes §48 to reach only "extreme" cruelty, x x x and it "neither has brought nor will bring a prosecution for anything less." x x x The Government hits this theme hard, invoking its prosecutorial discretion several times. But the First Amendment protects against the Government; it does not leave us at the mercy of noblesse oblige. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.
> Cf. Whitman v. American Trucking Assns., Inc., 531 U.S. 457, 473.
>
> This prosecution is itself evidence of the danger in putting faith in government representations of prosecutorial restraint. When this legislation was enacted, the Executive Branch announced that it would interpret §48 as covering only depictions "of wanton cruelty to animals designed to appeal to a prurient interest in sex." x x x No one suggests that the videos in this case fit that description. The Government's assurance that it will apply §

> 48 far more restrictively than its language provides is pertinent only as an implicit acknowledgment of the potential constitutional problems with a more natural reading.
>
> Nor can we rely upon the canon of construction that "ambiguous statutory language [should] be construed to avoid serious constitutional doubts." FCC v. Fox Television Stations, Inc., 556 U.S. 502, 516, 129 S.Ct. 1800, 1811, 173 L.Ed.2d 738 (2009). "[T]his Court may impose a limiting construction on a statute only if it is 'readily susceptible' to such a construction." Reno v. American Civil Liberties Union, 521 U.S. 844, 884, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997). We "'will not rewrite a ... law to conform it to constitutional requirements,'" id., at 884-885, 117 S.Ct. 2329 (quoting Virginia v. American Booksellers Assn., Inc., 484 U.S. 383, 397 (1988); omission in original), for doing so would constitute a "serious invasion of the legislative domain," United States v. Treasury Employees, 513 U.S. 454, 479, n. 26, (1995), and sharply diminish Congress's "incentive to draft a narrowly tailored law in the first place," Osborne, 495 U.S., at 121. To read § 48 as the Government desires requires rewriting, not just reinterpretation.[295] (Emphasis and underscoring supplied)

The majority therefore correctly strikes clown the qualifying "Not Intended Clause" in the proviso for being unconstitutional.

VIII.

Section 9, or inciting to commit terrorism, is not unconstitutional

Petitioners argue that Section 9 on Inciting to Commit Terrorism follows the unconstitutionality of Section 4, being a mere by-product of the latter. They argue that Section 9 punishes incitement, which necessarily includes speech; and because of its deterrent effect, it is presumed unconstitutional as a prior restraint which can only be overcome by showing a compelling state interest and its achievement through the least intrusive means.[296] In contrast, the majority finds that Section 9 is reasonably and narrowly drawn and is the least restrictive means to achieve the declared compelling state purpose.[297]

I agree with the majority.

Indeed, Section 9 is intricately related to Section 4 because it makes reference to the latter in defining the punishable act:

> SEC. 9. Inciting to Commit Terrorism. — Any person who, without taking any direct part in the commission of terrorism, shall incite others to the execution of any of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end, shall suffer the penalty of imprisonment of twelve (12) years. (Underscoring supplied)

With the striking down of the "Not Intended Clause," the ponencia categorically affirms that all persons are "free to protest, dissent, advocate, peaceably assemble to petition the government for redress of grievances, or otherwise exercise their civil and political rights, without fear of being prosecuted as terrorists under the ATA."[298] With the removal of the "Not Intended Clause," Section 4 ceases to suffer from constitutional infirmity; and in the same vein, petitioners' argument that Section 9 follows the unconstitutionality of Section 4 no longer has any leg to stand on.

In construing the specifics of Section 9, the ponencia makes reference to the Senate deliberations, which show that the provision was "intended to operate only within a narrow and confined area of speech where restrictions are permitted, and only within the confines of the intent-purposes parameters of Section 4."[299] Hence, statements may be penalized as an incitement if the speaker clearly intended the hearers to perform any of the

punishable acts and for the purposes stated in Section 4.[300] In support of this, the ponencia cites the IRR, which states in part:

> Rule 4.9. Inciting to Commit Terrorism
>
> x x x x
>
> In determining the existence of reasonable probability that speeches, proclamations, writings, emblems, banners, or other representations would help ensure success in inciting the commission of terrorism, the following shall be considered:
>
> a.
>
> Context
>
> Analysis of the context should place the speech, proclamations, writings, emblems, banners, or other representations within the social and political context prevalent at the time the same was made and/or disseminated;
>
> b.
>
> Speaker/actor
>
> The position or status in the society of the speaker or actor should be considered, specifically his or her standing in the context of the audience to whom the speech or act is directed;
>
> c.
>
> Intent
>
> What is required is advocacy or intent that others commit terrorism, rather than the mere distribution or circulation of material;
>
> d.
>
> Content and form
>
> Content analysis includes the degree to which the speech or act was provocative and direct, as well as the form, style, or nature of arguments deployed in the speech, or the balance struck between the arguments deployed;
>
> e.
>
> Extent of the speech or act
>
> This includes such elements as the reach of the speech or act, its public nature, its magnitude, the means of dissemination used and the size of its audience; and
>
> f.
>
> Causation
>
> Direct causation between the speech or act and the incitement.
>
> Any such person found guilty therefor shall suffer the penalty of imprisonment of twelve (12) years. (Emphasis supplied)

I agree with the ponencia that these guidelines serve as safeguards to ensure that not all forms of provocation or passionate advocacy or criticism against the government shall be penalized as incitement under the law.[301]

In arguing that Section 9 is unconstitutional, petitioners maintain that said provision fails to satisfy the two-pronged test in the U.S. case of Brandenburg v. Ohio[302] (Brandenburg), i.e., that the advocacy (1) must be directed to inciting or producing imminent lawless action; and (2) is likely to incite or produce such action (the Brandenburg Test). According to petitioners, Section 9 is nothing more than a legislative overreach that is patently void for suppressing protected speech.[303]

For context, Brandenburg involved the constitutionality of a criminal statute which sought to punish the mere advocacy of violence as a means in furtherance of reform. In particular, the accused who was a leader of the Ku Klux Klan was convicted under the Ohio Criminal Syndicalism Statute for advocating the necessity, duty, and propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reforms; and for voluntarily assembling with a group formed to teach or advocate the doctrines of criminal syndicalism.[304] The SCOTUS sustained the challenge against the statute and ruled that the advocacy of illegal action becomes punishable only if such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.[305] The relevant portions of the decision are quoted herein:

> The Ohio Criminal Syndicalism Statute was enacted in 1919. From 1917 to 1920, identical or quite similar laws were adopted by 20 States and two territories. E. Dowell, A History of Criminal Syndicalism Legislation in the United States 21 (1939). In 1927, this Court sustained the constitutionality of California's Criminal Syndicalism Act, Cal.Penal Code §§ 11400-11402, the text of which is quite similar to that of the laws of Ohio. Whitney v. California, x x x (1927). The Court upheld the statute on the ground that, without more, "advocating" violent means to effect political and economic change involves such danger to the security of the State that the State may outlaw it. Cf. Fiske v. Kansas, x x x (1927). But Whitney has been thoroughly discredited by later decisions. See Dennis v. United States, x x x(1951). These later decisions have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. As we said in Noto v. United States, x x x (1961).
>
> "the mere abstract teaching ... of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action."
>
> x x x A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments. It sweeps within its condemnation speech which our Constitution has immunized from governmental control. x x x
>
> Measured by this test, Ohio's Criminal Syndicalism Act cannot be sustained. The Act punishes persons who "advocate or teach the duty, necessity, or propriety" of violence "as a means of accomplishing industrial or political reform"; or who publish or circulate or display any book or paper containing such advocacy; or who "justify" the commission of violent acts "with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism"; or who "voluntarily assemble" with a group formed "to teach or advocate the doctrines of criminal syndicalism." Neither the indictment nor the trial judge's instructions to the jury in any way refined the statute's bald definition of the crime in terms of mere advocacy not distinguished from incitement to imminent lawless action.
>
> Accordingly, we are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute falls within the condemnation of the First and Fourteenth Amendments. The contrary teaching of Whitney v. California, supra, cannot be supported, and that decision is therefore overruled.[306] (emphasis supplied, citations omitted)

The Brandenburg Test has been applied in the case of Hess v. Indiana,[307] where the appellant, an Indiana

University protester, was convicted for violating the Indiana disorderly conduct statute for shouting: "We'll take the fucking street again (or later)" during the anti-war demonstration on their college campus. The Indiana Supreme Court placed primary reliance on the trial court's finding that appellant's statement was intended to incite further lawless action on the part of the crowd in his vicinity, and was likely to produce such action. The SCOTUS reversed appellant's conviction and ruled that such profanity was protected following the Brandenburg Test since the speech amounted to nothing more than advocacy of illegal action at some indefinite future time, which is not sufficient to punish appellant's speech. In conclusion, the SCOTUS held that since there was no evidence, or rational inference from the import of the language, that appellant's words were intended to produce, and likely to produce, imminent disorder, his words could not be punished by the State on the ground that they had a "tendency to lead to violence."[308]

Another case where the SCOTUS applied the Brandenburg Test is NAACP v. Claiborne Hardware Co.[309] The case arose from the boycott of white merchants in Claiborne County, Mississippi, organized by the National Association for the Advancement of Colored People (NAACP), in order to secure compliance by civil and business leaders with a list of demands in furtherance of equality and racial justice. Respondents (white merchants) filed for injunctive relief and damages against petitioners (the NAACP and a number of individuals who participated in the boycott, including Charles Evers who was a principal organizer of the boycott). The lower court, as affirmed by the Mississippi Supreme Court, found the boycott unlawful and petitioners liable for damages resulting from the boycott on the ground that they had agreed to use force, violence, and threats to effectuate the same.[310]

In reversing the Mississippi Supreme Court, the SCOTUS found that the nonviolent elements of petitioners' activities are entitled to protection under the First Amendment and that they are not liable in damages for the consequences of their nonviolent, protected activity. As regards Charles Evers and the speeches he made in connection with the boycott, the SCOTUS applied the Brandenburg Test, and found that the speech was protected, to wit:

> The emotionally charged rhetoric of Charles Evers' speeches did not transcend the bounds of protected speech set forth in Brandenburg. The lengthy addresses generally contained an impassioned plea for black citizens to unify, to support and respect each other, and to realize the political and economic power available to them. In the course of those pleas, strong language was used. If that language had been followed by acts of violence, a substantial question would be presented whether Evers could be held liable for the consequences of that unlawful conduct. In this case, however — with the possible exception of the Cox incident — the acts of violence identified in 1966 occurred weeks or months after the April 1, 1966, speech; the chancellor made no finding of any violence after the challenged 1969 speech. Strong and effective extemporaneous rhetoric cannot be nicely channeled in purely dulcet phrases. An advocate must be free to stimulate his audience with spontaneous and emotional appeals for unity and action in a common cause. When such appeals do not incite lawless action, they must be regarded as protected speech. To rule otherwise would ignore the "profound national commitment" that "debate on public issues should be uninhibited, robust, and wide-open."[311] (Emphasis supplied)

The Philippine Supreme Court has recognized the Brandenburg Test in the 1985 case of Salonga v. Paño,[312] involving then Senator Jovito Salonga (Salonga), who was implicated for the bombings that occurred in Metro Manila in the months of August, September, and October 1980. He was likewise linked to subversive groups, with the prosecution's witness claiming that he allegedly supported a violent struggle in the country if reforms were not instituted. While the case was ultimately dismissed for mootness due to the prosecutor's dropping of the subversion case against Salonga, the Court nevertheless discussed the merits of the case and ruled that the prosecution failed to produce evidence that would establish any link between Salonga and subversive

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organizations. The alleged opinion of Salonga - that violent struggle is likely unless reforms are instituted - by no means shows either advocacy of or incitement to violence or furtherance of the objectives of a subversive organization. The following pronouncements in Salonga are enlightening:

> The prosecution has not come up with even a single iota of evidence which could positively link the petitioner to any proscribed activities of the Movement for Free Philippines or any subversive organization mentioned in the complaint. Lovely had already testified that during the party of former Congressman Raul Daza which was alleged to have been attended by a number of members of the MFP, no political action was taken but only political discussion. Furthermore, the alleged opinion of the petitioner about the likelihood of a violent struggle here in the Philippines if reforms are not instituted, assuming that he really stated the same, is nothing but a legitimate exercise of freedom of thought and expression. No man deserves punishment for his thoughts. Cogitationis poenam nemo meretur. And as the late Justice Oliver W. Holmes stated in the case of U.S. v. Schwimmer, 279 U.S. 644, ". . . if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought — not free thought for those who agree with us but freedom for the thought that we hate."
>
> We have adopted the concept that freedom of expression is a "preferred" right and, therefore, stands on a higher level than substantive economic or other liberties. The primacy, the high estate accorded freedom of expression is a fundamental postulate of our constitutional system. (Gonzales v. Commission on Elections, 29 SCRA 835). As explained by Justice Cardozo in Palko v. Connecticut (302 U.S. 319) this must be so because the lessons of history, both political and legal, illustrate that freedom of thought and speech is the indispensable condition of nearly every other form of freedom. Protection is especially mandated for political discussions. This Court is particularly concerned when allegations are made that restraints have been imposed upon mere criticisms of government and public officials. Political discussion is essential to the ascertainment of political truth. It cannot be the basis of criminal indictments.
>
> x x x x
>
> In the case before us, there is no teaching of the moral propriety of a resort to violence, much less an advocacy of force or a conspiracy to organize the use of force against the duly constituted authorities. The alleged remark about the likelihood of violent struggle unless reforms are instituted is not a threat against the government. Nor is it even the uninhibited, robust, caustic, or unpleasantly sharp attack which is protected by the guarantee of free speech. Parenthetically, the American case of Brandenburg v. Ohio (395 U.S. 444) states that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. The words which petitioner allegedly used according to the best recollections of Mr. Lovely are light years away from such type of proscribed advocacy.
>
> Political discussion even among those opposed to the present administration is within the protective clause of freedom of speech and expression. The same cannot be construed as subversive activities per se or as evidence of membership in a subversive organization. x x x[313] (Emphasis supplied)

To be sure, the offense of inciting lawless action is not novel. The Revised Penal Code penalizes inciting to war under Article 118, inciting to rebellion, or insurrection under Article 138, and inciting to sedition under Article 142. Accordingly, the Brandenburg Test is customarily used as a yardstick for determining whether speech has a reasonable probability or likelihood of producing such lawless action. These standards, as the ponencia aptly observed, are reflected in Rule 4.9 of the IRR, which merely supplied the guidelines for when speech has a reasonable probability of success in inciting the commission of terrorism.[314] By contextualizing the utterances and requiring an assessment of its likelihood to cause terrorism, a sufficiently narrow criteria for the punishable speech is drawn. At this juncture, I quote petitioners' misgivings as regards Section 9:

> x x x Section 9 must be voided for being overbroad. Due to the wide net cast by the provision, all forms of expression may now be deemed criminal. This would render obsolete the well-established distinctions between protected and unprotected speech, and base criminal liability solely on audience reception. For example, musicians like Bob Dylan and Rage Against the Machine, who typically perform political songs, could be held liable under Section 9 if their music inspired an actual uprising - even if they had no intention to cause the same. Political commentators could be arrested and jailed for actions of others who claimed they had acted at the "incitement" of persons who made public statements in mass media, even if such public statements were constitutionally protected. Law or political science professors who engage their students on socialism, Marxism, or even liberation theology where inevitably the concept of "armed struggle" will be part of the discussion could be held liable under Section 9, despite the constitutional guarantee of academic freedom.[315]

The fears put forward by petitioners are understandable, especially in times where legitimate dissents against the government are continuously being attacked and hindered. Nevertheless, these fears should now be allayed by the delineation made by the ponencia of Section 4 — which now categorically upholds the right to protest, dissent, advocate, peaceably assemble to petition the government for redress of grievances, or otherwise exercise civil and political rights, without fear of being prosecuted as terrorists under the ATA — as well as the guidelines provided in the IRR and the Brandenburg Test. This much has been recognized and acknowledged by the ponencia, which I support:

> Together, the foregoing guidelines serve as an effective safeguard which ensures that not all forms of provocation or passionate advocacy or criticism against the Government shall be penalized as incitement under the law. The context, speaker, intent, content and form, and the extent of the speech or act shall all he considered to ensure that the incitement is not only grave, but may very well be imminent. For example, when a humble teacher posts on social media that he will give fifty million pesos to the one who kills the President, he may not be punished for inciting to commit terrorism in the absence of a showing that the statements made were clearly directed to inciting an imminent act of terrorism and is likely to lead to terrorism. The position of the speaker also appears not likely to influence others to commit terrorism.
>
> Accordingly, the Court finds that, as construed, Section 9 is reasonably and narrowly drawn and is the least restrictive means to achieve the declared compelling state purpose.[316] (Emphasis supplied)

In sum, I concur with the ponencia that speech can be penalized as inciting to commit terrorism under Section 9 only if it is (1) a direct and explicit - not merely vague, abstract, equivocal - call to engage in terrorism; (2) made with intent to promote terrorism; and (3) directly and causally responsible for increasing the actual likelihood of terrorist attacks.[317] In my opinion, this formulation, coupled with the guidelines provided in the IRR and the literature on the Brandenburg Test, are sufficient to ensure that the enforcement of Section 9 does not unlawfully infringe on protected speech.

IX.

By extension, the entire provision of Section 10 is likewise constitutional.

In upholding the constitutionality of Section 4, particularly the main part that defined the proscribed conduct, it necessarily follows that the entire provision of Section 10 is also neither vague nor overbroad. The phrase in Section 10, which states that a group, organization, or association should be "organized for the purpose of engaging in terrorism", must be read in relation to Section 4, as it is now delineated by the ponencia. Following the same parameters of actus reus and mens rea in Section 4, there are clear standards by which a person can determine whether an organization, association or group is engaged for such purpose. For these reasons, I agree

with the majority's holding that Section 10 is constitutional.

X.

Designation and proscription under the ATA

In the State's quest for a multi-pronged approach at combatting terrorism, the ATA establishes a system of identifying individuals and groups of persons as terrorists as an aid, not only in the prosecution of terrorism, but also as a measure aimed at its prevention. To this end, Section 25 of the ATA provides for the domestic designation of terrorist individuals, groups of persons, organizations, or associations, as such:

> SEC. 25. Designation of Terrorist Individual, Groups of Persons, Organizations or Associations. - Pursuant to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, group of persons, organizations, or associations designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group.
>
> Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373.
>
> The ATC may designate an individual, groups of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, groups of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act.
>
> The assets of the designated individual, group of persons, organization, or association above-mentioned shall be subject to the authority of the Anti-Money Laundering Council (AMLC) to freeze pursuant to Section 11 of Republic Act No. 10168.
>
> The designation shall be without prejudice to the proscription of terrorist organizations, associations, or groups of persons under Section 26 of this Act.

Parsing Section 25, three modes of designation are provided: (1) the ATC's automatic adoption of the United Nations (UN) Security Council (UNSC) Consolidated List; (2) approval of requests from other jurisdictions; and (3) designation by the ATC. Such designation goes beyond bestowing upon a person or group a nomenclature attached to terrorism. With it comes a sanction in the form of freezing the assets of the person or group designated, following Section 11 of R.A. No. 10168.[318]

In addition to designation, the ATA likewise provides for the proscription of terrorist organizations, associations, or group of persons under Section 26, which provides:

> SEC. 26. Proscription of Terrorist Organizations, Association, or Group of Persons. - Any group of persons, organization, or association, which commits any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, or organized for the purpose of engaging in terrorism shall, upon application of the DOJ before the authorizing division of the Court of Appeals with due notice and opportunity to be heard given to the group of persons, organization or association, be declared as a terrorist and outlawed group of persons, organization or association, by the said Court.
>
> The application shall be filed with an urgent prayer for the issuance of a preliminary order of proscription. No application for proscription shall be filed without the authority of the ATC upon the recommendation of the National Intelligence Coordinating Agency (NICA).

Unlike the designation provided under Section 25, which extends to both individuals and groups, proscription under Section 26 is limited to terrorist organizations, associations, or groups of persons. Moreover, proscription is a judicial proceeding commenced by an application filed by the Department of Justice (DOJ) before the CA.[319] The ATA reinforces Section 26 by introducing a preliminary order of proscription under Section 27 and requests for proscription from foreign jurisdictions under Section 28:

> SEC. 27. Preliminary Order of Proscription. - Where the Court has determined that probable cause exists on the basis of the verified application which is sufficient in form and substance, that the issuance of an order of proscription is necessary to prevent the commission of terrorism, he/she shall, within seventy-two (72) hours from the filing of the application, issue a preliminary order of proscription declaring that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26 of this Act.
>
> The court shall immediately commence and conduct continuous hearings, which should be completed within six (6) months from the time the application has been filed, to determine whether:
>
> (a) The preliminary order of proscription should be made permanent;
>
> (b) A permanent order of proscription should be issued in case no preliminary order was issued; or
>
> (c) A preliminary order of proscription should be lifted. It shall be the burden of the applicant to prove that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26 of this Act before the court issues an order of proscription whether preliminary or permanent.
>
> The permanent order of proscription herein granted shall be published in a newspaper of general circulation. It shall be valid for a period of three (3) years after which, a review of such order shall be made and if circumstances warrant, the same shall be lifted.
>
> SEC. 28. Request to Proscribe from Foreign Jurisdictions and Supranational Jurisdictions. - Consistent with the national interest, all requests for proscription made by another jurisdiction or supranational jurisdiction shall be referred by the Department of Foreign Affairs (DFA) to the ATC to determine, with the assistance of the NICA, if proscription under Section 26 of this Act is warranted. If the request for proscription is granted, the ATC shall correspondingly commence proscription proceedings through DOJ.

Petitioners launch a challenge against the foregoing system of designation and proscription on the grounds that Sections 25, 26, 27, and 28 have a chilling effect on the freedoms of speech, expression, assembly, association and other allied rights.[320] In resolving this challenge, the ponencia holds that the provisions in question are susceptible to a facial challenge[321] and proceeds to weigh these provisions upon the scales of the overbreadth doctrine and the strict scrutiny test.[322] Against these standards, I respectfully submit that only the first of the three modes of designation withstands constitutional muster.

I begin my analysis with the nature of petitioners' claim of chilling effect. A chilling effect occurs when individuals seeking to engage in a constitutionally protected activity are deterred from doing so by governmental regulation not specifically directed at that protected activity.[323] Deterrence is at its core, as an indirect result of a government regulation directed at an altogether different activity. In other words, petitioners proffer the argument that because of the ATA's regime of terrorist designation, there is an incidental effect of deterring constitutionally protected activities, i.e. the fundamental rights of speech, expression, assembly, association and their cognate rights. Hence, the "chilling" effect.

The chilling effect, therefore, is a result of the application of a statute which deters people from exercising certain rights for fear of punishment.[324] In dealing with a statute which purportedly has a chilling effect, the overbreadth doctrine necessarily factors in the analysis. Under this doctrine, litigants may bring a facial challenge to a statute that is "overbroad", reaching both protected and unprotected speech, even if the litigant may be

properly prosecuted under a more narrowly drawn statute.[325] This is essential in any challenge of this nature since without this doctrine, any person whose speech is protected may be deterred, or "chilled", and lose the opportunity to challenge the overbroad law. Again, a law may be struck down as unconstitutional under the overbreadth doctrine if it achieves a governmental purpose by means that are unnecessarily broad and thereby invade the area of protected freedoms.[326]

So pernicious is the phenomenon of chilling that its application extends beyond those statutes that suffer the vice of overbreadth. The chilling effect may also exhibit in statutes that are vague and uncertain. While vagueness is a due process consideration, an uncertainty in the law's scope carries the same pervasive evil in its incidental effects — a person who would otherwise engage in protected speech would self-censor for fear of government regulation since he or she is left unaware of the contours and remedies of the vague law.[327] Hence, the application of this doctrine upon which the questioned provisions are to be measured is also warranted.

Measured against the standards of the void-for-vagueness doctrine, I reach the same conclusion as that of the majority — that the first mode of designation withstands the constitutional challenge.[328] In arriving at the ultimate analysis in favor of its constitutionality, the political context and the legal milieu behind the Consolidated List and its automatic adoption by a number of UN member states provide much needed guidance.

Acting on its Chapter VII[329] authority under the UN Charter, The UNSC adopted Resolution 1267[330] on October 15, 1999 addressing the concerns raised over the use of the Afghan territory "for the sheltering and training of terrorists and planning of terrorist acts."[331] Under Resolution 1267, a Sanctions Committee was tasked with monitoring the implementation of measures decided against the Taliban, Usama Bin Laden, and individuals affiliated with him. These measures were further strengthened and reaffirmed in a number of subsequent Resolutions[332] imposing sweeping sanctions in the form of travel and arms band and the freezing of assets. Notably, the subsequent Resolution 1526[333] broadened the scope of these sanctions to include "funds and other financial assets of Usama bin Laden and individuals and entities associated with him as designated by the [Sanctions] Committee, including those in the Al-Qaida organization..." Based on information provided by member states, the Sanctions Committee maintained a Consolidated List of individuals and entities designated as terrorists.

Following the September 11, 2001 attacks against the United States, the UNSC passed Resolution 1373 in 2001 which imposed upon member states obligations of a general character concerning the prevention and punishment of the financing of terrorist activities in addition to other obligations aiming at the prevention and repression of terrorist acts. Under this regime, the designation and the standing sanctions such as the freezing of assets and travel bans were extended to members of any terrorist group.

In response to mounting criticisms, mostly on the lack of mechanisms aimed at satisfying due process considerations, the Sanctions Committee adopted guidelines in 2002. Substantial amendments were issued under Resolutions 1730 (2006) and 1735 (2006). These Resolutions established a central office which handles delisting requests from targets by passing along such requests to the concerned states, i.e., the designating state and the state of the petitioner's residence and citizenship and informing the petitioner of the ultimate decision made by the Sanctions Committee.[334]
In the same vein, Resolution 1822 (2002) was adopted urging member states to view delisting petitions in a timely manner and to update the Sanctions Committee of developments on the status of delisting petitions.[335] This Resolution likewise directed the Sanctions Committee to conduct periodic reviews of targets to ensure that the listings remained appropriate and encouraged the Sanctions Committee to continue ensuring that fair and clear procedures exist for placing individuals on the Consolidated List and for removing them.[336]

Finally, the Sanctions Committee adopted the Guidelines of the Committee for the Conduct of its Work[337] in 2018, outlining the decision-making process of the Sanctions Committee, as well as outlining the process of listing which requires multilateral acceptance among member states.

At this juncture, I wish to point out two (2) critical legal findings:

First, the foregoing UNSC Resolutions adopted under Chapter VII of the UN Charter bind the Philippines and other member states of the UN.[338] However, it goes without saying that the implementation of the measures enacted by the UNSC relies entirely on the member states. Since most of the obligations envisaged by the relevant UNSC resolutions require domestic translation, their implementation and efficacy will greatly depend on the extent to which states incorporate them properly into their domestic legal orders and subsequently enforce them by means of their internal law enforcement machinery. One such instance is the automatic incorporation of the Consolidated List. In fact, a handful of states provide for this automatic incorporation, automatically forming part of the domestic legal order, such as the Republic of Angola[339] and the Republic of Belarus.[340]

Second, inasmuch as UNSC Resolution 1373 and the prior resolutions are binding on the Philippines, so are the subsequent resolutions providing for a mechanism for review, the updating of the Consolidated List, and petitions for delisting. Mirroring these international commitments, Rule 6.9 of the ATA IRR recognizes the different avenues for delisting petitions: (1) through a delisting request submitted to the Sanctions Committee coursed through the government; (2) through a delisting request directly submitted by the person designated to the Office of the Ombudsperson, an office created pursuant to UNSC Resolution 1904 (2009).

Therefore, understanding and taking cognizance of the entire regime of designation under this first mode in its entirety, effectively debunks the petitions for its invalidation on a perceived chilling effect. The adoption of the Consolidated List, and the mechanisms that come with it, are not unnecessarily broad as to invade constitutionally protected freedoms. Extending this reasoning, no protected speech is incidentally deterred or chilled by the automatic designation.

Neither can the first mode be struck down for being vague under due process considerations. As discussed, mechanisms for the listing, delisting, review, and updating of the Consolidated List have been adopted precisely to address the necessity for due process. The ATC and domestic law enforcers do not have unbridled discretion on the matter. In fact, no discretion is ever exercised under the first mode. The designation and the attendant procedures of review and delisting happen on the international level, spearheaded by the Sanctions Committee after a multi-state consensus.

The same mantle of constitutionality, however, cannot be extended to the second and third modes of designation under Section 25 of the ATA. Thus, while I agree with the majority in finding the second mode unconstitutional, I respectfully differ as to the third mode of designation. To my mind, both the second and third modes suffer the vices of being both overbroad and vague and have the effect of incidentally deterring protected speech.

The second mode of designation grants power to the ATC to act upon requests for designation by other jurisdictions.[341] On the other hand, the third mode of designation also grants the ATC the power to designate any individual, group of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that there is a commission, an attempt to commit, or a conspiracy in the acts defined and penalized under Sections 4 to 12 of the ATA.

This grant of powers to the ATC is both unbridled and unchecked. Section 25 of the ATA is silent as to the standards and guidelines when acting upon requests for designations. Likewise problematic is the ATA's silence-on any remedial measure it affords to a person or group sought to be designated. A common thread

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running through the second and third modes is the absence of remedial measures that would satisfy the requirements of the due process clause. It does not provide notice of the designation, an opportunity to rebut the factual accusations, nor the opportunity to be heard before an unbiased tribunal.

In all, the second and third modes: (1) lack necessary mechanisms that would afford due process protection over targeted individuals sought to be designated; and (2) give unbridled and unchecked discretion to the ATC in its determination as to whether or not a person or group of persons should be designated as a terrorist. For these reasons, the Court should not bestow upon these modes the mantle of constitutionality. These two modes are both overbroad and vague at the same time. As such, I join the majority in striking down the second mode of designation, and in addition thereto, I vote that the third mode should likewise be declared unconstitutional.

XI.

Section 29 of the ATA infringes on the exclusive power of judges to issue warrants, in violation of the principle of separation of powers.

Petitioners submit that Section 29 of the ATA violates the fundamental principle of separation of powers as it empowers the ATC, an executive office, to issue a written authorization, which serves as the basis for taking into custody a person suspected of committing any terrorist activity.[342]

On the other hand, the respondents contend that there is no violation of the separation of powers because Section 29 of the ATA does not authorize the ATC to issue warrants of arrest.[343] The OSG argues that the written authorization is a mere law enforcement tool to allow the arresting officer to detain a person arrested pursuant to a valid warrantless arrest for a period within that contemplated under Section 29, which is fourteen (14) days, extendable for another ten (10) days.[344] It is only the extended period of fourteen (14) days, says the OSG, that Section 29 seeks to implement - a period which is reasonable, given the special nature of the crime of terrorism.

Fundamental to the consideration of the issue on whether Section 29 of the ATA violates the principle of separation of powers is Article III, Section 2 of the 1987 Constitution, which provides that only judges, and no one else, may validly issue warrants of arrest and search, viz.:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[345] (Emphasis supplied)

Jurisprudence is replete with decisions that invalidate laws and decrees that conflict with Article III, Section 2 of the 1987 Constitution. This is so because a statute may be declared unconstitutional because it is not within the legislative power to enact; or it creates or establishes methods or forms that infringe constitutional principles; or its purpose or effect violates the Constitution or its basic principles.[346]

In Salazar v. Achacoso,[347] the Court declared unconstitutional Article 38, paragraph (c)[348] of the Labor Code, which granted the Secretary of Labor and Employment the power to cause arrest and detention, because the Labor Secretary is not a judge, thus:

> [I]t is only a judge who may issue warrants of search and arrest. x x x.

> x x x [T]he Secretary of Labor, not being a judge, may no longer issue search or arrest warrants. Hence, the authorities must go through the judicial process. To that extent, we declare Article 38, paragraph (c), of the Labor Code, unconstitutional and of no force and effect.[349]

Similarly, the Court ruled that the Presidential Anti-Dollar Salting Task Force and mayors had no authority to issue judicial warrant as this power is reserved for the judges or the Judiciary:

> Presidential Anti-Dollar Salting Task Force v. Court of Appeals[350]
>
> We agree that the Presidential Anti-Dollar Salting Task Force exercises, or was meant to exercise, prosecutorial powers, and on that ground, it cannot be said to be a neutral and detached "judge" to determine the existence of probable cause for purposes of arrest or search. xxx xxx xxx To permit him to issue search warrants and indeed, warrants of arrest, is to make him both judge and jury in his own right, when he is neither. That makes, to our mind and to that extent, Presidential Decree No. 1936 as amended by Presidential Decree No. 2002, unconstitutional.[351] (Emphasis supplied)
>
> Ponsica v. Ignalaga[352]
>
> x x x Section 143 of the Local Government Code, conferring this power on the mayor has been abrogated, rendered functus officio by the 1987 Constitution which took effect on February 2, 1987, the date of its ratification by the Filipino people. xxx xxx xxx The constitutional proscription has thereby been manifested that thenceforth, the function of determining probable cause and issuing, on the basis thereof, warrants of arrest or search warrants, may be validly exercised only by judges, this being evidenced by the elimination in the present Constitution of the phrase, "such other responsible officer as may be authorized by law" found in the counterpart provision of said 1973 Constitution — who, aside from judges, might conduct preliminary investigations and issue warrants of arrest or search warrants.[353] (Emphasis supplied; italics in the original)

Based on the foregoing discussion, I agree with petitioners' stance that Section 29 of the ATA violates the principle of separation of powers because the written authority mentioned therein directly violates Article III, Section 2 of the 1987 Constitution. The constitutional infirmity is readily apparent on the face of Section 29, which reads:

> SEC. 29. Detention Without Judicial Warrant of Arrest. — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period often (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.
>
> Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.

> The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities.
>
> The penalty of imprisonment of ten (10) years shall be imposed upon the police or law enforcement agent or military personnel who foils to notify any judge as provided in the preceding paragraph.[354] (Emphasis supplied)

Relevant to Section 29 is Section 45 of the ATA, which lists the members of the ATC from whom the written authority to detain emanates. Notably, the ATC is composed of cabinet members from the Executive branch of the government:

> SEC. 45. Anti-Terrorism Council. — An Anti-Terrorism Council (ATC) is hereby created. The members of the ATC are: (1) the Executive Secretary, who shall be its Chairperson; (2) the National Security Adviser who shall be its Vice Chairperson; and (3) the Secretary of Foreign Affairs; (4) the Secretary of National Defense; (5) the Secretary of the Interior and Local Government; (6) the Secretary of Finance; (7) the Secretary of Justice; (8) the Secretary of Information and Communications Technology; and (9) the Executive Director of the Anti-Money Laundering Council (AMLC) Secretariat as its other members.
>
> x x x x

The majority, however, agrees with the respondents that the written authority under Section 29 is not in any way akin to a warrant of arrest. The majority, through the ponencia, stresses that when Section 29 is harmonized with the provisions of Rule 9.1 and Rule 9.2[355] of the ATA's IRR, it is clear that the ATC issues a written authorization to law enforcement agents only to permit the extended detention of a person arrested after a valid warrantless arrest is made under Rule 9.2.[356] In arriving at this conclusion, the ponencia explains:

> x x x [T]here is an apparent need to clarify the meaning of Section 29 insofar as the parties insist on varying interpretations. On this point, the Court abides by the principle that if a statute can be interpreted in two ways, one of which is constitutional and the other is not, then the Court shall choose the constitutional interpretation. As long held by the Court:
> Every intendment of the law should lean towards its validity, not its invalidity. The judiciary, as noted by Justice Douglas, should favor that interpretation of legislation which gives it the greater chance of surviving the test of constitutionality.

Notably, it has also been stated that "laws are presumed to be passed with deliberation [and] with full knowledge of all existing ones on the subject"; therefore, as much as possible, the Constitution, existing rules and jurisprudence, should be read into every law to harmonize them within the bounds of proper construction.

Accordingly, with these in mind, the Court's construction is that under Section 29, a person may be arrested without a warrant by law enforcement officers or military personnel for acts defined or penalized under Sections 4 to 12 of the ATA but only under any of the instances contemplated in Rule 9.2, i.e., arrest in flagrante delicto, arrest in hot pursuit, and arrest of escapees, which mirrors Section 5, Rule 113 of the Rules of Court. Once arrested without a warrant under those instances, a person may be detained for up to 14 days, provided that the ATC issues a written authority in favor of the arresting officer pursuant to Rule 9.1, upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism and the relevant circumstances as basis for taking custody of said person. If the ATC does not issue the written authority, then the arresting officer shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the RFC — the prevailing general rule. The extended detention period — which, as will be explained in the ensuing discussions, is the crux of Section 29 — is therefore deemed as an exception to Article 125 of the RFC based on Congress' own wisdom and policy determination relative to the exigent and peculiar

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nature of terrorism and hence, requires, as a safeguard, the written authorization of the ATC, an executive agency comprised of high-ranking national security officials.[357] (Emphasis and underscoring in the original)

Following the above, two succeeding events will trigger the power of the ATC to issue a written authority to detain a person up to fourteen (14) days. First, the law enforcement officer or military personnel makes a warrantless arrest for acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the ATA. Second, the arresting officer submits a sworn statement stating the details of the person suspected of committing acts of terrorism and the relevant circumstances as basis for taking custody of the said person. Upon the submission of the sworn statement, the ATC then determines whether to issue a written authority in favor of the arresting officer for the extension of the detention period. If the ATC issues a written authority, the arrested person may be detained for up to fourteen (14) days. If the ATC does not issue a written authority, the arrested person must be delivered to the proper judicial authority within thirty-six (36) hours as provided by Article 125 of the RPC.[358]

A.

Rule 9.1 of the IRR should be declared invalid for being ultra vires.

With due respect, I submit that the foregoing interpretation of the ponencia is without legal basis.

Firstly, the construction crafted by the ponencia is possible only if Rule 9.1 of the IRR is taken into consideration. Under the second paragraph of Rule 9.1, the arresting officer is charged with the duty to submit a sworn statement to the ATC to substantiate the extension of the detention period up to fourteen (14) days. The last two paragraphs of Rule 9.1,[359] taken together, grant the ATC with discretion to issue a written authority after the warrantless arrest, on the basis of such sworn statement. Thus, the ponencia concludes that the "issuance of the authorization after the arrest is implied by the requirement under Rule 9.1 of the IRR for the arresting officer to submit a sworn statement stating the details of the person suspected of committing acts of terrorism and the relevant circumstances as basis for taking custody of the said person without a judicial warrant."[360]

However, there is nothing in Section 29 of the ATA which mandates the arresting officer to submit a sworn statement to the ATC, stating the details of the person suspected of committing acts of terrorism and the relevant circumstances for taking custody of the said person. It is likewise silent on the discretion of the ATC to issue a written authority allowing the extension of the detention period of a person suspected of committing acts of terrorism for up to fourteen (14) days after the warrantless arrest of said person and on the basis of the arresting officer's sworn statement.

Secondly, nowhere in Section 29 of the ATA is there any clear reference to Rule 1 13 of the Rules of Court about warrantless arrests. The reference is, once more, found in the IRR. Rule 9.1 clarifies that the authority in writing referred to in Section 29 is to be issued by the ATC in case of warrantless arrests provided for under Rule 9.2, to wit:

> Rule 9.2. Detention of a suspected person without warrant of arrest. A law enforcement officer or military personnel may, without a warrant, arrest:
>
> - a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;
>
> - a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said

> suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which has just been committed; and
>
> - a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another.

Section 29 of the ATA, therefore, is evidently incomplete in all its essential terms and conditions. It speaks of a detention without a judicial warrant of arrest or, otherwise stated, a detention effected after a warrantless arrest. Furthermore, the written authority issued by the ATC refers to the detention period of fourteen (14) days. Thus, on its own, Section 29 does not lend to the interpretation of the ponencia that the ATC issues a written authority on a case-by-case basis after a valid warrantless arrest and in light of the sworn statement of the arresting officer.

The only requirements imposed by Section 29 on the law enforcement agent or military personnel is to notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s; and (c) the physical and mental condition of the detained suspect/s. Copies of such written notice given to the judge must be furnished to the ATC and the Commission on Human Rights (CHR). Evidently, the written notice to be furnished to the ATC under Section 29 is different from the sworn statement to be submitted to the ATC in Rule 9.1 of the IRR. The purpose of the former is merely to inform the ATC of the circumstances surrounding the arrest of a particular person and his or her present location and condition; whereas the latter serves as the ATC's basis to determine the propriety of granting a written authority to extend the detention period of the arrested person up to fourteen (14) days.

The last two paragraphs in Rule 9.1[361] are therefore ultra vires because they introduce substantial amendments to Section 29. In so doing, the IRR rearranged and modified the sequence of events that will lead to the ATC's issuance of a written authority in favor of the arresting officer. Rule 9.1 clearly does not merely "fill in the details." To the contrary, it completely amends the law.

It is basic that an IRR cannot amend an act of Congress, for IRRs are solely intended to carry out, not to supplant or to modify, the law.[362] The ATA's IRR cannot and should not have expanded Section 29 for the spring can neither rise higher than nor boast of replenishing its own source. The IRR, through Rules 9.1 and 9.2, can neither correct the law it seeks to implement by filling in the substantive gaps in Section 29 for this is an impermissible attempt to remedy the constitutional infirmity of Section 29 itself. When a gap in the law exists, such as under Section 29, the remedy is for Congress to amend the same and not for this Court to augment or qualify it under the guise of statutory construction.

The foregoing being the case, I am of the view, different from that of the ponencia's, that there is here an undue delegation of legislative power to the ATC and the DOJ.[363] This cannot be done, as the ATC and the DOJ cannot perform law-making powers or decide what the law shall be. Fn one case,[364] the Court held, "[t]he true distinction x x x is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."[365]

In order for the delegation of legislative power to be valid, it is essential that the law satisfies the completeness test and the sufficient standard test. The law must be complete in all its essential terms and conditions when it leaves the legislature so that there will be nothing left for the delegate to do when it reaches him, except to enforce it. If there are gaps in the law that will prevent its enforcement unless they are first filled, the delegate will then have been given the opportunity to step in the shoes of the legislature and exercise a discretion essentially legislative in order to repair the omissions. This is an invalid delegation, and the Court has not hesitated to strike

down an administrative regulation that dangerously ventures into law-making.[366]

In Tatad v. Secretary of the Department of Energy,[367] the Court found that E.O. No. 392 constituted a misapplication of R.A. No. 8180 because the executive department rewrote the standards set forth in the law when it considered the extraneous factor of depletion of the oil price stabilization fund (OPSF) - a factor not found in R.A. No. 8180 in fully deregulating the downstream oil industry:

> x x x [T]he Executive department failed to follow faithfully the standards set by R.A. No. 8180 when it considered the extraneous factor of depletion of the OPSF fund. The misappreciation of this extra factor cannot be justified on the ground that the Executive department considered anyway the stability of the prices of crude oil in the world market and the stability of the exchange rate of the peso to the dollar. By considering another factor to hasten full deregulation, the Executive department rewrote the standards set forth in R.A. [No.] 8180. The Executive is bereft of any right to alter either by subtraction or addition the standards set in R.A. No. 8180 for it has no power to make laws. To cede to the Executive the power to make law is to invite tyranny, indeed, to transgress the principle of separation of powers. The exercise of delegated power is given a strict scrutiny by courts for the delegate is a mere agent whose action cannot infringe the terms of agency. In the cases at bar, the Executive co-mingled the factor of depletion of the OPSF fund with the factors of decline of the price of crude oil in the world market and the stability of the peso to the US dollar. On the basis of the text of E.O. No. 392, it is impossible to determine the weight given by the Executive department to the depletion of the OPSF fund. It could well be the principal consideration for the early deregulation. It could have been accorded an equal significance. Or its importance could be nil. In light of this uncertainty, we rule that the early deregulation under E.O. No. 392 constitutes a misapplication of R.A. No. 8180.[368]

In Lokin, Jr. v. COMELEC[369] (Lokin, Jr.), the Court invalidated Section 13 of COMELEC Resolution No. 7804 for being contrary to Section 8 of R.A. No. 7941 or the Party-List System Act, holding that:

> The COMELEC, despite its role as the implementing arm of the Government in the enforcement and administration of all laws and regulations relative to the conduct of an election, has neither the authority nor the license to expand, extend, or add anything to the law it seeks to implement thereby. The IRRs the COMELEC issues for that purpose should always accord with the law to be implemented, and should not override, supplant, or modify the law. It is basic that the IRRs should remain consistent with the law they intend to carry out.
>
> Indeed, administrative IRRs adopted by a particular department of the Government under legislative authority must be in harmony with the provisions of the law, and should be for the sole purpose of carrying the law's general provisions into effect. The law itself cannot be expanded by such IRRs, because an administrative agency cannot amend an act of Congress.[370]

The Court also significantly held in Lokin, Jr. that the following test should be applied in examining the validity of IRRs:

> To be valid, therefore, the administrative IRRs must comply with the following requisites to be valid [sic]:
>
> - Its promulgation must be authorized by the Legislature;
>
> - It must be within the scope of the authority given by the Legislature;
>
> - It must be promulgated in accordance with the prescribed procedure; and
>
> - It must be reasonable.[371]

Here, the above second requisite in Lokin, Jr. has not been met for Rule 9.1, in relation to Rule 9.2, unduly expanded Section 29 of the ATA. Section 29 should be read literally because its language is plain and free from ambiguity. An administrative agency tasked to implement a statute may not construe it by expanding its meaning

where its provisions are clear and unambiguous.[372]

In the same vein, even where the courts should be convinced that the legislature really intended some other meaning, and even where the literal interpretation should defeat the very purposes of the enactment, the explicit declaration of the legislature is still the law, from which the courts must not depart. When the law speaks in a clear and categorical language, there is no reason for interpretation or construction, but only for application. Hence, while I agree with the principle that the Court must favor the construction of legislation that would survive the test of constitutionality, to permit the interpretation of the ponencia and, thereby, allow Rule 9.1 to amend and modify Section 29 under the guise of saving the latter provision from constitutional infirmity, would be to open the floodgates for other administrative bodies to amend, expand, and modify laws in absolute derogation of the principle of separation of powers underpinning the stability of our Government.

B.

Section 29 is unconstitutional because it infringes on the power of judges to issue warrants.

As regards the nature of the written authority by the ATC referred to in Section 29, it is also my view that the same is akin to a judicial warrant in the 1987 Constitution. Again, a plain reading of the phrase in Section 29 — "duly authorized in writing by the ATC" — confirms this, as the phrase shows that it modifies the act of taking custody "of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act." The written authorization is therefore required before a law enforcement agent or military personnel takes custody of an individual. Simply put, the written authorization from the ATC allows any law enforcement agent or military personnel to take custody of a person suspected of committing any of the acts under the ATA. In effect, Section 29 empowers the ATC — an executive office — to issue warrants of arrest even though the Constitution and jurisprudence make it abundantly clear that only judges may do so.

At this juncture, the definition of the term "arrest" under the Rules of Criminal Procedure finds relevance:

> SECTION 1. Definition of Arrest. — Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense.[373]

It can be gleaned from the definition above that to arrest means to take a person into custody. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest.[374] "To take a person into custody" is the same language employed in Section 29. Ineluctably, the written authority issued by the ATC to take custody of suspected terrorists is literally a written authority to effect an arrest. It is disingenuous to argue that it merely authorizes the prolonged period of detention after a valid warrantless arrest.

Former Chief Justice Reynato S. Puno, in his opening statement as amicus curiae in this case, stated the following relevant points — which I completely agree with:

> The question that confronts us is whether the ATA erodes the protection of existing rights of arrested persons. Consider the following:
>
> - The warrant is issued by the ATC, an executive functionary. Under present legal regime, a warrant of arrest is issued by a judge. And it is issued by a judge, upon application by a prosecutor who has independently evaluated the evidence of guilt of the respondent in the exercise of quasi-judicial function. These two (2) levels

> of protection appear to have been taken away and given to the ATC, a body that cannot exercise judicial power.[375]

While Section 45 states that "[n]othing herein shall be interpreted to empower the ATC to exercise any judicial or quasi-judicial power or authority", Section 29 nonetheless does just that by granting the ATC a power exclusively vested in the courts. When the ATC issues a written authority to a law enforcement agent or military personnel, the latter takes custody of suspected terrorists, who are consequently deprived of their freedom of action in a significant way.[376] Thus, the written authority has the same effect as a warrant of arrest: taking a person into custody, resulting in deprivation of liberty.

Since the written authority is a disguised judicial warrant that, again, only judges can issue, it follows that the principle of separation of powers is indeed violated.

In Soliven v. Makasiar,[377] the Court held that the present Constitution underscores the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. Verily, the judge has the exclusive role of determining whether a warrant would be issued. The function of the judge to issue a warrant of arrest upon the determination of probable cause is exclusive.[378] In other words, the issuance of a warrant calls for the exercise of judicial discretion on the part of the issuing magistrate.[379]

Even if it is conceded, for the sake of argument, that the written authority is merely a law enforcement tool necessary for the continued detention of suspected terrorists following a valid warrantless arrest, the same conclusion would actually be reached. There is still a violation of the fundamental principle of separation of powers.

In the relevant case of Sayo v. Chief of Police of Manila[380] (Sayo), a policeman arrested the petitioners and thereafter filed with the city fiscal a formal complaint for robbery. However, five (5) days after, petitioners continued to be in detention and the fiscal had not yet released or filed against them an Information with the proper courts. This caused petitioners to file a petition for habeas corpus before this Court, which was then faced with the principal issue — is the city fiscal of Manila a judicial authority within the meaning of the provisions of Article 125 of the RPC?

Answering in the negative, the Court emphasized that only justices or judges are vested with the judicial power to order the detention or confinement of a person charged with having committed a public offense, and that without a warrant of commitment duly issued by such judicial officers, the detention of a person arrested for more than the period fixed under the law would be illegal and in violation of the Constitution, thus:

> Taking into consideration the history of the provisions of the above quoted article, the precept of our Constitution guaranteeing individual liberty, and the provisions of Rules of Court regarding arrest and habeas corpus, we are of the opinion that the words "judicial authority", as used in said article, mean the courts of justices or judges of said courts vested with judicial power to order the temporary detention or confinement of a person charged with having committed a public offense, that is, "the Supreme Court and such inferior courts as may be established by law". (Section 1, Article VIII of the Constitution.).
>
> x x x x
>
> Besides, [S]ection 1(3), Article III, of our Constitution provides that "the right of the people to be secure in their persons . . . against unreasonable seizure shall not be violated, and no warrant [of arrest, detention or confinement] shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witness he may produce." Under this constitutional precept no person may be deprived of his liberty, except by warrant of arrest or commitment issued upon probable cause by a judge after examination of the complainant and his witness. And the judicial authority to whom a person

> arrested by a public officer must be surrendered cannot be any other but a court or judge who alone is authorized to issue a warrant of commitment or provisional detention of the person arrested pending the trial of the case against the latter. Without such warrant of commitment, the detention of the person arrested for more than six hours would be illegal and in violation of our Constitution.[381] (Emphasis supplied)

It bears noting that Sayo was decided under the 1935 Constitution,[382] which, similar to the present 1987 Constitution, reserved the issuance of warrants of arrest exclusively to judges. As discussed in the ponencia, the 1935 and 1987 Constitutions differ from the 1973 Constitution[383] which empowered judges and "such other responsible officer as may be authorized by law" to issue such arrest warrants, thereby leading to the notorious and much-abused Arrest, Search and Seizure Orders (ASSOs) by the Secretary of National Defense during Martial Law.[384]

To stress, the Court in Sayo had categorically declared that a warrant of commitment, the purpose of which is to authorize the continued detention of a person arrested beyond the period fixed under the RPC, may only be validly issued by a judicial officer pursuant to Article III of the Constitution. The act of a non-judicial officer such as a city fiscal of ordering such extension is unconstitutional. Similarly, here, the order for the continued detention of suspected terrorists under Section 29 issued by the ATC, assuming this to be the proper interpretation of Section 29, nonetheless offends the Constitution.

Furthermore, Sayo construed the Constitutional guarantee against unreasonable seizures under Section 2, Article III,[385] as extending to all orders which effect the confinement of a person, regardless if such confinement is made before or after an arrest (or to extend the effects of an arrest). This interpretation is not difficult to fathom. As the ponencia correctly explains, Section 2 reinforces the Constitutional principle of separation of powers and its mandate under Section 1, Article III, that no person should be deprived of his property or liberty without due process of law.[386] Hence, the point of Section 2 is to guard against any kinds of deprivation of liberty, except upon a proper finding of probable cause by a judicial officer.

Moreover, under such argument that the written authorization in Section 29 would only be for continued detention, the same would be analogous to a commitment order, which is also issued only by judges, pursuant to Rule 112 of the Rules of Court:

> SEC. 6. When warrant of arrest may issue. — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.
>
> x x x x (Emphasis supplied)

In Escañan v. Monterola II[387] (Escañan), the Court held that a clerk of court who issues a warrant of arrest and authority to order a person's immediate detention usurps a purely judicial function, thus:

> x x x As it were, the issuance of the warrant for the arrest of a convicted person and the authority to order his immediate detention is purely a judicial function. The clerk of court, unlike a judge, has no power to order either the commitment or the release of persons charged with penal offenses. In ordering the arrest of the accused and confinement in police custody, therefore, respondent clerk of court unduly usurped the judicial prerogative of the judge. Such usurpation is equivalent to grave misconduct.[388] (Emphasis supplied)

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Likewise, in Carandang v. Base[389] (Carandang), the Court ruled that a clerk of court who issues a commitment order also acts out of line:

> The Court finds that by issuing a commitment order, respondent arrogated upon herself a judicial function. ". . . The Clerk of Court, unlike a judicial authority, has no power to order either the commitment or the release on bail of person charged with penal offenses. The Clerk of Court may release an order 'upon the order of the Judge' or 'by authority of the Judge', but under no circumstance should the clerk make it appear that the judge signed the order when in fact, the judge did not." x x x[390] (Emphasis supplied; italics omitted)

Escañan and Carandang thus instruct that the issuance of a commitment order is a judicial function. Hence, the continued detention of suspected terrorists by virtue merely of a written authority from the ATC and in the absence of a commitment order issued by a judge violates Rule 112 of the Rules of Criminal Procedure and encroaches on a judicial function. The OSG's insistence that the written authorization does not constitute an authority to arrest but only an authority to detain[391] is accordingly puerile, and cannot save Section 29 from its constitutional infirmity.

Finally, it is well to point out that the grant of written authority by the ATC may be issued even prior to any warrantless arrest. If the OSG's theory is to be believed, there would be no reason for the ATC to issue a written authority to merely extend the period of detention when no detention has even commenced. Logically and sequentially, the written authority should not be issued prior to a warrantless arrest, for how would the police or the ATC even divine that an in flagrante delicto or hot pursuit arrest would occur, let alone that it would be proper to extend the resulting detention by fourteen (14) days?

In fine, a plain reading of Section 29 shows that a written authority from the ATC is first issued, and it is on this basis that a law enforcement agent or military personnel will take custody of suspected terrorists. Clearly, this written authority takes the place of a judicial warrant. This means that the continued detention of suspected terrorists is based solely on a written authority issued by an executive office.

Accordingly, I submit that Section 29 of the ATA is unconstitutional because it infringes on the power of judges to issue warrants, thus, violating the fundamental principle of separation of powers. The respondents' assertion — seemingly adopted by the ponencia — that the written authority pertains only to the extended detention of persons validly arrested in a valid warrantless arrest, does not save it from infirmity: there is still a violation of the principle of separation of powers, as the written authority functions similarly to a commitment order that only a judicial officer can issue.

XII.

Section 29 authorizes the arrest of a suspect on the basis of evidence less than probable cause

The OSG advances that Section 29 continues to be bound by the standard of probable cause necessary to effect a "hot pursuit" arrest under Section 5(b) of Rule 113.[392] Contrary to the OSG's arguments, however, what is clear from the text of Section 29 is that it gives the ATC an almost unlimited authority to cause the detention of a suspect well beyond the periods provided in Article 125 of the RPC upon a mere suspicion, a standard lower than that of probable cause as contemplated in Rule 113, Section 5 of the Rules of Court.

Any discussion on warrantless arrests must first acknowledge that warrantless arrests are the exception — and a very limited exception at that — to the general rule that any arrest can only be made pursuant to a warrant issued by a judge upon his or her personal determination of the existence of probable cause.[393] The Court, in the

exercise of its Constitutional power to promulgate rules concerning the protection and enforcement of constitutional rights,[394] carved out of the general rule the three (3) exceptions in Rule 113, Section 5 — in flagrante delicto arrests, "hot pursuit" arrests, and arrests of an escaped prisoner. In the first and second instances, probable cause is the fundamental requirement.

Probable cause as the gauge for propriety of warrantless arrests is a settled concept in jurisprudence. In Vaporoso v. People,[395] the Court said:

> Based on the foregoing provision, there are three (3) instances when warrantless arrests may be lawfully effected. These are: (a) an arrest of a suspect in flagrante delicto; (b) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.
>
> In warrantless arrests made pursuant to Section 5 (b), Rule 113, it is required that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it. Verily, under Section 5 (b), Rule 113, it is essential that the element of personal knowledge must be coupled with the element of immediacy; otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible in consonance with the exclusionary rule of the 1987 Constitution. In People v. Manago, the Court held:
> In other words, the clincher in the element of "personal knowledge of facts or circumstances" is the required element of immediacy within which these facts or circumstances should be gathered. This required time element acts as a safeguard to ensure that the police officers have gathered the facts or perceived the circumstances within a very limited time frame. This guarantees that the police officers would have no time to base their probable cause finding on facts or circumstances obtained after an exhaustive investigation.
>
> The reason for the clement of the immediacy is this as the time gap from the commission of the crime to the arrest widens, the pieces of information gathered are prone to become contaminated and subjected to external factors, interpretations and hearsay. On the other hand, with the element of immediacy imposed under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure, the police officer's determination of probable cause would necessarily be limited to raw or uncontaminated facts or circumstances, gathered as they were within a very limited period of time. The same provision adds another safeguard with the requirement of probable cause as the standard for evaluating these facts of circumstances before the police officer could effect a valid warrantless arrest. x x x[396] (Emphases supplied; emphasis and underscoring in the original omitted)

Further, in People v. Tudtud,[397] the Court explained:

> The question, therefore, is whether the police in this case had probable cause to arrest appellants. Probable cause has been defined as:
> an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith of the peace officers making the arrest.

The long-standing rule in this jurisdiction, applied with a great degree of consistency, is that "reliable information" alone is not sufficient to justify a warrantless arrest under Section 5 (a), Rule 113. The rule requires, in addition, that the accused perform some overt act that would indicate that he "has committed, is actually committing, or is attempting to commit an offense."[398] (Emphasis supplied)

In. sum, if the arrest is to be done under Rule 113 Section 5(a), referring to in flagrante delicto arrests, the person

arrested must have, in the presence of or within view of the arresting officer, actually done an overt act indicating that he or she has just committed, is actually committing, or is attempting to commit a crime.[399] If arrest is to be done under Rule 113, Section 5(b), or the so-called "hot pursuit" arrests, the arresting officers must have a reasonable belief based on actual facts perceived or observed immediately after the commission of the offense.[400]

Evidently, Section 29 of the ATA which, by its plain language, authorizes the taking into custody "of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of [the] Act" falls way short of the standard of probable cause which would validate a warrantless arrest under Rule 113, Section 5 of the Rules of Court. Mere suspicion by itself, or a hunch entertained by even the most seasoned of law enforcement agents, is not enough for a warrantless arrest.

On this ground alone, Section 29 of the ATA is already hopelessly invalid for being contrary to the rules on warrantless arrests. But even if the OSG's theory — that Section 29 does not go against Rule 113 of the Rules of Court but merely authorizes the longer 14-day period of detention — is given credence, Section 29 would still be invalid.

First, neither the law nor the IRR provide parameters for the issuance of a written authority to detain for the initial fourteen (14) days. The interpellation by Associate Justice Amy C. Lazaro-Javier (Justice Lazaro-Javier) to Assistant Solicitor General Marissa B. Dela Cruz-Galandines (ASG Galandines) during the oral arguments of this case is on point:

> ASSOCIATE JUSTICE LAZARO-JAVIER:
> Now, does the law provide specific parameters or standards to be applied by the ATC in evaluating the evidence and in deciding whether to grant applications for detention authority?
>
> ASSISTANT SOLICITOR GENERAL GALANDINES:
> The law enforcement agents or the military personnel must be able to convince the ATC and present probable cause that the continued detention of the detainee is needed so that further terrorist attack, terrorist's acts could be prevented, that the continuous detention is necessary to prevent, is necessary to preserve the evidence and that the detention, is being, the detention and investigation is being conducted in an orderly manner, Your Honor.
>
> ASSOCIATE JUSTICE LAZARO-JAVIER:
> Yes. You were speaking of the extension. Right?
>
> ASSISTANT SOLICITOR GENERAL GALANDINES:
> Yes, Your Honor.
>
> ASSOCIATE JUSTICE LAZARO-JAVIER:
> And the law specifies the standard probable cause. I am asking you about the initial grant of the detention authority. What is the standard imposed by the law, if any?
>
> ASSISTANT SOLICITOR GENERAL GALANDINES:
> Your Honor, we submit it is probable cause, Your Honor.
>
> ASSOCIATE JUSTICE LAZARO-JAVIER:
> Why? Is it specified in the law? Just like how the law specifies that probable cause for extension? Is the standard to be followed?
>
> ASSISTANT SOLICITOR GENERAL GALANDINES:
> It is not specified in the law, Your Honor. But we submit that it is probable cause because said suspected

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person, to justify the continued detention of said suspected person, Your Honor, without incurring any criminal liability, Your Honor.

ASSOCIATE JUSTICE LAZARO-JAVIER:
Yes. You're again speaking of the extension, we're on the same page. Aren't we?

ASSISTANT SOLICITOR GENERAL GALANDINES:
I... (interrupted)

ASSOCIATE JUSTICE LAZARO-JAVIER:
I was speaking of the initial grant of up to fourteen (14) days.

ASSISTANT SOLICITOR GENERAL GALANDINES:
Yes.

ASSOCIATE JUSTICE LAZARO-JAVIER:
The law itself does not provide any standard. Okay, so please, treat this in your memorandum.

ASSISTANT SOLICITOR GENERAL GALANDINES:
We will do so, Your Honor.

ASSOCIATE JUSTICE LAZARO-JAVIER:
Okay, very well. Is the grant of detention authority ministerial on the part of the ATC?

ASSISTANT SOLICITOR GENERAL GALANDINES:
No, Your Honor. It is not ministerial, Your Honor.

ASSOCIATE JUSTICE LAZARO-JAVIER:
So what are the possible grounds for denying an application of detention authority?

ASSISTANT SOLICITOR GENERAL GALANDINES:
Your Honor, the ATC may deny the grant of detention authority if the law enforcement agents or the military personnel could not show that there is a necessity to preserve the, there was actually no evidence to preserve. Or the detention is not, the continued detention is not necessary because there is no, because it would not prevent the commission of any other crime. So... (interrupted)

ASSOCIATE JUSTICE LAZARO-JAVIER
So again, Ms. Madam Assistant Solicitor General, you were again speaking of the extension and I was asking you about the initial grant or denial of an application for detention authority. x x x[401] (Emphasis and underscoring supplied)

Indeed, the grounds cited by ASG Galandines refer only to the 10-day extension of the period of detention after the initial 14-day detention. Section 29 states in part:

> The period of detention may be extended to a maximum period of ten (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.

Similarly, Rule 9.1 of the IRR states:

> Rule 9.1. Authority from ATC in Relation to Article 125 of the Revised Penal Code.
>
> Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (c) of Rule 9.2, has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of

> the Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period of ten (10) calendar days if it is established that (a) further detention of the person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.
>
> The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.
>
> If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply. (Emphasis supplied)

Clearly, the law and the IRR do not state the goal of the fourteen (14)-day extended period of detention, the grounds upon which it may be authorized by the ATC, and upon what considerations the ATC may disallow the same. As worded, Section 29 of the law and Rule 9 of the IRR seem to be providing for a ministerial duty on the part of the ATC to issue a written authority to law enforcers based only on the latter's mere representation that the person arrested is suspected of committing any of the acts penalized in Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the ATA.

Relevantly, the Senate deliberations on the ATA would reveal that the legislative intent of the 14-day period is to allow the police to gather additional evidence and essentially beef up its case against the detained person.[402] The intent seems reasonable at first blush; given the gravity of the crime, the body of evidence necessary to secure a conviction for terrorism would be significantly larger and more complex than what would be necessary for more familiar or lesser crimes.

But the same cannot be presumed of any and all prosecutions for acts of terrorism. It must be remembered that what is ultimately at stake is the liberty of a human being with inherent dignity who is at the mercy of the state's law enforcement agents. The ATA must burden those enforcing it with the duty to prove that the 14-day period is necessary on a case-by-case basis; otherwise, it will become a convenient excuse for delaying the delivery of a detained person to the proper judicial authorities. At the very least, law enforcement agents should be able to reasonably demonstrate the following: (a) why they would not be able to complete their evidence within a shorter period of time; (b) what information or evidence they expect to recover within the said period; and (c) what means they intend to employ in order to obtain said evidence. Without these parameters, the unscrupulous among law enforcement agents would embark on fishing expeditions while the detained person languishes for fourteen (14) days in police or military custody.

Second, even if it is assumed that the IRR cured the lack of reference to Rule 113 in the law, it is still doubtful whether the warrantless arrests referred to in the IRR would be done upon meeting the threshold of probable cause. To recall, Rule 9.2 of the IRR states:

> Rule 9.2 Detention of a Suspected Person without Warrant of Arrest
>
> A law enforcement officer or military personnel may, without a warrant, arrest:

> - a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;
>
> - a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which has just been committed; and
>
> - a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another. (emphasis supplied)

The similarity of the above provision to Rule 113, Section 5 of the Rules of Court is undoubtedly striking, except for a phrase in Section 5(b):

> SEC. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:
>
> a. When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> b. When an offense has in fact just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> c. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Emphasis and underscoring supplied)

Notably, while Rule 9.2 of the IRR seems to paraphrase Rule 113, it modifies Section 5(b) by omitting the phrase "personal knowledge of facts and circumstances." While seemingly inconsequential, the reference to facts and circumstances echoes the doctrine in jurisprudence requiring that "personal knowledge" by police officers should be grounded on facts which they actually and personally observe:

> Rule 113, Section 5(b) of the Rules of Court pertains to a hot pursuit arrest. The rule requires that an offense has just been committed. It connotes "immediacy in point of time." That a crime was in fact committed does not automatically bring the case under this rule. An arrest under Rule 113, Section 5(b) of the Rules of Court entails a time element from the moment the crime is committed up to the point of arrest.
>
> Law enforcers need not personally witness the commission of a crime. However, they must have personal knowledge of facts and circumstances indicating that the person sought to be arrested committed it.
>
> People v. Gerente illustrates a valid arrest under Rule 113, Section 5(b) of the Rules of Court. In Gerente, the accused was convicted for murder and for violation of Republic Act No. 6425. He assailed the admissibility of dried marijuana leaves as evidence on the ground that they were allegedly seized from him pursuant to a warrantless arrest. On appeal, the accused's conviction was affirmed. This Court ruled that the warrantless arrest was justified under Rule 113, Section 5(b) of the Rules of Court. The police officers had personal knowledge of facts and circumstances indicating that the accused killed the victim:
> The policemen arrested Gerente only some three (3) hours after Gerente and his companions had killed Blace. They saw Blace dead in the hospital and when they inspected the scene of the crime, they found the instruments of death: a piece of wood and a concrete hollow block which the killers had used to bludgeon him to death. The eye-witness, Edna Edwina Reyes, reported the happening to the policemen and pinpointed her neighbor, Gerente, as one of the killers. Under those circumstances, since the policemen had personal knowledge of the violent death of Blace and of facts indicating that Gerente and two others had killed him, they could lawfully arrest Gerente without a warrant. If they had postponed his arrest until they could obtain a

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> warrant, he would have lied the law as his two companions did. x x x

The requirement that law enforcers must have personal knowledge of facts surrounding the commission of an offense was underscored in In Re Salibo v. Warden.

In Re Salibo involved a petition for habeas corpus. The police officers suspected Datukan Salibo (Salibo) as one (1) of the accused in the Maguindanao Massacre. Salibo presented himself before the authorities to clear his name. Despite his explanation, Salibo was apprehended and detained. In granting the petition, this Court pointed out that Salibo was not restrained under a lawful court process or order. Furthermore, he was not arrested pursuant to a valid warrantless arrest:

> It is undisputed that petitioner Salibo presented himself before the Datu Hofer Police Station to clear his name and to prove that he is not the accused Butukan S. Malang. When petitioner Salibo was in the presence of the police officers of Datu Hofer Police Station, he was neither committing nor attempting to commit an offense. The police officers had no personal knowledge of any offense that he might have committed. Petitioner Salibo was also not an escapee prisoner. x x x

In this case, petitioner's arrest could not be justified as an in flagrante delicto arrest under Rule 113, Section 5(a) of the Rules of Court. He was not committing a crime at the checkpoint. Petitioner was merely a passenger who did not exhibit any unusual conduct in the presence of the law enforcers that would incite suspicion. In effecting the warrantless arrest, the police officers relied solely on the tip they received. Reliable information alone is insufficient to support a warrantless arrest absent any overt act from the person to be arrested indicating that a crime has just been committed, was being committed, or is about to be committed.

The warrantless arrest cannot likewise be justified under Rule 113, Section 5(b) of the Revised Rules of Criminal Procedure. The law enforcers had no personal knowledge of any fact or circumstance indicating that petitioner had just committed an offense.

A hearsay tip by itself does not justify a warrantless arrest. Law enforcers must have personal knowledge of facts, based on their observation, that the person sought to be arrested has just committed a crime. This is what gives rise to probable cause that would justify a warrantless search under Rule 113, Section 5(b) of the Revised Rules of Criminal Procedure.[403] (Emphasis and underscoring supplied; italics in the original)

From the above, the significance of the phrase "personal knowledge of facts and circumstances" is clear: for there to be probable cause to effect an arrest in hot pursuit, the arresting officers themselves must have personal, first-hand knowledge — in other words, based on their own observation — that a crime was committed and the person to be arrested was the one who committed it. The element of the officers' own observation is crucial, as it ties in with the element of immediacy. The crime should have "just been" committed. The police officers' knowledge cannot be based on records, mere reports, hearsay — and not even on previous surveillance or investigation which they themselves conducted.

That Rule 9.2 of the IRR deviates from the language of Rule 113, Section 5(b) on a material point is a red flag that must not be taken lightly. It is yet another indication that the warrantless arrest and prolonged detention authorized under Section 29 of the ATA are not only unreasonably broad and without parameters, but also require a standard much lower than that of probable cause.

In conclusion, Section 29 of the ATA and Rule 9.2 of the IRR violate the fundamental right to liberty and the right of the people to be secure against unreasonable searches and seizures because, as plainly worded, Section 29 deviates from the rule on warrantless arrests in Rule 113 of the Rules of Court. The attempt in the IRR to paraphrase Rule 113 does not save Section 29 of the law from invalidity because the IRR cannot go beyond what

the law provides. Even assuming that the IRR can modify the law, Section 29 would remain infirm because it contains no parameters and safeguards for the initial 14-day detention of a person arrested, and it allows both the arrest and extended detention to be done upon mere suspicion, not probable cause.

Having established that the situation on which Section 29 of the ATA seeks to operate is no different from instances of warrantless arrests, there is an argument to be made in favor of the proposition that Section 29 creates a group or classification of persons who may be arrested without warrant but are treated differently insofar as their period of detention prior to a judicial charge is concerned. Considering that the fundamental rights of equal protection and of liberty are at stake, the Court should weigh Section 29's provisions on detention under the strict scrutiny test.

To recall, any inquiry into a constitutional challenge based on the equal protection clause and fundamental freedoms necessarily begins with three components:

The first inquiry is what governmental interests support a statute's constitutionality. Depending on the standard of review, the governmental interests must be legitimate or permissible, important, substantial, or significant; or compelling or overriding.[404] Of course, the governmental interest to support a statute may be impermissible or illegitimate, and thus not support the statute under any standard of review.[405]

The second inquiry concerns the relationship between the statute's means and how it advances those governmental ends. Depending on the standard of review, the statute must have a rational relationship, a substantial relationship, or a direct relationship to its ends.[406]

The third inquiry focuses on the burdens imposed by the statute's means. Depending on the standard of review, the statute's burden must not be irrational, substantially more burdensome than necessary, or it must be the least restrictive burden that would be effective in advancing the governmental interest.[407]

The three main standards of review track the responses to these three questions. Under strict scrutiny, the statute must directly advance compelling governmental interests and be the least restrictive effective means of doing so.[408] While the Court is ready to concede that an effective approach at addressing the ever-mutating nature of terrorism is a compelling government interest, the means adopted by Section 29 are from being the least restrictive and even borders on the absurd.

XIII.

The 14-day detention period in Section 29, which may be extended for another 10 days, is unconstitutional because it goes beyond the three-day period laid down in Section 18, Article VII of the 1987 Constitution.

The ponencia finds that Section 18, Article VII of the Constitution is irrelevant to terrorism because it applies only in cases of invasion or rebellion when the public safety requires it. Rebellion or invasion are scenarios of open war while terrorism is not, to wit:

> x x x [T]he Constitution is silent as to the exact maximum number of hours that an arresting officer can detain an individual before he is compelled by law to deliver him to the courts. The three-day period in the last paragraph of Section 18, Article VII of the Constitution is irrelevant to terrorism because it is applicable only in cases of invasion or rebellion when the public safety requires it. The fifth paragraph of Section 18 reiterates this by stating that the suspension of the privilege of the writ of habeas corpus shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with, invasion. To add terrorism is not permitted by the text of the Constitution and would indirectly extend the President's powers to call out

> the armed forces and suspend the privilege of the writ of habeas corpus.
>
> Petitioners have not made out a case that terrorism is conceptually in the same class as rebellion or invasion, which are scenarios of "open war". This is not unexpected, since terrorism — a relatively modern global phenomenon — then may not have been as prevalent and widespread at the time the 1987 Constitution was framed as compared to now. It must be remembered that "rebellion" has an exact definition under Article 134 of the RPC as the act of rising publicly and taking arms against the Government for the purpose of, among others, removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof. The intent of rebellion is categorically different from that provided for under Section 4 of the ATA. Thus, a person may be in rebellion while not committing terrorism and vice versa.[409] (Emphasis omitted)

I vehemently disagree. To say that Section 18, Article VII is not applicable to acts of terrorism would mean that, in the face of a terrorist attack, the President is rendered inutile because he cannot invoke any of his Commander-in-Chief powers. Surely, this piecemeal application and apparent compartmentalization of Section 18, Article VII of the 1987 Constitution, if only to lend legitimacy to an extended form of deprivation of liberty, should not, and cannot, withstand constitutional muster.

Section 18, Article VII of the 1987 Constitution refers to the graduated powers of the President as Commander-in-Chief. From the most to the least benign, these are: the calling out power, the power to suspend the privilege of the writ of habeas corpus, and the power to declare martial law.[410] The Commander-in-Chief provision reads:

> Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.
>
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis and underscoring supplied)

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Aside from granting the President Commander-in-Chief powers, Section 18, Article VII is, more significantly, a curtailment of said powers. It is a product of the country's experience during Martial Law under the dictator, Ferdinand E. Marcos. The manipulations and abuses that the Filipino people went through during those dark years resulted in a Commander-in-Chief provision that essentially limited the exercise of powers that are generally accepted to be inherent powers of the President as head of the Executive Department.

One of the restrictions put in place by Section 18, Article VII after a President suspends the privilege of the writ of habeas corpus is the three-day detention period, within which persons arrested for rebellion or offenses inherent in or directly connected with the invasion must be judicially charged. Otherwise, said person should be released. It is the judicial charge for rebellion or offenses inherent in or directly connected with the invasion which marks the onset of the suspension of the privilege of the writ of habeas corpus.[411]

The rationale behind the three-day maximum detention period can be gleaned from the deliberations of the 1986 Constitutional Commission, to wit:

> THE PRESIDENT: Commissioner Padilla is recognized.
>
> MR. PADILLA: Madam President, I propose to delete lines 21, 22, and 23 of Section 15 and in lieu thereof insert the following: DURING THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS, ANY PERSON WHO HAS BEEN ARRESTED OR DETAINED SHALL BE JUDICIOUSLY CHARGED WITHIN FIVE WORKING DAYS, OTHERWISE HE SHALL BE RELEASED. If I may explain a little, Madam President.
>
> THE PRESIDENT: Commissioner Padilla has five minutes to explain his amendment.
>
> MR. PADILLA: The purpose of the amendment is to prevent a situation similar to the past regime when innocent persons were arrested, detained and confined in prison sometimes for one month one year, or even more, without any criminal charge filed against them who oftentimes did not even understand why they had been arrested or detained.
>
> The last paragraph of Section 15 reads:
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or for offenses inherent in or directly connected with invasion.

If a person has been judicially charged, that means there has been a warrant of arrest issued by the courts. This paragraph will not protect innocent persons who have been arrested and detained by the military under orders of the past regime, such as the ASSO, PCO or PDA. What we are trying to protect is the right of the persons arrested and detained by requiring that at least within five working days a criminal charge be filed against them, otherwise, if there is no crime committed or no evidence in support of the culpability of such detained person, he should be immediately released after five working days.

x x x x

MR. DE CASTRO: Madam President, yesterday I informed the Floor Leader about my proposed amendment on the last paragraph of Section 15. My first impression was to delete the whole lines 21, 22 and 23, but after talking with the honorable Chief Justice, both of us expressed our concern on judicially charging those arrested under the writ, so I gave way to the amendment of Commissioner Padilla. My reason in doing so is that there are only two instances by which the writ may be issued, and that is during actual rebellion and actual invasion. We shall not talk of actual invasion because I really doubt the practicality of issuing a writ when there is actual invasion of our country. Instead, we will talk of actual rebellion in a certain area where the writ will have to be issued. I even doubt whether the detainee could be released within five working days considering that there is a fighting going

on in that area, or a theater of war, as described by the Honorable Bernas. In the actual theater of war, I really doubt whether the authorities will have sufficient time to get the necessary affidavits, prepare the necessary complaint and submit the necessary charge before the court. I even doubt whether there will be a court existing in the actual theater of war or in the place where there is actual rebellion. Nevertheless, let me say that I finally would like to agree or to convince myself to agree that the five-day period in the actual operation, actual shooting, actual theater of war, when the authorities may be able to prepare the necessary charge, the necessary affidavits, the necessary evidence so that the court may accept the complaint, will be sufficient.

x x x x

MR. SARMIENTO: I wish to propose an amendment to the amendment of the honorable Vice-President. He is for the charging of the accused within five days. My submission, Madam President, is that five days is too long. Our experience during martial law was that torture and other human rights violations happened immediately after the arrest, on the way to the safe houses or to Camp Aguinaldo, Fort Bonifacio or Camp Crame. I repeat, five days is too long, Madam President. As a matter of fact, under the Revised Penal Code, and, of course, the honorable Vice-President is an expert on criminal law, we have the 6-9-18 formula — 6 hours, 9 hours, 18 hours within which to charge and bring the accused to judicial authorities. Of course, during martial law, the 6-9-18 formula was increased under P.D. No. 1404. So I wish to suggest that we reduce the period of five days to THREE days as a compromise. That would be 72 hours, Madam President. Actually, it is still quite long.

Will the honorable Vice-President yield to my amendment?

THE PRESIDENT: What does Commissioner Padilla say?

MR. PADILLA: Madam President, I have no particular conviction on the number of days or number of hours. That was suggested by a few Commissioners in conference yesterday. It is true that under Article 125 of the Revised Penal Code which penalizes the delaying of the transmittal or delivery of the person arrested to the judicial authorities, the period is based on the gravity of the offense and this is punishable by the same penalties as those for arbitrary detention in Article 124 of the Code and the delay in the release under Article 126. But this provision is made to apply when there is a suspension by the President of the privilege of the writ of habeas corpus. So it covers a different situation from that contemplated in the Revised Penal Code. The Rules of Court, Rule 113, Section 6 thereof, also allows arrest without warrant under three situations. However, that is also subject to the period for delivery of the arrested person to the judicial authorities, which means to the courts through the fiscal.

With regard to the proposed amendment to our amendment which is to reduce the period of five working days to "THREE" working days, I have no particular objection, Madam President.[412] (Emphasis and underscoring supplied)

Section 18, Article VII contemplates the exercise by the President of the powers to suspend the privilege of the writ of habeas corpus and to declare martial law in a "theater of war"[413] where all hell has broken loose. In such extraordinary times, a person arrested for rebellion or offenses inherent in or directly connected with the invasion can be detained without judicial charge for a maximum of three days only. The three-day maximum applies regardless and in spite of the probability that the government - crippled by an actual rebellion or invasion - could barely function and in all likelihood, does not have enough resources to gather evidence and charge the person arrested.

At this juncture, mindful of the historical context upon which the constitutional provision draws its origins and the foresight the framers had in ensuring that the words ratified by the people will provide protection from any and all

attempts at replicating the atrocities of the past and its cognate evils, two key points warrant consideration:

First, it must be pointed out that the deliberations took place in 1986 when technology was more crude and investigative tools were more rudimentary. Even then and notwithstanding an actual rebellion or invasion, the framers of the Constitution set a limit of three days within which a person arrested for rebellion or offenses inherent in or directly connected with the invasion must be judicially charged. Given the advances in forensic science and in technology in the last three decades, the rationale behind the 14-day detention period, which is extendible for another ten (10) days, simply does not hold water.[414] It is incomprehensible why it would take longer to gather evidence and build a case against a suspected terrorist in this day and age and under ordinary circumstances without any ongoing armed rebellion or invasion contemplating actual hostilities. On the one hand, the three-day period is a fixed limit set by no less than the 1987 Constitution. On the other hand, the competency and expertise of law enforcement agencies are variables that can be honed and developed. If law enforcement agencies bemoan that three days are not enough time to build a case against a suspected terrorist, then the solution is to strengthen the institutional capacities of these agencies in order to meet the three-day period — not to encroach on constitutionally-protected rights and freedoms of the citizenry. It does not bode well for a democracy to shift the burden of responsibility from the government to the people at the expense of sacrificing civil liberties in order to make up for government inadequacies.

The threshold of three (3) days was put in place to prevent a repeat of the atrocities that happened during Martial Law under Ferdinand E. Marcos. This is in recognition of the fact that certain situations, such as custodial investigations or, as couched in the ATA, custodial detentions,[415] are the perfect set-up for abusive and cruel behavior. In their zeal to catch the culprit, law enforcement authorities often lose sight of what is lawful in pursuit of an apparently legitimate objective. Thus, aside from an equivocal prohibition on torture of a person under investigation for the commission of an offense,[416] including rebellion or offenses inherent in or directly connected with the invasion under the context of Section 18, Article VII, a maximum detention period of three days for such offenses was likewise put in place by the said provision.

Hence, second, it would appear that the lay of the land is for all measures of custodial investigation, for whatever purpose it may serve, to fall within the spectrum set by Section 18, Article VII of the 1987 Constitution. That is, any form of custodial investigation, to be constitutionally firm, may authorize a period no longer than three days before proper judicial intervention. This is evident in the periods set by Article 125 of the Revised Penal Code and the predecessor of the ATA, the Human Security Act. Indeed, even the most atrocious acts condemned by the international community, domestically penalized by R.A. No. 9851 or "The Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity", follow the regime circumscribed by Section 18, Article VII of the 1987 Constitution.

While the ATA explicitly prohibits torture and other cruel, inhumane and degrading treatment during investigation or interrogation, this again would be merely paying lip service if the arresting officers are given the latitude to commit the said acts in the first place. A detention period of fourteen (14) days, extendible for another ten (10) days, is exactly that — an occasion for law enforcement agents or military personnel to lose their heads in the name of a warped concept of justice. That evidence obtained as a result of torture is inadmissible is practically meaningless in light of the longer detention period. As is the nature of torture, perpetrators commit such acts covertly. Victims of torture — if they are permitted to survive — would be hard-pressed to scrape together sufficient proof to prosecute their torturers, much less challenge the admissibility of evidence unlawfully obtained from them by their torturers.

Finally, the fact that other countries have longer detention periods is irrelevant in this case — they are irrelevant

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because our Constitution makes them so. Our Constitution reflects our values and history as a people. Because of the scar left by our dark years under the Martial Law of Ferdinand E. Marcos, the Constitution was crafted to allow only a maximum of three days of detention even under the most dire of circumstances, i.e., "open war". And it defies logic that such period of detention can become longer for a situation that is less than "open war".

A palpable temptation certainly exists to curtail, if not wholeheartedly abandon, historical roots and time-honored protections articulated in our laws in favor of measures that, at first blush, purport to offer a greater sense of security and prosecutorial power all in the name of preventing a great evil. Lest we forget, these measures which promise to offer much but stand with one foot outside of constitutionally protected rights are no less malevolent than the evils which they seek to prevent. In its insidious nature, such measures are the greater evil.

XIV.

Regrettably, the Court did not take this opportune time to reconsider its judicial policy towards facial challenges. I remain steadfast, however, that statutes or regulations patently offensive to the constitution, or those that seriously intrude into protected civil liberties, are within the Court's expanded power of judicial review — even when the right implicated by such a measure does not concern speech. Having established that the Court's reluctance in taking on facial challenges outside free speech cases is premised on wrong reasons, the Court should discard its practice of framing facial challenges of this sort as automatically premature for adjudication.

Fully cognizant of a perceived effect that in allowing facial challenges the Court may be inviting a deluge of cases that could clog its docket and adversely affect the discharge of its functions, I respectfully submit that such apprehension is more imagined than real. Parties coming before the Court remain bound by the requirements of justiciability. A carved out exception to this is not being suggested here. That the floodgates would open to constitutional challenges is not, to my mind, a reasonable justification to defer to the legislature and shirk from the Court's constitutional duty. The floodgates should rightly be open to cases of transcendental importance. The Court was not vested with the power of judicial review so it could dedicate itself solely to the resolution of private obligations and property rights. As the highest tribunal and final arbiter of the law, it is with more reason that the Court must, without hesitation, wield its authority when the fundamental rights of life and liberty are at stake.

Professor Laurence Tribe and Joshua Matz, in their book Uncertain Justice: The Roberts Court and the Constitution,[417] significantly observed:

> The Court's state of cases thus continues to fill up with the most pressing and conflicted issues of our time. Questions about how the Court will resolve the controversies that reach it, what considerations will influence its decisions, what effects it expects those decisions to have, and how well those expectations will match what actually ensues — all of these uncertainties remain a constant in the unfolding story of the Court and the Constitution. It could hardly be otherwise. The decisions the Court will render, and the effects those decisions might have, are beyond precise calibration and exact prediction.

In all, the disfavor towards facial challenges should not become an unbending, rigid and inflexible rule that stymies the Court into inaction. As in Joint Ship, where the Court found that the petition presented a case of first impression and the issues involved public welfare and the advancement of public policy, or in National Federation, where it was emphasized that the Court should not mechanically apply the filtering mechanism, the Court has the prerogative and discretion to determine which cases should be given due course.

As a final word, the rhetoric that the law-abiding citizen has nothing to fear,[418] in my view, dismally misses the point that in the whole scheme of law enforcement, a lot of variables come into play. One such possible variable is a vague and overbroad law, which a scrupulous law enforcer and a conscientious court may otherwise end up enforcing and interpreting, to the detriment of an accused. The rhetoric does nothing but unduly place the burden

on the individual to watch over and protect his or her civil liberties, which the State is duty-bound to observe in the first place. The Bill of Rights, it must be underscored operates for the protection of the innocent and the guilty alike. The vast powers of the government are likewise circumscribed by the liberties guaranteed under the Bill of Rights. As such, the suppression of these rights is not warranted merely because a person is guilty. Neither is it warranted when the suppression is made for a laudable objective. The Bill of Rights is an enduring protection of the people against the State's unreasonable and unjustified intrusion into their guaranteed liberties. In no uncertain terms should this protection be turned on its head.

In these lights, in addition to my submission that the Court should abandon its rigid position on facial challenges to penal statutes, I vote to strike down the following provisions of the ATA for being unconstitutional:

(1) the "Not Intended Clause" in the proviso of Section 4 for vagueness, overbreadth, and for failing the strict scrutiny test;

(2) the second and third modes of designation under Section 25 for vagueness and overbreadth; and

(3) Section 29 for violating the principle of separation of powers, for infringing on the right to liberty and the right to be secure against unreasonable searches and seizures, and for failing the strict scrutiny test. As a necessary consequence of declaring Section 29 unconstitutional: (a) Rule 9.1 of the IRR should also be declared void for being ultra vires; and (b) Rule 9.2 of the IRR should be declared void for violating the right to liberty and the right to be secure against unreasonable searches and seizures.

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[1] Cited in the Dissenting Opinion of then Associate Justice Claudio S. Teehankee in In Re: Ilagan v. Enrile, No. L-70748, October 21, 1985, 139 SCRA 349, 391. Emphasis supplied; italics omitted.

[2] AN ACT TO PREVENT, PROHIBIT AND PENALIZE TERRORISM, THEREBY REPEALING REPUBLIC ACT NO. 9372, otherwise known as the "HUMAN SECURITY ACT OF 2007," approved on July 3, 2020.

[3] Memorandum for Respondents (Vol. I), p. 283.

[4] Memorandum for Respondents (Vol. II), p. 288-291; Memorandum for Respondents (Vol. III), pp. 634-635.

[5] Ponencia, p. 229.

[6] [Definition of] Terrorism.

[7] The proviso reads: "x x x which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety." The ponencia describes this as the "Not Intended Clause."

[8] Designation of Terrorist individual, Groups of Persons, Organizations or Associations.

[9] [Definition of] Terrorism.

[10] Threat to Commit Terrorism.

[11] Planning, Training, Preparing, and Facilitating the Commission of Terrorism.

[12] Proposal to Commit Terrorism.

[13] Inciting to Commit Terrorism.

[14] Recruitment to and Membership in a Terrorist Organization.

[15] Providing Material Support to Terrorists.

[16] Automatic adoption of the United Nations Security Council Consolidated List.

[17] Designation by the Anti-Terrorism Council.

[18] Detention Without Judicial Warrant of Arrest.

[19] The ponencia dismisses Yerbo v. Offices of the Honorable Senate President (UDK 16663) and Balay Rehabilitation Center Inc. v. Duterte (G.R. No. 253118).

I fully agree with the reasons of the ponencia as regards the dismissal of the Yerbo petition, which is completely lacking not only in form, but in substance. Likewise, I concur with respect to the dismissal of the Balay Rehabilitation Center petition, as petitioners therein anchor their arguments on essentially factual matters that are beyond the purview of this Court's power of judicial review. Thus, my concurrence with the ponencia in relation to the requirements for judicial review pertains to the thirty-five consolidated petitions.

[20] Ponencia, pp. 55-67.

[21] See Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc., G.R. Nos. 207132 & 207205, December 2016, 812 SCRA 452, 492; Francisco, Jr. v. House of Representatives, G.R. Nos. 160261, etc., November 10, 2003, 415 SCRA 44, 133.

[22] G.R. Nos. 238875, 239483 & 240954, March 16, 2021.

[23] Id. at 61. Italics supplied.

[24] Supra note 21.

[25] Roy III v. Herbosa, G.R. No. 207246, November 22, 2016, 810 SCRA 1, 35.

[26] Id. at 35.

[27] Ponencia, pp. 63-64.

[28] ATC Resolution No. 12 (2020), Designating the Communist Party of the Philippines and the New People's Army also known as Bagong Hukbong Bayan (CPP/NPA) as Terrorist Organizations, Associations, and/or Groups of Persons (December 9, 2020) available at <https://www.officialgazette.gov.ph/downloads/2020/12dcc/20201209-ATC-12-RRD.pdf>; ATC Resolution No. 13 (2020), Designation of Islamic State East Asia, Maute Group, Daulah Islamiyah, and Other Associated Groups as Terrorist Organizations, Associations, and/or Groups of Persons (December 9, 2020) available at <https://www.officialgazette.gov.ph/downloads/2020/12dcc/20201209-ATC-13-RRD.pdf>; ATC Resolution No. 20 (2021), Designating the 20 Individuals Affiliated with the Local Terrorist Groups, which are Designated under Anti-Terrorism Council Resolution No. 13 (2020), as Terrorists (June 23, 2021), available at <https://www.officialgazette.gov.ph/downloads/2021/06jun/20210623-ATC-Resolution-20.pdf>; ATC Resolution No. 21 (2021), Designating the National Democratic Front (NDF) also known as the National Democratic Front of the Philippines (NDFP) as a Terrorist Organization/Association dated 23 June 2021 (June 23, 2021), available at <https://www.officialgazette.gov.ph/downloads/202l/06jun/20210623-ATC-Rcsolution-21.pdf>.

[29] Designation of Central Committee Members of the Communist Party of the Philippines and the New People's

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Army also known as Bagong Hukbong Bayan (CPP/NPA), which was Designated under Anti-Terrorism Council Resolution No. 12 (2020), as Terrorists (April 21, 2021), available at <https://www.officialgazette.gov.ph/downloads/2021/04apr/20210421-ATC-RESO-17-RRD.pdf>.

[30] Priam Nepomuceno, Philippine News Agency, "Parlade quits as NTF ELCAC spox but will continue fight vs. Reds," available at <https://www.pna.gov.ph/articles/1145578>.

[31] Petitioner in G.R. No. 252585.

[32] Antonio Parlade, Facebook Post dated January 16, 2021 at <https://www.facebook.com/antonio.parladejr/posts/3605232892888246>; see also Manifestation and Motion [Re: Possible Intimidation Prior to Oral Arguments] dated January 22, 2021, filed by petitioners in G.R. No. 252736.

[33] Id.

[34] Id.

[35] Memorandum for Petitioners (Cluster I), pp. 61-62.

[36] Gabriel Pabico Lalu, Inquirer.net, "Badoy Insists Makabayan Reps are CPP NPA Execs; Gaite says explain pork barrel," available at <https://newsinfo.inquirer.net/1332050/badoy-insists-makabayan-reps-are-cpp-npa-execs-gaite-says-explain-pork-instead>.

[37] Id.

[38] One of the petitioners in G.R. No. 252733, Joanna Marie Gaspar Robles, is the Deputy Secretary General of the League of Filipino Students.

[39] Xave Gregorio, Philstar.com, "NTF-ELCAC spox baselessly red-tags CNN Philippines for sharing student org's donation drive," available at <https://www.philstar.com/headlines/2020/11/14/2056851/ntf-elcac-spox-baselessly-red-tags-cnn-philippines-sharing-student-orgs-donation-drive>; see also Petition of Bayan v. Duterte G.R. No. 252733, pp. 25-39.

[40] TSN, Oral Arguments, May 12, 2021, p. 101.

[41] OSG Opening Statement, p. 16, par. 83: "On March 30, 2021—less than a month ago—a PNP contingent raided a CPP-NPA armory in Sta. Rosa, Laguna. Like in Mindoro, the police officers, too, found a cache of high-powered firearms and explosives, which included improvised anti-personnel and claymore mines. Likewise discovered in the armory were subversive documents, streamers, campaign paraphernalia of Congressman Colmenares, Bayan Muna and Gabriela, and training materials on advanced revolutionary warfare." (emphasis supplied)

[42] See Office of the President Executive Order (E.O.) No. 70, INSTITUTIONALIZING THE WHOLE-OF-NATION APPROACH IN ATTAINING INCLUSIVE AND SUSTAINABLE PEACE, CREATING A NATIONAL TASK FORCE TO END LOCAL COMMUNIST ARMED CONFLICT, AND DIRECTING THE ADOPTION OF A NATIONAL PEACE FRAMEWORK, December 4, 2018 available at <https://www.officialgazette.gov.ph/downloads/2018/12dec/20181204-EO-70-RRD.pdf>.

[43] Section 45 of R.A. No. 11479 creates the Anti-Terrorism Council (ATC). Its members are: (1) the Executive Secretary, who shall be its Chairperson; (2) the National Security Adviser who shall be its Vice Chairperson; and

(3) the Secretary of Foreign Affairs; (4) the Secretary of National Defense; (5) the Secretary of the Interior and Local Government; (6) the Secretary of Finance; (7) the Secretary of Justice; (8) the Secretary of Information and Communications Technology; and (9) the Executive Director of the Anti-Money Laundering Council (AMLC) Secretariat as its other members.

Meanwhile, the NTF-ELCAC is composed of the President of the Republic of the Philippines, as Chair; the National Security Adviser, as Vice-Chair; and the following as members:

a. Secretary, Department of the Interior and Local Government;
b. Secretary, Department of Justice;
c. Secretary, Department of National Defense;
d. Secretary, Department of Public Works and Highways;
e. Secretary, Department of Budget and Management;
f. Secretary, Department of Finance;
g. Secretary, Department of Agrarian Reform;
h. Secretary, Department of Social Welfare and Development;
i. Secretary, Department of Education;
j. Director General, National Economic and Development Authority;
k. Director General, National Intelligence Coordinating Agency;
l. Director General, Technical Education and Skills Development Authority;
m. Presidential Adviser on the Peace Process;
n. Presidential Adviser for Indigenous Peoples' Concerns;
o. Chief of Staff, Armed Forces of the Philippines;
p. Director General, Philippine National Police;
q. Chairperson, National Commission on Indigenous Peoples;
r. Secretary, Presidential Communications Operations Office; and
s. Two (2) Representatives from the private sector.

Except for the private sector representatives, the members may designate an alternate, with a rank not lower than an Assistant Secretary, to represent their respective offices in the Task Force, provided that the alternate must be fully authorized to decide on behalf of the member. The names of the alternates shall be submitted to the National Secretariat.

The Private Sector Representatives, with a term of one (1) year each, shall be appointed by the President upon the recommendation of the Task Force. (E.O. No. 70 Sec. 3)

[44] R.A. No. 11479, Sec. 10.

[45] Id., Sec. 12.

[46] See Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, G.R. Nos. 178552, etc., 632 SCRA 146, 177, citing Holder v. Humanitarian Law Project, 561 U.S. 1 (2010).

[47] Ponencia, p. 64.

[48] The Province of Nueva Vizcaya v. CE Casecnan Water and Energy Company, Inc., G.R. No. 241302, February 1, 2021, p. 9, citing Estarija v. Ranada, 525 Phil. 718, 729-730 (2006), further citing Matibag v. Benipayo, 429 Phil. 554 (2002).

[49] G.R. No. 217158, March 12, 2019, 896 SCRA 213.

[50] G.R. No. 205728, January 21, 2015, 747 SCRA 1.

[51] Gios-Samar, Inc. v. Department of Transportation and Communications, supra note 49 at 233.

[52] G.R. No. 247471, July 7, 2020.

[53] Joint Ship Manning Group, Inc. v. Social Security System, supra note 52, at 9-10. Citations omitted.

[54] Ponencia, p. 65.

[55] Francisco, Jr. v. House of Representatives, supra note 21, at 139. Citations omitted.

[56] Respondents' Memorandum, Part I, pp.110-114.

[57] G.R. Nos. 204819, etc., April 8, 2014, 721 SCRA 146.

[58] G.R. No. 225442, August 8, 2017, 835 SCRA 350.

[59] G.R. No. 113375, May 5, 1994, 232 SCRA 110.

[60] Id. at 154-157.

[61] R.A. No. 11479, Sec. 2.

[62] Gios-Samar, Inc. v. Department of Transportation and Communications, supra note 49, at 290-291. Citations omitted.

[63] G.R. No. 205835, June 23, 2020.

[64] Id. at 35-36. Citations omitted.

[65] Namely, FFW, et al., BAYAN, et al., NUJP, et al., Kabataang Tagapagtanggol ng Karapatan, et al., Latiph, et al., GABRIELA, et al., Pabillo, et al., Abendan, et al., Concerned Online Citizens, et al., and Mohammad, et al.

[66] OSG's Memorandum, Vol. I, p. 127.

[67] J. Lazaro-Javier, Dissenting Opinion in Gatmaytan v. Misibis Land, Inc., G.R. No. 222166, June 10, 2020, pp. 10-11, citing Tongonan Holdings and Development Corporation v. Escaño, Jr., 672 Phil. 747, 756 (2011).

[68] Culled from the Court's Advisory dated November 23, 2020, these substantive issues are summarized, as follows: (1) Whether Section 4 defining and penalizing the crime of "terrorism" is void for vagueness or overbroad; (2) Whether Sections 5 to 14 defining and penalizing threats to commit terrorism, planning, training, preparing, and facilitating terrorism, conspiracy, proposal, inciting to terrorism, material support, and other related provisions are void for vagueness or overbroad and violative of the prohibition against ex post facto laws and bills of attainder; (3) Whether the uniform penalties for all acts under Sections 4 to 14 violate the prohibition against the imposition of cruel, degrading, or inhuman punishment; (4) Whether surveillance under Section 16 violates the constitutional rights to due process, against unreasonable searches and seizures, to privacy of communication and correspondence, freedom of speech and expression, freedom of religion, and accused's right to be presumed innocent; (5) Whether judicial authorization to conduct surveillance under Section 17 violates the constitutional right unreasonable searches and seizures, and forecloses the remedies under the rules on amparo and habeas data; (6) Whether the powers granted to the ATC are unconstitutional; (7) Whether Section 27 of R.A. No. 11479 on preliminary and permanent orders of proscription violates the prohibition against ex post facto laws and bills of attainder, and unconstitutionally punishes mere membership in an organization; (8) Whether the detention period under Section 29 of R.A. No. 11479 contravenes the Constitution, the Revised Penal Code, the Rules of Court and international obligations against arbitrary detention; (9) Whether the restriction under Section 34 violates the constitutional rights to travel, against incommunicado detention, to bail and R.A. No. 9745; (10) Whether

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Sections 35 to 36 in relation to Section 25 on the Anti-Money Laundering Council's authority violate separation of powers (judicial), as well as the constitutional right to due process, and right against unreasonable searches and seizures; (11) Whether Section 49 on the extra-territorial application of R.A. No. 11479 violates the freedom of association and the prohibition against ex post facto laws and bills of attainder; (12) Whether Section 54 on the ATC and Department of Justice's power to promulgate implementing rules and regulations constitutes an undue delegation of legislative power for failure to meet the completeness and sufficient standard tests; (13) Whether Section 26 repealing R.A. No. 9372 (Human Security Act) violates the constitutional mandate to compensate victims of torture or similar practices and right to due process; (14) Whether R.A. No. 11479 violates the Indigenous Peoples and Moros' rights to self-determination and self-governance under the Constitution; (15) Whether the House of Representatives gravely abused its discretion by passing House Bill No. 6875 in violation of the constitutionally prescribed procedure.

[69] TSN, Oral Arguments, May 17, 2021, pp. 21-22.

[70] Ponencia, p. 74.

[71] Id. at 78.

[72] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 46, at 186. Emphasis and underscoring omitted.

[73] Id. Underscoring omitted.

[74] Estrada v. Sandiganbayan, G.R. No. 148560, November 19, 2001, 369 SCRA 394; Romualdez v. Sandiganbayan, G.R. No. 152259, July 29, 2004, 435 SCRA 371; David v. Arroyo, G.R. Nos. 171396, etc., May 3, 2006, 489 SCRA 160; Spouses Romualdez v. COMELEC, G.R. No. 167011, April 30, 2008, 553 SCRA 370; Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 46; Disini v. Secretary of Justice, G.R. No. 203335, February 18, 2014; Falcis III v. Civil Registrar General, G.R. No. 217910, September 3, 2019; Madrilejos v. Gatdula, G.R No 184389 September 24, 2019, 920 SCRA 475.

[75] Estrada v. Sandiganbayan, id.; Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, id.

[76] Estrada v. Sandiganbayan, id.; Romualdez v. Sandiganbayan, supra note 74; David v. Arroyo, supra note 74; Spouses Romualdez v. COMELEC, supra note 74; Madrilejos v. Gatdula, supra note 74; Nicolas-Lewis v. COMELEC, G.R. No. 223705, August 14, 2019, 913 SCRA 515.

[77] Cf. Ponencia, pp. 71-72.

[78] See Solomon F. Lumba, Understanding Facial Challenges, 89 PHIL. L.J. 596 (2015).
Solomon Lumba is an Assistant Professor at the University of the Philippines College of Law. He obtained his Bachelor of Laws in 2001 from the University of the Philippines, where he graduated Cum Laude.

[79] Ponencia, p. 73.

[80] Supra note 74.

[81] Id. at 435.

[82] Id. at 440

[83] J. Tinga, Dissenting Opinion in Spouses Romualdez v. COMELEC, supra note 7, at 469.

[84] Estrada v. Sandiganbayan, supra note 74, at 530-531. Citations omitted.

[85] Supra note 74.

[86] J. Tinga, Separate Opinion in Romualdez v. Sandiganbayan, supra note 74 at 401.

[87] Id. at 401-403.

[88] Supra note 74.

[89] Id. at 467-468, citing J. Vicente V. Mendoza, Separate Opinion in Estrada v. Sandiganbayan, G.R. No. 148560, (Resolution on the Motion for Reconsideration), January 29, 2002 available at <https://www.chanrobles.com/scresolulions/resolutions/2002/january/148560.php>.

[90] 576 U.S. ____ (2015) (Slip Op., p. 4).

[91] 461 U.S. 352 (1983). (A criminal statute that requires persons who loiter to provide "credible and reliable" identification was declared unconstitutional for violating the Due Process Clause of the Fourteenth Amendment).

[92] 410 U.S. 113 (1973). (A statute criminalizing abortion was struck down for violating the right to privacy) cited in Solomon F. Lumba, supra note 78.

[93] 527 U.S. 41 (1999). (A facial challenge against an ordinance prohibiting individuals from loitering in public places was allowed because "vagueness permeates the text of the ordinance").

[94] 306 U.S. 451 (1939). (A statute punishing any person known to be a member of a gang was struck down for being vague and repugnant to the Due Process Clause).

[95] See Richard H. Fallon, Jr., Fact and Fiction About Facial Challenges, 99 Calif. L. Rev. 915 (2011) available at <https://dash.harvard.edu/bitstream/handle/1/11222673/01_fallon.pdf?sequence=1>; Fallon stated in his seminal survey of U.S. jurisprudence on facial challenges that the U.S. Supreme Court has pronounced statutes invalid for violating the Free Speech Clause and religion clauses of the First Amendment, the right to travel, the Fourteenth Amendment Privileges or Immunities Clause, the Eighth Amendment, the Due Process Clauses of the Fifth and Fourteenth Amendments, and the Equal Protection Clause (99 Calif. L. Rev. 936-939 [2011]).

[96] Id.

[97] Supra note 74.

[98] See Solomon F. Lumba, supra note 78, at 605.

[99] Imbong v. Ochoa, Jr., supra note 57, at 281-283. Citations omitted.

[100] Ponencia, p. 76.

[101] Imbong v. Ochoa, Jr., supra note 57, at 281.

[102] Pimentel, Jr. v. Aguirre, G.R. No. 132988, July 19, 2000, 336 SCRA 201 222.

[103] Id. at 222. Citations omitted.

[104] 413 U.S. 601 (1973) cited in Estrada v. Sandiganbayan, supra note 74, at 530.

[105] Romualdez v. Sandiganbayan, supra note 74, at 398.

[106] Grayned v. City of Rockford, 408 U.S. 104, 109 (1972); See Mark L. Rienzi, Federal Courts, Overbreadth, and Vagueness: Guiding Principles for Constitutional Challenges to Uninterpreted State Statutes, 2002 Utah L. Rev. 381, 389-390 available at <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1183&context=scholar>.

[107] See J. Tinga, Dissenting Opinion in Spouses Romualdez v. COMELEC, supra note 74, at 461-462.

[108] Id. at 398.

[109] G.R. No. 121777, January 24, 2001, 350 SCRA 163.

[110] Id. at 175-176.

[111] Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra note 58 at 391 -392.

[112] Sec City of Manila v. Laguio, Jr., G.R. No. 118127, April 12, 2005, 455 SCRA 308; see also J. Tinga, Dissenting Opinion in Spouses Romualdez v. COMELEC, supra note 74.

[113] 1987 CONSTITUTION, Art. III, Sec. 1.

[114] See Ynot v. Intermediate Appellate Court, No. L-74457, March 20, 1987, 148 SCRA 659.

[115] See Holding Legislatures Constitutionally Accountable Through Facial Challenges by Caitlin Borgmann, City University of New York (CUNY), 2009, accessed at <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1138&context=cl_pubs>.

Catherine Borgmann is a Professor of Law at the City University of New York School of Law. She obtained her B.A. from Yale University, and her J.D. from the New York University School of Law.

[116] See Chicago v. Morales, 527 U.S. 41 (1999).

[117] See Bernas, S.J., Joaquin G., The 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 136 (2003 ed.); Fr. Joaquin G. Bernas also opines that: while indeed the defect of 'overbreadth' as an analytical tool is applicable only to cases involving speech, this is not so about 'vagueness.' Vagueness and overbreadth are distinct from each other. An overbroad law does not need to lack clarity or precision, but a vague law does. Laws which do not involve speech can be declared invalid for 'vagueness.' Thus, for instance, Lanzetta v. New Jersey (306 U.S. 451 [1939]) invalidated a statute for vagueness because it criminalized being a member of a 'gang.'

[118] See J. Jardeleza, Separate Opinion in Versoza v. People, G.R. No. 184535, September 3, 2019.

[119] 584 U.S. ____ (2018), 138 S. Ct. 1204 (2018).

[120] Id.

[121] Id. Citations omitted.

[122] See Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra note 58, at 390.

[123] See Belgica v. Ochoa, G.R. Nos. 208566, etc., November 19, 2013, 710 SCRA 1, 107.

[124] Justice Neil Gorsuch concurring in part and concurring in the judgment of Sessions v. Dimaya, supra note 119; see also United States v. Davis, 588 U.S. ____ (2019), 139 S. Ct. at 2323, 2325 (2019).

[125] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 46, at 187. Underscoring omitted.

[126] David v. Macapagal-Arroyo, supra note 74, at 238.

[127] Estrada, supra note 74, at 440. Citation omitted.

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[128] Romualdez, supra note 74, at 386.

[129] Spouses Romualdez, supra note 74.

[130] Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra note 58, at 390.

[131] People v. Dela Piedra, supra note 109; see also Lanzetta v. New Jersey, supra note 94; see Nicholas Quinn Rosenkranz, The Subjects of the Constitution, 62 Stan. L. Rev. 1209 (2010) at <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1364&context=facpub>.

Nicholas Quinn is an Associate Professor of Law at the Georgetown University Law Center. He obtained his J.D. from Yale University in 1999.

[132] G.R. Nos. 124360 & 127867, December 3, 1997, 282 SCRA 337.

[133] Id. at 354. Citations omitted.

[134] Holding Legislatures Constitutionally Accountable Through Facial Challenges by Caitlin Borgmann, City University of New York (CUNY), 2009, accessed at <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1138&context=cl_pubs>.

[135] Richard H. Fallon, Jr. Strict Judicial Scrutiny, 54 UCLA L. Rev. 1267 (2007), available at <https://www.uclalawreview.org/strict-judicial-scrutiny/>.

Richard Fallon is a Ralph S. Tyler, Jr. Professor of Constitutional Law in Harvard Law School.

[136] Id. at 1268, citing Johnson v. California, 543 U.S. 499, 505 (2005); Republican Party of Minn. v. White, 536 U.S. 765, 774-75 (2002); Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995); R.A.V. v. City of St. Paul, 505 U.S. 377, 395-96 (1992); Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983).

[137] Id. at 1268-1269.

[138] Id. at 1269.

[139] Id.

[140] Id.

[141] See Ang Ladlad LGBT Party v. Commission on Elections, G.R. No. 190582, April 8, 2010, 618 SCRA 32 and Republic v. Manalo, G.R. No. 221029, April 24, 2018, 862 SCRA 580.

[142] Disini, Jr. v. Secretary of Justice, supra note 74.

[143] 394 U.S. 618 (1969).

[144] Shapiro v. Thompson, id. at 633-634. Citations omitted.

[145] Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra note 58, at 411-412. Citations omitted.

[146] Id. at 424.

[147] G.R. No. 221318, December 16, 2015, 777 SCRA 574

[148] Id. at 609. Italics supplied.

[149] 395 U.S. 621 (1969).

[150] Id. at 625-626. Citations omitted.

[151] Id. at 632.

[152] 521 U.S. 702(1997).

[153] Id. at 720-721; citations removed.

[154] Id. at 720-721; citations removed.

[155] Id. at 723.

[156] Id. at 729.

[157] Id. at 731.

[158] Id. at 732.

[159] Id.

[160] G.R. No. 127685, July 23, 1998, 293 SCRA 141.

[161] Supra note 111.

[162] G.R. No. 122846, January 20, 2009, 576 SCRA 416.

[163] Ople v. Torres, supra note 158, at 169. Italics supplied.

[164] City of Manila v. Laguio, Jr., supra note 111, at 338-339. Citations omitted.

[165] 529 U.S. 803 (2000).

[166] Id. at 806.

[167] Id. at 813.

[168] Id. at 817. Citation omitted.

[169] Id. Citation omitted.

[170] Id. at 814.

[171] Id. at 826.

[172] Id. 826-827.

[173] G.R. Nos. 164785 & 165636, April 29, 2009, 587 SCRA 79.

[174] G.R. No. 168338, February 15, 2008, 545 SCRA 441.

[175] Soriano v. Laguardia, supra note 173, at 103-104.

[176] G.R. No. 162272, April 7, 2009, 584 SCRA 213.

[177] Id. at 245.

[178] See Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 46, at 190.

[179] The Court elaborated:

> Petitioners' notion on the transmission of message is entirely inaccurate, as it unduly focuses on just one particle of an element of the crime. Almost every commission of a crime entails some mincing of words on the part of the offender like in declaring to launch overt criminal acts against a victim, in haggling on the amount of ransom or conditions, or in negotiating a deceitful transaction. An analogy in one U.S. case illustrated that the fact that the prohibition on discrimination in hiring on the basis of race will require an employer to take down a sign reading "White Applicants Only" hardly means that the law should be analyzed as one regulating speech rather than conduct.
>
> Utterances not elemental but inevitably incidental to the doing of the criminal conduct alter neither the intent of the law to punish socially harmful conduct nor the essence of the whole act as conduct and not speech. This holds true a fortiori in the present case where the expression figures only as an inevitable incident of making the element of coercion perceptible.
> "[I]t is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was, in part, initiated, evidenced, or carried out by means of language, either spoken, written, or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society. x x x (Emphasis, italics and underscoring in the original) Id. at 191-192.

[180] Petitioners' Memorandum dated June 26, 2021, Cluster II, p. 21.

[181] Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra note 58, at 390, citing Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 46.

[182] Id.

[183] Ryan McCarl, Incoherent and Indefensible: An Interdisciplinary Critique of the Supreme Court's Void-for-Vagueness Doctrine, 42 Hastings Const. L.Q. 73 (2014), available at <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1987&=&context=hastings_constitutional_law_quaterly&=&sci-redir=l&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fhl%253Den%2526as_sdt%253D0%25252C5%2526q%253DIncoherent%252Band%252BIndefensible%25253A%252BAn%252BInterdisciplinary%252BCritique%252Bof%252Bthe%252BSupreme%252BCourt%252527s%252BVoid-for-Vagueness%252BDoctrine%2526btnG%253D#search=%22Incoherent%20Indefensible%3A%20An%20Interdisciplinary%20Critique%20Supreme%20Courts%20Void-for-Vagueness%20Doctrine%22>.

Ryan McCarl earned a J.D. with Honors from the University of Chicago Law School, an M.A. in International Relations and B.A. in Political Science from the University of Chicago, and an M.A. in Education from the University of Michigan. He has worked at several litigation firms and clerked for the Hon. David M. Ebel on the United States Court of Appeals for the Tenth Circuit. His writings have appeared in the Stanford Journal of International Law, Cincinnati Law Review, Hastings Constitutional Law Quarterly, Real Estate Law Journal, Daily Journal, and elsewhere; accessed at <http://ryanmccarl.com/>.

[184] Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra note 58, at 390, citing Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 46.

[185] Ryan McCarl, supra note 183.

[186] United States v. Davis, supra note 124.

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[187] 576 U.S. 591 (2015).

[188] Petitioners' Memorandum dated June 26, 2021 Cluster II on 22-25.

[189] Id. at 26-27.

[190] Id. at 27, citing Kolender v. Lawson, supra note 91, at 360.

[191] Kolender v. Lawson, id. at 358.

[192] Id.

[193] 392 U.S. 1 (1968).

[194] Kolender v. Lawson, supra note 91 at 360.

[195] Id.

[196] 402 U.S. 611 (1971).

[197] 405 U.S. 156 (1972).

[198] 415 U.S. 566 (1974).

[199] Coates v. City of Cincinnati, supra note 196, at 615.

[200] Id. at 614.

[201] The assailed ordinance defined "Vagrants" as "[r]ogues and vagabonds, or dissolute persons who go about begging; common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering of strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting ail lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children." Papachristou v. Jacksonville, supra note 197, at 171.

[202] Papachristou v. Jacksonville, id. at 165-166.

[203] Id. at 170. Citations omitted.

[204] Smith v. Goguen, supra note 198, at 566.

[205] Id. at 575.

[206] Id.

[207] Id. at 575-576.

[208] TSN, Oral Arguments, April 27, 2021, pp. 48-50.

[209] Ponencia, pp. 92-98.

[210] Estrada v. Sandiganbayan, supra note 74, at 435.

[211] Id.

[212] 407 U. S. 104 (1972).

[213] Id. at 110.

[214] Smith v. Goguen, supra note 198, at 581. Sec also Robinson, Paul II, "Fair Notice and Fail-Adjudication: Two Kinds of Legality" (2005). Faculty Scholarship at Penn Law. 601, <https://scholarship.law.upcnn.edu/cgi/viewcontent.cgi?article=1600&context=faculty_scholarship:>. "Uncertain statutory language has been upheld when the subject matter would not allow more exactness and when greater specificity in language would interfere with practical administration."

Paul H. Robinson obtained his J.D. and LL.M from the University of California at Los Angeles and Harvard University, respectively. He is a former federal prosecutor and counsel for the US Senate Subcommittee on Criminal Laws and Procedures and an author or editor or 18 books, including the standard lawyer's reference on criminal law defenses, three Oxford monographs on criminal law theory, a highly regarded criminal law treatise, and an innovative case studies course book.

[215] 553 U.S. 285 (2008).

[216] Id. at 304-305.

[217] Id. at 305.

[218] Id. at 305-306.

[219] Id. at 306-307. Citations omitted.

[220] Petitioners' Memorandum dated June 26, 2021, Cluster II, pp. 22-23.

[221] Ponencia, p. 129, citing Black's Law Dictionary, 9[th] ed., p. 1463: Scienter is the degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission, or the fact of an act having been done knowingly.

[222] Hoffman Estates v. The Flipside, Hoffman Estates, 455 U.S. 489, at 499 (1982).

[223] Ryan McCarl, supra note 183.

[224] G.R. No. 160188, June 21, 2007, 525 SCRA 306.

[225] Ponencia, pp. 91-92.

[226] Valenzuela v. People, supra note 217, at 322-323.

[227] See People v. Listerio, G.R. No. 122099, July 5, 2000, 335 SCRA 40, 62-63.

[228] Ponencia, p. 96. Emphasis, italics and underscoring omitted. Citations omitted.

[229] See Rait v. People G.R. No. 180425, July 31, 2008, 560 SCRA 785, 791.

[230] See Smith v. Goguen, supra note 198, at 573: "Where a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts."

[231] Supra note 185, at Slip Op., p. 2.

[232] Supra note 123, at 2324.

[233] Johnson v. United States, supra note 187 (slip op., at 4).

[234] Id. (slip op., at 5-6); See also Canaparo, GianCarlo, Judicial Courage: Justice Gorsuch Ventures Out on Mis Own While Preserving Scalia's Principles, Legal Memorandum No. 255, The Heritage Foundation, November 15, 2019; available at <https://www.heritage.org/sites/default/files/2019-11/1.M255.pdf>.

[235] Id. (slip op., at 5).

[236] Id. In illustrating how speculative the judicial assessment might be under the residual clause, Johnson cited the following example from a previous case, James v. United States, 550 U. S. 192 (2007):

> Explaining why attempted burglary poses a serious potential risk of physical injury, the Court said: "An armed would-be burglar may be spotted by a police officer, a private security guard, or a participant in a neighborhood watch program. Or a homeowner . . . may give chase, and a violent encounter may ensue." The dissent, by contrast, asserted that any confrontation that occurs during an attempted burglary "is likely to consist of nothing more than the occupant's yelling 'Who's there?' from his window, and the burglar's running away." The residual clause offers no reliable way to choose between these competing accounts of what "ordinary" attempted burglary involves.

[237] Id. (slip op., at 9); See also Canaparo, GianCarlo, supra note 227.

[238] See Johnson v. United States, supra note 187 (slip op., at 6).

[239] United States v. Davis, supra note 124, at 2329.

[240] Id. at 2328.

[241] Id.

[242] Id.

[243] Sessions v. Dimaya, supra note 119 (slip op., at 12).

[244] Id. (slip op., at 8).

[245] Chavez v. Commission on Elections, G.R. No. 162777, August 31, 2004, 437 SCRA 415, 425.

[246] See Broadrick v. Oklahoma, supra note 104, at 615.

[247] 560 F.2d 22 (1977).

[248] Id. at 30 (1977). Citations omitted.

[249] Pierce, Christopher A. (2011) "The 'Strong Medicine' of the Overbreadth Doctrine: When Statutory Exceptions Are No More than a Placebo," Federal Communications Law Journal: Vol. 64: Iss. 1, Article 6, available at <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1608&=&context=fclj&=&sei-redir=l&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fhl%253Den%2526as_sdt%253D0%25252C5%2526q%253D%252522overbreadth%252Bsubstantial%252522%2526btnG%253D#search=%22overbreadth%20must%20substantial%22>.

[250] Id.

[251] Petitioners' Memorandum dated June 26, 2021, Cluster II, pp. 23-24.

[252] Broadrick v. Oklahoma, supra note 104, at 615-616. Citations omitted.

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[253] Echegaray v. Secretary of Justice, GR No. 132601, October 12, 1998, 297 SCRA 754, 783-784.

[254] See 1987 CONSTITUTION Art. VI, Sec. 1; Art. VII. Sec. 1; and Art. VIII, Sec. 1.

[255] Belgica v. Ochoa, supra note 123, at 107.

[256] Id. at 108, citing Nixon v. Administrator of General Services, 433 U.S. 425, 441-446 and 451-452 (1977) and United States v. Nixon, 418 U.S. 683 (1974), which in turn was cited in Justice Powell's concurring opinion in Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983).

[257] Sessions v. Dimaya, supra note 119 (slip op., at 5).

[258] Id. (slip op., at 4-5).

[259] Justice Neil Gorsuch concurring in part and concurring in the judgment in Sessions v. Dimaya, id. (slip op., at 7-9).

[260] Id. (slip op., at 9). Citations omitted.

[261] United States v. Davis, supra note 124, at 2325. Citations omitted.

[262] See, for instance, Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City, supra note 58; Celdran v. People, G.R. No. 220127, November 21, 2018 Unsigned Resolution); People v. Dela Piedra, supra note 109.

[263] G.R. No. 169364, September 18, 2009, 600 SCRA 476.

[264] See, for instance, People v. Dela Piedra, supra note 109; People v. Nazario, No. L-44143, August 31, 1988, 165 SCRA 186; Romualdez v. Sandiganbayan, supra note 74.

[265] Supra note 57, at 357. Citations omitted.

[266] Samahan ng mga Progresibong Kabataan SPARK v. Quezon City, supra note 58.

[267] See Separate Opinion of Justice Thomas in Sessions v. Dimaya, supra note 119.

[268] Sessions v. Dimaya, id. (slip op., at 4-5).

[269] K. SULLIVAN AND G. GUNTHER, CONSTITUTIONAL LAW (14th ed.) at 1829 cited in the Dissenting Opinion of Justice Tinga in Spouses Romualdez v. COMELEC, supra note 74, at 476.

[270] Id. Citations omitted.

[271] United States v. Davis, supra note 124, at 2333.

[272] Id. at 2323.

[273] Id.

[274] See Ponencia, p. 94.

[275] R.A. No. 11479, Sec. 55.

[276] Tatad v. Secretary of the Department of Energy, supra note 132, at 354.

[277] TSN, Senate Deliberations, January 21, 2020, pp. 16-17.

[278] TSN, Senate Deliberations, December 17, 2019, pp. 49-50.

[279] TSN, Senate Deliberations, January 22, 2020, pp. 9-12.

[280] TSN, Oral Arguments, April 27, 2021, p. 52; TSN, Oral Arguments, May 4, 2021 p. 64.

[281] 357 U.S. 513 (1958).

[282] Id. at 515.

[283] 357 U.S. 513, at 521 (1958).

[284] Fear, Risk and the First Amendment: Unraveling the Chilling Effect by Frederick Schauer; College of William & Mary Law School William & Mary Law School Scholarship Repository (1978) available at <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2010&context=facpubs>.

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[285] Speiser v. Randall, supra note 281 at 521-524.

[286] 376 U.S. 254 (1964).

[287] See Guinguing v. CA, G.R. No. 128959 September 30, 2005, citing Cass Sunstein, Democracy and the Problem of Free Speech (1995 ed.) at 9-10.

[288] New York Times v. Sullivan, supra note 286, at 279-284.

[289] See Frederick Schauer, Fear, Risk and the First Amendment: Unraveling the Chilling Effect, supra note 284, citing Smith v. California, 361 U.S. 147 (1959).

[200] 361 U.S. 147 (1959).

[291] Id. at 148-149. The Freedom of Speech at Risk in Cyberspace: Obscenity Doctrine and a Frightened University's Censorship of Sex on the Internet; Jeffrey E. Faucette, Duke Law Journal, Vol. 44:1155. (1995).

[292] Id. at 150-154. The Supreme Court later refined the level of scienter necessary for a constitutionally permissible obscenity prosecution in Mishkin v. New York [383 U.S. 502 (1966)] and Hamling v. United States [418 U.S. 87 (1974)]. In Mishkin, the Court upheld a conviction under a New York state obscenity law that was interpreted as requiring that the defendant be "aware of the character of the material." In Hamling, the Court held that "[i]t is constitutionally sufficient that the prosecution show that a defendant had knowledge of the contents of the materials he distributed, and that he knew the character and nature of the materials;" The Freedom of Speech at Risk in Cyberspace: Obscenity Doctrine and a Frightened University's Censorship of Sex on the Internet, id.

[293] Speiser v. Randall, supra note 281, at 526. Notably, Justice Douglas, with whom Justice Black agrees also stated in his concurring opinion that:

> If one conspires to overthrow the Government, he commits a crime. To make him swear he is innocent to avoid the consequences of a law is to put on him the burden of proving his innocence. That method does not square with our standards of procedural due process, as the opinion of the Court points out.

[294] 559 U.S. 460 (2010), 130 S. Ct. 1577 (2010).

[295] Id. at 1591-1592.

[296] Memorandum for the Petitioners (June 26, 2021, Cluster II), p. 35.

[297] Ponencia, p. 128.

[298] Id. at 114. Emphasis omitted.

[299] Id. at 125. Emphasis omitted.

[300] Id. at 126.

[301] Id. at 125.

[302] 395 U.S. 444 (1969).

[303] Memorandum for the Petitioners (June 26, 2021, Cluster II), p. 36.

[304] MVRS Publications v. Islamic Da'wah Council of the Philippines, G.R. No. 135306 January 28, 2003, 396 SCRA 210, 233.

[305] Id. at 233.

[306] Brandenburg v. Ohio, supra note 302 at 447-449.

[307] 414 U.S. 105 (1973).

[308] Id. at 107-109.

[309] 458 U.S. 886 (1982)

[310] Id. at 894-895.

[311] Id. at 928.

[312] No. L-59524, February 18, 1985, 134 SCRA 438.

[313] Id. at 458-460.

[314] Ponencia, pp. 126-127.

[315] Memorandum for the Petitioners (June 26, 2021, Cluster II), pp. 36-37.

[316] Ponencia, p. 128.

[317] Id. at 123.

[318] Otherwise known as "THE TERRORISM FINANCING PREVENTION AND SUPPRESSION ACT OF 2012." See R.A. No. 11479, Sec. 29.

[319] R.A. No. 11479, Sec. 26.

[320] Ponencia, pp. 145-146; Petitioners Memorandum (Cluster 3), p. 41; Petitioners' Memorandum (Cluster 4), p. 24; Petitioners' Memorandum (Cluster 2), p. 46.

[321] Id. at 155.

[322] Id. at 155-156.

[323] Frederick Schauer, Fear, Risk and the First Amendment: Unraveling the "Chilling Effect," supra note 284, at 693.

[324] See id. at 688.

[325] See Henry Paul Monaghan, Overbreadth, 1981 SUP. CT. REV. 1.

[326] See Chavez v. Commission on Elections, supra note 245, at 425.

[327] Leslie Kendrick, Speech, Intent, and the Chilling Effect, 54 WM. & MARY L. REV. 1633, 1653 (2013) available at <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3481&context=wmlr>; see also New York Times v. Sullivan, supra note 286, at 279; see also Citizens United v. FEC, 558 U.S. 310, 324 (2010); Scott Michelman, Who Can Sue over Government Surveillance?, 57 UCLA L. REV. 71, 78 (2009) available at <https://www.uclalawreview.org/who-can-sue-over-government-surveillance/>; Dawinder S. Sidhu, The Chilling Effect of Government Surveillance Programs on the Use of the Internet by Muslim-Americans, 7 U. MD. L.J. RACE RELIGION GENDER & CLASS 375, 376 (2007) <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1134&context=rrgc>.

[328] R.A. No. 11479, Sec. 25, par. 1.

[329] See Article 25 of the UN Charter which requires all member states to accept and carry out decisions of the UNSC; See also Article 103 of the UN Charter which demands all member states to defer to their Charter responsibilities over other international obligations. Taken together, these ensure that UNSC Resolutions made pursuant to the UNSC powers under Chapter VII of the UN Charter are binding on all member states of the UN.

[330] S.C. Res. 1267 U.N. Doc. S/RES/1267 (Oct. 15, 1999)

[331] Id.

[332] These are Resolution 1333 S.C. Res. 1333, U.N. Doc. S/RES/1333 (Dec. 19, 2000); Resolution 1363 S.C. Res. 1363, U.N. Doc. S/RES/1363 (July 30, 2001); Resolution 1373 (S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001); Resolution 1390 S.C. Res. 1390, U.N. Doc. S/RES/1390 (Jan. 28, 2002); Resolution 1452 (S.C. Res. 1452, U.N. Doc. S/RES/1452 (Dec. 20, 2002)); Resolution 1455 (S.C. Res. 1455, U.N. Doc. S/RES/1455 (Jan. 17, 2003)); Resolution 1526 (S.C. Res. 1526, U.N. Doc. S/RES/1526 (Jan. 30, 2004)); Resolution 1566 (S.C. Res. 1566, U.N. Doc. S/RES/1566 (Oct. 8, 2004)); Resolution 1617 (S.C. Res. 1617, U.N. Doc. S/RES/1617 (July 29, 2005)); Resolution 1624 (S.C. Res. 1624, U.N. Doc. S/RES/1624 (Sept. 14, 2005)); Resolution 1699 (S.C. Res. 1699, U.N. Doc. S/RES/1699 (Aug. 8, 2006)); Resolution 1730 (S.C. Res. 1730, U.N. Doc. S/RES/1730 (Dec. 19, 2006)); Resolution 1735 (S.C. Res. 1735, U.N. Doc. S/RES/1735 (Dec. 22, 2006)); Resolution 1822 (S.C. Res. 1822, U.N. Doc. S/RES/1822 (June 30, 2008)); Resolution 1904 (S.C. Res 1904 UN Doc. S/RES/1904 (Dec. 17, 2009)).

[333] Resolution 1526 (S.C. Res. 1526, U.N. Doc. S/RES/1526 (Jan. 30, 2004)

[334] Resolution 1730 (S.C. Res. 1730, U.N. Doc. S/RES/1730 (Dec. 19, 2006).

[335] Resolution 1822 (S.C. Res. 1822, U.N. Doc. S/RES/1822 (June 30, 2008).

[336] Id., par. 28.

[337] Available at <https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/guidelines_of_the_committee_for_th

e_conduct_of_its_work_0.pdf>

[338] Ponencia, pp. 154-155.

[339] See Report of the Republic of Angola Pursuant to Paragraph 6 of Security Resolution 1455 (2003) S/AC.37/2003/(1455)/3 at 4.

[340] See Report of the Republic of Belarus on the Implementation of Security Council Resolution 1455 (2003) S/AC.37/2003/(1455)/25 at 2.

[341] R.A. No. 11479, Sec. 25, 2nd par.

[342] Petitioners' Memorandum dated June 26, 2021, Cluster II, p. 49.

[343] OSG's Memorandum, Vol. II, p. 506.

[344] Id. at 513-514.

[345] 1987 CONSTITUTION, Art. III, Sec. 2.

[346] Sabio v. Gordon, G.R. Nos. 174340, 174318 & 174177, October 17, 2006, 504 SCRA 704, 730.

[347] G.R. No. 81510, March 14, 1990, 183 SCRA 145.

[348] Article 38, paragraph (c) of the Labor Code, reads:

> (c) The Secretary of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-licensee or non-holder of authority x x x.

[349] Salazar v. Achacoso, supra note 347, at 149-152. Citations omitted.

[350] G.R. No. 83578, March 16, 1989, 171 SCRA 348.

[351] Id. at 366-367.

[352] No. L-72301, July 31, 1987, 152 SCRA 647.

[353] Id. at 662-663. Citations omitted.

[354] R.A. No. 11479, Sec. 29.

[355] Rule 9.1, in relation to Rule 9.2 of the IRR of the ATA, clarifies that the authority in writing referred to in Section 29 is to be issued by the ATC in case of warrantless arrests done in the following circumstances:

A law enforcement officer or military personnel may, without a warrant, arrest:

- a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;

- a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which has just been committed; and

- a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9,

10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another.

[356] Ponencia, p. 205.

[357] Id. at 201-202. Citations omitted.

[358] Article 125 of the RPC provides:

Article 125. Delay in the delivery of detained persons to the proper judicial authorities. - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel.

Since the penalties imposed in Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the ATA are cither imprisonment of 12 years or life imprisonment without the benefit of parole, the 36-hour limit under Article 125 applies.

[359] Rule 9.1. Authority from ATC in relation to Article 125 of the Revised Penal Code

Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (c) of Rule 9.2, has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period often (10) calendar days if it is established that (a) further detention of the person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.

The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.

If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply.

[360] Ponencia, p. 205. Italics in the original.

[361] Rule 9.1. x x x

The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.

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If the law enforcement agent of or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of the Rule shall apply.

[362] Lokin, Jr. v. Commission on Elections, G.R. Nos. 179431-32 & 180443, June 22, 2010, 621 SCRA 385, 405.

[363] R.A. No. 11479, Section 54 reads:

SECTION 54. Implementing Rules and Regulations. — The ATC and the DOJ, with the active participation of police and military institutions, shall promulgate the rules and regulations for the effective implementation of this Act within ninety (90) days after its effectivity. x x x

[364] People v. Vera, 65 Phil. 56 (1937).

[365] Id. at 117.

[366] Guingona, Jr. v. Carague, G.R. No. 94571, April 22, 1991, 196 SCRA 221, 234.

[367] G.R. Nos. 124360 & 127867, November 5, 1997, 281 SCRA 330.

[368] Id. at 353-354.

[369] Supra note 362.

[370] Id. at 411. Citations omitted.

[371] Id. at 404. Citations omitted.

[372] Id. at 407.

[373] RULES OF COURT, Rule 113, Sec. 1.

[374] Luz v. People, G.R. No. 197788, February 29, 2012, 667 SCRA 421, 429.

[375] Position Paper of Former Chief Justice Reynato S. Puno as amicus curiae, pp. 13-14.

[376] See Magtoto v. Manguera, Nos. L-37201-02, L-37424, L-38929, March 3, 1975, 63 SCRA 4, 35.

[377] Nos. L-82585, 82827, 83979, November 14, 1988, 167 SCRA 393.

[378] Tagastason v. People, G.R. No. 222870, July 8, 2019, 907 SCRA 621, 627.

[379] Placer v. Villanueva, Nos. L-60349-62, December 29, 1983, 126 SCRA 463, 469.

[380] 80 Phil. 859 (1948).

[381] Id. at 865-867.

[382] Article III, Section 1(3) of the 1935 Constitution provided:

(3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

[383] Article IV, Section 3 of the 1973 Constitution provided:

SEC. 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

[384] Ponencia, pp. 194-195.

[385] 1935 CONSTITUTION, Art. III, Sec. 1(3).

[386] See Ponencia, p. 196.

[387] A.M. No. P-99-1347, February 6, 2001, 351 SCRA 228.

[388] Id. at 236. Citation omitted.

[389] A.M. No. P-08-2440, March 28, 2008, 550 SCRA 44.

[390] Id. at 51. Citations omitted.

[391] OSG's Memorandum, Vol. IV, p. 61.

[392] Id.

[393] 1987 CONSTITUTION, Art. III, Sec. 2.

[394] Id., Art. VIII, Sec. 5.

[395] G.R. No. 238659, June 3, 2019.

[396] Id. at 6-7.

[397] G.R. No. 144037, September 26, 2003, 416 SCRA 142.

[398] Id. at 155. Citation omitted.

[399] Veridiano v. People, G.R. No. 200370, June 7, 2017, 826 SCRA 382, 400.

[400] Id.

[401] TSN, Oral Arguments, May 11, 2021, pp. 48-50.

[402] TSN, Senate Deliberations, January 22, 2020, pp. 28-36.

[403] Veridiano v. People, supra note 399, at 402-405. Citations omitted.

[404] See R. Randall Kelso, Considerations of Legislative Fit Under Equal Protection, Substantive Due Process, and Free Speech Doctrine: Separating Questions of Advancement, Relationship and Burden, 28 U. Rich, L. Rev. 1279 (1994) available at https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=2109&context=lawreview>.

[405] See, e.g., Romer v. Evans, 517 U.S. 620, 634-35 (1996) (finding "animus" against a politically unpopular group, in this case animus based upon sexual orientation, an illegitimate governmental interest); City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 448 (1985) (holding prejudice against the mentally impaired is

illegitimate); Palmore v. Sidoti, 466 U.S. 429, 433 (1984) (finding prejudice against interracial marriage illegitimate).

[406] See generally R. Randall Kelso, supra note 392, at 1288-97.

[407] Id. at 1298-1305.

[408] Id. ("Under strict scrutiny a law is upheld if it is proven necessary to achieve a compelling government interest. The government ... must show that it cannot achieve its objective through any less discriminatory alternative.").

[409] Ponencia, pp. 213-214.

[410] Lagman v. Medialdea, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1, 162.

[411] Based on the Record of the Constitutional Commission, R.C.C. No. 44, July 31, 1986:

FR. BERNAS: Madam President, after conferring with Commissioner Concepcion, we have no objection to the amendment if it is an amendment by addition but not by substitution, because if it is an amendment by substitution, it weakens the intent of the provision as it exists. The intention of the provision is precisely to apply the suspension of the privilege of the writ of habeas corpus only to those who have been judicially charged.

So if the amendment is by addition, that is, we require that the accused be charged within a certain period or number of days, we will accept it provided that what stands here is not deleted. The suspension of the privilege of the writ will apply only to those who have been judicially charged. Until they are charged, the suspension does not apply to them.

x x x x

FR. BERNAS: It is not a question of whether or not a warrant of arrest can be issued. The question is whether in spite of the warrant, they can still be released. What we are saying here is that to prevent release under a suspension of the privilege of the writ of habeas corpus, the person who is under detention must be judicially charged. Until he is judicially charged, he is not covered by any suspension.

MR. PADILLA: If other persons are not covered by the suspension except those who are judicially charged, what would be the effect of that to others not subject to the suspension?

FR. BERNAS: Precisely, the purpose of the suspension of the privilege of the writ of habeas corpus is to enable the government to deal with a situation of an invasion or a rebellion and the government must charge judicially those who are involved in invasion or rebellion. Those who are not charged are not involved nor considered to be involved in the rebellion or invasion and, therefore, there is no reason for extending the suspension of the privilege of the writ to them.

x x x x

Point of clarification only from the distinguished Vice-President. Is it my understanding that during the three-day period, and consistent with the firm stand and interpretation of the honorable Chief Justice Concepcion, that particular respondent would not be deprived of the right to sue for a writ of habeas corpus?

MR. PADILLA: There is no waiver of any right of the person arrested.

[412] Record of the Constitutional Commission, R.C.C. No. 44, July 31, 1986.

[413] MR. FOZ: Thank you, Madam President.

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May I go to the next question? This is about the declaration of martial law or the suspension of the privilege of the writ of habeas corpus on page 7, on the second to the last paragraph of Section 15. Is it possible to delete the clause "where civil courts are able to function"? In the earlier portion of the same sentence, it says, "nor supplant the functioning of the civil courts ..." I was just thinking that if this provision states the effects of the declaration of martial law — one of which is that it does not supplant the functioning of the civil courts — I cannot see how civil courts would be unable to function even in a state of martial law.

MR. SUMULONG: May we refer that interpellation to Commissioner Bernas?

FR. BERNAS: This phrase was precisely put here because we have clarified the meaning of martial law; meaning, limiting it to martial law as it has existed in the jurisprudence in international law, that it is a law for the theater of war. In a theater of war, civil courts are unable to function. If in the actual theater of war civil courts, in fact, are unable to function, then the military commander is authorized to give jurisdiction even over civilians to military courts precisely because the civil courts are closed in that area. But in the general area where the civil courts are opened then in no case can the military courts be given jurisdiction over civilians. This is in reference to a theater of war where the civil courts, in fact, are unable to function.

MR. FOZ: It is a state of things brought about by the realities of the situation in that specified critical area.

FR. BERNAS: That is correct. (Record of the Constitutional Commission, R.C.C. No. 42, July 29, 1986.)

[414] TSN, Senate Deliberations, January 22, 2020, pp. 28-36:

Senator Hontiveros. Thank you, Mr. President.

I would like to proceed now to Section 23 of the bill which amends Section 27 and increases the period of detention from three days to 14 days. What is the rationale, Mr. President, for increasing the period of detention from three days to 14 days? So, from half week to two weeks. In the worst scenarios, is it so that subjects might possibly be subjected to 14 days of enhanced investigation or interrogation until they crack?

Senator Lacson. Mr. President, in his co-sponsorship speech, Sen. Ronald dela Rosa shared with the members of this Body his first-hand experience in Davao City. The 36-hour reglementary period is not enough to build up a case against the suspected terrorist.

With the permission of the lady senator, let us hear directly from Senator Dela Rosa what he experienced; and it created more damage when he was not able to file or make the inquest proceedings on the arrested suspects.

Senator Dela Rosa. Thank you, and Mr. President.

Based on my personal experience, indeed, the spirit of this bill is to secure the state and protect our people from terrorism by giving more teeth to our law enforcement in its anti-terror campaign. Then, I think we should extend the reglementary period from the maximum period of 36 hours to what is being penned in this bill. Because as per my experience, ISIS terrorist Muhammad Reza, which I presented during my cosponsorship speech, I was able to arrest him in Davao City, but I had to release him before 36 hours because I do not have enough evidence to hold him further or beyond 36 hours. But I was fully convinced and the intelligence community was fully convinced and they were forcing me, they were pleading before me not to release this guy because he was very dangerous. But I told them that I cannot do otherwise; I cannot break the law. So, I had to release him. But months later, Mr. President, the intelligence committee showed me the video from YouTube the three of them, including Mohammad Reza were holding the head of the European victim and slashing the throat of the victim. So, from being local black flag terrorist here in the Philippines, in Lanao del Sur, he travelled to Raqqa, Iraq and became an ISIS member. So, he was able to slash a lot more throats of ISIS victims in Iraq and Syria. If there was a law

allowing me to hold him further beyond 36 hours, then many more lives could have been saved.

Senator Hontiveros. The current Human Security Act already provides not just 36 hours, but 72 hours—doble po—or three days. Ang tinatanong ko lamang ay hindi ba sapat na iyong tatlong araw, doble sa panahon na mayroon? Kailangan pa ba talagang dagdagan hanggang dalawang linggo? In fact, should not the case be built up before arrest? Noong naaresto sa wakas iyong Mohammad Reza and definitely, persons like him should be arrested and subjected to our laws, bago pa siya inaresto, Hindi po ba nabigyan ng ebidensiya ang good gentleman from Davao ng intelligence community? Ano po iyong evidence na mayroon that prompted the good gentleman to make the arrest in the first place? It must have been substantive enough.

Senator Dela Rosa. For the information of the good lady from Panay, ibang-iba po iyong intelligence reports from investigative reports. Intelligence reports have no evidentiary value but they are classified as Al, meaning, coming from the direct source and from first-hand information. Iba po iyon. Alam natin na iyan na iyan talaga, but legally, it cannot stand in court. So, iyan po ang dilemma ngayon ng law enforcers.

Babalik lamang ako sa sinabi ng ating interpellator, the good senator from Panay, that instead of using the 72 hours as provided by the Human Security Act, the law enforcers are more inclined to use the 36 hours provided by ordinary laws other than the Human Security Act because we find more convenience in using the other laws and because we find the Human Security Act very anti-police. Instead of giving more teeth to the police, it is giving more fear to the police because of that provision.

Senator Lacson. Because of the P500,000 per day fine, Mr. President. So, instead of filing cases for violation of the Human Security Act, the police would instead file ordinary violations of the Revised Penal Code to avoid this, sasabihin natin, sword of Damocles.

Senator Hontiveros. I understand, Mr. President.

Senator Lacson. Pagbabayarin sila ng P500.000 per day once the suspected terrorist is acquitted.

On top of what Senator Dela Rosa has shared with us, during the committee hearings, the members of the law enforcement agencies shared with us their experience na kulang talaga iyong three days and they need, more or less, 14 days. That is the reason why we incorporated in this measure iyong reglementary period na 14 days.

We are just trying to be at par with other ASEAN neighbors or ASEAN countries-Sri Lanka, 14 days; Australia, 14 days; Bangladesh, 15 days; Indonesia, 21 days; Pakistan, 30 days; Malaysia, 59 days; and Singapore, 730 days. Ito iyong reglementary periods. Tapos tayo, non-extendible iyong 14 days.

In other countries or in other jurisdictions, like Thailand, puwede pa silang mag-extend ng another 30 days; Indonesia, extendable hanggang 120 days; Malaysia, extendible hanggang dalawang taon; Maldives, extendible to an indefinite period; and Singapore, indefinite period. Mabait po tayo kasi alam ko po nandiyan kayo kaya ang sabi ko 14 days, tama na.

Senator Hontiveros. Thank you, Mr. President.

Mr. President, I understand na ganito po ang trend sa iba at karamihan ng mga bansa sa region natin. Mas gusto ko pa nga na Hindi tayo manatiling mabait pero...

Senator Lacson. So, we value human rights, Mr. President.

Senator Hontiveros. Exactly, Mr. President.

Senator Lacson. That is what I meant by saying na mabait tayo.

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Senator Hontiveros. Yes, exactly, Mr. President.

Kahit na nagmumukha tayong odd man out, mas gusto ko po sanang manatili tayong nagtataguyod ng mahabang track record ng ating bansa struggling to uphold human rights and civil liberties even under very challenging circumstances tulad nitong global threat nga ng terrorism na humanap ng mga creative pero effective na paraan. I was even surprised doon sa sinabi ng good gentleman from Davao na walang evidentiary value bilang investigation report iyong intelligence report. Because I know even as a civilian at bilang mistah ng good gentleman from Davao, and the good sponsor knows this even more as a former chief-PNP, how hard our police and military intelligence units work to gather iyong sinabi nga ng good gentleman from Davao—Al intelligence information which will enable our law enforcement officers to arrest these suspected terrorists or these terrorists. Kaya ko itinanong na hindi ba iyong pag-aresto roon kay Mohammad Reza was actually backed up by solid evidence that could stand in court in the prosecution of the case, Mr. President.

Senator Lacson. Well, the bottom line here is, Mr. President, had Senator Dela Rosa, or Colonel Dela Rosa at that time been, accorded this particular provision extending the reglementary period for terrorist, sana na-save natin iyong na-slash na leeg doon sa Iraq.

On top of that, Mr. President, let me just inform the gentlelady that there are safeguards that are put in place to prevent abuses under this particular provision. Number one, the law enforcer taking custody shall notify in writing the judge nearest the place of arrest of the following facts: time, date, manner of arrest, location or locations of the detained suspects, physical and mental condition of the detained suspects. These are the additional safeguards na naisip naming ilagay para mabawasan or mawala iyong possible abuses ng law enforcement agents.

So, hindi puwede iyong itago-tago because they will be answerable. They are also mandated to furnish with a written notice iyong anti-terrorism council, Mr. President. Ito iyong mga safeguards.

Senator Hontiveros. Thank you, Mr. President.

Of course, we also believe that we have to consider the rationale behind the original provision in the Human Security Act which is to prevent or frustrate an imminent attack. Because if an attack is already being carried out, then is it not correct to say that not only can our security forces arrest the perpetrators in flagrante delicto but they can also use deadly force to preserve public order or save lives?

Senator Lacson. Well, we should not wait for the destruction or the killing to happen before we conduct the arrest, Mr. President. We want to be proactive because malalakas na po iyong mga anti-terrorism laws in other jurisdictions. If we are left behind, we are opening up our country to be a safe haven for these terrorists. Ito pa po, Section 20, iyong penalty for failure to deliver suspect to the proper judicial authority, mayroon po tayong provision na puwede silang makulong. Of course, it is already provided for under existing laws, iyong tinatawag na "arbitrary detention" pero nai-emphasize pa rin po natin iyon.

Senator Hontiveros. Salamat po, Mr. President.

At sa totoo lamang po, itong pinag-uusapan nating longer period of detention na sinasabi na global trend at nakikita natin sa ating rehiyon ay ginagamit laban sa mga estudyante, mga pro-democracy activists, pati mga human rights lawyers na lahat po ay hindi mga terorista and there is no evidence that it contributes meaningfully against terrorism. Ito po ay mula sa Amnesty International.

Senator Lacson. On the other hand, let us look at it from another perspective, Mr. President. Itong mga countries na ito, they are adequately equipped. Tayo po ay hindi masyado. And iyong existence ng batas na umiiral sa kanila that provides for a longer reglementary period could be contributory kung bakit kakaunli marahil iyong

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nangyayaring mga terroristic activities in their areas. Sa atin, nagiging laboratory, nagiging training ground just like Marwan and the other terrorists sa Marawi. Kaya po nangyayari iyon kasi mas magaan sila sa Pilipinas because of our weak laws on terrorism.

Senator Hontiveros. Mr. President, I think it would be arguable na roon sa mga bansa na mas may mahahabang reglementary period, lalo na iyong mga mauunlad na bansa sa kanila ay posibleng humuhupa ang terorismo because they are addressing the root causes of terrorism in a balanced way kasama ng effective law enforcement. So, hindi lamang heavily sa law enforcement, may kasama po.

Senator Lacson. And effective laws, Mr. President.

Senator Hontiveros. Which is the argument of the good sponsor that we do not have right now. And effective laws which, I know, is what we are all seeking to.

Senator Lacson. Which we do not have right now, Mr. President.

Senator Hontiveros. Which is the argument of the good sponsor that we do not have right now, Mr. President. At the proper time, I will propose some possible amendments to achieve that objective as part of the community of nations, to address the threat of terrorism while still unequivocally upholding our commitments to human rights and civil liberties.

Further, Mr. President, if our security forces are still in the process of investigating a terrorist conspiracy, can they not build their case using the mechanisms already provided, for example, in the Terrorism Financing Prevention and Suppression Act? Secondly, the surveillance order provision in the current HSA or applying for a good old-fashioned search warrant under the Rules of Court?

Senator Lacson. It is time to improve or enhance the Human Security Act by way of amending it, Mr. President, including all these provisions because right now, there is only one conviction. Imagine, when did we pass the Human Security Act? It is in 2007. We are now in 2020. So far, there is only one conviction and one difficulty which we suggested that we delete, iyong predicate crimes. Ito iyong one of the handicaps. We have to prove first the predicate crimes before we can even proceed to prosecute the terrorist for violating the Human Security Act. That is why, we deemed it necessary to just delete the predicate crimes.

Senator Hontiveros. I see, Mr. President. If the State needs 14 days with the suspect to get anything useful from him or her, hindi po ba fishing expedition na iyon?

Senator Lacson. Definitely no, Mr. President. Sa amin nga pong committee hearing, ito iyong common experience ng mga law enforcement agencies present, ang sabi nila ay kulang na kulang talaga iyong three days. Ang hinihingi pa po nila ay 90 days na hindi nga ako pumayag dahil naalala ko kayo. x x x

TSN, Senate Deliberations, January 29, 2020, pp. 30-31:

Senator Pangilinan. Yes, Mr. President. We thank the good senator for that clarification. My concern now is if we do approve the extension, will the proposed lengthening of the period to 14 days, maybe the two-week period, then merits a presentation before a judge?

This is just a manifestation, Mr. President. We will review the provision, and if we feel the need to put some amendments so that we can ensure that the 14-day period that a person is held in detention would not be an opportunity in violation of the accused's rights.

We have no problem if the person accused is in fact a known terrorist. But reality is more complex. We may find ourselves in a situation wherein we are accused of terrorism and, therefore, 14 days in detention, lengthening the

period, may apply to us or may apply to working days.

That is our concern, Mr. President.

Senator Lacson. During the committee hearing, Mr. President, we asked the law enforcement agents and according to them, the three-day reglementary period is too short to gather enough evidence and to prevent the occurrence of another terrorist act. In fact, in his co-sponsorship speech, Senator Dela Rosa related his own firsthand personal experience wherein he arrested a terrorist suspect but he was forced to release him because he would exceed the three-day reglementary period. Then a few weeks after that, he recognized that same terrorist that he arrested beheading a person in Iraq. When we asked them, they told us that they need at least 14 days to develop a case and to file a strong case for violation of this proposed measure to strengthen the case. And we want to be at par with the other countries. For example, Singapore, two years pero renewable pa to an unlimited period; Sri Lanka, 14 days; Bangladesh, 15 days; Pakistan, 60 days; Australia, 14 days.

Ito po iyong mga na-consult natin during the deliberations that is why we just wanted to be at par with other countries because we want to prevent the Philippines to be a safe haven for terrorists, Mr. President.

[415] SEC. 30. Rights of a Person under Custodial Detention. — The moment a person charged with or suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act is apprehended or arrested and detained, he/she shall forthwith be informed, by the arresting law enforcement agent or military personnel to whose custody the person concerned is brought, of his/her right: (a) to be informed of the nature and cause of his/her arrest, to remain silent and to have competent and independent counsel preferably of his/her choice. If the person cannot afford the services of counsel of his/her choice, the law enforcement agent or military personnel concerned shall immediately.

[416] Section 12 (2) of Article III of the 1987 Constitution reads:

Section 12.

x x x x

2. No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

[417] Laurence Tribe and Joshua Matz, Uncertain Justice: The Roberts Court and the Constitution (2014 ed.) p. 317.

[418] Opening Statement of Solicitor General Calida, p. 17, par. 88.

SEPARATE OPINION

LAZARO-JAVIER, J.:

The Anti-Terrorism Act of 2020 is a law of noble intentions at such a bad timing. For starters, we have the pandemic to deal with. Along with this crisis came want. In terms of the economy, we are wanting in resources. The pandemic has forced many businesses to fold shop. For good measure, the government has kept its firm hands on the saddle. As a polity, we want to secure a steady grasp of our future. After all, we are in the midst of choosing our next leaders. We want a safe environment for ourselves and our children and the generations after them. At the same time, we want the freedom and the right to express ourselves and be the best that we and our

children would ever become.

The peace and order sector is doing its best to help build safe and secure communities, and in the middle of this pandemic, is often asked to do more than what its duties call it to accomplish. They attend to satisfying the want for safe and peaceful communities while respecting the want for full human rights. At times they succeed but at times they do not. They have programs that fail as much as programs that our people have unanimously lauded. In other words, these are perilous times that have been made much more dangerous and anxious because of the invisible virus that has ruined already two (2) years of our existence.

This is the context that drives both the support for and opposition to The Anti-Terrorism Act of 2020. There is something immeasurably wrong in the world, and this statute has been laid down to try to fix it. But in presenting itself to be the solution, it has become a source of problem and confusion. This Court is caught in the middle of this swirling vortex. While politics cannot dictate its decision, one way or another, since law as an independent scholarship has its own driving force, I cannot be all that blind to the circumstances that surround how we should make sense of the provisions of the statute.

I am happy to note and fully concur in the careful balancing of the contending forces which the scholarly ponencia of Associate Justice Rosmari D. Carandang has achieved. Her insightful analysis and extensive references provided an accurate summary and easy-to-understand discussion of the varied and complex issues raised in the thirty-seven (37) petitions and the government's responses thereto. My inputs, therefore, will only modestly supplement the ponencia's analysis arising from its conceptual framework that I also wholeheartedly endorse.

ONE. Section 4 of The Anti-Terrorism Act of 2020 defines the crime of Terrorism as follows -

> SECTION 4. Terrorism. — Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:
>
> (a)
>
> Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;
>
> (b)
>
> Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property;
>
> (c)
>
> Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;
>
> (d)
>
> Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and
>
> (e)
>
> Release of dangerous substances, or causing fire, Hoods or explosions when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safely, shall be guilty of committing terrorism and

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> shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code:" Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

The ponencia correctly ruled that Section 4 identifies the actus reus and mens rea of Terrorism.

A. Actus Reus

The actus reus of Terrorism are the acts referred to in Section 4 (a) to (e). There are, however, three (3) other components to consider.

First, the acts do not need to be consummated. This is because Section 4 contemplates acts regardless of the stage of execution - the acts do not have to produce the stated consequences mentioned in Section 4 (a) to (e) nor the stated purposes in the when-the-purpose clause of Section 4. A mere attempt or a frustration of any of the acts will commit Terrorism. To stress, the consummation or actual occurrence of the stated consequences or the stated purposes are not part of the actus reus of Terrorism. Instead, as will be explained below, these consequences and purposes are elements of the mens rea of Terrorism.

Second, we cannot eliminate at once conduct or acts mentioned in Section 4 (a) to (e) from their categorization as speech. As Justice Leonen explained in Diocese of Bacolod v. Commission on Elections[1] -

> Communication is an essential outcome of protected speech.
>
> Communication exists when "(1) a speaker, seeking to signal others, uses conventional actions because he or she reasonably believes that such actions will be taken by the audience in the manner intended; and (2) the audience so takes the actions." "[I]n communicative action[,] the hearer may respond to the claims by . . . either accepting the speech act's claims or opposing them with criticism or requests for justification."
>
> Speech is not limited to vocal communication. "[C]onduct is treated as a form of speech sometimes referred to as 'symbolic specch[,]'" such that "'when 'speech' and 'nonspeech' elements are combined in the same course of conduct,' the 'communicative element' of the conduct may be 'sufficient to bring into play the [right to freedom of expression].'"
>
> The right to freedom of expression, thus, applies to the entire continuum of speech from utterances made to conduct enacted, and even to inaction itself as a symbolic manner of communication. (Emphases added)

But while conduct or acts mentioned in Section 4 (a) to (e) may be categorized as speech, Section 4 has already classified each of them as unprotected speech. Then Chief Justice Puno expounded in his Dissent in Soriano v. Laguardia[2] that the free speech clause is based on the idea that any harm that speech may cause can be avoided or addressed by more speech since truth will emerge from the "free trade of ideas." Unprotected speech, on the other hand, is harmful, and because such harm is simply not curable by more speech, it is thus not protected by the right to free speech.[3]

The conduct or acts mentioned in Section 4 (a) to (e) are categories of speech determined wholesale and in advance to be harmful.[4] They have minimal or no value.[5] According to Associate Justice Presbitero J. Velasco, Jr. in his ponencia in Soriano v. Laguardia, the regulation of unprotected speech does not require the application of the clear and present danger test or other balancing tests that weigh competing values or interests, as they are deemed to fall under established categories[6] - here, the category of fighting words.

Then Chief Justice Puno described this category of unprotected speech —

> "[F]ighting words" ... are "words which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace." In Chaplinsky v. New Hampshire, the U.S. Supreme Court held that a state may forbid the use in a public place of words that would be likely to cause an addressee to fight. Accordingly, it found that Chaplinsky's calling the city marshall a "damned fascist" and "damned racketeer" qualified as "fighting words." It is not sufficient, however, for the speech to stir anger or invite dispute, as these are precisely among the functions of free speech. In the case at bar, as public respondent has not shown that the subject speech caused or would be likely to cause private respondent Sandoval to fight petitioner, the speech cannot be characterized as "fighting words."[7] (Emphases added)

"Likely to cause immediately" is the necessary quality of the conduct or act in Section 4 (a) to (e) to qualify as punishable fighting words. Thus, not every act under Section 4 (a) to (e) will be deemed fighting words to merit punishment with having to pass through the tests for regulating speech and symbolic speech.

To repeat, the consummation or actual occurrence of the desired consequences or the desired purposes is not required to be able to say that the actus reus of Terrorism has been proved. And, we also do not have to read-in the clear-and-present danger test into the definition of the actus reus of Terrorism in Section 4 (a) to (e) because Section 4 has categorized each of these conducts or acts beforehand as unprotected speech as fighting words.

It is essential, nonetheless, that the conduct or acts mentioned in Section 4 (a) to (e) must likely cause immediately the desired consequences in Section 4 (a) to (c) or the desired purposes under Section 4's when-the-purpose clause. This is because speech including symbolic speech becomes fighting words only when the speech is likely to cause an immediate breach of the peace.

Stated differently, not every conduct or act mentioned in Section 4 (a) to (e) would constitute the actus reus of Terrorism, even if the necessary mens rea is present, or even if Section 4 penalizes the conduct or acts regardless of the stage of execution. To constitute the actus reus of Terrorism, the conduct or acts in Section 4 (a) to (e) should be of such gravity as to likely cause immediately the desired consequences or the desired purposes under Section 4.

Third, by virtue of the exempting proviso under Section 4, the actus reus must not, directly or indirectly, relate to advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights. So long as the animating factor or purpose surrounding the speech and symbolic speech is the advocacy, protest, dissent, etc., it ought to be understood by the criminal justice sectors that these activities are covered by the protective mantle of the proviso.

But what is advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights?

As ordinarily understood, advocacy refers to the act or process of supporting a cause or proposal. On the other hand, protest is something said or done that shows disagreement with or disapproval of something. Not every speech, verbal or conduct though would fall under and qualify for the protective mantle of the proviso. Not just because one group advocates for or protests against something will their speech be constitutionally immune from prosecution.

The general rule is where advocacy, protest, etc. are an integral part of unlawful conduct, they have no constitutional protection.[8] The protective ambit of the proviso is built on the right of free speech which contemplates only an advocacy, protest, etc. using legal and constitutional means to bring about changes in governments.[9] The right to free speech is lost when it is abused by using or urging the use of illegal or unconstitutional methods.[10]

An important and pervasive gloss over this general rule is the doctrine that advocating the use of force, law violation, or breach of the peace per se is not forbidden or proscribed.[11] Rather, this advocacy or protest confers no protection ONLY where it is purposely directed towards inciting or producing imminent lawless action and is likely to incite or produce such action.[12]
Thus, unprotected advocacy or protest requires the concurrence of these elements: (1) the speech "explicitly or implicitly encouraged lawless action,"[13] (2) "the speaker intends that the speech will result in ... lawless action," and (3) "the imminent use of ... lawless action is the likely result of [the] speech."[14] By lawless action, we mean bodily injury or death, destruction of property, and other forms of violence such as discrimination, rape, sexual abuse, emotional and psychological abuse, pillage, arson, and the like.

In determining whether the elements of unprotected advocacy or protest exist, we must also account for such factors as the nature of the speech (whether persuasive or coercive), the nature of the wrong advocated or induced (whether violent or merely offensive to the morals, whether patently criminal or merely an advocacy of law violation, i.e., not to pay taxes, block traffic flow, etc.), and the degree of probability that the substantive evil actually will result (the standard is one of probability or likelihood of occurrence).[15]

When the subject conduct or acts take place in the context of an advocacy, protest, etc., the burden is upon the government to prove that the conduct or acts are unprotected by the right to free speech.[16]

B. Mens Ren

The ponencia also correctly held that Section 4 identifies the requisite mens rea of Terrorism. To clarify, Section 4 requires two (2) stages of mens rea.

Each of Section 4 (a) to (c) has its own explicit mens rea element. Section 4 (a) requires the actor's intent to cause death or serious bodily injury to any person, or to endanger a person's life. Section 4 (b) refers to the intent to cause extensive damage or destruction to a government or public facility, public place or private property. Under Section 4 (c), the intent is to cause extensive interference with, damage, or destruction to critical infrastructure.

In contrast, Section 4 (d) and (e) do not require such act-specific intent. It is only essential that the acts mentioned in (d) and (e) are done voluntarily.

The next stage of mens rea is found in the when-the-purpose clause of Section 4. This is the overarching intent characterizing the mental element of each of the conduct or acts in Section 4 (a) to (e). Notably, as regards mens rea, purpose is the same as intent. The overarching intent or purpose is either of the following intents or purposes —

- to intimidate the general public or a segment thereof,

- to create an atmosphere or spread a message of fear,

- to provoke or influence by intimidation the government or any international organization,

- to seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or

- to create a public emergency or seriously undermine public safety.

C. Summary

In sum, to prove liability for the crime of Terrorism, the prosecution has to prove beyond reasonable doubt that -

I. Actus Reus

- voluntary commission of the nets in Section 4 (a) to (e), regardless of the stage of execution thereof;

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> - even if the conduct or act was performed only in its attempted or frustrated stage, or when it was consummated, the act is of such gravity as to likely cause immediately the relevant consequences mentioned in Section 4 (a) to (c) and the relevant purposes in the when-the-purpose clause of Section 4; and
>
> - the conduct or act must not, directly or indirectly, relate to advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights.
>
> where the conduct or act directly or indirectly relates to advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, the government has the burden to prove that (I) the speech, verbal or conduct, "explicitly or implicitly encouraged lawless action," (2) the actor or speaker "intends that the speech will result in ... lawless action," and (3) "the imminent use of ... lawless action is the likely result of the speech."
>
> II. Mens Rea
>
> - the conduct or act was done with the mental element specified in Section 4 (a) to (c) and the when-the-purpose clause of Section 4.

TWO. I agree with the ruling on the proviso of Section 4, retaining its main clause but excising its subordinate clause, illustrated visually as follows:

> Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

The ponencia is correct that the subordinate clause makes every actor in any advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights on the defensive; that it effectively chills the actor's exercise of their[17] right to free speech and its cognate rights. Reading-out this subordinate clause for unconstitutionality is therefore the proper remedy for this infirmity.

Further to the remedy granted by the ponencia, there are four (4) more components of this exempting circumstance of advocacy, protest, etc. that I wish to stress.

First, advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights are not a one-day or one-night or one-off affair that end when the day of culmination closes.

For instance, the activities on the President's State of the Nation Address (SONA), every third Monday of July each year, do not begin and terminate only on SONA. Planning takes weeks even months before the SONA, and the post SONA impact activities, and assessment also takes weeks or months after. Typically, preparatory activities include organizing, teach-ins and discussion groups, coordination for mass transportation, preparation and circulation of propaganda/agitation materials including press statements, banners and effigies, mobilization, camping, more teach-ins and discussion groups, and mobilization to rally sites and back. After December 10, we will both hear and witness some more speech and symbolic speech from these groups to keep the ante and its message alive. Given the democratic space that our Constitution has promised, the advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights in relation to the SONA has become a ritual that we, from circles outside the activists' groups, have watched and listened to, reveled at, ruminated on, and perhaps snarled at due to the traffic slow-down or stand-still on Commonwealth Avenue and its arterial roads.

My point is precisely that the protective or exempting circumstance of the proviso should NOT be restricted to the activities of the day of the advocacy or protest but must extend as well to those of the days prior and after. So long

as the activities are connected to the advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, whether directly or indirectly, and so long as the animating factor or purpose of the surrounding speech and symbolic speech is still the advocacy, protest, etc., it ought to be understood by the criminal justice sectors that these activities are covered by the protective mantle of the proviso.

Second, it bears emphasis that the proviso exempts only from a criminal charge of Terrorism and other criminal provisions where the gravamen is fundamentally Terrorism. Obvious examples of these would of course be the other criminal provisions of The Anti-Terrorism Act of 2020 and Sections 4 to 9 of The Terrorism Financing Prevention and Suppression Act of 2012.

Just as often is the case, protesters and rally leaders and participants are criminally charged with violation of the Public Assembly Act of 1985 or Direct Assault. The proviso does not relate to these offenses. The proviso does not exempt them from criminal liabilities, if any, for these offenses. Advocates, rally organizers and attendees, protesters, and strikers are bound to answer for the offenses they commit under OTHER criminal statutes, if any, in the course of their advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights. The hope of course is that law enforcers, prosecutors, and protesters and advocates alike would come to a reasonable modus vivendi so that none of these public-assembly and petition-to-redress-grievances matters would reach the courts and further use up judicial resources. These matters happen year-in and year-out. Maximum tolerance and reasonable expectations of conduct could be mapped out well in advance.

I further stress that the efficacy of the proviso as an exempting circumstance should not be made dependent on the formal legality, or more precisely, the compliance of the advocacy, protest, etc. with content-neutral regulations such as the Public Assembly Act of 1985 and its implementing rules. I believe that this is a reasonable inference from the proviso's exempting effect from the otherwise substantive coverage of Section 4 and the other criminal provisions of The Anti-Terrorism Act of 2020 and other criminal provisions in other statutes on Terrorism. If the proviso is effective against a criminal charge of Terrorism and related criminal statutes, there is no reason to bar the efficacy of this proviso solely because rules on time and place of rallies or protests, which are of lesser impact and magnitude, have not been complied with.

Third, may I refer again to Section 4 (c) -

> SECTION 4. Terrorism. - Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:
>
> ...
>
> (e) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure....(Emphases added)

My concern has to do with the criminalization of extensive interference with ... critical infrastructure. Of the five (5) classes of Terrorism, this category would have to be the most intimately connected with the exempting proviso in Section 4. This is because the point and impact of every advocacy, protest, etc. is precisely to interfere extensively to the widest scope and greatest extent possible with the State's critical infrastructure AT ISSUE.

Consistent with the ponencia of Justice Carandang, I think Section 4 (c) must be applied with utmost care so as not to become overbroad. This is to say that Section 4 (c) should be read down as not covering acts or conduct that relate, directly or indirectly, to the proviso on advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights.

Notably, critical infrastructure is defined in Section 2 of The Anti-Terrorism Act of 2020 as follows -

> (a) Critical Infrastructure shall refer to an asset or system, whether physical or virtual, so essential to the maintenance of vital societal functions or to the delivery of essential public services that the incapacity or destruction of such systems and assets would have a debilitating impact on national defense and security, national economy, public health or safety, the administration of justice, and other functions analogous thereto. It may include, but is not limited to, an asset or system affecting telecommunications, water and energy supply, emergency services, food security, fuel supply, banking and finance, transportation, radio and television, information systems and technology, chemical and nuclear sectors.... (Emphases added)

Critical infrastructure provides the many battle points for advocates, protesters, dissenters, and every mass action known to human kind. For example, mining is a controversial industry. It impacts on a wide variety of rights and interests. Stopping its operations would have a huge, if not debilitating impact on the economy. Yet doing so also protects the rights of sundry others. But doing so would potentially extensively interfere with a critical infrastructure. In this instance, the criminal justice sector would be well-advised to study carefully the proviso when considering a prosecution under Section 4 (c) so as not to infringe but to protect mightily the right to free speech and its cognate rights.

To further illustrate, when Georgie Man San Mateo, a fictional Chairperson of the transport group PISTON, calls on the people to protest on May 4, 2022, or just days before the May 9, 2022 elections, specifically, to denounce

> (i) the weekly oil price and spare parts hike; (ii) the government's program to phase-out and declare illegal the use of traditional jeepneys as public transport; (iii) the use of alleged trolls in telecommunications to bash and intimidate government critics; (iv)the non-renewal of ABS-CBN's franchise; (v) the red-tagging of every known critic of the government; (vi) the rising food and medicine prices, the non-availability of some critical food items such as rice, fish and meat, the importation of essential food stuff to the prejudice of local producers, the rising prices of water and energy borne by the end-consumers, and the incursion of Chinese militias into Philippine territories,

and his calls resulted in traffic gridlocks, massive immobilization, lack of fuel supply nationwide, massive protests affecting banking and finance, with potential debilitating impact on the national economy, Mr. San Mateo cannot be charged with and convicted of Terrorism under Section 4 (c). His acts are not and cannot be Terrorism by authority of the proviso.

Fourth, this is where we relate Section 4 (c) with Section 9 on Inciting to Terrorism.[18] In the same fictional example, Mr. San Mateo cannot be held liable for Inciting to Terrorism because he cannot be said to have incited others to the execution of any of the PUNISHABLE acts specified in Section 4. There are no punishable acts since the proviso exempts advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights from the definition of Terrorism and therefore the punishment arising from such criminalization.

This conclusion is consistent with the thesis that the proviso exempts not only from a criminal charge of Terrorism but also from other criminal provisions where the gravamen is fundamentally Terrorism.

I cannot stress enough that a speaker by verbal or symbolic speech cannot be held liable for Inciting to Commit Terrorism unless another or others have first executed any of the actus reus with mens rea of Terrorism under Section 4.[19] Since the whole gamut of speech relating to advocacy, protest, etc. cannot give rise to Terrorism, there is no way that this protected speech would result in Inciting to Commit Terrorism.

This notwithstanding the quality or gravity of the speech in question as being provocative or inductive of a condition of unrest or likely to agitate people to be dissatisfied with government, to inflict injury or to Incite an Immediate breach of the peace. As the ponencia bravely elucidated -

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> In this regard, the Court wishes to convey, as a final point on Section 4, that terrorism is not ordinarily the goal of protests and dissents. Such exercises of the freedom of speech are protected, even if they might induce a condition of unrest or stir people to anger. Incitement aside, intimidating the government or causing public unrest is not unlawful per se if the means taken to cause such intimidation or unrest is through speech, discourse, or "expressive conduct[."] The foundation of democracy, by design, is a populace that is permitted to influence or intimidate its government with words, even those that induce anger or create dissatisfaction. (Emphases added)

In this light, the balancing test found in Rule 4.9[20] of the Implementing Rules and Regulations of The Anti-Terrorism Act of 2020 for the prosecution of incitement under Section 9 does not apply to acts relating to the panoply of speech relating to advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights. Again, this is because these acts are not Terrorism by virtue of the proviso.

Rather, the balancing test would be relevant only when the speaker's verbal or symbolic speech is classified as unprotected speech, specifically, plainly and simply fighting words as it is not related to advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights AND is likely to cause injury or breach of the peace immediately. It is of course the government's burden to prove that the advocacy, protest, etc. to which the conduct or act ostensibly relates is not the advocacy, protest, etc. that the proviso in Section 4 refers to, that is, they are actually unprotected speech.

THREE. I agree with the ponencia that Section 12 of The Anti-Terrorism Act of 2020 is not unconstitutionally vague or overbroad. Section 12 states:

> SECTION 12. Providing Material Support to Terrorists. - Any person who provides material support to any terrorist individual or terrorist organization, association or group of persons committing any of the acts punishable under Section 4 hereof, knowing that such individual or organization, association, or group of persons is committing or planning to commit such acts, shall be liable as principal to any and all terrorist activities committed by said individuals or organizations, in addition to other criminal liabilities he/she or they may have incurred in relation thereto. (Emphases added)
>
> Section 3 (e) defines "material support" -
>
> (e) Material Support shall refer to any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation... (Emphases added)

There are two (2) other points that I would wish to reflect on.

First, I think that Section 12 implicates freedom of speech beyond the provision of "training, expert advice or assistance." The provision of service or property including currency or monetary instruments or financial securities, safe houses and transportation are symbolic speech that articulate one's advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights.[21] As a result, the provision thereof as material support under Section 12 could very well be the subject of a facial challenge.

Second, Section 12 is relevant only when the predicate crime of Terrorism was in fact committed or is being committed in whatever stage of execution, and the material supporter knew of such fact and still gave material support. All the elements of the crime of Terrorism must be canvassed and proved to exist before the provision of

material support can be held to be criminal. Given the proper construction of Section 4, including the proviso therein which exempts acts related to legitimate advocacy, protest, dissent, etc., which should henceforth guide law enforcers in their enforcement of this and other provisions of The Anti-Terrorism Act of 2020, it can hardly be said that Section 12 is vague or overbroad.

FOUR. I concur with the ponencia that Section 29[22] supplements Article 125 of the Revised Penal Code (RPC) by providing an exceptional rule with specific application only in cases where: (1) there is probable cause to believe that the crime committed is that which is punished under Sections 4 to 12 of The Anti-Terrorism Act of 2020; and (2) a written authorization from the Anti-Terror Council (ATC) is secured for the purpose. Both requisites must be complied with; otherwise, the arresting officer must observe the periods provided under Article 125, RPC.[23]

To be sure, Article 125 of the RPC is an evolving law which adapts to the situations surrounding the passage of its amendments. Revisiting its history is therefore apropos:

Article 202 of the Old Penal Code mandates the delivery of an arrested person to the judicial authorities within twenty-four (24) hours from his or her arrest, viz.:

> ARTICLE 202. Any public officer, other than a judicial officer, or one not acting under the authority mentioned in article two hundred, who shall arrest a person upon a charge of crime and shall foil to deliver such person to the judicial authorities within twenty-four hours after his arrest, if such arrest be made at the capital of the district, or as soon as possible, according to the distance and means of communication, shall suffer the penalties next higher in degree than those designated in said article two hundred.[24]

The original iteration of Article 125 under Act 3815 required the delivery of the arrested person within one (1) hour from his or her delivery. Realizing that the one (1) hour prescribed period caused the deluge of hastily filed complaints, the Congress saw fit to extend the delivery to six (6) hours. Act 3940 amended Act 3815:

> ART. 125. Delay in the delivery of detained persons to the proper judicial authorities. — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours.[25]

It was Republic Act No. (RA) 1083 which initiated the graduated schedule of delivery of arrested persons depending on the gravity of the offense committed:

> Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: six hours, for crimes or offenses punishable by light penalties, or their equivalent; nine hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.
>
> In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.[26] (Emphases added)

Then Presidential Decree 1404 extended the period of detention up to thirty (30) days in the interest of national security:

> Art. 125. Delay in the delivery of detained persons. - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: six hours, for crimes or offenses punishable by light penalties, or their equivalent; nine hours, for crimes or offenses punishable by

> correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent: Provided, however, That the President may, in the interest of national security and public order, authorize by Executive Order longer periods, which in no case shall exceed 30 days, or for as long as, in the determination of the President, the conspiracy to commit the crime against national security and public order continues or is being implemented, for the delivery of persons arrested for crimes or offenses against public order as defined in Title III, Book II of this Code, namely: Article 134, 136, 138, 139, 141, 142, 143, 144, 146, and 147, and for subversive acts in violation of Republic Act No. 1700, as amended by Presidential Decree No. 885, in whatever form such subversion may take; as well as for the attempt on, or conspiracy against, the life of the Chief Executive of the Republic of the Philippines, that of any member of his family, or against the life of any member of his Cabinet or that of any member of the latter's family; the kidnapping or detention, or, in any manner, the deprivation of the Chief Executive of the Republic of the Philippines, any member of his family, or any member of his Cabinet or members of the latter's family, of their liberty, or the attempt to do so; the crime of arson when committed by a syndicate or for offenses involving economic sabotage also when committed by a syndicate, taking into consideration the gravity of the offenses or acts committed, the number of persons arrested, the damage to the national economy or the degree of the threat to national security or to public safety and order, and/or the occurrence of a public calamity or other emergency situation preventing the early investigation of the cases and the filing of the corresponding information before the civil courts.
>
> As used herein, Economic Sabotage means any act or activity which undermines, weakens or renders into disrepute the economic system or viability of the country or tends to bring about such effects to include, but not necessarily limited to, the following offenses: trafficking, counterfeiting, blackmarketing or mass movement of local or foreign currency in violation of existing laws and regulations, price manipulation to the prejudice of the public especially in the sale of prime commodities in violation of price control laws, tax evasion, bank swindling and violation of land reform laws and regulations. For purposes of this Decree, Economic Sabotage as herein above defined and Arson as defined and penalized in this Code are considered committed by a syndicate if planned and carried out by a group of at least three persons organized for the purpose of committing such or any other unlawful or illegal transaction, enterprise or scheme.
>
> In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at anytime with his attorney or counsel, and to be visited by his immediate relatives.[27]

Executive Order (EO) 191[28] reinstated Article 125 sans the amendments introduced by PD 1404.

The present iteration of Article 125 was by virtue of EO 272:

> ART. 125. Delay in the delivery of detained persons to the proper judicial authorities. - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent, and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.
>
> In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at anytime with his attorney or counsel.[29] (Emphases added)

The above amendments have the following common denominators: the graduated schedule of delivery of arrested persons was enacted taking into consideration the gravity of offense committed, to provide sufficient time for the public prosecutor to study the case, and to do away with unjust and hastily filed complaints for compliance purposes only.

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Verily, setting the period of detention has always been a legislative prerogative, circumscribed only by Section 18, Article VII of the Constitution, thus:

> The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis added)

It is clear, however, that the constitutional mandate that the person arrested or detained be judicially charged within three (3) days is only applicable when the privilege of the writ of habeas corpus has been suspended. Otherwise, the periods specified in Article 125 of the RPC or any other relevant laws prescribing the period of detention would govern.

During the Senate deliberations, Senator Ronald M. Dela Rosa called the attention of his colleagues to these periods and the compelling need to put them in place if we have to succeed in our fight against terrorism.[30] He asserted that should we not put these periods in place, suspected terrorists would easily end up getting released as they simply have to wait for the lapse of at most seventy-two (72) hours. There is absolutely no reasonable time left for the police officers to process the case, let alone, complete the collation of evidence required to support an indictment for terrorism against the suspected terrorists. Should we then decline to give tooth to the law against terrorism by rejecting to grant our law enforcement authorities a wider window to process the case against suspected terrorists, we would never become a terror tree country.

At any rate, compared to how other countries deal with terrorism, ours is the most lenient. We take a look at the periods of detention of the first world countries:

> Country
>
> Period of Detention
>
> United States

7 days extendible up to 6 months if detained under section 412. There must be "reasonable grounds to believe" that the alien: (1) entered the United States to violate espionage or sabotage laws; (2) entered to oppose the government by force; (3) engaged in terrorist activity; or (4) endangers the United States' national security. (USA Patriot Act)[31]

United Kingdom

28 days (Terrorism Act of 2006)[32]

Australia

14 days (Terrorism (Preventative Detention) Act 2005)[33]

Singapore

3 months (Singapore Constitution)[34]

To dispel badges of erroneous points of comparison, we take a look at the periods of detention of our neighboring countries and other developing countries like ours:

Country

Period of Detention

Malaysia

29 days (Security Offences: Special Measures Act 2012)[35]

Indonesia

6 months (Government Regulation in lieu of Legislation of the Republic of Indonesia No 1/2002 on Combating Criminal Acts of Terrorism)[36]

Thailand

30 days (Emergency Decree on Public Administration In Emergency Situation)[37]

Brunei-Darussalam

2 years (Internal Security Act)[38]

As well, the longer period of detention is not without concomitant protection of the detained person's rights. The following are the key safeguards provided under The Anti-Terrorism Act of 2020 to protect the rights and ensure humane treatment of a detained suspected terrorist:

- Before the period of detention is extended to another ten (10) days, the arresting officer must first establish the following circumstances: (a) the need to preserve evidence related to the terrorist act or to complete the investigation; (b) the need to prevent the commission of another terrorist act; and (c) the investigation is being conducted properly and without delay.[39]

- The law enforcement officer or military personnel is required to notify in writing the judge of the court nearest the place of the arrest of a person suspected of committing terrorism on the following facts: a) time, date, and manner of arrest; b) location or locations of the detainee; and c) the physical and mental condition of the detainee. The law enforcement officer or military personnel is likewise required to furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.[40]

- Upon detention, the detainee has the right to be informed of the nature and cause of his or her arrest, to remain

silent, and to have competent and independent counsel preferably of his or her own choice. These rights cannot be waived except in writing and in the presence of his or her counsel of choice: 1) be informed of the cause of his or her detention; 2) communicate freely with his or her counsel; 3) communicate freely with the members of his or her family; and 4) avail of the services of a physician or physicians of choice.[41]

- The law enforcement custodial unit is required to maintain an Official Custodial Logbook. This logbook shall record all details concerning the treatment of the detained person while under custodial arrest and detention. The same is a public document accessible to the lawyer of the detainee or any member of his or her family or relative by consanguinity or affinity within the fourth civil degree or his or her physician subject to reasonable restrictions by the custodial facility.[42]

- Absolute prohibition on the use of torture and other cruel, inhumane, and degrading treatment or punishment as defined in Sections 4 and 5 of RA 9745 otherwise known as the Anti-Torture Act of 2009 at any time during the investigation or interrogation of a detainee.[43]

- Speedy investigation and prosecution of all persons detained.[44]

- The ATC is mandated to monitor the progress of the investigation and prosecution of all persons detained.[45]

- The CHR is granted the highest priority in the investigation and prosecution of violations of the rights of persons in relation to the implementation of the Act. This is to ensure the observance of due process.[46]

- The welfare of detainees who are elderly, pregnant, disabled, women, and children is considered.[47]

- The penalty of ten (10) years imprisonment shall be imposed upon law enforcement agent or military personnel who fails to notify any judge in case of warrantless arrests of a suspected person under the Act.[48]

- The same penalty of the ten (10) years imprisonment shall be imposed upon any law enforcement agent or military personnel who has violated the rights of persons under their custody. Unless the law enforcement agent or military personnel who violated the rights of a detainee is duly identified, the same penalty shall be imposed on the head of the law enforcement unit or military unit having custody of the detainee.[49]

- The penalty of six (6) years imprisonment shall be imposed upon any person who knowingly furnishes false testimony, forged document, or spurious evidence in any investigation or hearing conducted in relation to any violations under the Act.[50]

- The Bureau of Jail Management and Penology and the Bureau of Corrections are mandated to establish a system of assessment and classification for persons charged for committing terrorism and preparatory acts punishable under the Act. This system shall cover the proper management, handling, and interventions for the detainees.[51]

Indeed, the law has specifically provided for procedures and safeguards to those detained for possible terrorism charges. This gives flesh to the decreed policy under Section 2 of The Anti-Terrorism Act of 2020 that the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution. Thus, the key measures indicated here enforce the commitment to justice and respect for human rights of detained individuals and also strengthen a necessary building block to counter terrorism.

FIVE. Petitioners raise fears of possible abuses in the implementation of Section 29 of the The Anti-Terrorism Act of 2020 since whether a person ought to be detained for up to fourteen (14) days, extendible to twenty-four (24) days, allegedly rests solely on the discretion of the arresting officer or officers.[52]

But the Court does not strike down laws as unconstitutional because of mere possibility of abuses in their implementation[53] or probability of law enforcers acting arbitrarily in pursuit thereof. Neither can the Court

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adjudge a law or any of its provisions as unconstitutional on ground that the implement or committed illegal acts.[54] There must be a clear and unequivocal, not a doubtful, breach of the Constitution to justify the nullification of the law or its implementation. In case of doubt in the sufficiency of proof establishing unconstitutionally, the Court must sustain legislation because "to invalidate [a law] based on .... baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it."[55]

For the most part, I agree with the government's thrust that The Anti-Terrorism Act of 2020 is not invalid, only misunderstood. Thus, during the oral arguments, I prodded on the government's efforts, if any, in allaying the fears of the public on possible abuses in the implementation of the law, viz.:

> J. Javier: Can I have Mr. ASG Rigodon first .... Many of the petitioners including their respective counsel are bona fide members of the bar. Two (2) of them are former members of the Court who to this very date hold our highest respect and admiration. They are our compatriots whose love for this country like ours cannot be measured. They assert that instead of assuring our people protection, security, and safety, the anti-terror law triggers fears of massive rights abuses in view of what petitioners refer to as the grant of excessive and unchecked powers of the state under the law. That the law is a legalized form of capital punishment that can be inflicted anytime by one trigger-happy law enforcer or military officer. What is the government's position on this?
>
> ASG Rigodon: The assertions of the petitioners are highly speculative, your Honor and ... jurisprudence teaches us that assuming that there is a possibility of abusing the implementation, such possibility is not a ground to invalidate the law your Honor.
>
> J. Javier: Okay, very well. If the government says that fears and apprehensions are merely speculative, then, baseless, what has the government done to allay the fears, the apprehension, ... the suspicion, and feeling of repugnance of the public toward the ATL?
>
> ASG Rigodon: For one, your Honor, ... in his opening statement, the Solicitor General pointed out that the government is not the enemy here but the terrorist your Honor. And as ... ASG Galandines has stated ... [if you are not] a terrorist, you have nothing to fear.
>
> J. Javier: Alright, is that enough to allay the fears, the apprehensions, the suspicion, and repugnance of the public toward the ATL? ...
>
> ASG Rigodon: Your Honor, the State recognizes that the fight against terrorism requires a comprehensive approach comprising political, economic, diplomatic, military, and legal means taking into account the root cause of terrorism and or criminal activities. Such measures shall include conflict management and post-conflict peace building addressing the rules of conflict by building state capacity and promoting equitable economic development your Honor.
>
> J. Javier: Alright. Please pardon me but I think the answer is not responsive to my question, ... please present this in your memorandum. (Emphases added)

In their memorandum, however, respondents did not bother propound on the concrete measures undertaken by the government to quell the fears, apprehensions, suspicions, and general feeling of repugnance of the public toward The Anti-Terrorism Act of 2020. On the contrary, they merely quoted President Rodrigo Duterte's statement that "for the law-abiding citizen of this country, ... Huwag ho kayong matakot kung hindi ka terorista"[56] and added "fear, however, is common in all things new, but unfounded fear should not cause a paralysis of a law seeking to protect the country and its people."[57]

The deafening silence of respondents on this front pales in comparison to the efforts of other countries in

correcting any misinformation among its citizens regarding their respective anti-terror laws.

For instance, the official website of the US Department of Justice (DOJ) contains a comparative presentation between the myths regarding their Terrorist Expatriation Act of 2010, on the one hand, and what the reality is, on the other. All throughout the presentation, only the ordinary language known to the ordinary citizens is used. Hence, the US DOJ is able to inform and educate citizens about the real impact of the law on their lives, limbs, and fundamental liberties — that it is truly for their protection, not for their damnation.

For another, Canada has devoted an official website[58] for public safety, explaining what their anti-terror law is all about, as well as its policies and strategies to ensure its effective and efficient implementation. The Canadian government also devoted online space for consultations with stakeholders, meaning any organization, association, or concerned citizen can ask questions or express their opinions about the law, whether for or against it. The purpose is to encourage an open discussion between the citizens and the government concerning the law. Their website, too, enumerates their efforts to counter terrorism, their response plan, and strategies to mitigate threats of terrorism.[59] It also has a page on Listed Terrorist Entities, its listing process,[60] and complete publications and reports.[61] It provides transparency on how the law works and what the citizens could reasonably expect in its implementation.

In stark contrast, the official websites of our country's Department of National Defense, Department of Justice, Official Gazette, and the Presidential Communications Operations Office have no helpful content for purposes of explaining the provisions of The Anti-Terrorism Act of 2020 to the Filipino citizens. They bear nothing that would aid the lay person in understanding the law and to ease whatever fears, misconception, suspicion, or aversion they may have toward it.

What I discovered instead was a post by the Philippine National Police Human Rights Affairs Office captioned as Frequently Asked Questions or FAQs. But this post was made before The Anti-Terrorism Act of 2020 got enacted and way before its IRR was issued.[62] Also, the FAQs were written in a language known only to lawyers. In fact, some portions of the post simply copied and pasted the provisions of the then anti-terror bill. But is this enough to enlighten and convince the Filipino people that the law is not their enemy, nor is the government; that if they are not terrorists, they need not be afraid; and that the law is meant to protect them, not to annihilate them? I believe not.

Meantime, the people, through mainstream and social media, are bombarded with news about alleged extrajudicial killings perpetrated in line with the counterinsurgency program of the government, among them, of known activists following accusations against them of working with armed guerrillas, or of labor leaders in the course of the implementation of search warrants on them.

We, too, must remain cognizant of the fact that the law was enacted at the time of rampant "red-tagging."

Red-tagging, whoever coined it, is the meta legal version of proscription and designation; one need not go through the formal processes but could still achieve some of their desired effects. All it requires is a platform which in this case could be as simple as banners, flyers, street tarpaulins, or social media posts. It does not require any official document, let alone, a judicial order. In ordinary times, red-tagging would be considered a libelous offense. But now, red-tagging is deadly. It is a threat to life, security and liberty.

As the Court itself has observed, not even lawyers and judges are spared from red-tagging. In fact, the Court just this year issued a strongly worded statement condemning in the strongest sense every instance where lawyers are threatened, and a judge, unfairly labeled, as in the case of Mandaluyong City Regional Trial Court Judge Monique Quisumbing-Ignacio who was linked to rebel groups after dismissing charges against two (2) identified activists.

On the other hand, on March 12, 2021, a certain Police Lieutenant sent a letter to the Clerk of Court, Hall of Justice, Calbayog City requesting for a list of lawyers who represent "communist terrorist group personalities" for submission to "PNP higher offices." Attached to the letter was a form to be filled out by the clerk of court. The form bore several columns for the name of the lawyer, the name of the communist terrorist client, the case handled by the lawyer, and one column asked for the "mode of neutralization" for each personality involved, whatever that means.

Considering the foregoing backdrop, how then do we expect the public to positively react to The Anti-Terrorism Act of 2020?

Indeed, anyone with internet access can read the provisions of the law and its implementing rules and regulations. But knowing the provisions of the law is one thing, understanding these provisions is another. And as it has been often said, people fear what they do not understand.

Obviously, respondents have fallen short in launching and sustaining an effective, far-reaching, and massive information dissemination campaign to the people to make them understand what The Anti-Terrorism Act of 2020 is truly all about - that the law is their protector, not their enemy. The public requires, nay deserves more than lip service for their peace of mind. They need assurance. They cannot be left submerged in their fears — a cryptonym for terror.

In another vein, our law enforcement officers and military personnel must be properly guided in the implementation of The Anti-Terrorism Act of 2020. Their respective heads of agency must ensure that they undergo relevant trainings and seminars on how the law ought to be implemented. Our law enforcement officers and military personnel must be apprised of the boundaries of the law and the limits of their exercise of discretion. Not only would this help assure our citizens that their fundamental liberties would be respected, but also prevent incidents similar to what transpired in Calbayog City.

It all boils down to transparency in what can and cannot be done by both the citizens and state actors under The Anti-Terrorism Act of 2020. Thus, I call on the implementing agencies to conduct relevant trainings and information drives on the The Anti-Terrorism Act of 2020, its purposes, implications, impact on the lives of ordinary citizens, and manner of enforcement. For information is a vital need of our society; good governance is ensured when there is a flow of information between the State and the people it defends.

SIX. I would like to offer my ruminations on the constitutionality of Sections 16 and 17 of The Anti-Terrorism Act of 2020 which was not discussed in the ponencia of Justice Carandang.

Under Section 16 of The Anti-Terrorism Act of 2020, law enforcement or military personnel may perform surveillance activities on suspected terrorists when so authorized by the Court of Appeals, thus:

> SECTION 16. Surveillance of Suspects and Interception and Recording of Communications. — The provisions of Republic Act No. 4200 otherwise known as the "Anti-Wire Tapping Law" to the contrary notwithstanding, a law enforcement agent or military personnel may, upon a written order of the Court of Appeals secretly wiretap, overhear and listen to, intercept, screen, read, surveil, record or collect, with the use of any mode, form, kind or type of electronic, mechanical or other equipment or device or technology now known or may hereafter be known to science or with the use of any other suitable ways and means for the above purposes, any private communications, conversation, discussion/s, data, information, messages in whatever form, kind or nature, spoken or written words (a) between members of a judicially declared and outlawed terrorist organization, as provided in Section 26 of this Act; (b) between members of a designated person as defined in Section 3 (e) of Republic Act No. 10168; or (c) any person charged with or suspected of committing any of the crimes defined and penalized under the provisions of this Act: Provided, That, surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources

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> and confidential business correspondence shall not be authorized.
>
> ....

Section 3 (i) specifies what these "surveillance activities" refer to:

> SECTION 3. Definition of Terms. — As used in this Act:
>
> ....
>
> (i) Surveillance Activities shall refer to the act of tracking down, following, or investigating individuals or organizations; or the tapping, listening, intercepting, and recording of messages, conversations, discussions, spoken or written words, including computer and network surveillance, and other communications of individuals engaged in terrorism as defined here under.

Meanwhile, Section 17 enumerates the conditions before the Court of Appeals may issue the requisite authorization:

> SECTION 17. Judicial Authorization, Requisites. — The authorizing division of the Court of Appeals shall issue a written order to conduct the acts mentioned in Section 16 of this Act upon:
>
> (a)
>
> Filing of an ex parte written application by a law enforcement agent or military personnel, who has been duly authorized in writing by the Anti-Terrorism Council (ATC); and
>
> (b)
>
> After examination under oath or affirmation of the applicant and the witnesses he/she may produce, the issuing court determines:
>
> (1)
>
> that there is probable cause to believe based on personal knowledge of facts or circumstances that the crimes defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act has been committed, or is being committed, or is about to be committed; and
>
> (2)
>
> that there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained.

According to petitioners, Section 16 violates the constitutional right to due process, against unreasonable searches and seizures, and to privacy of communication and correspondence. They, too, assail Section 17 as it allegedly infringes on the constitutional right against unreasonable searches and seizures and forecloses the remedies under the rules on amparo and habeas data.

Petitioners are mistaken.

A.

Surveillance Activities under RA 11479 do not violate the right to privacy of communications.

The present and previous iterations of the Constitution have invariably upheld the right of all individuals to privacy of communications, viz.:

> Article III, Section 1(5) of the 1935 Constitution:
>
> The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise.
>
> Article III, Section 4(1) of the 1973 Constitution:
>
> The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety and order require otherwise.
>
> Article III, Section 3(1) of the 1987 Constitution:
>
> The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law. (Emphases added)

Notably though, the right to privacy of communications is far from absolute. It exempts from the guarantee, intrusions upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.

The first exception is in accordance with the search warrant requirement under Article III, Section 2 of the 1987 Constitution, thus:

> SECTION 2. The right of the people lo be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In the landmark case of Katz v. US, the Supreme Court of the United States (SCOTUS)[63] set the criteria when prior judicial warrant is necessary before there could be valid government intrusion of the right to privacy. There, the government introduced evidence of Katz' telephone conversations which were overheard by Federal Bureau of Investigation (FBI) agents using electronic listening and recording devices attached to the outside of the public telephone booth from which Katz placed his calls. SCOTUS held, however, that Katz had a reasonable expectation that his telephone conversations from inside a phone booth are private, hence, constitutionally protected. An antecedent judicial authorization was therefore a precondition for the kind of electronic surveillance involved.[64] As it was, however, no such prior judicial authorization was issued in that case. The FBI agents had no right to listen to Katz' conversations; whatever they heard and recorded during surveillance were in fact treated inadmissible in evidence under the exclusionary rule.

As for the second exception, i.e., when public safely or order requires otherwise, as prescribed by law, retired Associate Justice Antonio T. Carpio elucidated in his Concurring and Dissenting Opinion in Disini v. Secretary of Justice,[65] thus:

> When the members of the 1971 Constitutional Convention deliberated on Article III, Section 4 (1) of the 1973 Constitution, the counterpart provision of Article III, Section 3 (1) of the 1987 Constitution, the phrase "public safety or order" was understood by the convention members to encompass "the security of human lives, liberty and property against the activities of invaders, insurrectionists and rebels." This narrow understanding of the public safety exception to the guarantee of communicative privacy is consistent with Congress' own interpretation of the same exception as provided in Article III, Section 1 (5) of the 1935 Constitution.

He, too, noted that compared to the previous 1935 and 1973 versions of the constitutional guarantee, the present

iteration expressly states that it is Congress who decides which are matters of public safety and order. The inclusion of the phrase "as prescribed by law" removed from the executive branch of government its erstwhile authority to decide motu proprio when an intrusion on the right to privacy would be warranted by public exigencies.

Hence, in Lagman v. Medialdea[66] the Court noted two (2) pieces of legislature wherein intrusion into the right to privacy was justified for the higher causes of public safety and order. For one, RA 10173, or the Data Privacy Act of 2012, sanctions the processing of one's personal information, even without the consent of the delta subject, whenever "necessary in order to respond to national emergency, to comply with the requirements of public order and safety, or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of (the National Privacy Commission's) mandate," thus:

> SECTION 12. Criteria for Lawful Processing of Personal Information. - The processing of personal information shall be permitted only if not otherwise prohibited by law, and when at least one of the following conditions exists:
>
> ....
>
> (e) The processing is necessary in order to respond to national emergency, to comply with the requirements of public order and safety, or to fulfill functions of public authority which necessarily includes the processing of personal data for the fulfillment of its mandate;
>
> SECTION 3. Definition of Terms. - Whenever used in this Act, the following terms shall have the respective meanings hereafter set forth:
>
> ....
>
> (j) Processing refers to any operation or any set of operations performed upon personal information including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data. (Emphases added)

For another, Section 3 of RA 4200, the Anti-Wiretapping Act, allows any peace officer, upon court authorization in cases involving national security "to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or walkie-talkie or tape recorder, or however otherwise described," thus:

> SECTION 3. Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding sections in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security: Provided, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated herein above has been committed or is being committed or is about to be committed: Provided, however, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed; (2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and (3) that there are no other means readily available for obtaining such evidence.... (Emphases added.)

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The provision exempts from the ban on wiretapping "cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the RPC, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security."[67]

Even then, the Anti-Wiretapping Act provides that in these specific and limited cases where wiretapping has been allowed, a court warrant, is nevertheless required before the government can record the conversations of individuals. In other words, despite the use of the conjunction "or" in Article III, Section 3 (1) of the 1987 Constitution, both exceptions require judicial authorization before a person's right to privacy may be encroached. The difference is that under the first exception, the rules on the application and implementation of search warrants under Rule 126 of the Rules of Criminal Procedure would apply. On the other hand, the procedure for obtaining a judicial authority under the second exception is outlined in the law prescribing such measure in the interest of public order and safety, as in Section 3 of RA 4200.

I find that Sections 16 and 17 of The Anti-Terrorism Act of 2020 on surveillance, just like RA 4200, falls within the second exception to the right to privacy of communications, hence, the same are valid. As eloquently discussed in the ponencia of Justice Carandang, terrorism has far-reaching repercussions beyond the immediate target or victim. It is deemed the most prevalent danger to the security of national states and the citizens thereof.[68] Section 2 of RA 11479 further recognizes terrorism as a national security concern and must be dealt with as such:

> SECTION 2. Declaration of Policy. — It is declared a policy of the State to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations....

Clearly, countering terrorism has become a top national security priority, so much so that mere threats thereof must be nipped in the bud. One way of achieving this is through surveillance activities sanctioned under Article III, Section 3 (1) of the 1987 Constitution which allows the Legislature to prescribe measures by which the government may intrude on a person's right to privacy of communications in pursuit of the above-cited State policy. As it was, the Congress codified such measures under Sections 16 and 17 of RA 11479, as implemented through Rule 5 of the law's Implementing Rules and Regulations.

B.

Surveillance Activities do not constitute unreasonable searches and seizures

Petitioners' claim that surveillance activities constitute unreasonable searches and seizures is likewise untenable.

To recall, Article III, Section 2 of the 1987 Constitution decrees:

> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (Emphases added)

Generally, a search or seizure is deemed "reasonable" if the law enforcement officer has a warrant from a judge based on probable cause to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched. Although a search may be reasonable without a warrant if an exception applies under the circumstances,[69] intrusions on the right to privacy of communications, such as surveillance activities, invariably require an antecedent judicial authorization.

Under Section 17 of The Anti-Terrorism Act of 2020, the requisite judicial authorization may only be issued by the Court of Appeals upon written application by the duly-authorized law enforcement agent or military personnel. During the proceedings, the applicant must establish:

> (1)
>
> that there is probable cause to believe based on personal knowledge of facts or circumstances that the crimes defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act has been committed, or is being committed, or is about to be committed; and
>
> (2)
>
> that there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained.

In fine, the requirement of probable cause under Article III, Section 2 of the 1987 Constitution is still retained under Section 17, albeit determined by a Division of the Court of Appeals, rather than a trial court judge. There is no reason therefore to consider Section 17 as a deviation from the constitutional guarantee.

The provisions of RA 4200 may also be used as benchmark for determining whether the provisions of RA 11479 pass the test of reasonableness, thus:

> RA 4200
>
> RA 11479
>
> Section 3. Nothing contained in this Act however, shall render it unlawful c punishable for any peace officer, who is authorized by a written order of the Court to execute any of the acts declared to be unlawful in the two preceding sections in cases involving the crimes of treason espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion sedition, conspiracy to commit sedition inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security: ...
>
> The court referred to in this section shall be understood to mean the Court of First Instance within whose territorial jurisdiction the acts for which authority is applied for are to be executed.
>
> SECTION 16. Surveillance of Suspects and Interception and Recording of Communications. — The provisions of Republic Act No. 4200, otherwise known as the "Anti-Wire Tapping Law" to the contrary notwithstanding, a law enforcement agent or military personnel may, upon a written order of the Court of Appeals secretly wiretap, overhear and listen to, intercept, screen, read, surveil record or collect, with the use of any mode form, kind or type of electronic, mechanical or other equipment or device or technology now known or may hereafter be known to science or with the use of any other suitable ways and means for the above purposes, any private communications, conversation, discussion/s, data, information, messages in whatever form, kind or nature, spoken or written words (a) between members of a judicially declared and outlawed terrorist organization, as

provided in Section 26 of this Act; (b) between members of a designated person as defined in Section 3 (e) of Republic Act No. 10168; or (c) any person charged with or suspected ot committing any of the crimes defined and penalized under the provisions of this Act: Provided, That, surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized.

The law enforcement agent or military personnel shall likewise be obligated to (1) file an ex-parte application with the Court of Appeals for the issuance of an order, to compel telecommunications service providers (TSP) and internet service providers (ISP) to produce all customer information and identification records as well as call and text data records, content and other cellular or internet metadata of any person suspected of any of the crimes defined and penalized under the provisions of this Act; and (2) furnish the National telecommunications Commission (NTC) a copy of said application. The NTC shall likewise be notified upon the issuance of the order for the purpose of ensuring immediate compliance.

Section 3. ... That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated herein above has been committed or is being committed or is about to be committed: Provided, however, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed; (2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and (3) that there are no other means readily available for obtaining such evidence. (Emphases added)

SECTION 17. Judicial Authorization, Requisites. — The authorizing division of the Court of Appeals shall issue a written order to conduct the acts mentioned in Section 16 of this Act upon:

(a) Filing of an ex parte written application by a law enforcement agent or military personnel, who has been duly authorized in writing by the Anti-Terrorism Council (ATC); and

(b) After examination under oath or affirmation of the applicant and the witnesses he/she may produce, the issuing court determines:

(1) that there is probable cause to believe based on personal knowledge of facts or circumstances that the crimes defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act has been committed, or is being committed, or is about to be committed; and

(2) that there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained. (Emphases added)

Section 3. ....

The order granted or issued shall specify: (1) the identity of the person or persons whose communications, conversations, discussions, or spoken words are to be overheard, intercepted, or recorded and, in the case of telegraphic or telephonic communications, the telegraph line or the telephone number involved and its location; (2) the identity of the peace officer authorized to overhear, intercept, or record the communications, conversations, discussions, or spoken words; (3) the offense or offenses committed or sought to be prevented; and (4) the period of the authorization.....(Emphases added)

SECTION 18. Classification and Contents of the Order of the Court. — The written order granted by the authorizing division of the Court of Appeals as well as the application for such order, shall be deemed and are hereby declared as classified information. Being classified information, access to the said documents and any

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information contained in the said documents shall be limited to the applicants, duly authorized personnel of the ATC, the hearing justices, the clerk of court and duly authorized personnel of the hearing or issuing court. The written order of the authorizing division of the Court of Appeals shall specify the following: (a) the identity, such as name and address, if known, of the person or persons whose communications, messages, conversations, discussions, or spoken or written words are to be tracked down, tapped, listened to, intercepted, and recorded; and, in the case of radio, electronic, or telephonic (whether wireless or otherwise) communications messages, conversations, discussions, or spoken or written words, the electronic transmission systems or the telephone numbers to be tracked down, tapped listened to, intercepted, and recorded and their locations or if the person or person; suspected of committing any of the crimes defined and penalized under the provision of this Act are not fully known, such person or persons shall be the subject of continuous surveillance; (b) the identity of the law enforcement agent or military personnel, including the individual identity of the members of his team judicially authorized to undertake surveillance activities; (c) the offense or offenses committed, or being committed, or sought to be prevented; and, (d) the length of time within which the authorization shall be used or carried out (Emphases added)

Section 3. ...

The authorization shall be effective for the period specified in the order which shall not exceed sixty (60) days from the date of issuance of the order, unless extended or renewed by the court upon being satisfied that such extension or renewal is in the public interest. (Emphases added)

SECTION 19. Effective Period of Judicial Authorization. — Any authorization granted by the Court of Appeals, pursuant to Section 17 of this Act, shall only be effective for the length of time specified in the written order of the authorizing division of the Court of Appeals which shall not exceed a period of sixty (60) days from the date of receipt of the written order by the applicant law enforcement agent or military personnel.

The authorizing division of the Court of Appeals may extend or renew the said authorization to a non-extendible period, which shall not exceed thirty (30) days from the expiration of the original period: Provided, That the issuing court is satisfied that such extension or renewal is in the public interest: and Provided, further, That the ex parte application for extension or renewal, which must be filed by the original applicant, has been duly authorized in writing by the ATC.

In case of death of the original applicant or in case he/she is physically disabled to file the application for extension or renewal, the one next in rank to the original applicant among the members of the team named in the original written order shall file the application for extension or renewal: Provided, finally That, the applicant law enforcement agent or military personnel shall have thirty (30) days after the termination of the period granted by the Court of Appeals as provided in the preceding paragraphs within which to file the appropriate case before the Public Prosecutor's Office for any violation of this Act.

For purposes of this provision, the issuing court shall require the applicant law enforcement or military official to inform the court, after the lapse of the thirty (30)-day period of the fact that an appropriate case for violation of this Act has been filed with the Public Prosecutor's Office.(Emphases added)

Section 3.

....

All recordings made under court authorization shall, within forty-eight hours after the expiration of the period fixed in the order, be deposited with the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the peace officer granted such authority stating the number of recordings made, the dates and times covered by each recording, the number of tapes, discs, or records included in the deposit, and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the envelope or package deposited with the court. The envelope or

> package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.
>
> SECTION 20. Custody of Intercepted and Recorded Communications. — All tapes, discs, other storage devices, recordings, notes, memoranda, summaries, excerpts and all copies thereof obtained under the judicial authorization granted by the Court of Appeals shall, within forty-eight (48) hours after the expiration of the period fixed in the written order or the extension or renewal granted thereafter, be deposited with the issuing court in a sealed envelope or sealed package, as the case may be, and shall be accompanied by a joint affidavit of the applicant law enforcement agent or military personnel and the members of his/her team.
>
> In case of death of the applicant or in case he/she is physically disabled to execute the required affidavit, the one next in rank to the applicant among the members of the team named in the written order of the authorizing division of the Court of Appeals shall execute with the members of the team that required affidavit.
>
> It shall be unlawful for any person, law enforcement agent or military personnel or any custodian of the tapes, discs, other storage devices, recordings, notes, memoranda, summaries, excerpts and all copies thereof to remove, delete, expunge, incinerate, shred or destroy in any manner the items enumerated above in whole or in part under any pretext whatsoever.
>
> Any person who removes, deletes, expunges, incinerates, shreds or destroys the items enumerated above shall suffer the penalty of imprisonment of ten (10) years. (Emphases added)

The foregoing provisions readily show that The Anti-Terrorism Act of 2020 has more safeguards in place to protect the constitutional right to privacy of communications as compared to RA 4200. Consider:

First. Under RA 4200, the authorization is issued by a lone trial court judge. Under RA 11479, it is issued by a Division of the Court of Appeals.

Second. The Anti-Terrorism Act of 2020 explicitly limits the subject of surveillance to communications (a) between members of a judicially declared and outlawed terrorist organization, as provided in Section 26 of the law; (b) between members of a designated person as defined in Section 3(e) of RA 10168; or (c) of any person charged with or suspected of committing any of the crimes defined and penalized under the same law; communications between lawyers and clients, doctors and patients, journalists and their sources, and confidential business correspondence are expressly excluded. No such limitation is contained in RA 4200.

Third. Under The Anti-Terrorism Act of 2020, the applicant for judicial authority must be duly authorized by the ATC to do so. The ATC may therefore install a vetting process and screen applicants before allowing them to go to court.

Fourth. In The Anti-Terrorism Act of 2020, the applicant is mandated by law to report within thirty (30) days whether the appropriate case has been filed before the prosecutor's office.

Fifth. The Anti-Terrorism Act of 2020 criminalizes infidelity in the custody of recorded communications, unauthorized opening or disclosure of deposited materials, and malicious interception of communications.[70]

Finally. Rule 5.25 of the Implementing Rules and Regulations of The Anti-Terrorism Act of 2020 elucidates how RA 10173 or the Data Privacy Act bears upon surveillance activities under RA 11479:

> RULE 5.25. Compliance with the Data Privacy Act. —
>
> The processing of personal data for the purpose of surveillance, interception, or recording of communications shall comply with Republic Act No. 10173, or the "Data Privacy Act of 2012," including adherence to the principles of transparency, proportionality, and legitimate purpose.

Thus, if RA 4200 which affords fewer protection to the constitutional right to privacy of communications passes the test of reasonableness and remains to be valid for 56 years and counting, with more reason the provisions of The Anti-Terrorism Act of 2020 pertaining to surveillance ought to be upheld.

C.

RA 11479 does not foreclose the application of other judicial remedies

Aside from the safety features enumerated above, judicial remedies are available to parties aggrieved by surveillance activities, thus:

> RULE 5.23. Remedy of the Aggrieved Party. —
>
> The aggrieved party in the crime of unauthorized or malicious interceptions and/or recordings shall be furnished with all information that have been maliciously procured so he or she may avail of the remedies provided by law.
>
> RULE 5.24. Remedy in Surveillance without Legal Ground. —
>
> Any person who suspects that his communications are unlawfully being intercepted or kept without legal grounds has the right to file a petition for writ of habeas data in accordance with the Supreme Court's "Rule on the Writ of Habeas Data" (A.M. No. 08-1-16-SC, 22 January 2008).

These provisions single-handedly negate petitioners' claim that there is no judicial recourse available in relation to surveillance activities under The Anti-Terrorism Act of 2020.

SEVEN. Although technically it is not part of the arguments raised in the petitions, I shudder at the thought that the military establishment has purged some university libraries of printed materials referencing communism or anything related to it.[71] In this age of the internet and the world wide web, the endeavor is incredibly useless, if not unwise. In the first place, how many students access printed materials? On the other hand, this endeavor is chilling and terrifying. If there is anything terroristic, it is this purge of the libraries — printed materials now, internet and social media next?

This endeavor to rid libraries of reading materials on communism not only violates the right to be informed and the right of academic institutions to academic freedom, both cognates of the right to free speech.

The purge is also outrightly illegal. It is the sole professional prerogative of professional librarians under The Philippine Librarianship Act of 2003 to -

> - select and acquire multi-media sources of information that would best respond to clientele's need for adequate, relevant, and timely information;
>
> - catalogue and classify knowledge or sources of information into relevant organized collections and creation of local databases for speedy access, retrieval or delivery of information;
>
> - establish library systems and procedures; disseminate information; render information, reference and research assistance; archive; and educate users;
>
> - render services involving ... the preparation of bibliographies, subject authority lists, thesauri and union catalogues/lists;
>
> - prepare, evaluate or appraise plans, programs and/or projects for the establishment, organization,

> development and growth of libraries or information centers, and the determination of library requirements for space, buildings, structures or facilities; and, organize, conserve, preserve and restore historical and cultural documents and other intellectual properties.

What the military establishment has been doing is contrary to law. The university libraries that have been approached to purge its contents of anything that bears the word "communism" or the like is doing a disservice to The Philippine Librarians/tip Act of 2003, most especially the goal of professionalizing and raising the standards of librarians throughout the country.

In the ponencia's understanding of Section 6 of The Anti-Terrorism Act of 2020, the following practice, act, or conduct should not be held criminal -

> Accordingly, the foregoing construction should foreclose any interpretation that would include "skill" as ordinarily and broadly understood, especially considering that the teaching of "general knowledge," as in classroom instruction done for purely academic purposes and in good faith, is expressly excluded from the definition of training under Section 3(k). To the Court's mind, the parameters found in Section 3(k) betrays a legislative intent to put a stop to the knowing and deliberate transfer of specific skills in connection with projected terrorist acts, and not the imparting of knowledge in the general and broad sense.

As if resolving the arguments against the constitutionality of Section 6 of The Anti-Terrorism Act of 2020 were not worrisome by itself, the purging of the libraries of the word commies or communism or communist is not any bit reassuring that the criminal provisions under attack would not be misused and misapplied. I really see no logic in this endeavor except somehow to validate petitioners' claims in challenging Section 6 that -

> To expound, for the petitioners, "training" in Section 6 is vague or overly broad because even though it is defined under Section 3 (k), the term "instruction" is nevertheless undefined. The petitioners in G.R. No. 252580, for example, point out that the ATA curtails the academic freedom of professors who teach Marxism or Thomas Aquinas' philosophy on the justification of war. They fear that under this provision, the study or re-enactment of Dr. Jose Rival's El Filibusterismo, a work which the Spanish colonial government had considered subversive, might be considered as pretext for the state to arrest teachers and students.

The ponencia of Justice Carandang then says that the above-quoted argument fails to impress. But with this latest caper in the reincarnated form of a once failed cultural and political censorship scheme, I hope the State itself is not undermining the Court's effort to let this otherwise noble law see the light of day.

EIGHT. An important focus of the discussions here pertains to the limits of the Court's authority to construe a statute to make it conformable to the Constitution. The discussions reflect the age-old tension between models of judicial decision-making, the declaratory model against the policy-making approach, and debate on the propriety or impropriety of reading in and reading out meanings into the statutory language.

The declaratory model conceives of the judge as an adjudicator of specific and concrete disputes who decides cases by the mechanical application of legal rules as already established in the legal system. These rules are binding on judges and a judge's personal opinion about the wisdom of the rules is irrelevant. On the other hand, the policy-making approach is rooted in legal realism which posits that the mechanical application of rigid and automatic rules cannot adequately dispose of individual cases. This approach sees judges as living in an active polity where everyone who wields authority is actively engaged in making policies for the governmental system to survive.

The expanded and expansive power of judicial review has made each member of the Court a critical overseer of government policy. We have been thrusted into the role of being among the guardians of the Constitution and its values but ultimately the final say, or the buck, stops at the halls of the Court.

With constitutional values oftentimes broadly expressed and defined and statutory expressions vetted and inked to balance a myriad of competing interests, the Court has inevitably relied much more heavily upon the balancing of policy considerations. This has consequently ushered in an era of activism that every member of the Court from time immemorial cherishes to affirm or even deny, a denial that I say is nonetheless pregnant with muted admissions of such activism.

The supremacy of the Constitution above all else in the legal order seems to suggest that the only remedy is for the Court to declare the invalidity of inconsistent laws to the extent of their inconsistency. Some of the opinions sway to this suggestion.

In constitutional interpretative practice, however, the Court has developed a number of remedial variations ranging from nullification or striking down and severance or reading out the offending section without striking down the entire statute, to the remedy of reading-in provisions under existing laws which after all were deemed to have been considered by the legislature whenever it enacted a new law.

I believe that the ponencia of Justice Carandang canvassed these considerations when it chose to read in a meaning to the contentious provisions of The Anti-Terrorism Act of 2020 in order to sustain its validity and so we may continue to live as a peaceful and safe community where terrorism, destruction, and mayhem if not totally avoided is effectively reduced to the barest of bare minimum, without unnecessarily sacrificing the human rights of our people.

ACCORDINGLY, I join in full the dispositions of the ponencia of Associate Justice Rosmari D. Carandang to grant in part the petitions, declare identified portions of The Anti-Terrorism Act of 2020 as unconstitutional, and decree a few other ancillary forms of relief.

Further, I call on the Executive Branch of government, particularly the implementing agencies, law enforcement officers, and military personnel to launch a more extensive, yet, simplified information campaign on the implications of the The Anti-Terrorism Act of 2020, highlighting its safeguards against abuses, to allay the fears of the public. Too, our law enforcement officers and military personnel ought to be trained and educated on the proper implementation of the law, including the limits of their authority under it.

---

[1] 751 Phil. 301, 355-356 (2015).

[2] 605 Phil. 43, 96 (2009).

[3] Chief Justice Puno, Dissent, Soriano v. Laguardia, supra at 148.

[4] Id.

[5] Id.

[6] Id.

[7] Dissent, Soriano v. Laguardia, supra 150.

[8] McNally v. Bredemann, 2015 IL App (1st) 134048, 391 111. Dec. 287, 30 N.E.3d 557 (App. Ct. 1st Dist. 2015).

[9] People v. Gitlow, 234 N.Y. 132, 136 N.E. 317 (1922), affd, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925) and (overruled in part on other grounds by, People v. Epton, 19 N.Y.2d 496, 281 N.Y.S.2d 9, 227 N.E.2d 829 (1967)).

[10] Musser v. Utah, 333 U.S. 95, 68 S. Ct. 397, 92 L. Ed. 562 (1948).

[11] Salonga v. Paño, 219 Phil. 402, 426 (1985); U.S. v. Fleschner, 98 F.3d 155 (4th Cir. 1996).

[12] Salonga v. Paño, supra; Colten v. Kentucky, 407 U.S. 104, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972).

[13] Higgins v. Kentucky Sports Radio, LLC, 951 F.3d 728, 736-37 (6th Cir. 2020): Speech that does not 'specifically advocate' for listeners to take unlawful action does not constitute incitement. Id. at 245. Even if communications have the 'tendency ... to encourage unlawful acts,' and even if the speaker intended the communications *737 to have that effect, those facts do not furnish a 'sufficient reason for banning' the communications, absent direct advocacy. Ashcroft v. Free Speech Coalition, 535 U.S. 234, 253, 122 S.Ct. 1389, 152 L.Ed.2d 403 (2002). Higgins has not identified any statement made by the defendants, explicitly or implicitly, that fans should attack his business.

[14] Higgins v. Kentucky Sports Radio, LLC, 951 F.3d 728, 736 (6th Cir. 2020).

[15] Shuttlesworth v. City of Birmingham, Ala., 373 U.S. 262, 83 S. Ct. 1130, 10 L. Ed. 2d 335 (1963).

[16] Nicolas-Lewis v. Commission on Elections, G.R. No. 223705, August 14, 2019.

[17] I use "their" to indicate gender sensitivity, neutrality, and non-affiliation.

[18] SECTION 9. Inciting to Commit Terrorism. — Any person who, without taking any direct part in the commission of terrorism, shall incite others to the execution of any of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end, shall suffer the penalty of imprisonment of twelve (12) years.

[19] I use "their" to indicate gender sensitivity, neutrality and non-affiliation.

[20] RULE 4.9. Inciting to Commit Terrorism. - It shall be unlawful for any person who, without taking any direct part in the commission of terrorism, shall incite others to commit the execution of any of the acts specified as terrorism as defined in Section 4 of the Act.

There is incitement to commit terrorism as defined in Section 4 of the Act when a person who does not take any direct part in the commission of terrorism incites others to the commission of the same in whatever form by means of:

i. speeches;
ii. proclamations;
iii. writings;
iv. emblems;
v. banners; or
vi. other representations.

and the incitement is done under circumstances that show reasonable probability of success in inciting the commission of terrorism.

In determining the existence of reasonable probability that speeches, proclamations, writings, emblems, banners, or other representations would help ensure success in inciting the commission of terrorism, the following shall be considered:

- Context

Analysis of the context should place the speeches, proclamations, writings, emblems, banners, or other

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representations within the social and political context prevalent at the lime the same was made and/or disseminated;

- Speaker/actor

The position or status in the society of the speaker or actor should be considered, specifically his or her standing in the context of the audience to whom the speech or act is directed;

- Intent

What is required is advocacy or intent that others commit terrorism, rather than the mere distribution or circulation of material;

- Content and form

Content analysis includes the degree to which the speech or act was provocative and direct, as well as the form, style, or nature of arguments deployed in the speech, or the balance struck between the arguments deployed;

- Extent of the speech or act

This includes such elements as the reach of the speech or act, its public nature, its magnitude, the means of dissemination used and the size of its audience; and

- Causation

Direct causation between the speech or act and the incitement. Any such person found guilty therefor shall suffer the penalty of imprisonment of twelve (12) years.

[21] See e.g., Citizens United v. Federal Election Commission, 558 U.S. 310 (2010).

[22] SECTION 29. Detention without Judicial Warrant of Arrest. - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period of ten (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.....

[23] Ponencia, p. 184.

[24] The Revised Penal Code.

[25] Amendment to Article 125 of Act No. 3815 (Revised Penal Code), Act No. 3940, November 29, 1932.

[26] Amending Article 125 of the Revised Penal Code Re: Delay in Delivery of Detained Persons, Republic Act No. 1083, June 15, 1954.

[27] Amending Article 125 of Revised Penal Code as Amended, Presidential Decree No. 1404, June 9, 1978.

[28] Modifying Executive Order No. 59, dated June 10, 1987.

[29] Amending Article 125 of Revised Penal Code Re: Delivery of Detained Persons to Proper Judicial Authorities, Executive Order No. 272, July 25, 1987.

[30] Ponencia, p. 207.

[31] https://www.justice.gov/archive/11/subs/add_myths.htm#s412 Accessed: November 3, 2021.

[32] https://www.legislation.gov.uk/ukpga/2006/11/part/2/crossheading/detention-of-terrorist-suspects/enacted Accessed: November 3, 2021.

[33] https://www.legislation.sa.gov.au/LZ/C/A/TERRORISM%20(PREVENTATIVE%20DETENTI0N)%20ACT%202005/CURRENT/2005.71.AUTH.PDF Accessed: November 3, 2021.

[34] https://www.icj.org/wp-content/uploads/2013/07/Singapore-Constitution-l963-eng.pdf Accessed: November 4, 2021.

[35] https://www.icj.org/wp-content/uploads/2012/12/Malaysia-Security-Offenses-Special-Measures-Act-2012-eng.pdf Accessed: November 3, 2021.

[36] http://www.vertic.org/media/National%20Legislation/Indonesia/ID_Law_Criminal_Act_Terrorism.pdf Accessed: November 3, 2021.

[37] https://www.icj.org/wp-content/uploads/2012/12/Thailand-Emergency-Decree-on-Public-Administration-in-Emergency-Situation-2005-eng.pdf Accessed: November 3, 2021.

[38] https://www.icj.org/wp-content/uploads/2012/12/Brunei-Internal-Sccurity-Act-1982-2002-eng.pdf Accessed: November 4, 2021.

[39] Section 29, Anti-Terrorism Act.

[40] Id.

[41] Section 30, Anti-Terrorism Act.

[42] Section 32, Anti-Terrorism Act.

[43] Section 33, Anti-Terrorism Act.

[44] Section 46(c), Anti-Terrorism Act.

[45] Section 46, Anti-Terrorism Act.

[46] Section 47, Anti-Terrorism Act.

[47] Section 51, Anti-Terrorism Act.

[48] Section 29, Anti-Terrorism Act.

[49] Section 31, Anti-Terrorism Act.

[50] Section 43, Anti-Terrorism Act.

[51] Section 52, Anti-Terrorism Act.

[52] Petitioners' Memorandum for Cluster II Issues, pp. 53-54.

[53] See Joint Ship Manning Croup, Inc. v. Social Security System, G.R. No. 247471, July 7, 2020.

[54] See David v. Macapagal-Arroyo, 522 Phil. 705-854 (2006).

[55] Rama v. Moises, 802 Phil. 29, 80-81 (2016).

[56] Respondents' Memorandum, Volume I, p 2.

[57] Id. at 118.

[58] https://www.publicsafety.gc.ca/index-en.aspx. Last accessed May 14, 2021, 22:30.

[59] https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-lrn-sm/index-en.a.spx. Last accessed May 14, 2021, 22:31.

[60] https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/lstd-ntts/bt-lstng-prcss-en.aspx. Last accessed May 14, 2021, 22:31.

[61] https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/pblc-rprts-trrrst-thrt-en.aspx. Last accessed May 14, 2021, 22:32.

[62] https://hrao.pnp.gov.ph/images/FAQ_AntiTenorismAct2020.pdf?fbclid=lwARONdocAkRntDwmRwrWHs-IKuBVahm0xzxtNZHFRPW8pqI5Jjn7S9f3QlAY. Last accessed May 14, 2021, 22:40.

[63] 389 U.S. 347.

[64] See People v. Canton, 442 Phil. 743-764 (2002).

[65] 727 Phil. 28-430 (2014).

[66] 812 Phil. 179-853 (2017).

[67] Carpio, Concurring and Dissenting Opinion, Disini v. Secretary of Justice, 727 Phil. 28-430 (2014).

[68] Ponencia, p. 43.

[69] In Manibog v. People, G.R. No. 211214, March 20, 2019, the Count enumerated the instances of reasonable warrantless searches and seizures, thus:

1. Warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;
2. Seizure of evidence in "plain view;"
3. Search of a moving vehicle;
4. Consented warrantless search;
5. Customs search;
6. Stop and Frisk; and
7. Exigent and Emergency Circumstances.

[70] RULE 5.17. Crime in the Custody of Recorded Communications. —

It shall be unlawful for any person, law enforcement agent or military personnel, or any custodian of the tapes, discs, other storage devices recordings, notes, memoranda, summaries, excerpts and all copies thereof to remove, delete, expunge, incinerate, shred, or destroy in any manner the items enumerated in Section 20 of the Act in whole or in part under any pretext whatsoever.

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Any such person found guilty therefor shall suffer the penalty of imprisonment of ten (10) years.

....

RULE 5.20. Crime of Unauthorized Opening or Disclosing of Deposited Material. —

It shall be unlawful for any person to open, disclose, or use as evidence the scaled envelope or scaled package referred to in Section 22 of the Act without the authority granted by the authorizing division of the Court of Appeals.

Any such person found guilty therefor shall be penalized by imprisonment of ten (10) years.

....

RULE 5.22. Crime of Unauthorized or Malicious Interceptions and/or Recordings. —

It shall be unlawful for any law enforcement agent or military personnel to conduct surveillance activities without a valid judicial authorization pursuant to Section 17 of the Act.

Any such person found guilty therefor shall suffer the penalty of imprisonment of ten (10) years.

[71] Kurt Dela Peña, "Purge of 'subversive' PH books draws images of Nazi book-burning orgies" at https://newsinfo.inquirer.net/1496689/puige-of-subversive-ph-books-draws-images-of-nazi-book-burning-orgies#ixzz78KnJg0ye (last accessed October 4, 2021).

SEPARATE OPINION

INTING, J.:

In a country dubbed as a haven for terrorists,[1] there is a constant threat on human security, the nation's economy and social order. Although steps have been taken to mitigate the effects of terrorism in this country, the peril seemingly evolves and expands exponentially pushing nation countries to adopt more draconian measures to address this borderless crime against humanity. It is n struggle which is not limited to the local landscape. Relentlessly, unified efforts are gearing towards a global framework; after all, we have a common humanity to protect, with the attainment of international peace and security as our shared goal.

The ponencia highlighted the peculiar nature of terrorism and the global approach to combat it. Indeed, to address the massive and prolonged atrocities caused by terrorist acts, counterterrorism measures, including the enactment of stringent anti-terror laws, are undertaken worldwide. It does not mean, however, that by adopting these measures, basic rights are to be disregarded. Definitely, laws must, at all times and at all cost, be in consonance with the Constitution, especially the basic rights to life and liberty enshrined under the very first Section of our Bill of Rights.

The Court is once again faced with the colossal task of preventing violations of the Constitution and, in the process, must observe the balance between the nation's need for order and the citizen's exercise of individual liberties.

It bears stressing that while I concur in the results of the Court's Decision, I agree that only four out of the 37 petitions should be given due course. I vote that only G.R. Nos. 252585, 252767, 252768 and 253242 must be given due course considering that they are the only ones which present a justiciable controversy in relation to legal standing and actual or direct injury.

As the court of last resort, petitions filed before the Supreme Court, especially those filed directly and in the first instance, must conform strictly with the requisites of judicial review before they could be given due course.

The Court's power of judicial review which is inherent in all courts is vested no less by the Constitution under Section I,[2] Article VI11 thereof. The exercise of the power of judicial review has the following requisites: (1) there must be an actual case or justiciable controversy before this Court; (2) the question before this Court must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very lis mota of the case.[3]

With respect to the first requisite, an actual case or controversy is "one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.'"[4] This requirement must be coupled with "ripeness," meaning the act being challenged has had a direct adverse effect on the individual challenging it.[5] A petitioner must show that he/she has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[6]

In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other, concerning a real and not a mere theoretical question or issue.[7] An actual and substantial controversy admitting of a specific relief through a decree conclusive in nature must exist, in contrast to an opinion advising what the law would be upon a hypothetical state of facts.[8] "Courts, thus, cannot decide on theoretical circumstances. They are neither advisory bodies, nor are they tasked with taking measures to prevent imagined possibilities of abuse."[9]

Ripeness as an aspect of an actual case or controversy correlates to the second requisite of judicial review which is legal standing. As defined, a petitioner must allege a personal stake in the outcome of the controversy in that the interest of a person assailing the constitutionality of a statute must be direct and personal.[10] A party must be able to show, not only that the law or any government act is invalid, but also that he/she sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he/she suffers thereby in some indefinite way.[11] It must appear that the person complaining has been or is about to be denied some right or privilege to which he/she is lawfully entitled or that he/she is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[12]

Only four out of the 37 petitions have presented a justiciable controversy or a personal stake in the outcome of the case.

Veritably, I agree with Chief Justice Alexander G. Gesmundo that the Court may exercise the power of judicial review only after it has satisfied itself that a party with legal standing raised an actual controversy in a timely manner and after recourse to the hierarchy of courts, and that the resolution of the case pivots on a constitutional question.

To be sure, the petitioners in the four petitions (G.R. Nos. 252585, 252767, 252768 and 253242) are either identified or tagged as terrorists (Bayan Muna Party-List Representatives Carlos Isagani Zarate, Bishop Broderick S. Pabillo, et al., General Assembly Binding Women for Reforms, Integrity, Equality, Leadership and Action (GABRIELA), Inc., et al., and Coordinating Council for People's Development and Governance, Inc., Ferdinand Gaite, and Eufemia Cullamat, et al.), or cited as members of terrorist groups and are lined tip for arrest and prosecution, or are individuals whose bank accounts are under investigation pursuant to The Anti-Terrorism Act of 2020[13] (ATA) (Bishop Broderick S. Pabillo, et al.).[14] Considering that they face actual, direct and real effects of the enforcement of the ATA, their cases must be given due course, as opposed to those petitions which only invoke the possibility of infringement of rights should the ATA be enforced against them.

The Court recognizes the exceptions to legal standing as carved out by jurisprudence, one of which is the doctrine of transcendental importance. However, as earlier established, there are already four petitions which presented a justiciable controversy in compliance with the requisites of judicial review. Thus, the transcendental importance doctrine, being the exception, has no application in the case and should not be applied liberally. Otherwise, the Court will, be swamped with petitions filed by parties with no actual or direct injury with the effect of reducing court pronouncements to mere advisory opinions with no binding force. Ultimately, the resolution of the four petitions which presented concrete actual settings and factual matters would lead to a more intelligent appreciation by the Court of the issue at hand.

The case of Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council[15] (Southern Hemisphere), explained this aspect of justiciability in this wise:

> Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.
>
> The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. . . . Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.[16] (Emphasis, underscoring and citations omitted.)

Another exception to the legal standing rule is the facial' challenge as espoused by all the petitioners herein.[17] However, a facial challenge does not apply to penal statutes.[18] The questioned law herein, ATA, is by no mistake, a penal law.

In Southern Hemisphere, the Court, quoting the Concurring Opinion of Associate Justice Vicente V. Mendoza in Estrada v. Sandiganbayan,[19] elucidated on the parameters of a facial challenge, thus:

> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.
>
> This rationale does not apply to penal statutes. Criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.
>
> The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment." in Broadrick v. Oklahoma, the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it has been held that "a facial challenge to a legislative act is the most difficult challenge to mount successfully, since the challenger must establish that no

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> set of circumstances exists under which the Act would be valid." As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."
>
> In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant." x x x.[20] (Emphasis and underscoring in the original.)

To distinguish, a facial challenge is allowed upon a vague or overbroad statute where there is a possibility of chilling effect on protected speech. Under the facial challenge, the Court may invalidate a statute and declare it unconstitutional in its entirety on the ground that they might be applied to persons who are not before the Court but whose activities are constitutionally protected.[21]
As with penal laws like the ATA, the Court held in Disini, Jr. v. The Secretary of Justice[22] that "[w]hen a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable."[23] The Court, adopted the view of then Associate Justice Antonio T. Carpio in his dissent in Romualdez v. Commission on Elections[24] that "we must view these statements of the Court on the inapplicability of the overbreadth and vagueness doctrines to penal statutes as appropriate only insofar as these doctrines are used to mount 'facial' challenges to penal statues not involving free speech."[25]

On the other hand, an "as applied" challenge is applicable where the subject statute must be considered in the light of specific acts alleged to be committed by or against the petitioners.[26] Under the "as applied" challenge, a person can assail the constitutionality of a statute provided that one alleges an actual breach of his/her rights, not a violation of the rights of persons who are not before the court.[27]

Thus, petitioners cannot facially challenge the ATA to render it unconstitutional in its entirety because it is a penal law governing conduct and not speech. Emphasis must also be placed on the first requisite of judicial review on actual case or controversy to petitions involving penal laws.

> [A]n "on-its-face" invalidation of criminal statutes would result in a mass acquittal of parties whose cases may not have even reached the courts. Such invalidation would constitute a departure from the usual requirement of "actual case and controversy" and permit decisions to he made in a sterile abstract context having no factual concreteness. x x x[28]

Nevertheless, in analyzing the provisions of the ATA, I find that the facial challenge applies but only insofar as freedom of expression and its cognate rights are involved. Specifically, I agree with Associate Justice Rodil V. Zalameda that facial analysis shall apply "only [to] those portions of the ATA which expressly implicated speech, e.g., the Not Intended Clause."[29]

For provisions affecting the exercise of the freedom of expression and its cognate rights, I join Associate Justice Rodil V. Zalameda in his conclusion:

> x x x "I find the delimited facial analysis framework acceptable as this allowed for a review of the law in light of the serious issues raised against its provisions, especially in relation to speech, but one that was limited enough to be respectful of long established principles, such as locus standi, actual case and controversy, and

the hierarchy of courts, which are themselves rooted in considerations of justice and due process."[30]

In this regard, I further concur with the ponencia that the Not Intended Clause in Section 4 is unconstitutional applying the facial challenge.

For clarity, the Not Intended Clause under Section 4 of the ATA pertains to this particular portion of the proviso: "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety." This portion is immediately preceded by the phrase: "Provided, That, terrorism as defined, in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights."

The proviso: "Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety," involves freedom of speech and expression and its cognate rights of freedom of assembly and association, which are covered by a facial challenge. Notably, in mentioning the phrase "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercise of civil and political rights," the framers of the law intended to limit the definition of terrorism to exclude any legitimate exercise of basic rights. For which reason, the portion of the proviso which contains "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" is a mere surplusage which would only create confusion as it tends to criminalize legitimate acts under the ATA.

I concur with the ponencia that the Not Intended Clause is ambiguous and void for vagueness as there are no sufficient standards that render it capable of judicial construction. I agree that "[w]ithout any sufficient parameters, people are not guided whether or not their impassioned and zealous propositions or the intense manner of government criticism or disapproval are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."[31]

Further, insofar as Section 4 of the ATA applies to the petitioners in the four remaining petitions, I find that the Not Intended Clause under Section 4 of the ATA is unconstitutional considering that it violates one of the fundamental rules under the Bill of Rights of the Constitution that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved."[32] Specifically, as aptly explained in the ponencia, "the 'Not Intended Clause' shifts the burden upon the accused to prove that his actions constitute an exercise of civil and political rights."[33] The constitutional presumption of innocence in favor of the accused dictates that it should be the government proving the guilt of the accused rather than the accused proving his innocence.

Overall, in resolving the subject four petitions, I, nonetheless, find in order the conclusion of the ponencia that the provisions of the ATA, for most parts, is not unconstitutional, especially Section 29 of the law.

As regards Section 29 of the ATA, I share the view of Associate Justice Rodil V. Zalameda that the vagueness test may be invoked both in a "facial" and "as applied" challenges. Specifically, vagueness test lies where a statute is deemed invalid if persons of common intelligence must necessarily guess at the meaning and differ as to the application of the law. In an "as applied" challenge, the vagueness test finds application in so far as the due process clause is cited in challenging the law.[34]

With this in mind, I concur with the ponencia, particularly in the determination that Section 29 of the ATA is not unconstitutional. The fear of a chilling effect caused by the warrantless arrest and the resulting detention of fourteen (14) days, with possible extension often (10) days, is more imaginary than real. In fact, sufficient safeguards are in place to protect fundamental rights.

The arrest without a warrant under Section 29 of the ATA is in accordance with Section 5, Rule 113 of the Rules of Court as follows:

> SEC. 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

Section 29 of the ATA does not abandon the requirement of probable cause as threshold in warrantless arrests. The contemplated lawful warrantless arrests cover three instances: "(a) an arrest of a suspect in flagrante delicto; (b) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his [or her] case or has escaped while being transferred from one confinement to another."[35] These provisions on lawful warrantless arrests are reflected in Rule 9.2[36] of the Implementing Rules and Regulations of the ATA. Suffice it to state that Section 18[37] of RA 9372[38] or the Human Security Act of 2007, the predecessor law of the ATA, also provides for detention without judicial warrant, which no court of law has categorically declared unconstitutional.

The warrantless arrest under Section 29 of the ATA is justified because the arresting person must have with him/her facts and circumstances which—had they been before a judge—would amount to sufficient basis for a finding of probable cause for the commission of any of the punishable acts under the ATA. There must be overt acts constitutive of the offenses punishable under the ATA that would, in turn, arouse the need for the arrest of an individual.[39] Verily, the threat or fear of arrest without a judicial warrant and of prolonged detention of those legitimately exercising their rights remains unfounded.

Moreover, the detention period under Section 29 of the ATA does not run counter to the three-day detention limit under Section 18, Article VII of the Constitution. Unlike the situation under Section 29 of the ATA, Section 18, Article VII of the Constitution requires two specific conditions, namely: (1) a state of rebellion or invasion, when public safety so warrant; and (2) an order suspending the privilege of the writ of habeas corpus:

> Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. x x x
>
> x x x x
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or

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> offenses inherent in or directly connected with the invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The distinction between terrorism, on the one hand, and a state of rebellion or invasion, on the other hand, places the situations under Section 29 of the ATA and Section 18, Article VII of the Constitution under different categories.

Terrorism is described in the ponencia as an "attack on the state and its exclusive right to the legitimate use of violence. Unlike a murderer or robber, the terrorist or assassin does not just kill: he [or she] claims a legitimacy, even a lawfulness, in doing so. Such acts do not break the law, but seek to impose a new or higher law."[40] Moreover, Section 4 of the ATA enumerated the particular acts that would amount to terrorism:

> Section 4. Terrorism. — Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:
>
> (a)
>
> Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;
>
> (b)
>
> Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private properly;
>
> (c)
>
> Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;
>
> (d)
>
> Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and
>
> (e)
>
> Release of dangerous substances, or causing fire, floods or explosions when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code": Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

Meanwhile, rebellion is defined under Article 134[41] of the Revised Penal Code and requires the concurrence of the following requisites: "(1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives."[42] On the

other hand, invasion is defined as entering "a country by force with large number of soldiers in order to take possession of it."[43]

It cannot, thus, be denied that terrorism, rebellion and invasion are different from each other. They have varying elements and are punishable under different laws.

Section 29 of the ATA is not inconsistent with the detention limit under Section 18, Article VII of the Constitution as shown by the fact that the privilege of the writ of habeas corpus may be availed of under Section 29 of the ATA, which privilege is ordered suspended under Section 18, Article VII of the Constitution. It must be noted that the writ of habeas corpus shall extend to ail cases of illegal confinement or detention by which any person is deprived of his/her liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.[44] This remedy is available under Section 29 of the ATA to a detainee arrested without a warrant for acts defined as terrorism or to a person on his/her behalf as long as it could be shown that the confinement was illegal or that the detainee was illegally deprived of his or her liberty. Simply stated, and as correctly argued by the Office of the Solicitor General, Section 29 of the ATA does not contemplate an extraordinary situation where the privilege of the writ of habeas corpus has been suspended, otherwise, in such case, the three-day rule under the Constitution will apply. This makes the 14/24 days period justifiable.

With this obvious difference in circumstances, then there is indeed no bar when a person is arrested—provided that he/she committed overt acts constitutive of any of those punishable acts under the ATA—is detained for 14/24 days without judicial charge under Section 29 of the ATA.

To be sure, the Constitution especially provided the requirements under which the three-day detention limit shall apply. These requirements are wanting in the situation under Section 29 of the ATA. The Court should abide by such explicit provision requiring a state of rebellion or invasion and suspension of the privilege of writ of habeas corpus when the three-day limit for detention without judicial charge is allowed. Certainly, where the law, or in this case, the Constitution does not distinguish, neither should the Court.

By the plain wording of Section 18, Article VII of the Constitution, the three-day period must be interpreted to apply only under specific conditions, i.e., an arrestee commits either rebellion or offenses inherent in or directly connected with the invasion and in both instances, there must be a suspension of the privilege of the writ of habeas corpus. There is nothing in Section 18, Article VII to indicate that the three-day period was meant to serve as a ceiling on the detention periods that may be legislated by Congress. In the same vein, there is no provision in the Constitution that prohibits detention longer than three days for circumstances not contemplated under Section 18, Article VII. "What the law does not prohibit, it allows."[45]

This is not to say that such interpretation of Section 18, Article VII of the Constitution gives Congress a blanket license to legislate detention periods of any length. Ultimately, in an appropriate case, the Court is not precluded from making a pronouncement on whether a legislated detention period violates the constitutional rights of detainees. In this particular case, however, the Court finds no undue deprivation of liberty under Section 29 of the ATA.

The ATA is a law of necessity. It was enacted because there is an urgent need to address the pressing global threat of terrorism with a recognition that dealing with terrorism is laden with inherent difficulties and complexities. Section 2 of the ATA is clear as to the State's policy which is "to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the Law of Nations."[46] As significantly observed in the ponencia, terrorism is not an ordinary crime. Most terrorist activities, including training, financing, and other forms of intricate preparation, involve months or even years of

clandestine planning. In enacting the ATA, the Congress recognized that "the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities."[47]

Forming part of this comprehensive approach to fight terrorism is Section 29 of the ATA. The power to determine the period of resulting detention of a person arrested under Section 29 is within the power of Congress. To reiterate, this period of detention is not determined and limited by the Constitution. Indeed, when our security and national interest is greatly endangered, the state must adopt extraordinary and extensive measures to protect itself.

It must also be pointed out that sufficient safeguards are in place in the enforcement of Section 29 of the ATA. As enumerated in the ponencia, "(1) it only operates when the [Anti-Terrorism Council or ATC] issues a written authorization; (2) the detaining officer incurs criminal liability if he [or she] violates the detainee's rights; and (3) the custodial unit must diligently record the circumstances of the detention."[48] In fact, the arresting officer must also execute a sworn statement stating the complained acts of terrorism and other relevant circumstances necessitating the custody of the arrestee.[49] With these built-in safeguards, the fear for violation of basic constitutional rights is Weird off. Furthermore, considering the procedure laid down under Section 29 as regards the manner of arrest and detention, the threat against the legitimate exercise of constitutional rights is put to rest.

Lastly, the ponencia acknowledges that existing procedural rules may not be satisfactorily appropriate for the process of proscription under Sections 26 and 27 of the ATA. Invoking the Court's rule-making power, the ponencia directs the Court of Appeals to formulate guidelines to be observed in applying for a proscription order under Section 26 to guide the bench, bar, and public.[50]

In similar regard, pursuant to the Court's rule-making power under Section 5(5),[51] Article VIII of the Constitution, a formulation of guidelines governing Detention Without a Judicial Warrant of Arrest under Section 29 would also be proper, more particularly on the extension of the period of detention beyond the three (3) days by the ATC.

Without a doubt, the Court's rule-making power encompasses the right to promulgate rules concerning the protection and enforcement of constitutional rights. Considering that what is involved under Section 29 is deprivation of liberty, as opposed to proscription which merely seeks deprivation of property rights (i.e., may give rise to freezing of assets, surveillance under Section 16, examination of banking records; etc.), it is with more reason that guidelines be formulated governing the extension of detention proceeding from arrests without a judicial warrant. The necessary guidelines would address the apprehensions against the extended period of detention proceeding from a warrantless arrest, and would likewise guide the courts in resolving actual controversies arising therefrom. Indeed, the guidelines would provide clearer safeguards to fundamental rights, the protection of which is a constitutional duty of the Court through its rule-making power.

Specifically, I propose the following measures to be incorporated in the guidelines which the Court may promulgate:

- Taking into consideration that from the warrantless arrest under Section 29 of the ATA, the resulting detention may last for fourteen (14) clays and extendible to an additional period of ten (10) days, the law enforcement agents or military personnel who have custody of the detainee shall periodically present the detainee to the court nearest the place of detention (concerned trial court), i.e., on the 7[th] and 14[th] day of detention for questioning on his or her physical and mental condition and for the submission of the detainee's medical certificate issued by a government hospital or facility;

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- During the detention, the detainee should not be transferred from one detention facility to another without notifying the concerned trial court and the transferring court nearest to the new place of detention;

- The law enforcement agents or military personnel who have custody of the detainee must also report to the concerned trial court the specific reasons for the additional period of ten (10) clays detention. Let it be noted that Section 29 of the ATA only requires the police or military personnel to notify the concerned trial court of the circumstances of the arrest of the detainee without need for a report of the justification for the extended period often (10) days from the original fourteen (14) days detention under the ATA;

- The detainee should be immediately placed in a medical and or mental facility upon the recommendation of the examining government doctor, subject to the court's approval.

IN VIEW OF THE FOREGOING, I concur in the results of the Court's decision.

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[1] See The Cost of Terrorism: Bombings by the Abu Sayyaf Group in the Philippines by Amparo Pamela Fabe <https://www.jstor.org/stable/43486362> (last accessed on December 14, 2021).

[2] Section 1, Article VIII of the Constitution provides:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[3] Kilusang Mayo Uno v. Aquino III, G.R. No. 210500, April 2, 2019, citing Araullo v. President Aquino III, 737 Phil. 457, 532 (2014); see also Francisco, Jr. v. House of Representatives, 460 Phil. 830 (2003); Garcia v. Executive Secretary, 281 Phil. 572 (1991), citing Dumlao v. Commission on Elections, 184 Phil. 369 (1980), Corales v. Republic, 716 Phil. 432 (2013).

[4] Belgica v. Hon. Exec. Sec. Ochoa, Jr., 721 Phil. 416, 519 (2013), citing Province of North Cotabato v. Gov't. of the Rep. of the Phils. Peace Panel on Ancestral Domain (GRP), 589 Phil. 387, 481 (2008).

[5] Id.

[6] Sps. Imbong v. Hon. Ochoa, Jr., 732 Phil. 1, 127 (2014).

[7] Information Technology Foundation of the Phils. v. COMELEC, 499 Phil. 281, 305 (2005), citing Vide: De Lumen v. Republic, 50 OG No. 2, February 14, 1952, p. 578.

[8] Id., citing Aetna Life Insurance Co. v. Hayworth, 300 U.S. 227 (1937).

[9] Kilusang Mayo Uno v. Aquino III, supra note 3.

[10] Araullo v. President Aquino III, 737 Phil. 457, 535 (2014), citing De Castro v. Judicial and Bar Council, 629 Phil. 629, 677-678 (2010), further citing Agan, Jr. v. Phil. International Air Terminals Co., Inc., 450 Phil. 744, 802 (2003).

[11] Id.

[12] Id.

[13] Republic Act No. (RA) 11479, approved on July 3, 2020.

[14] See Concurring and Dissenting Opinion of Chief Justice Alexander G. Gesmundo pp. 77-79.

[15] 646 Phil. 452 (2010).

[16] Id. at 482-483.

[17] See Dissenting Opinion of retired Senior Associate Justice Antonio T. Carpio in Romualdez v. COMELEC, 576 Phil. 357 (2008). It states in part:

> "The U.S. Supreme Court has created a notable exception to the prohibition against third-party standing. Under the exception, a petitioner may mount a 'facial' challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute. To mount a "facial" challenge, a petitioner has only to show violation under the assailed statute of the rights of third parties not before the court. This exception allowing "facial" challenges, however, applies only to statutes involving free speed. The ground allowed for a "facial" challenge is overbreadth or vagueness of the statute."

[18] See Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 14.

[19] 421 Phil. 290 (2001).

[20] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 14 at 485-487.

[21] See Concurring Opinion of Justice Vicente V. Mendoza in Estrada v. Sandiganbayan, supra note 19 at 430.

[22] 733 Phil. 717 (2014).

[23] Id. at 121.

[24] 576 Phil. 357 (2008).

[25] Id. at 409. As quoted in Disini, Jr. v. The Secretary of Justice, supra note 22 at 121.

[26] See Concurring Opinion of Associate Justice Vicente V. Mendoza in Estrada v. Sandiganbayan, supra note 20 at 433.

[27] Sps. Imbong v. Hon. Ochoa, Jr., supra note 6.

[28] Romualdez v. Hon. Sandiganbayan, 479 Phil. 265, 283 (2004).

[29] See Separate Opinion of Associate Justice Rodil V. Zalameda, p. 7.

[30] Id.

[31] Calleja v. Exec. Sec. Medialdea, et al., G.R. Nos. 252578, et al., p. 109.

[32] Section 14(2), Article III, CONSTITUTION.

[33] Calleja v. Exec. Sec. Medialdea, et al., G.R. Nos. 252578, et al., p. 108.

[34] See Separate Opinion of Associate Justice Rodil V. Zalameda, p. 14.

[35] Miguel v. People, 814 Phil. 1073, 1085 (2017), citing Sindac v. People, 794 Phil. 421, 420 (2016), further citing Comerciante v. People, 764 Phil. 627, 634-635 (2015).

[36] Rule 9.2 of the Implementing Rules and Regulations of RA 11479 reads:

RULE 9.2. Detention of a Suspected Person without Warrant of Arrest. — A law enforcement officer or military personnel may, without a warrant, arrest:

- a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections A. 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;

- a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which has just been committed; and

- a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another.

[37] Section 18 of RA 9372 provides:

SEC. 18. Period of Detention Without Judicial Warrant of Arrest. — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or inspected, person has been apprehended or arrested, detained, and taken into custody of the said police, or law enforcement personnel: Provided, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.

The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the hitter's residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among oilier things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar clays from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: Provided, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty often (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify and judge as provided in the preceding paragraph.

[38] Approved on March 6, 2007.

[39] See Dissenting Opinion of Associate Justice Florentino P. Feliciano in Lacson v. Perez, 410 Phil. 78, 109 (2001).

[40] Calleja v. Exec. Sec. Medialdea, et al., G.R. Nos. 252578, et al., p. 142, citing Fresh Perspectives on the 'War on Terror', edited by Miriam Gani and Penelope Mathew, ANU Press 2008, pp. 27-44.

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[41] Article 134 of the Revised Penal Code provides:

> Art. 134. Rebellion or insurrection; How committed.— The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land/naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

[42] Rep. Legman v. Senate Pres. Pimentel III, 825 Phil. 112, 210 (2018), citing Lagman v. Medialdea 812 Phil. 179 (2017).

[43] Available on <https://dictionary.cambridge.org/dictionary/english/invade> (last accessed November 10, 2021).

[44] Section 1, Rule 102 of the Rules of Court.

[45] See In the Matter of the Adoption of Stephanie Nathy Astorga Garcia, 494 Phil. 515, 520 (2005).

[46] See Section 2 of RA 11479.

[47] Id.

[48] Calleja v. Exec. Sec. Medialdea, et al., G.R. Nos. 252578, et al., p. 211.

[49] Id. at 186.

[50] Id. at 182.

[51] Section 5(5) of the Constitution provides:

> Section 5. The Supreme Court shall have the following powers:
>
> x x x x
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

SEPARATE OPINION

ZALAMEDA, J.:

At the outset, I deem it necessary to state, lest there be doubt, that the Court is keenly aware of its limitations, especially in matters of national security in this fast-changing world. We nevertheless strive to be responsive to the needs of the times. The Court's decision in this case should in no way be read as to undermine the powers of either Executive or the Congress. Under our Constitution's separation of powers structure, the exercise by the Executive of powers granted to it by Congress is vindicated, not eroded, when confirmed by the Judicial Branch.[1] Ultimately, we take heart that "the law and the Constitution are designed to survive, and remain in force, even in extraordinary times x x x. Liberty and security can be reconciled" as it was in my view reconciled here, "within the framework of the law."[2]

This Separate Opinion not only serves as an exposition, but also identifies the necessary consequences of the ponencia's conclusion. Discussion will include the effect on the Implementing Rules and Regulations (IRR) of the Anti-Terrorism Act (ATA), or Republic Act No. (RA) 11479, as well as matters which should be addressed by Congress, the Anti-Terrorism Council (ATC), and the Anti-Money Laundering Council (AMLC). As far as practicable, the order of discussion will follow the sequence of sections of the ATA.

I. Current Situation

A.

Anti-terrorism Laws and Judicial Review in Other Jurisdictions

Anti-terrorism laws or counterterrorism measures in general, notwithstanding the admitted public interest served, have always been heavily scrutinized in view of their inevitable effect on civil liberties and human rights. Ideally, effective counterterrorism measures and respect for the rule of law, human rights and fundamental freedoms are complementary and mutually reinforcing objectives.[3] While the Legislative and Executive departments are expected to undertake this balancing act when enacting and implementing counterterrorism legislations, the herculean task of ensuring such balance ultimately falls with the Judiciary.

The United States of America (USA) and the United Kingdom (UK), in enacting their anti-terror laws, have struggled to find balance in their desire for security and preservation of constitutional or human rights.[4]

In the USA, the indefinite detention of aliens under the Patriot Act was harshly criticized by the media.[5] Under the said law, the Attorney General has the power to take into custody foreign terrorist suspects and, if deportation is unlikely, to detain them for up to 6 months, with renewable 6-month terms,[6] subject to judicial review in the form of habeas corpus proceedings.[7] The 6-month time limit appeared to be their Congress' response to the court ruling[8] that an alien who is held for more than 6 months has presumptively had his or her due process violated.[9]

The Anti-Terrorism, Crime and Security Act 2001[10] of the UK provides for indefinite detention of non-citizens, who are identified as international terrorists by the Secretary of State and are unable to leave UK, without charge or trial.[11] After the House of Lords found this to be in violation of the European Convention on Human Rights for being disproportionate and discriminatory,[12] the UK enacted the Prevention of Terrorism Act 2005. This gave the Secretary of State the power to place an individual under house arrest or place such other restrictions on his or her movements (referred to as control order), instead of indefinite detention.[13] Notably, court decisions influenced the evolution of anti-terrorism legislations in both jurisdictions.

In striking down anti-terrorism laws, judicial review allows the Legislature to engage in a dialogue with the Judiciary by enacting a reply legislation.[14] Interestingly, there are also cases when anti-terror laws upheld as constitutional are nevertheless repealed by the Legislature.

In Canada, their highest tribunal upheld the provision in the Anti-Terrorism Act, which allows an investigative hearing where the police may obtain a judicial order that would compel a person to answer questions and reveal documents that were relevant in a terrorism investigation, subject to certain restrictions on its use.[15] The Canadian Parliament, however, allowed said provision to expire despite the favorable ruling.[16]

In a facial challenge lodged against India's Prevention of Terrorism Act (POTA), the constitutionality of the law was upheld, including the process of listing terrorist groups since the availability of judicial review after listing

was deemed sufficient.[17] This notwithstanding, the POTA was repealed by a subsequent legislation.[18]

B.

The Philippines' ATA and the Anti-Terrorism Laws of Other Countries

In his sponsorship speech, Senator Panfilo M. Lacson stated that there was a need to amend the Human Security Act (LISA) to, among others, meet international and regional standards on anti-terrorism laws.[19] The Philippine Government, in response to the Office of the United Nations High Commissioner on Human Rights (OHCHR), highlighted the similarities of the ATA to that of the Australian Criminal Code, the Canadian Criminal Code, and the Terrorism Act 2000 of the U.K.[20]

To demonstrate that the Congress did not formulate the definition of terrorism arbitrarily, the ponencia points out that the language of Section 4 of the ATA is almost identical to the language used in the United Nation's (UN) proposed Comprehensive Convention on International Terrorism, the Directive (EU) 2017/541 of the European Union, the Terrorism Act 2000 of the U.K., and the 2002 Terrorism (Suppression of Financing) Act of Singapore.[21] The ponencia looks into the designation process of the USA and the proscription process of the UK and Singapore and notes that these processes are neither novel nor recent preventive and extraordinary counterterrorism measures.[22]

The ATA notably bears substantial likeness to anti-terrorism legislations in other jurisdictions.

The definition of terrorism under the Australian Criminal Code,[23] the Canadian Criminal Code,[24] and the Malaysian Penal Code[25] appear similar to Section 4 of the ATA. Said laws define the acts, and the required intent and purpose of said acts, to constitute terrorism, with the proviso that advocacy, protest, dissent or industrial action is not considered terrorist act if it is not intended to cause serious harm that is physical harm to a person, to cause a person's death, to endanger the life of a person, other than the person taking the action, or to create a serious risk to the health or safety of the public or a section of the public.

Section 6 of the ATA, which refers to knowingly providing or receiving training connected with terrorist acts,[26] possessing things connected therewith,[27] collecting or making documents likely to facilitate terrorist acts,[28] and other acts done in preparation for, or planning, terrorist acts,[29] are also offenses punishable in the Australian Criminal Code.

Further, while not entirely the same as designation and proscription under the ATA, the Australian Criminal Code provides for a listing mechanism done by the Australian Federal Police Minister (in practice the Minister of Home Affairs), upon satisfaction that there is reasonable ground that the organization is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or advocates the doing of a terrorist act,[30] which listing ceases to have effect after 3 years (referred to as sunset clause).[31] The Criminal Code of Canada also provides for a listing regime by the Governor in Council, upon recommendation of the Minister of Public Safety,[32] subject to a five-year sunset clause.[33]

The formulation of anti-terrorism legislation is indeed a challenging one. It is imperative that the prevention of terrorist incidents through effective law enforcement is performed within the constraints of the rule of law. At the same time, the differing legal traditions and levels of technological capacities of States preclude the formulation of a uniform definition and approach to terrorism.

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II.

Approaches in Judicial Review

A.

Modes of Challenging the Constitutionality of Statutes

In dealing with constitutional questions presented before the Court, due consideration must be given to the type of challenge mounted, i.e., whether the attack was made by way of a facial or an as-applied challenge. The mode employed determines justiciability and, if judicial review appears proper, delineates the boundaries of the Court's pronouncements.

A facial challenge scrutinizes an entire law or provision by identifying its flaws or defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that the very existence of the law or provision is repugnant to the Constitution.[34] Facial challenges depart from the case and controversy requirement of the Constitution.[35]

While facial challenges traditionally result in the invalidation of the entire law,[36] Philippine jurisprudence has adopted a delimited type of facial analysis, where scrutiny is confined to certain provisions vulnerable to facial attack.[37] As a rule, only laws and provisions implicating freedom of expression and its cognate rights are susceptible to a facial challenge.[38]

In contrast, an as-applied challenge considers only extant facts affecting real litigants, and examines the flaws and defects of the law on the basis of its actual operation to the parties.[39]

The propriety of a facial challenge primarily turns on the law's character (whether it is penal or non-penal) and subject (whether it involves speech or conduct).

B.

Facial Review of Penal Laws

Penal laws, such as the ATA, are not generally susceptible to facial attack. They are, by nature and design, meant to have an "in terrorem effect" to deter socially harmful conduct.[40]

Considering, however, the value and importance placed on speech - as the "lifeblood of democracy, x x x precondition for the discovery of truth, and vital to our self-development,"[41] a facial challenge against a penal law may be lodged if the alleged violation relates to freedom of speech or any of its cognate rights.[42] In other words, the Court allows a facial challenge to a penal law to counter possible chilling effects it may have on protected speech because said penal law is vague or overbroad.[43]

On this point, I concur with the delimited facial analysis adopted by the ponencia. I find the framework acceptable as this allowed for a review of the law in light of the serious issues raised against its provisions, especially in relation to speech, but one that was limited enough to be respectful of long-established principles, such as locus standi, actual case and controversy, and the hierarchy of courts, which are themselves rooted in considerations of

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justice and due process.[44]

I am, however, in favor of a facial analysis of only that portion of the ATA which expressly implicates freedom of speech, expression, and their cognate rights, i.e., the proviso in Section 4 of the ATA,[45] referred to in the ponencia as the "Not Intended Clause." This, to me, seems an acceptable compromise (at least for the moment) between numerous competing values - a balance between security and civil liberty - prior to a resolution in a probable as-applied case which could properly examine the law's penal provisions. This is also why I vote that the phrase "organized for the purpose of engaging in terrorism" in Section 10 and the modes of designation under Section 25 are not unconstitutional.

Moreover, restricting Our facial analysis to the Not Intended Clause is more in keeping with a long line of jurisprudence holding that laws governing conduct may not be facially assailed, as will be expounded below.

C.

Facial Review of Laws Proscribing or Regulating Conduct

In assessing the availability of a facial challenge, We have consistently distinguished between laws regulating conduct vis-a-vis those pertaining to speech.

Our prevailing jurisprudence on the matter takes its bearings from the Separate Opinion of justice Vicente V. Mendoza in Estrada v. Sandiganbayan[46] (Estrada), where he comprehensively discussed the inapplicability of facial challenges to ordinary statutes penalizing conduct.[47] Justice Mendoza opined that facial invalidation of a statute that does not regulate or prohibit speech may jeopardize the interest of society to suppress harmful conduct, viz:

> To recapitulate, had R.A. No. 7080 been a law regulating speech, I would have no hesitation examining it on its face on the chance that some of its provisions — even though not here before us — are void. For then the risk that some state interest might be jeopardized, i.e., the interest in the free How of information or the prevention of "chill" on the freedom of expression, would trump any marginal interest in security.
>
> But the Anti-Plunder Law is not a regulation of speech. It is a criminal statute designed to combat graft and corruption, especially those committed by highly-placed public officials. As conduct and not speech is its object, the Court cannot take chances by examining other provisions not before it without risking vital interests of society. Accordingly, such statute must be examined only "as-applied" to the defendant and, if found valid as to him, the statute as a whole should not be declared unconstitutional for overbreadth or vagueness of its other provisions.[48]

The position of justice Mendoza was then adopted in Romualdez v. Sandiganbayan,[49] where the Court ruled that Section 5 of the Anti-Graft Law involved conduct—not speech—and must be examined only as applied to petitioners therein. The same line of reasoning was adopted in David v. Macapagal-Arroyo[50] and Spouses Romualdez v. Commission on Elections.[51] In these cases, the Court maintained that facial adjudication is not intended to test the validity of a law that penalizes unprotected conduct.

Going to the case at bar, primarily instructive is the Court's ruling in Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council (Southern Hemisphere),[52] which involved a provision of similar import as Section 4 of the ATA. In Southern Hemisphere, petitioners assailed the definition of terrorism in Section 3 of the HSA for being vague and overly broad. The Court ruled that, the HSA, being a penal statute, may not be subjected to a facial challenge. A limited vagueness analysis of the definition of "terrorism" is legally impermissible absent an actual or imminent charge against the petitioners therein.[53]

Petitioners in Southern Hemisphere attempted to clothe the definition of terrorism with a speech component. However, the Court rebuffed this theory, finding that Section 3 of the HSA penalizes conduct, not speech.

Here, the other provisions of the ATA, except the Not Intended Clause, do not expressly implicate speech, expression, or any of their cognate rights. Going by precedent, it is my considered view that the delimited facial analysis should be confined to the Not Intended Clause. The other provisions of the ATA may be assailed through an appropriate as-applied challenge.

D.

Advocated Expansion of Facial Review to Laws Implicating Other Fundamental Rights

Petitioners prompt the Court to expand the scope of facial challenges beyond speech-and expression-related provisions of the ATA.[54] They rely on Imbong v. Ochoa, Jr. (Imbong),[55] where the Court held that facial challenges cover statutes regulating free speech, religious freedom, and "other fundamental rights."

I acknowledge that the Court's use of facial challenge in Imbong was not confined to religion-related provisions of RA 10354 (RH Law). The Court also struck down certain provisions of the RH Law for violating the equal protection clause,[56] the mutual right of the spouses to found a family and their right to marital privacy,[57] and the right of parents to exercise parental control over their minor-child.[58] In fact, in his dissenting opinion in Imbong, Justice Marvic M.V.F. Leonen noted the Court's expansion of the scope of facial challenges.[59]

Since the deviation in Imbong, however, the Court redirected facial analysis to its limited application.

In Falcis III v. Civil Registrar General,[60] the Court restated the rule that a facial challenge requires a showing of curtailment of the right to freedom of expression, based on the principle that an overly broad statute may chill otherwise constitutional speech.[61] In Madrilejos v. Gatdula,[62] the Court noted that an anti-obscenity statute cannot be facially attacked because facial challenges are limited to cases involving protected speech. Thus, notwithstanding Imbong, the prevailing rule is that facial challenges are limited to laws directly implicating freedom of expression and its cognate rights.

As of yet, there is no compelling reason to expand the scope of facial challenges to all other constitutional rights.

Relatedly, the general rule is that courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.[63] There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[64]

The danger of an advisory opinion is that we are forced to substitute our own imagination of the facts that can or will happen.[65] In an actual case, there is judicial proof of the real facts that frame Our discretion.[66] Upending the doctrines requiring a justiciable controversy would flood the courts with cases framed within hypothetical and speculations. In turn, ruling on these imagined scenarios would make courts tread into dangerous territory, in potential encroachment of the legislative prerogatives vested by the people upon Congress.

Hence, I submit that facial challenges must be used in the conservative and only to avert the chilling effect proscribed by the Constitution.[67] An on-its-face invalidation is a manifestly strong medicine to be used sparingly and only as a last resort.[68] Accordingly, the Court's facial analysis of the ATA should be limited to the Not Intended Clause.

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E.

Outcomes in facial and as-applied challenges

I emphasize that the ponencia's use of a delimited facial challenge does not foreclose, and is not determinative of, any possible outcome in an appropriate as-applied challenge. Litigants may still obtain relief through an as-applied challenge backed by concrete facts.

To illustrate the possible similar outcomes between facial and as-applied challenges, a summary of the rules is in order:

First. In a facial challenge, a litigant may invoke the doctrines of overbreadth and vagueness. The overbreadth doctrine provides that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.[69] Meanwhile, the vagueness doctrine holds that a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application.[70]

The application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases,[71] whether involving penal or non-penal laws.[72] A statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.[73]

Unlike overbreadth, the vagueness doctrine may be invoked both in a facial and an as-applied challenge. The Court categorically affirmed this in Southern Hemisphere,[74] where We ruled that prevailing doctrines do not preclude the operation of the vagueness test as applied to litigants with an actual or imminent charge against them.

In an as-applied challenge, the vagueness doctrine is not confined to free speech cases; it may be invoked against a penal law under a claim of violation of due process.[75] In Southern Hemisphere, the Court noted several cases where the vagueness doctrine, asserted under the due process clause, was utilized to examine the constitutionality of criminal statutes.[76] In all these cases, accused were charged with violations of the assailed statute, and they raised vagueness as a defense.

Second. As to possible outcomes, a successful facial challenge would result in striking down the law or the offending provisions.[77] Meanwhile, an as-applied challenge has several possible results:

- The court may rule that the statute is not vague. This finding may be premised on the fact that the law sets sufficient standards,[78] the provisions are intended to be understood in their plain and ordinary meaning,[79] or the alleged ambiguous terms would be addressed by the State's evidence as trial progresses.[80]

- If the legislation is merely couched in imprecise language, but which nevertheless specifies a standard through defectively phrased, the law may be saved by proper construction.[81]

- If the statute is apparently ambiguous but fairly applicable to certain types of activities, the statute may not be challenged whenever directed against such activities.[82]

- If the court finds that the statute is unconstitutional as applied to the accused, the court may carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis.[83]

- In highly exceptional circumstances, as when the statute is "perfectly vague" and it cannot be clarified by a

saving clause or by construction, the statute may be struck down as unconstitutionally vague.[84] As mentioned in the ponencia, it is theoretically possible that a case which starts out as an as-applied change may eventually result in the total invalidation of the statute if, in the process, the court is satisfied that the law could never have any constitutional application.[85]

Otherwise put, a facial challenge and an as-applied challenge have similar issues and outcomes. The matters passed upon in this case may resurface again in an as-applied case.

For example, the accused may claim that his or her actions do not fall within the plain text of the law, and he or she could not have known that his or her acts would be covered by the law. If the defense is meritorious, courts may invalidate certain applications of the law for violating due process, without necessarily nullifying the law itself. Thus, an as-applied challenge may result in a ruling that the law, as applied to the accused, is ambiguous or vague. Until passed upon in a proper case, therefore, vagueness is a valid defense, whether meritorious or not.

Thus, the ponencia's disquisition passing upon provisions not subject to a facial challenge should not be decisive of future as-applied challenges. Judicial tenets must naturally arise from actual litigated facts.

III.

Section 4: Terrorism

A.

The unavailability of facial challenge to assail the main part of Section 4, which penalizes conduct unrelated to speech

Section 4, paragraphs (a) to (e) of the ATA (referred to in the ponencia as the "main part") may not be assailed through a facial challenge.[86] These clauses pertain to conduct, and not to speech.[87]

Similar to the definition of terrorism assailed in Southern Hemisphere, the main part of Section 4 covers acts of the same character as those proscribed by other penal laws. It has no speech component elemental to the crime.

Paragraphs (a) to (c) of Section 4 speak of acts intended to cause death, serious bodily injury, extensive damage or destruction, or extensive interference with critical infrastructure. Paragraph (d) pertains to overt acts involving weapons and explosives, while paragraph (e) refers to conduct relating to dangerous substances, fires, floods, or explosions. Thus, the crimes are defined through acts that cause a specific harm, injury, or damage.

It is only when the main part of Section 4 is read in relation to the Not Intended Clause that there appears basis for a vagueness and overbreadth challenge. The ponencia even pointed out that it is only the Not Intended Clause, by clear import of its language and legislative history, which innately affects the exercise of freedom of speech and expression.[88] I would thus limit this facial challenge only to this objectionable portion, rather than the entirety, of Section 4.

As also mentioned, the ATA, being a penal law, is not susceptible to a facial challenge on vagueness or overbreadth grounds.[89] In fact, if the law is to work precisely as it was intended, it should create a chilling

effect as to deter any commission of acts of terrorism. No one disputes that terrorism is an. evil which the State has the right to protect itself and the public from.

At any rate, even assuming that the main part of Section 4 may be facially attacked, I find the terms of the main part to be sufficiently clear as to remove it from the purview of a facial challenge on the grounds of vagueness and overbreadth.

A law will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act, it would be impossible to provide all the details in advance as in all other statutes.[90] Due process only requires that the terms of a penal statute be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.[91] To reiterate, even a law that is couched in imprecise language may not be struck down for vagueness and may be saved by proper construction so long as it sets a standard.[92]

In this case, it is impossible to foresee any and all forms that terrorism may take. As was emphasized during my interpellation in the oral arguments, terrorism is continuously evolving.[93] By the very nature of terrorism, the law penalizing it must be agile enough to remain resilient and responsive to the changing times.

Notwithstanding the flexibility of the main part of Section 4, it provides sufficient guideposts to delineate permissible and criminal conduct. The Chief Justice correctly points out that the overt acts are circumscribed by specific criminal intents (e.g., to cause death or serious bodily injury) and other specified results (e.g., the development of weapons and release of dangerous substances).[94] The criminal' acts are further delimited by the requirement for a terroristic purpose,[95] gleaned from the nature and context of the act.[96]

I agree that, at this point, the five elements of terrorism—overt act, intent to cause a particular harm, a link between the overt act and the particular harm intended, terroristic purpose, and standards of nature and context—appear to sufficiently apprise citizens and law enforcement of the range of prohibited conduct.[97]

B.

Invalidation of the Not Intended Clause

1.

Reasons for Concurrence

I agree with the ponencia that the Not Intended Clause is unconstitutional for being vague and overbroad, and hence, an undue restriction of freedom of speech and expression and its cognate rights. It is correct that the said clause indubitably pertains to speech and expression which qualifies it for the application of a facial challenge.

In Estrada,[98] the Court, citing Justice Mendoza, explained the void-for-vagueness and overbreadth doctrines in relation to a facial challenge which has special application only to free speech cases, thus:

> The void-for-vagueness doctrine states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." The overbreadth doctrine, on the other hand,

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> decrees that "a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."
>
> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that, the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.[99] (Emphasis supplied)

A reading of the proviso which includes the Not Intended Clause shows that the inclusion of the latter serves as a limitation to the exercise of the enumerated acts related to free speech, expression, and assembly, thus:

> SEC. 4. Terrorism. — x x x Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or create serious risk to public safety. (Emphasis supplied)

The inclusion of the Not Intended Clause was meant to safeguard freedom of speech and expression. However, I likewise find that its inclusion, while appearing to be a carve-out clause, produced the opposite effect. It criminalizes advocacy, protest, and other exercises of civil and political rights subject to proof of a specific intent. This is made more evident in Rules 4.1 to 4.4 of the ATA's IRR, which treats advocacy, protest, etc., as overt acts similar to the actus reus enumerated in the main part of Section 4. Its inclusion begs the question - would the exercise of the enumerated actions be considered as terrorism if found to have been intended to cause death or serious physical harm to a person, to endanger a person's life, or create serious risk to public safety? If it was the intention of the Congress to criminalize, such acts, this should have been clearly stated rather than hidden behind the supposed protection of the said rights. Indeed, despite the similar wording of Section 4 of the ATA and its corresponding provisions in the IRR with the definitions provided in other jurisdictions, the ATA and its IRR should be scrutinized under the lens of the 1987 Philippine Constitution and prevailing jurisprudence.

We are aware of the. view that what is actually being criminalized in the Not Intended Clause is not speech per se, but the accompanying or ensuing overt act of terrorism defined in the main part of Section 4. The enumerated acts would fall within the ambit of terrorism only when they are intended "to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."

However, this construction brings to light the overbreadth of the Not Intended Clause. If the accompanying or ensuing overt act is already covered and penalized under paragraphs (a) to (e) of Section 4, then there is no legal and practical necessity for the Not Intended Clause. As it stands, the proviso, as qualified by the Not Intended Clause, only serves as a cautionary warning against dissent; it does not and will not further the State's counter-terrorism efforts.

Even though the governmental purpose is legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.[100] Incidental restriction on freedom of speech and expression must be no greater than is essential to the furtherance of such governmental interest.[101] The requirement of a narrowly-tailored restriction applies even if the level of scrutiny is merely intermediate.[102]

Section 4 of the ATA was distributed among Rules 4.1 to 4.4 of its IRR. Before the ponencia's invalidation of the Not Intended Clause, Rule 4.4 of the ATA's IRR read:

> Rule 4.4. Acts not considered terrorism
>
> When not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety, the following activities shall not be considered acts of terrorism:
> a. advocacy;
> b. protest;
> c. dissent;
> d. stoppage of work;
> e. industrial or mass action;
> f. creative, artistic, and cultural expressions; or
> g. other similar exercises of civil and political rights.

If any of the acts enumerated in paragraph (a) to (g) of Rule 4.4, however, are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety, and any of the purposes enumerated in paragraph (b) under Rule 4.3 is proven in the engagement in the said act, the actor/s may be held liable for the crime of terrorism as defined and penalized under Section 4 of the Act. The burden of proving such intent lies with the prosecution arm of the government. (Emphasis supplied)

In this regard, the ATA's IRR is clear in categorically penalizing as acts of terrorism - advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights - supposedly intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety, and any of the purposes enumerated in paragraph (b) under Rule 4.3.

Expanding the purposes to include those mentioned in paragraph (b) of Rule 4.3 or the mens rea in Section 4 of the ATA, advocacy and similar acts are penalized if they are done for the following purposes: (a) to intimidate the general public or a segment thereof; (b) to create an atmosphere or spread message of fear; (c) to provoke or influence by intimidation the government or any international organization; (d) to seriously destabilize or destroy the fundamental political, economic, or social structures of the country; or (e) to create a public emergency or seriously undermine public safety.

The foregoing purposes, as laid out in paragraph (b) of Rule 4.3, show the broad extent of possible bases to claim as terrorism the exercise of advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights. Moreover, the catch-all phrase "other similar exercises of civil and political rights" may include any and all conceivable exercises of free speech, expression, and assembly such as, but not limited to, the press, print, and media.

It bears stressing that freedom of speech and expression are accorded primacy and high esteem in our jurisdiction. As eloquently explained in Chavez v. Gonzales,[103] our history shows that the struggle to protect the freedom of speech, expression and the press was, at bottom, the struggle for the indispensable preconditions for the exercise of other freedoms.

> Freedom of speech and of the press means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, and to take refuge in the existing climate of opinion on any matter of public consequence. When atrophied, the right becomes meaningless. The right belongs as well — if not more — to those who question, who do not conform, who differ. The ideas that may be expressed under this freedom are confined not only to those that are conventional or acceptable to the majority. To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of the unorthodox view, though it be hostile to or derided by others; or though such view "induces a condition

> of unrest, creates dissatisfaction with conditions as they are or even stirs people to anger." To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us.

As such, this Court cannot give judicial imprimatur to a patently wrongful characterization under the ATA and its IRR of the exercise of the fundamental rights to free speech, expression, and assembly. The Not Intended Clause relegates advocacy, protest, dissent, stoppage of work, industrial or mass action, and other exercises of civil and political rights similar to the actus reus enumerated in Section 4(a) to (e) of the ATA.

Further, the Not Intended Clause tinder the ATA is vague as there are no sufficient standards within which to objectively determine the supposed criminal intentions in the exercise of advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights. Such exercise will be highly subjective since the enumerated acts are normally intended to check and criticize governmental actions as well as establishments. It is also overbroad insofar as it invades protected areas of freedom, and sanctions criminalization of acts committed pursuant to such freedom. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence.[104]

In addition, I agree with the ponencia that the Not Intended Clause likewise fails the strict scrutiny test. In Disini vs. Secretary of Justice,[105] the Court stated that "under the strict scrutiny standard, a legislative classification that impermissibly interferes with the exercise of fundamental right or operates to the peculiar class disadvantage of a suspect class is presumed unconstitutional. The burden is on the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest." Here, while addressing the threats of terrorism is a valid objective, the Not Intended Clause unduly expands restrictions to fundamental rights which are not per se related to such objective.

If not declared unconstitutional, the Not Intended Clause makes anyone who exercises acts which relate to free speech, expression, and assembly vulnerable to terrorism charges. The facial invalidation of the Not Intended Clause is warranted by the "chilling effect" it has on protected speech, and an inhibitory effect on protesters, dissenters, and individuals exercising similar acts. While it is recognized that criminal acts may possibly be committed on the occasion of the exercise of such rights, such criminal acts should be differentiated from acts in the exercise of freedom of speech, expression, and assembly. Criminal acts should be punished under applicable penal laws. This recognition, however, does not detract from the fundamental precept of our democracy that the fundamental rights to advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, are central to our national life.

The foregoing considered, I agree that the Not Intended Clause should be declared unconstitutional. As a necessary consequence, portions of Rule 4.4 of the ATA's IRR should be expressly declared as unconstitutional.

2.

Necessary Consequence of Invalidation of the Not Intended Clause: Effect in the ATA's IRR

The ponencia declared unconstitutional the Not Intended Clause under Section 4 of the ATA. As ruled, Section 4 reads:

> SEC. 4. Terrorism. - Subject to Section 49 of this Act terrorism is committed, by any person who, within or outside the Philippines, regardless of the stage of execution:

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(a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;

(b) Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property;

(c) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;

(d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and

(e) Release or dangerous substances, or causing lire, floods or explosions

when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code": Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights.

Deletion of references made to the Not Intended Clause in the ATA's IRR thus follows as a necessary consequence of this declaration. To my mind, this entails the deletion of the first clause in the first paragraph and the entire second paragraph of Rule 4.4, thus:

RULE IV: TERRORISM AND TERRORISM-RELATED CRIMES

RULE 4.4. Acts not considered terrorism.

The following activities shall not be considered acts of terrorism:
a. advocacy;
b. protest;
c. dissent;
d. stoppage of work;
e. industrial or mass action;
f. creative, artistic, and cultural expressions; or
g. other similar exercises of civil and political rights.

IV.

Section 25: Designation of Terrorist Individual, Groups of Persons, Organizations or Associations

A.

Section 25 cannot be subject to a facial challenge

Section 25, by its terms, does not explicitly implicate the freedom of speech or its cognate rights; as part of a penal law, it cannot be subject to a facial challenge.

The following petitions, however, purport to present as-applied challenges:

In G.R. No. 252585, petitioners Bayan Muna, et al., claim that Section 25 is a "unilateral" and "purely executive act of designation without judicial intervention" that may be too sweepingly applied to "just any speaker and their speeches."[106] In particular, they argue that the power of designation could be used to disqualify them from participating under the party-list system by simply tagging them as "communist fronts and/or terrorists and/or NPA."[107] They went on to cite a recent Resolution issued by the Commission on Elections (COMELEC) dismissing one such petition filed against it and several other groups.[108]

In G.R. No. 252767, petitioners Pabillo, et al., maintain that the grant of designation powers to the ATC not; only "arrogat[es] the public prosecutor's function to determine probable cause in a preliminary investigation,"[109] it transgresses due process rights in that it designates an individual as a terrorist "based only on suspicion, sans evidence, and without any proceeding where a respondent is given an opportunity to refute the accusations against him/her x x x."[110] Petitioners in G.R. No. 252767 thereafter list instances when they have allegedly been "labelled and accused as front organizers of the CPP-NPA even prior to the enactment of RA No. 11479."[111]

In G.R. No. 252768, petitioners GABRIELA, et al., assert that Section 25 is a "very broad, in fact, undefined power, to suspect individuals x x x of being terrorists or committing terrorism x x x [with] no known parameters for [its] exercise x x x."[112]. Claiming that, officers, members, and supporters of GABRIELA have been targets of human rights violations[113] and red-tagging[114] by state forces, petitioners warn that "given the worsening climate of oppression and disregard of basic rights, x x x the law is wont to be implemented 'with an evil eye and an unequal hand.'"[115]

In G.R. No. 253242, petitioners Coordinating Council for People's Development, et al., argue that the ATC's designation power clearly and blatantly violates the due process clause of the Constitution[116] as it relies on a vague and overbroad definition of terrorism and lacks sufficient standards for its exercise. They also aver that they have been "openly branded as terrorist groups"[117] and, as such, targets of human rights violations perpetrated by State forces.[118]

I have examined the foregoing petitions and submit that the records before the Court are insufficient to justify a ruling on Section 25 at this time.

First, apart from petitioner Rey Claro Cera Casambre (Casambre), one of the petitioners in G.R. No. 252767, no other petitioner from the aforementioned petitions claims to have been the subject of the ATC's designation powers as to lodge a proper as-applied case against Section 25.

Second, while it is noted that Casambre was among those designated as terrorists under ATC Resolution No. 17, there is nothing by way of allegation, much less proof, in the petition in G.R. No. 252767, as to whether (and how) Section 25 operated to violate his constitutional rights. It also appears that specific references to government action against Casambre were solely in relation to his inclusion (as an alleged leader of the CPP-NPA) in the list of individuals in the proscription case filed by the DOJ before the Manila RTC Branch 19.[119] Nevertheless, and as the petition itself noted, his name was stricken off of this list upon his motion, "with the trial court declaring that [Casambre] cannot be considered 'a party respondent in the petition.'"[120]

Third, the lack of allegations as to the issue of designation may well be due to the date of issuance of ATC Resolution No. 17 (designating a number of individuals, including petitioner Casambre, as terrorists under the third mode of designation). The resolution was issued only on 21 April 2021, or nearly a year after the petition

was filed before the Court. To my mind, however, this only further underscores the prematurity of any ruling with respect to Section 25.

Fourth, even granting the presence of an actual as-applied case in Casambre's favor, there is still an absolute dearth of allegation supported by evidence on the record which can provide the necessary factual bases to strike down Section 25 (or portions thereof).

The allegations against Section 25 are essentially facial challenges against its reasonableness as a state-sponsored counterterrorism measure. A ruling on reasonableness in this case, however, is hinged on proof that the regulation is necessary to achieve a compelling State interest, and that it is the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.[121] Such finding is, in turn, inextricably linked to the resolution of underlying questions of fact.[122] In this case, there are no factual bases, at least ones established by testimony and evidence of opposing parties in the crucible of trial, by which to weigh and ascertain the balance between the promotion of the government's compelling interest (to prevent the commission of terrorism) and the alleged intrusion/s into petitioners' constitutional rights.[123]

In Alfonso v. Land Bank of the Philippines,[124] this Court resisted proposals to declare the unconstitutionality of Section 17 of RA 6657, or the Comprehensive Agrarian Reform Law, and the rules issued by the Department of Agrarian Reform (DAR) to implement the same. It considered that while petitioner Alfonso was "a direct injury party who could have initiated a direct attack" on the law and its implementing rules, he did not do so. As the petition concerned itself merely with the non-binding nature of Section 17 of RA 6657 and the resulting DAR formula in relation to the judicial determination of the just compensation for properties covered by the agrarian reform program, the Court ruled that the case did not meet the "case and controversy" requirement of Angara as to warrant a ruling on the law's constitutionality:

> Petitioner is a direct-injury party who could, have initiated a direct attack on Section 17 and DAR AO No. 5 (1998). His failure to do so prevents this case from meeting the "case and controversy" requirement of Angara. It also deprives the Court of the benefit of the "concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."
>
> The dissents are, at their core, indirect attacks on the constitutionality of a provision of law and of an administrative rule or regulation. This is not allowed under our regime of judicial review. x x x
>
> Our views as individual justices cannot make up for the deficiency created by the petitioner's failure to question the validity and constitutionality of Section 17 and the DAR formulas. To insist otherwise will be to deprive the government (through respondents DAR and LBP) of their due process right to a judicial review made only "after full opportunity of argument by the parties."
>
> Most important, since petitioner did not initiate a direct attack on constitutionality, there is no factual foundation of record to prove the invalidity or unreasonableness of Section 17 and DAR AO No. 5 (1998). This complete paucity of evidence cannot be cured by the arguments raised by, and debated among, members of the Court.[125]

Finally, and again granting the presence of evidence on record, this Court, since its creation in 1901, does not, as a rule, try questions of facts:

> x x x the Court, whether in the exercise of its original or appellate jurisdiction, is not equipped to receive and evaluate evidence in the first instance. Our sole role is to apply the law based on the findings of facts brought before us. x x x Accordingly, when litigants seek relief directly from the Court, they bypass the judicial structure and open themselves to the risk of presenting incomplete or disputed facts. This consequently hampers the resolution of controversies before the Court. Without the necessary facts, the Court cannot

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> authoritatively determine the rights and obligations of the parties. x x x[126]

It must be stressed that petitioner Casambre can file the proper case before the appropriate trial courts. To my mind, this would allow for a better means of ascertaining truth and minimizing the risk of error,[127] instead of a ruling based on "factual findings" made by this Court ex cathedra. As Justice Antonin Scalia, in his dissent in Sykes v. United States, warned:

> Supreme Court briefs are an inappropriate place to develop the key facts in a case. We normally give parties more robust protection, leaving important factual questions to district courts and juries aided by expert witnesses and the procedural protections of discovery.[128]

A commentator likewise wrote that a resort to in-house fact gathering creates serious risks, not least of which include the possibility of mistake, unfairness to the parties, and judicial enshrinement of biased data.[129]

Given the nature of the interests and the seriousness of the repercussions (both on the side of government as well as the individuals to be affected) involved in this case, I submit that the Court should refrain from striking down Section. 25 (or portions thereof) at this time and without the benefit of "contextualization of petitioners', arguments using factual and evidentiary bases."[130] Instead, the Court should reserve its views on this particular provision until such time that the issue is properly elevated before Us.

B.

Effect on RA 10168 and on AMLC Sanctions Guidelines and Resolutions

The enactment of the ATA prompted the revision of the Targeted Financial Sanctions by the AMLC. In this regard, the AMLC issued its 2021 Sanctions Guidelines.[131] Under paragraph 1.2.b of the AMLC's 2021 Sanctions Guidelines, designated persons were defined as:

> (a) Any person or entity designated as a terrorist, one who finances terrorism, or a terrorist organization or group under the applicable United Nations Security Council Resolution or by another jurisdiction or supra-national jurisdiction; or
>
> (b) Any person, organization, association, or group of persons designated under paragraph 3, Section 25 of the Anti-Terrorism Act of 2020 (ATA); and
>
> (c) Any person or entity designated under UNSC Resolutions Nos. 1718 (2006) and 2231 (2015).

Based on the foregoing definition of designated persons, the AMLC issued several resolutions to freeze the properties or funds, including related accounts, of those designated persons. These resolutions, which are enumerated below, were based on the designation by the ATC, and were directed not only to financial institutions and those covered institutions under the RA 9160, as amended, or the Anti-Money Laundering Act of 2001, but also to relevant government agencies, such as the Land Transportation Office, Land Registration Authority, Register of Deeds, Maritime Industry Authority, and the Civil Aviation Authority of the Philippines. The purpose of the freeze order is to deny listed individuals, groups, undertakings, and entities the means to support terrorism. AMLC seeks to ensure that no funds, financial assets, or economic resources of any kind are available to the designated persons for so long as they remain subject to the sanctions measures.

We are aware of the following designations made by the ATC pursuant to the ATA:

- Authorizing ATC Resolution: ATC Resolution No. 12, Series of 2020

See Also: Proclamation No. 374 issued on 05 December 2017 declaring the Communist Party of the Philippines - New People's Army (CPP-NPA) a Designated/Identified Terrorist Organization under R.A. No. 10168
Consequent AMLC Resolution: AMLC Resolution No. TF-33, Series of 2020
Persons designated: Communist Party of the Philippines and the New People's Army also known as Bagong Hukbong Bayan (CPP/NPA).

- Authorizing ATC Resolution: ATC Resolution No. 13, Series of 2020
Consequent AMLC Resolution: AMLC Resolution No. TF-34, Series of 2020
Persons designated: (1) Islamic State in Iraq and Syria in SouthEast Asia; (2) Dawlatul Islamiyah Waliyatul Masrik; (3) Dawlatul Islamiyyah Waliyatul Mashriq; (4) IS East Asia Division; (5) Maute Group; (6) Islamic State East Asia; (7) Maute ISIS; (8) Grupong ISIS; (9) Grupo ISIS; (10) Khilafah Islamiyah; (11) KLM; (12) Ansharul Khilafah; (13) Bangsamoro Islamic Freedom Fighters-Bungo; (14) Bangsamoro Islamic Freedom Fighters-Abubakar; (15) Jama'atu al-Muhajirin wal Ansar fil Filibin; (16) Daulah Islamiyah (DI); and (17) other Daesh-affiliated groups in the Philippines.

- Authorizing ATC Resolution: ATC Resolution No. 16, Series of 2021
Consequent AMLC Resolution: AMLC Resolution No. TF-39, Series of 2021
Persons designated: (1)Esmael Abdulmalik a.k.a. Cmdr Turaifie/Abu Turaifie/Abu Toraype of the Jama'atu al-Muhajirin wal Ansar fil Filibin and affiliated with the DI; (2) Raden Abu of the ASG and affiliated with the DI; (3) Esmael Abubakar a.k.a. Cmdr Bungos/Bungos of the Bangsamoro Islamic Freedom Fighters (BIFF)-Bungso faction; (A) Muhiddin Animbang a.k.a. Kagui Karialan/Karialan affiliated with the BIFF; (5) Salahuddin Hassan a.k.a' Orak/Salah/Tulea/Abu Salman affiliated with the DI; (6) Radzmil Jannatiil a.k.a. Khubayb/Kubayb/Kubaib/Kubaeb/Baeb of the ASG and affiliated with the DI; (7) Majan Sahidjuan a.k.a. Apo Mike/Apoh Mike of the ASG and affiliated with the DI; (8) Faharudin Behito Hadji Satar a.k.a. Jer Mimbantas/Abu Zacaria/Zacharia/Abu Bakar/Qmar of the Maute Group and affiliated with the Dl; (9) Mudsrimar-Sawadjaan a.k.a. Mundi Sawadjaan/Puruh Sawadjaan/Puroh of the ASG and affiliated with the DI; and (10) Almujer Yadah a.k.a, Mujer/Mujir of the ASG and affiliated with the DI.

- Authorizing ATC Resolution: ATC Resolution No. 17, Series of 2021
Consequent AMLC Resolution: AMLC Resolution No. TF-40, Series of 2021
Persons designated: (1) Jose Maria Canlas Sison a.k.a. Joma/Armando Liwanag/Amado Guerrero/Lodi/Pete/Al of the CPP; (2) Vicente Portades Ladlad a.k.a. Vic/Terry/Edgar/Ed/Gilbert/Fidel/Isagani/Emilio/Vlady/Dong/Nonong/Dino/Ramon/Billy/Bern of the CPP; (3) Rafael De Guzman Baylosis a.k.a. Raul/Rap/Raffy/Lando of the CPP; (4) Jorge Madlos a.k.a. Ka Oris/Ma) Fuerza/JS/Jose/Oloy/Caloy/Ando/Tatay/Cdr Karyo/Raul Castro/Kasky of the CPP; (5) Julieta De Lima Sison a.k.a. Juliet/Julia/Julie/Socorro/Rojo/ Mayette/ Leah/Maria C De Guzman/Cdr Lita/Jules/Manet/Marie/Sendang/Yelena/Ylna of the CPP; (6) Rey Claro Cera Casambre a.k.a. Bong of the CPP; (7) Abdias Gaudiana a.k.a. Abadias Guadiana/July/Badul/Abdul/Mario/Omar/Ramon/Dome of the CPP; (8) Alan Valera Jazmines a.k.a. Alfonso Jazmines, Jr./Tomas/Arthur/Tex/Dex/Ogie/Andy Perez/Juan Tivaldo/Teroy/ Archie of the CPP; (9) Benito Enriquez Tiamzon a.k.a. Celo/Iyo/Lot/Crising Banaag/Jing of the CPP; (10) Wilma Austria-Tiamzon a.k.a. Ka Wing/Didith/Jana/Pinay/Sering/Ria/Azon/Isabel/Suarez/Edith/Jana of the CPP; (11) Adelberto Albayalde Silva a.k.a. ca/Rigor/Perry/Percival Rojo of the CPP; (12) Ma. Conception Araneta-Bocala a.k.a. Kata/Concha/Clara/Remi/Estrella/Etang/Ling/Diwa/Martha of the CPP; (13) Dionesio Micabalo a.k.a. Dionisio Micabalo/Muling/Moling/Cardo/Kardo/Carpo/Bawang/Abu/Jeff of the CPP; (14) Myrna Sularte a.k.a. Myrna Solarte/Iyay/Imang/Emang/Bingbing/Maria Malaya/Josie of the CPP; (15) Tirso Lagora Alcantara a.k.a. Bart Sot/Flavio/Panginoon/Dave/Shane Sangria of the CPP; (16) Pedro Heyrona Codaste a.k.a. Gonyong/Koyoy/Inggo/Senyong/Beryong/Resurrecion Osorio of the CPP; (17) Tomas Dominado a.k.a.

Pendong/Asyong/Greg/Tom/Noynoy of the CPP; (18) Ma. Loida Tuzo Magpatoc a.k.a. Eva/Ka Norsen/Bebyang/Byang/Elay/Madam/Gwen/Adelaida Burias Tozo of the CPP; and (19) Menandro Villanueva a.k.a. Nelson/Boss/Dennis/Titing/Bok/Ka Luis/Book/Willy/Jude of the CPP.

- Authorizing ATC Resolution: ATC Resolution No. 41, Series of 2021
Consequent AMLC Resolution: AMLC Resolution No. TF-20, Series of 2021
Persons designated: (1) Radulan/Radullan Sahiron a.k.a. Commander Putol/Gagandilan/Magang of the ASG; (2) Hajan Sawadjaan/Hatib Hajan Sawadjaan a.k.a. Pah Hajan; Abdulhajan; Abduhajan of the ASG and affiliated with the Daulah Islamiyah (DI); (3) Furuji Amirin Indama/Furuji Indama a.k.a. Abu Sopek: Abu Dujana; Ustadz Faidz; Ben Dudjanan; Juljarna Indama of the ASG and affiliated with the DI; (4) Sansibar Saliddin Bensio/Sansibar Saliddin Bencio a.k.a. Sibar/Sansi of the ASG; (5) Pasil Bayali a.k.a. Kera/Kerah of the ASG and affiliated with the DI; (6) Abdullah Jovel Indanan a.k.a. Guro/Guroh of the ASG-and affiliated with the DI; (7) Ibni Acosta/Acosta Ibni Y Ibrahim a.k.a. Abu Tini/Alkaser Albani/Moin/Win of the ASG and affiliated with the DI; (8) Bensito Quirino Yadah/Bensito Quirino Bakun/Ben Quirino Yadah a.k.a. Ben Tattoo/Ben Yadah of the ASG and affiliated with the DI; (9) Suhud Gaviola Salasim a.k.a. Ben Wagas of the ASG and affiliated with the DI; (10) Hassan Solaiman Ind'al/Hassal Indal a.k.a. Abu Azam/ Abu Hassan/Assam/Abu Ali of the Turaifie Group and affiliated with the DI; (11) Hassan Kulaw/Mustapha K'assan Kulaw/Kassan Kulaw a.k.a. Abu Saiden/Abu Zaiden of the Turaifie Group and affiliated with the DI; (12) Norodin Ilassan/Nur Hassan a.k.a. Andot Hassan/Andot/Dots/Dot of the Hassan Group and affiliated with the DI; (13) Emarudin Kulaw/Emaruddin Kulaw/Samaruddin Kulaw/Emarudin Kasan/Emarudin Hassan a.k.a. Alpha King/Alpha King Hassan of the Maute Group and affiliated with the DI; also of the Hassan Group and affiliated with the DI; (14) Jaybee Mastura/Jayvee Mastura a.k.a. Abu Nairn/Abu Naem of the Hassan Group and affiliated with the DI; (15) Yusoph Hadji Nassif/Osoph Hadji Nassif/Osop Hadji Nasir a.k.a. Abu Asraf/Abu Arap/Osoph/Osop of the Maute Group and affiliated with the DI; (16) Mahir Sandab a.k.a. Abu Jihad/Jihad/Lumen/Telmijie of the Maute Group and affiliated with the DI; (17) Solaiman Tudon/Sulaiman Tudon a.k.a. Abu Jihad of the Bangsamoro Islamic Freedom Fighters-Karialan faction; (18) Sukarno Sapal a.k.a. Abubakar Sapal/Zulkarnain SapaJ/Sukarno Abubakar Joke/Diok/"CS 52"/Zuk of the Bangsamoro Islamic Freedom Fighters-Karialan faction; (19) Khadafi Abdulatif/Khadaffy Abdulatif/Khadaffy Abdullatip a.k.a. Yusa/"CS 01"/Zero One/Mukayam of the Bangsamoro Islamic Freedom Fighters - Bungos faction; and (20) Kupang Sahak/Kopang Sahak a.k.a. Commander Tarzan/Tarzan/Tarsan/Bapa Sahak of the Maguid Group and affiliated with the DI.

- Authorizing ATC Resolution: ATC Resolution No. 42, Series of 2021
Consequent AMLC Resolution: AMLC Resolution No. TF-21, Series of 2021
Persons designated: National Democratic Front (NDF), also known as the National Democratic Front of the Philippines (NDFP)

Consistent with the thrust of ATA, freeze orders were immediately implemented on the properties and funds of the accounts in the AMLC resolutions, as well as related accounts. As it is my view that Section 25 is not unconstitutional under the present petitions, its effects and consequences, i.e., the above-enumerated ATC and AMLC issuances on designation under the ATA, are valid until they are successfully challenged in the appropriate forum.

V.

Section 29: Detention Without Judicial Warrant of Arrest

A. Validation of Section 29

1. Reasons for Concurrence

I agree with the ponencia that Section 29 of the ATA does not contemplate the issuance of a warrant of arrest by the Executive department.[132] To be sure, the IRR salvaged the vague wording of the law. As clarified by the IRR, the written authorization issued by the ATC becomes relevant only after the valid warrantless arrest and particularly for the extension of the period of detention. Because the IRR ultimately fixed Section 29 of the ATA and the ponencia has elegantly constructed the provision consistent with the relevant rules, Section 29 ultimately passes strict scrutiny and is not overly broad.[133]

The ponencia harmonized the relevant provisions of law and clarified that a person may be arrested without a warrant by law enforcement officers or military personnel for acts defined or penalized under Sections 4 to 12 of the ATA but only under any of the instances contemplated in Rule 9.2 of the IRR, i.e., arrest in flagrante delicto, arrest in hot pursuit, and arrest of escapees - which emulates Section 5, Rule 113 of the Rules of Court.[134] Once arrested without a warrant under said instances, a person may be detained for 14 days, provided that the ATC issues a written authority in favor of the arresting officer pursuant to Rule 9.1 of the IRR. This is upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism and the relevant circumstances as basis for taking custody of said person. If the ATC does not issue the written authority, then the arresting officer shall deliver the detainee to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code (RPC). As such, Article 125 of the RPC is effectively the general rule as to the period of detention and it also applies to ATA-related offenses when the conditions under Section 29 are not met. Accordingly, the periods under Section 29 of the ATA will only become operative once the arresting officer has secured a written authorization from the ATC, upon compliance with the requirements provided in said section. Given the exclusive application of Section 29 to persons validly arrested without warrant for terrorism and its related crimes under the ATA, the 14-day detention provided therein simply supplements the periods provided under Article 125 of the RPC.

Prescinding from this, there is also no undue delegation or usurpation of authority since no warrant of attest is issued by the ATC.

2. Remedies for Section 29 Detainees

I underline, however, the effect of this construction on the remedy of the writ of habeas corpus. The availability of the writ is derogated as to the detainee since the prolonged detention, even when lacking the written authority for the extension, may be rendered lawful, or seemingly lawful, by the valid warrantless arrest. For instance, when a person is detained following a valid warrantless arrest, come the second day of detention, can he already file for a petition for the writ of habeas corpus? The propriety of the remedy becomes dependent on the timely issuance of the written authority by the ATC.

In this regard, I submit that while it is within the ATC's function to issue the authorization, the process of how the written authority is issued should be streamlined and disclosed for regularity and uniformity and should be more transparent to preserve the availability of the detainee's remedies.

As currently worded, the ATA only provides for the extension and the circumstances under which an extension can be granted without, however, stating how said extension will be applied for, if at all, and who approves it. The following questions remain to be addressed: Who will apply for the authorization? Who will appreciate the facts to justify extension? Is it the whole ATC or does one member suffice? Is a quorum needed? What are the

safeguards for the detainee and the process of deliberation?

The transparency of the process would ensure the earliest availability of the writ of habeas corpus to the detainee. The written authority should be issued and shown to the detainee within the 36 hours so that it is clear to the detainee when he can file for the writ of habeas corpus.

On this note, I also stress that the detainee may apply for bail even before an Information is filed against him. To be sure, the person seeking provisional release need not wait for a formal complaint or information to be filed against him as it is available to all persons where the offense is bailable, so long as the applicant is in the custody of the law. A person is considered to be in the custody of the law when (1) he is arrested either (a) by virtue of a warrant of arrest issued pursuant to Section 6, Rule 112, or (b) by warrantless arrest under Section 5, Rule 113 in relation to Section 7, Rule 112 of the revised Rules on Criminal Procedure, or (2) when he has voluntarily submitted himself to the jurisdiction of the court by surrendering to the proper authorities.[135]

This notwithstanding, although the wisdom and propriety of legislation is not for this Court to pass upon,[136] and considering other countries' anti-terrorism-laws, it is still worthy to note that the reason for the 14 + 10 day-period is not precisely clear or identified. According to the Senate deliberations, Congress simply thought that the 3-day maximum period under the HSA was insufficient for purposes of: (1) gathering admissible evidence for a prospective criminal action against the detainee; (2) disrupting the transnational nature of terrorist operations; (3) preventing the Philippines from becoming an "experiment-lab" or "safe haven" for terrorists; and (4) putting Philippine anti-terrorism legislation at par with those of neighboring-countries whose laws allow for pre-charge detention between 14 to 730 days, extendible, in some cases, for an indefinite period of time.[137] It was not discussed, however, why the 14 + 10 day-period, specifically, should be adopted. This is inconsistent with the Constitutional intent to minimize the period of detention without charge.[138] The same remains true even if I am constrained to agree that the Constitutionally mandated 3-day, period for delivery to judicial authorities pertains specifically to instances when the writ of habeas corpus is suspended.

3. Matters for Consideration

I concede that, based on the foregoing and given the legislative history of Article 125 of the RPC, Congress can theoretically provide for a longer period for detention. However, it must be underscored that the period for detention is not just a matter of policy. The Judiciary, through its expanded power, can review the same to guard against grave abuse of discretion.

At this juncture, it is well to point out that other States have the means and resources at their disposal to sanction a longer period of pre-charge detention, while maintaining safeguards to avoid violation of human rights.

In this wise, Congress and eventually the ATC will do well to publish an issuance clarifying the application and implications of Section 29 of the ATA in accordance with the ponencia. That Section 29 of the ATA merely supplements Section 125 of the RPC triggers repercussions that must be addressed through a more transparent and streamlined process as regards pre-charge detention in terrorism cases. Laypersons will surely find it difficult and confusing to properly interpret and understand said section of the ATA as it is. Certainly, the careless wording of the ATA runs counter to the truth that the law should be accessible to the public because it is, ultimately, for the public. The proper interpretation outlined by this Court should thus be adopted and further, embodied in an executive or legislative issuance in order to assist and guide the persons to be affected by said legal provision.

VI.

Remedies for Gaps in the ATA: Lack of Sanctions for Violators of Extraordinary Rendition (Section 48) and Protection of Most Valuable Groups (Section 51)

For most of the provisions in the ATA, the language used in imposing penalties for violations of the ATA are specific and definite: 4 years, 6 years, 10 years, 12 years, and life imprisonment. The violators are certain and identifiable: any person; an employee, official, or a member of the board of directors of a bank or financial institution; law enforcement agent or military personnel or any custodian; or any public officer who has direct custody of a detained person.

Section number

Provision

Who

Penalty: Imprisonment of 4 years

37

Malicious Examination of a Bank or a Financial Institution

Any person

39

Bank Officials and Employees Defying a Court Order

An employee, official, or a member of the board of directors of a bank or financial institution

Penalty: Imprisonment of 6 years

43

Furnishing False Evidence, Forged Document, or Spurious Evidence

Any person

Penalty: Imprisonment of 10 years

20

Custody of Intercepted and Recorded Communications

Any person, law enforcement agent or military personnel or any custodian

21

Contents of Joint Affidavit

Any person, law enforcement agent or military personnel

22

Disposition of Deposited Materials

Violator

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24

Unauthorized or Malicious Interceptions and/or Recordings

Any law enforcement agent or military personnel

29

Detention without Judicial Warrant of Arrest

Police, law enforcement agent or military personnel

31

Violation of the Rights of a Detainee

Law enforcement agent or military personnel

32

Official Logbook and Its Contents

Law enforcement custodial unit

41

Unauthorized Revelation of Classified Materials

Any person, law enforcement agent or military personnel, judicial officer or civil servant

42

Infidelity in the Custody of Detained Persons

Any public officer who has direct custody of a detained person

Penalty: Imprisonment of 12 years

5

Threat to Commit Terrorism

Any person

8

Proposal to Commit Terrorism

Any person

9

Inciting to Commit Terrorism

Any person

10

Recruitment to and Membership in a Terrorist Organization

Any person

14

Accessory

Any person

Penalty: Life imprisonment without the benefit of parole and the benefits of RA 10592

4

Terrorism

Any person within or outside the Philippines

6

Planning, Training, Preparing, and Facilitating the Commission of Terrorism

Any person

7

Conspiracy to Commit Terrorism

Any person

11

Foreign Terrorist

Any person

Liable as principal

12

Providing material support

Any person

During the Senate deliberations, our lawmakers agreed to impose a uniform penalty for violators of the ATA who are public officials. After Senator Franklin M. Drilon proposed a lower penalty of 6 years for violation of Disposition of Deposited Materials during the period of amendments, Senator Panfilo M. Lacson reminded him about the agreement with Senator Francis Pangilinan that the penalty for violations of law enforcement officers should be imprisonment for 10 years.

> Senator Lacson. And we agreed on 10 years to make it consistent with the other violations of law enforcement officers, Mr. President.
>
> Senator Drilon. So, what is the proposed penalty?
>
> Senator Lacson. Ten years, Mr. President.
>
> The President. So we can remove "eight (8) years and one day to" on lines 23 and 24. So, it shall read: penalized by imprisonment of TEN (10) YEARS.
>
> Senator Drilon. Whenever a violation of law enforcement officer is involved, we should want to retain 10 years. Mr. President, as an added safeguard as proposed by Senator Pangilinan.[139]

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This exchange highlights the legislative intent to impose a penalty of imprisonment, for 10 years for erring law enforcement officers. The penalty of imprisonment should be imposed in addition to administrative liabilities under the ATA:

> SEC. 15. Penalty for Public Official. - If the offender found guilty of any of the acts defined and penalized under any of the provisions of this Act is a public official or employee, he/she shall be charged with the administrative offense of grave misconduct and/or disloyalty to the Republic of the Philippines and the Filipino people, and be meted with the penalty of dismissal from the service, with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits and perpetual absolute disqualification from running for any elective office or holding any public office.

The specificity of the penalties for the violations in the table above stands in stark contrast to the lack of penalties for unauthorized or prohibited acts under extraordinary rendition in Section 48 and protection of most valuable groups in Section 51. Even though our legislators did not see fit to address the penalties for violations of these provisions in the ATA, it is submitted that remedies found in other laws, although considerably less than those imposed for the violations above, should remain as remedies to address these gaps within the ATA.

Extraordinary Rendition is mentioned twice in the ATA. It is defined in Section 3(c) and banned in Section 48. The counterpart provisions in the ATA's IRR, Rule 1.2(j), and Rule 11.12, reproduce the ATA's provisions verbatim.

> SEC. 3. Definition of Terms. - as used in this Act:
>
> x x x
>
> (c) Extraordinary Rendition shall refer to the transfer of a person, suspected of being a terrorist or supporter of a terrorist organization, association, or group of persons to a foreign nation for imprisonment and interrogation on behalf of the transferring nation, The extraordinary rendition may be done without framing any formal charges, trial, or approval of the court.
>
> SEC. 48. Ban on Extraordinary Rendition. - No person suspected or convicted of any of the crimes defined and penalized under the provisions of Sections 4, 5, 6, 7, 8. 9, 10, 11 or 12 of this Act shall be subjected to extraordinary rendition in any country.

There is no law which addresses extraordinary rendition. Violators of the ban inevitably involve public officials as the persons who have custody of suspected or convicted individuals and can authorize such transfers.

Section 51 of the ATA recognizes the concerns for the welfare of suspects who are elderly, pregnant, or suffering from a disability, as well as women and children:

> SEC. 51. Protection of Most Vulnerable Groups. - There shall be due regard for the welfare of any suspects who are elderly, pregnant, persons with disability, women and children while they are under investigation, interrogation or detention.

Rule 11.11 of the ATA's IRR added that the ATC will conduct training and capacity-building:

> Rule 11.11. Protection of most vulnerable groups.
>
> While under investigation, interrogation or detention, there shall be due regard for the welfare of any suspects who are elderly, pregnant, persons with disability, women and children.
>
> In the State's endeavor to build its capacity to prevent and combat terrorism, the ATC shall conduct training and capacity-building on gender-sensitive approaches to investigations and prosecutions as well as to rehabilitation and integration of families, particularly of women.

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In the RPC, Article 231 penalizes open disobedience while Article 235 recognizes the maltreatment of prisoners as a crime.

> Article 231. Open disobedience. - Any judicial or executive officer who shall openly refuse to execute the judgment, decision or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities, shall suffer the penalties of arresto mayor in its medium period to prision correccional in its minimum period, temporary special disqualification in its maximum period and a fine not exceeding 1,000 pesos.
>
> Article 235. Maltreatment of prisoners. - The penalty of arresto mayor in its medium period to prision correccional in its minimum period, in addition to his liability for the physical injuries or damage caused, shall be imposed upon any public officer or employee who shall overdo himself in the correction or handling of a prisoner or detention prisoner under his charge, by me imposition of punishment not authorized by the regulations, or by inflicting such punishment in a cruel and humiliating manner.
>
> If the purpose of the maltreatment is to extort a confession, or to obtain some information from the prisoner, the offender shall be punished by prision correccional in its minimum period, temporary special disqualification and a line not exceeding 500 pesos, in addition to his liability for the physical injuries or damage caused.

Arresto mayor in its medium period lasts from 2 months and 1 day to 4 months while prision correccional in its minimum period lasts from 6 months and 1 days to 2 years and 4 months. These periods are shorter than the imprisonment of 10 years imposed under the ATA.

Article 32 of the Civil Code of the Philippines also allows for civil liability. It does not impede any of the possible offended parties from filing a separate civil action for damages. Thus:

> Article 32. Any public officer or employee, or any private individual, who directly or indirectly, obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
>
> (1)
>
> Freedom of religion;
>
> (2)
>
> Freedom of speech;
>
> (3)
>
> Freedom to write for the press or to maintain a periodical publication;
>
> (4)
>
> Freedom from arbitrary or illegal detention;
>
> (5)
>
> Freedom of suffrage;
>
> (6)
>
> The right against deprivation of properly without due process of law;
>
> (7)

The right to a just compensation when private property is taken for public use;

(8)

The right to the equal protection of the laws;

(9)

The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;

(10)

The liberty of abode and of changing the same;

(11)

The privacy of communication and correspondence;

(12)

The right to become a member of associations or societies for purposes not contrary to law;

(13)

The right to take part in a peaceable assembly to petition the Government for redress of grievances;

(14)

The right to be a free from involuntary servitude in any form;

(15)

The right of the accused against excessive bail;

(16)

The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;

(17)

Freedom from, being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;

(18)

Freedom from excessive Ones, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and

(19)

Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the

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> latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

Indeed, the ATA's silence as to the imposition of the penalty of imprisonment or liability for civil damages for erring public officials should not be seen as a failure to hold these officials accountable. Even though the duration of the penalties in these laws are much shorter than those in the ATA, I would like to emphasize that remedies exist for aggrieved persons outside of the provisions of the ATA, it would do well for Congress to explicitly address these gaps to be consistent with its legislative intent.

VII.

Unconstitutionality of Continuous Trial (Section 44) and of Trial of Persons Charged Under ATA (Section 53): Usurpation of the SC's Rule-Making Power

Section 5(5), Article VIII of the 1987 Constitution reads:

> SECTION 5. The Supreme Court shall have the following powers:
>
> x x x
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.
>
> x x x.

It is submitted that the seemingly innocuous phrase "set the case for continuous trial on a daily basis from Monday to Thursday or other short-term trial calendar to" be motu proprio deleted from Section 44 of the ATA for usurpation of this Court's rule-making power. Section 44 should now read:

> SEC 44. Continuous Trial. - In cases involving crimes defined and penalized under the provisions of this Act, the judge concerned shall ensure compliance with the accused's right to speedy trial.

For the same reason, it is also submitted that second sentence in the first paragraph and the second paragraph of Section 53 be invalidated. Section 53 should now be worded as follows:

> SEC. 53. Trial of Persons Charged Under this Act. - Any person charged for violations of Sections 4, 5, 6, 7, 8, 9, 10, 11 or 12 of this Act shall be tried in special courts created for this purpose.

Accordingly, the counterpart of these ATA provisions in the ATA's IRR should read:

> RULE 11.14. Trial of Persons Charged under the Act.
>
> Any person charged for violations of Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act shall be tried in special courts created for this purpose.

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> In cases involving crimes defined and penalized under the provisions of the Act, the judge concerned shall ensure compliance with the accused's right to speedy trial.

In the case of Estipona v. Lobrigo,[140] We had the occasion to explain the evolution of this Court's rule-making power under the 1935, 1973, and 1987 Constitutions and to summarize our previous rulings on this matter:

> The power to promulgate rules of pleading, practice and procedure is now Our exclusive domain and no longer shared with the Executive and Legislative departments. In Echegaray v. Secretary of Justice, then Associate Justice (later Chief Justice) Reynato S. Puno traced the history of the Court's rule-making power and highlighted its evolution and development.
> x x x It should be stressed that the power to promulgate rules of pleading, practice and procedure was granted by our Constitutions to this Court to enhance its independence, for in the words of Justice Isagani Cruz "without independence and integrity, courts will lose that popular trust so essential to the maintenance of their vigor as champions of justice." Hence, our Constitutions continuously vested this power to this Court tor it enhances its independence. Under the 1935 Constitution, the power of this Court to promulgate rules concerning pleading, practice and procedure was granted but it appeared to be co-existent with legislative power for it was subject to the power of Congress to repeal, alter or supplement. Thus, its Section 13, Article VIII provides:
> "Sec. 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice and procedure are hereby repealed as statutes, and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines."

The said power of Congress, however, is not as absolute as it may appear on its surface. In In re: Cunanan Congress in the exercise of its power to amend rules of the Supreme Court regarding, admission to the practice of law, enacted the Bar Flunkers Act of 1953 which considered as a passing grade, the average of 70% in the bar examinations after July 4, 1946 up to August 1951 and 71% in the 1952 bar examinations. This Court struck down the law as unconstitutional. In his ponencia, Mr. Justice Diokno held that "x x x the disputed law is not a legislation; it is a judgment — a judgment promulgated by this Court during the aforecited years affecting the bar candidates concerned; and although this Court certainly can revoke these judgments even now, for justifiable reasons, it is no less certain that only this Court, and not the legislative nor executive department, that may do so. Any attempt on the part of these departments would be a clear usurpation of its function, as is the case with the law in question." The venerable jurist further ruled: "It is obvious, therefore, that the ultimate power to grant license for the practice of law belongs exclusively to this Court, and the law passed by Congress on the matter is of permissive character, or as other authorities say, merely to fix the minimum conditions for the license." By its ruling, this Court qualified the absolutist tone of the power of Congress to "repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines."

The ruling of this Court in In re Cunanan was not changed by the 1973 Constitution. For the 1973 Constitution reiterated the power of this Court "to promulgate rules concerning pleading, practice and procedure in all courts, x x x which, however, may be repealed, altered or supplemented by the Batasang Pambansa x x x." More completely, Section 5(2)5 of its Article X provided:

> xxx xxx xxx
>
> "Sec. 5. The Supreme Court shall have the following powers.
>
> xxx xxx xxx

> (5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights."

Well worth noting is that the 1973 Constitution further strengthened the independence of the judiciary by giving to it the additional power to promulgate rules governing the integration of the Bar.

The 1987 Constitution molded an even stronger and more independent judiciary. Among others, it enhanced the rule making power of this Court. Its Section 5(5), Article VIII provides:

> xxx xxx xxx
>
> "Section 5. The Supreme Court shall have the following powers:
>
> xxx xxx xxx
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court."

The rule making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The, Court was also granted for the first time the power to disapprove rules of procedure of special courts and quasi-judicial bodies. But most importantly, the 1987 Constitution look away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive. x x x.

Just recently, Carpio-Morales v. Court of Appeals (Sixth Division) further elucidated:

> While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress, the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court. Section 5 (5), Article VIII of the 1987 Constitution reads:
>
> xxx xxx xxx
>
> In Echegaray v. Secretary of Justice (Echegaray), the Court traced the evolution of its rule-making authority, which, under the 1935 and 1973 Constitutions, had been priorly subjected to a power-sharing scheme with Congress. As it now stands, the 1987 Constitution textually altered the old provisions by deleting the concurrent power of Congress to amend the rules, thus solidifying in one body the Court's rule-making powers, in line with the Framers' vision of institutionalizing a "[s]tronger and more independent judiciary."
>
> The records of the deliberations of the Constitutional Commission would show that the Framers debated on whether or not the Court's rule-making powers should be shared with Congress. There was an initial suggestion to insert the sentence "The National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court," right after the phrase "Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged[,]" in the enumeration of powers

> of the Supreme Court. Later, Commissioner Felicitas S. Aquino proposed to delete the former sentence and, instead, after the word "[under]privileged," place a comma (,) to be followed by "the phrase with the concurrence of the National Assembly." Eventually, a compromise formulation was reached wherein (a) the Committee members agreed to Commissioner Aquino's proposal to delete the phrase "the National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court" and (b) in turn, Commissioner Aquino agreed to withdraw his proposal to add "the phrase with the concurrence of the National Assembly." The changes were approved, thereby leading to the present lack of textual reference to any form of Congressional participation in Section 5 (5), Article VIII, supra. The prevailing consideration was that "both bodies, the Supreme Court and the Legislature, have their inherent powers."
>
> Thus, as it now stands, Congress has no authority to repeal, alter, or supplement rules concerning pleading, practice, and procedure. x x x.

The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by the Court. Viewed from this perspective, We have rejected previous attempts on the part of the Congress, in the exercise of its legislative power, to amend the Rules of Court (Rules), to wit:

> 1. Fabian v. Desierto — Appeal from the decision of the Office of the Ombudsman in an administrative disciplinary case should be taken to the Court of Appeals under the provisions of Rule 43 of the Rules instead of appeal by certiorari under Rule 45 as provided in Section 27 of R.A. No. 6770.
>
> 2. Cathay Metal Corporation v. Laguna West Multi-purpose Cooperative, Inc. - The Cooperative Code provisions on notices cannot replace the rules on summons under Rule 14 of the Rules.
>
> 3. RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees; Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Hon. Judge Cabato-Cortes; In Re: Exemption of the National Power Corporation from Payment of Filing/Docket Fees; and Rep. of the Phils, v. Hon. Mangotara, et al. — Despite statutory provisions, the GSIS, BAMARVEMPCO, and NPC are not exempt from the payment of legal fees imposed by Rule 141 of the Rules.
>
> 4. Carpio-Morales v. Court of Appeals (Sixth Division) — The first paragraph of Section 14 of R.A. No. 6770, which prohibits courts except the Supreme Court from issuing temporary restraining order and/or writ of preliminary injunction to enjoin an investigation conducted by the Ombudsman, is unconstitutional as it contravenes Rule 58 of the Rules.

Considering that the aforesaid laws effectively modified the Rules, this Court asserted its discretion to amend, repeal or even establish new rules of procedure, to the exclusion of the legislative and executive branches of government. To reiterate, the Court's authority to promulgate rules on pleading, practice, and procedure is exclusive and one of the safeguards of Our institutional, independence.

We laud Congress' efforts in upholding the fundamental liberties as enshrined in the Constitution and in balancing it with protecting our national security and the welfare of our people. However, We emphasize that the determination of the manner of compliance with law, including the accused's right to speedy trial, as part of our authority to protect and enforce constitutional rights, pleading, practice, and procedure exclusively lies within the power of this Court.

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VIII.

Conclusion

In sum, I maintain that the petitions should be ruled upon through a delimited facial challenge, I vote to strike down the phrase in the proviso of Section 4 which states "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety."

There are insufficient facts for the successful pursuit of an as-applied challenge. Moreover, the alleged injuries and imminent prosecution have not been passed upon by lower courts. The absence of concrete facts renders the Court unable to examine with precision the operation of specific provisions of the ATA in relation to the concerned parties.

In addition, for usurpation of this Court's rule-making power, I submit the invalidation of the phrase, "set the case for continuous trial on a daily basis from Monday to Thursday or other short-term trial calendar to" in Section 44 and of the second sentence in the first paragraph and the second paragraph of Section 54. I have also included the corresponding text in the ATA's IRR that are affected by this submitted invalidation.

The matters for concern raised in various portions of this Separate Opinion should in no way be viewed as exhaustive. Instead, it is envisioned that they serve as guideposts for amendment of the ATA or enactment of a subsequent related law.

The birthing and validation of a nuanced anti-terrorism law for the Philippines has been arduous. Both petitioners and respondents have undergone lengthy and laborious periods of researching, writing, and presenting their arguments before this Court. We see the need for legislation to keep up with evolving times and to comply with our international commitments, yet We are also mindful of our duty to uphold the Constitution.

The existence of a law is but one factor, in addressing terrorism. Terrorism will not be defeated by military force, law enforcement measures, and intelligence operations alone, and there is a need to address the conditions conducive to the spread of terrorism.[141] It is important that UN Member States, such as the Philippines, continue to exert efforts to develop non-violent alternative avenues to decrease the risk of radicalization to terrorism and to promote peaceful alternatives to violent narratives espoused by terrorist fighters.[142]

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[1] Boumedienne v. Bush, 553 U.S. 723, 797 (2008) [Per J. Kennedy].

[2] Id. at 798.

[3] Promoting and Protecting Human Rights and Fundamental Freedoms while Countering Terrorism <https://www.unodc.org/unodc/en/terrorism/news-and-events/human-rights-while-countering-terrorism.html> (last accessed 07 December 2021).

[4] JoAnne M. Sweeny, Indefinite Detention and Antiterrorism Laws: Balancing Security and Human Rights, 34 Pace L. Rev. 1190 (2014), p. 1191 <https://digitalcommons.pacc.edu/plr/vol34/iss3/6> (last accessed 07 December 2021).

[5] Id. at 1202.

[6] Id. citing U.S.C. §1226(a) (2012).

[7] Id. citing 28 U.S.C. §2241.

[8] Zadvydas v. Davis, 533 U.S. 678 (2001).

[9] Sweeny, supra at note 4, at 1203.

[10] This replaced the Terrorism Act 2000.

[11] Sweeny, supra at note 4, at 1214, citing Anti-terrorism, Crime and Security Act, 2001, § 23(2) (U.K.).

[12] Id. at 1219-1220, citing A v. Sec'y of State for Home Dep't, (2004) UKHL 56.

[13] Id. at 1222, citing Prevention of Terrorism Act, 2005, § 1 (U.K.).

[14] Kent Roach, Judicial Review of the State's Anti-Terrorism Activities: The Post 9/11 Experience and Normative Justifications for Judicial Review, p. 23 <https://www.researchgate.net/publication/228152832_Judicial_Review_of_the_State's_AntiTerrorism_Activities_The_Post-911_Experience_and_Normative_Justifications_for_Judicial_Review> (last accessed 07 December 2021).

[15] Id. at 10, citing Re Vancouver Sun (2004) 2 S.C.R. 332.

[16] Id. at 17.

[17] Id. at 15, citing People s Union for Civil Liberties v. Union of India, (2004) 9 SCC 580.

[18] Id. at 17.

[19] TSN, 02 October 2019 Senate Session, p. 27.

[20] The Philippine Government's Response to JOL PHL 4/2020 dated 29 June 2020 on Comments on the Anti-Terror Act (2020), pp. 5, 7, <https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gld=35537> (last accessed 07 December 2021).

[21] Ponencia, pp. 98-101.

[22] Id. at 145-151.

[23] Part 5.3, Section 100.1 defines "terrorist act" to mean an an action or threat of action where: (a) the action falls within subsection (2) and does not fall within subsection (3); and (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and (c) the action is done or the threat is made with the intention of: (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or (ii) intimidating the public or a section of the public.

(2) Action falls within this subsection if it: (a) causes serious harm that is physical harm to a person; (b) causes serious damage to property; (c) causes a person's death; (d) endangers a person's life, other than the life of the person taking the action; or (e) creates a serious risk to the health or safety of the public or a section of the public; (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to: (i) an information system; (ii) a telecommunications system; (iii) a financial system; (iv) a system used for the delivery of essential government services; (v) a system used for, or by, an essential public utility; (vi) a system used for, or by, a transport system.

(3) Action falls within this subsection if it: (a) is advocacy, protest, dissent or industrial action; and (b) is not intended: (i) to cause serious harm that is physical harm to a person; or (ii) to cause a person's death; or (iii) to endanger the life of a person, other than the person taking the action; or (iv) to create a serious risk to the health or

safety of the public or a section of the public.

[24] Section 83.01 (1) defines "terrorist activity" to mean: (a) an act or omission constituting offenses under various Conventions and Protocols; or (b) an act or omission, in or outside Canada, (i) that is committed: (A) in whole or in part for a political, religious or ideological purpose, objective or cause, and (B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada; and (ii) that intentionally: (A) causes death or serious bodily harm to a person by the use of violence, (B) endangers a person's life, (C) causes a serious risk to the health or safety of the public or any segment of the public, (D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or (E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C); and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

[25] Chapter VIA, Section 130B defines "terrorist act" as an act or threat of action within or beyond Malaysia where (a) the act or threat falls within subsection (3) and does not fall within subsection (4); (b) the act is done or the threat is made with the intention of advancing a political, religious or ideological cause; and (c) the act or threat is intended or may reasonably be regarded as being intended to—(i) intimidate the public or a section of the public; or (ii) influence or compel the Government of Malaysia or the Government of any State in Malaysia, any other government, or any international organization to do or refrain from doing any act.

An act or threat of action falls within this subsection if it—(a) involves serious bodily injury to a person; (b) endangers a person's life; (c) causes a person's death; (d) creates a serious risk to the health or the safety of the public or a section of the public; (e) involves serious damage to property; (1) involves the use of firearms, explosives or other lethal devices; (g) involves releasing into the environment or any part of the environment or distributing or exposing the public or a section of the public to—(i) any dangerous, hazardous, radioactive or harmful substance; (ii) any toxic chemical; or (iii) any microbial or other biological agent or toxin; (h) is designed or intended to disrupt or seriously interfere with, any computer systems or the provision of any services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure; (i) is designed or intended to disrupt, or seriously interfere with, the provision of essential emergency services such as police, civil defence or medical services; (j) involves prejudice to national security or public safety; (k) involves any combination of any of the acts specified in paragraphs (a) to (j), and includes any act or omission constituting an offence under the Aviation Offences Act 1984 [Act 307].

An act or threat of action falls within this subsection if it—(a) is advocacy, protest, dissent or industrial action; and (b) is not intended—(i) to cause serious bodily injury to a person; (ii) to endanger the life of a person; (iii) to cause a person's death; or (iv) to create a serious risk to the health or safety of the public or a section of the public.

[26] Australian Criminal Code, Section 101.3; Canadian Criminal Code, RSC 1985, c C-46, Section 83.18; Act 574, Section 130F and 130FA.

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[27] Australian Criminal Code, Section 101.4; Malaysian Penal Code, Section 130JB.

[28] Id. at Section 101.5.

[29] Id. at Section 101.6.

[30] Id. at Section 102.1 (2). Under the Australian listing regime, a listing can provide the basis for establishing the fact that an organization is a terrorist organization in a criminal proceeding. In this regime, the Minister of Home Affairs considers advice in the form of a Statement of Reasons, which is prepared based on unclassified, open-source information about an organization or a classified briefing may be provided by relevant agencies. The listing is subject to the review by the Parliamentary Joint Committee on Intelligence and Security, judicial review by the courts, and oversight by the Inspector-General of Intelligence and Security (an independent statutory office) <https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/protocol-for-listing> (last accessed 07 December 2021).

[31] Id. at Section 102.1 (3). Currently, 26 organizations are listed as terrorist organizations under this listing regime
<https://www.nationalsecurity.gov.au/what-austi-alia-is-doing/terrorist-organisations/listed-terrorist-organisations> (last accessed 07 December 2021).

[32] Criminal Code, RSC 1985, c C-46, Section 83.05 (1) and (8.1).

[33] To be listed, the Minister of Public Safely and the Governor in Council must be satisfied that there are reasonable grounds to believe that the has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or the entity has knowingly acted on behalf of, at the direction of or in association with, an entity involved in a terrorist activity. [Criminal Code, RSC 1985, c C-46, Section 83.05 (1)] <https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/lstd-ntts/bt-lstng-press-en.aspx> (last accessed 07 December 2021).

While being on the list does not constitute criminal offence, it can lead to criminal consequences since it prohibits, among others, the provision or collection of funds with the intention that the funds be used, or in the knowledge that the funds are to be used, by a designated person. <https://wwww.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/terrorists-terroristes.aspx?lang=eng> last accessed 07 December 2021).

As of 25 June 2021, there are 77 terrorist groups listed under this regime. <https://www.canada.ca/en/public-safety-canada/news/2021/06/government-of-canada-lists-four-new-terrorist-entities.html> (last accessed 07 December 2021).

[34] David v. Macapagal-Arroyo, 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez]; See also Separate Concurring Opinion of C.J. Sereno in Disini, Jr. v. Secretary of Justice, 727 Phil. 28 (2014) [Per J. Abad].

[35] Concurring Opinion of J. Mendoza in Estrada v. Sandiganbayan, 421 Phil. 290 (2001).

[36] See David v. Macapagal-Arroyo, supra at note 34: "In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute 'on its face,' not merely 'as applied for' so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly."

[37] See Disini, Jr. v. Secretary of Justice, supra at note 34, where the Court limited facial analysis to speech-related provisions of Republic Act No. 10175.

[38] Id.

[39] David v. Macapagal-Arroyo, supra at note 34; Romualdez v. Commission on Elections, 576 Phil. 357 (2008) [Per J. Chico-Nazario]; Estrada v. Sandiganbayan, supra at note 35.

[40] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452-496 (2010) [Per J. Carpio-Morales].

[41] L. Tribe and J. Matz, Uncertain Justice: The Roberts Court and the Constitution, (New York: Picador Press (2015), p. 122.

[42] See Disini, Jr. v. Secretary of Justice, supra at note 34.

[43] Id.

[44] See Gios-Samar, Inc. v. Department of Transportation and Communications, G.R. No. 217158, 12 March 2010 [Per J. Jardeleza].

[45] See Rep. Act No. 11479, Sec. 4: "SECTION 4. Terrorism. — Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:

x x x

x x x Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."

[46] Supra at note 35.

[47] See Separate Opinion of J. Mendoza in Estrada v. Sandiganbayan, supra at note 35, which was extensively quoted with approval in the main opinion.

[48] Emphasis supplied.

[49] 479 Phil. 265 (2004) [Per J. Panganiban].

[50] Supra at note 36.

[51] Supra at note 39.

[52] Supra at note 40.

[53] Id.

[54] See Petitioners' Memorandum for Cluster 1, p. 20.

[55] 732 Phil. 1 (2014) [Per J. Mendoza].

[56] See id. at Section 5.24 of the RH Law's implementing rules and regulations.

[57] See id. at Sec. 23(a)(2)(i) of the RH Law.

[58] See id. at Secs. 7 and 23(a)(2)(ii) of the RH Law.

[59] See id. Separate Dissenting Opinion of J. Leonen: "That we rule on these special civil actions for certiorari and prohibition — which amounts to a preenforcement freewheeling facial review of the statute and the

implementing rules and regulations — is very bad precedent. The issues are far from justiciable."

[60] G.R. No. 217910, 03 September 2019 [Per J. Leonen].

[61] Id.

[62] G.R. No. 184389, 24 September 2019 [Per J. Jardeleza].

[63] Republic v. Tan, 470 Phil. 322 (2004) [Per J. Carpio-Morales].

[64] Southern Hemisphere, supra at note 40.

[65] Separate Dissenting Opinion of J. Leonen, Imbong v. Ochoa, Jr. supra at note 55.

[66] Id.

See Nicolas-Lewis v. Commission on Elections, G.R. No. 223705, 14 August 2019 [Per J. Reyes]: "The allowance of a review of a law or statute on its face in free speech cases is justified, however, by the aim to avert the 'chilling effect' on protected speech, the exercise of which should not at all times be abridged."

[68] David v. Macapagal-Arroyo, supra at note 34.

[69] Adiong v. Commission on Elections, G.R. No. 103956, 31 March 1992 [Per J. Gutierrez, Jr.].

[70] Spouses Romualdez v. Commission on Elections, supra at note 39.

[71] Southern Hemisphere, supra at note 40.

[72] See Disini, Jr. v. Secretary of Justice, supra at note 34.

[73] Southern Hemisphere, supra at note 40.

[74] Id.

[75] Southern Hemisphere, supra at note 40:

American jurisprudence instructs that "vagueness challenges that do not involve the First Amendment must be examined in light of the specific facts of the case at hand and not with regard to the statute's facial validity."

For more than 125 years, the US Supreme Court has evaluated defendants' claims that criminal statutes are unconstitutionally vague, developing a doctrine hailed as "among the most important guarantees of liberty under law."

[76] People v. Nazario, G.R. No. L-44143, 31 August 1988 [Per J. Sarmiento]; People v. Dela Piedra, 403 Phil. 31 (2001) [Per J. Kapunan]; People v. Siton, 616 Phil. 449 (2009) [Per J. Ynares-Santiago]. See also Romualdez v. Sandiganbayan, supra at note 49; Romualdez v. Commission on Elections, supra at note 39; Estrada v. Sandiganbayan, supra at note 35.

[77] Estrada v. Sandiganbayan, supra note 35.

[78] People v. Nazario, supra at note 76, citing Parker v. Levy, 417 U.S. 733 (1974).

[79] Estrada, supra note 35.

[80] Dans, Jr. v. People, 349 Phil. 434 (1998) [Per J. Romero].

[81] People v. Nazario, supra at note 76; Romualdez v. Sandiganbayan, supra at note 49; People v. Dela Piedra, supra at note 76.

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[82] People v. Nazario, supra at note 76.

[83] David v. Macapagal-Arroyo, supra note 34.

[84] People v. Nazario, supra at note 76, citing Coates v. City of Cincinnati, 402 U.S. 611 (1971).

[85] Ponencia, p. 70, citing INS v. Chadha, 462 U.S. 919 (1983).

[86] See Ponencia, p. 88.

[87] Id.

[88] Id. at 85.

[89] Madrilejos v. Gatdula, supra at note 62.

[90] Estrada v. Sandiganbayan, supra at note 35.

[91] People v. Dela Piedra, supra at note 76.

[92] People v. Nazario, supra at note 76; Romualdez v. Sandiganbayan, supra at note 49; People v. Dela Piedra, supra at note 76.

[93] See Ponencia, p. 102, citing TSN, 02 March 2021, pp. 41-44.

[94] Concurring and Dissenting Opinion of C.J. Gesmundo, p. 152.

[95] See Sec. 4 of the ATA: "x x x to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety x x x"

[96] Concurring and Dissenting Opinion of C.J. Gesmundo, p. 153.

[97] See id. at 151-152.

[98] Supra at note 35.

[99] Citations omitted.

[100] Adiong v. Commission on Elections, supra at note 69.

[101] Chavez v. Gonzales, 569 Phil. 155 (2008) [Per C.J. Puno], citing Osmeña v. Commission on Elections, 351 Phil. 692 (1998) [Per J. Mendoza].

[102] See id.

[103] Supra at note 101.

[104] Disini, Jr. v. Secretary of Justice, supra at note 34.

[105] Id.

[106] Petition (G.R. No. 252585), p. 53.

[107] Id. at 56-63.

[108] It is noted, however, that the disqualification case was filed by one Angela Aguilar, a private party. According to the cited COMELEC Resolution, Aguilar is the current Secretary General of Kababaihang Maralita,

a non-government organization. Annex E of Petition (G.R. No. 252767).

[109] Petition (G.R. No. 252767), p. 91.

[110] Id. at 91-92.

[111] Id. at 92-91.

[112] Petition (G.R. No. 252768), p. 43.

[113] Id. at 2-18.

[114] Id. at 18-25.

[115] Id. at 50.

[116] Petition (G.R. No. 253242), pp. 82-85.

[117] Id. at 14.

[118] Id. at 15-39.

[119] Petition (G.R. No. 252767), p. 33.

[120] Id. at 17.

[121] Samahan ng mga Progresibong Kabataan v. Quezon City, 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe].

[122] See Concurring and Dissenting Opinion of J. Jardeleza in Zabal v. Duterte, G.R. No. 238467, 12 February 2019 [Per J. Del Castillo].

[123] See Social Justice Society v. Dangerous Drugs Board, 591 Phil. 393 (2008) [Per J. Velasco].

[124] 801 Phil, 217 (2016) [Per J. Jardeleza].

[125] Citations omitted. Emphasis supplied.

[126] Gios-Samar, Inc. v. Department of Transportation and Communications, supra at note 44. Emphasis supplied.

[127] Allison Orr Larsen, "Confronting Supreme Court Fact Finding," (2012). Faculty Publications. Virginia Law Review, Vol. 98, p. 1294. <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2328&context=tacpubs> (last accessed 07 December 2021).

[128] 564 U.S. ____ (2011).

[129] Allison Orr Larsen, "Confronting Supreme Court Fact Finding," (2012). Faculty Publications. Virginia Law Review, Vol. 98, p. 1263. <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2328&context=Tacpubs> (last accessed 07 December 2021).

[130] Falcis III v. Civil Registrar General, supra at note 60.

[131] <http://www.amle.gov.ph/images/PDFs/2021%20SANCTIONS%20GUIDELINES.pdf> (last accessed 07 December 2021).

[132] Ponencia, pp. 186-215.

[133] Id.

[134] Id.

[135] Paderanga v. Court of Appeals, 317 Phil. 862 (1995) [Per J. Regalado].

[136] Silverio v. Republic, 562 Phil. 953 (2007) [Per J. Coronal; People v. Genosa, 464 Phil. 680 (2004) [Per J. Panganiban]; Santos v. Bedra-Santos, 310 Phil. 21 (1995) [Per J. Vitug]; Pascual v. Pascual-Bautista, G.R. No. 84240, 25 March 1992 [Per J. Paras]; People v. Lava, 138 Phil. 77 (1969) [Per J. Zaldivar]; and People v. Hernandez, 99 Phil. 515 (1956) [Per J. Concepcion].

[137] Senate Deliberations, TSN, 22 January 2020, pp. 28-31.

[138] II Record of the Constitutional Commission, 31 July 1986, pp. 510-513.

[139] TSN, 19 February 2020, p. 50. Emphasis added.

[140] 816 Phil. 798-820 (2017) [Per J. Peralta], Formatting, in the original. Citations omitted.

[141] Preamble, United Nations Security Resolution No. 2178 (2014).

[142] See paragraph 19, United Nations Security Resolution No. 2178 (2014).

CONCURRING AND DISSENTING OPINION

LOPEZ, M. J.:

I submit this Separate Opinion on the issues besetting Republic Act (RA) No. 11479 or The Anti-Terrorism Act of 2020. The discussions will focus on the requirements of judicial review, the compelling state interest; and the anatomy of RA No. 11479's penal provisions, which include thoughts on the "non-intendment clause" in Section 4, the phrase "organized for the purpose of engaging in terrorism" in Section 10, the designation of terrorist individual, groups of persons, organizations or associations in Section 25, the proscription of terrorist organization, association, or group of persons in Sections 26, 27 and 28, and detention without judicial warrant of arrest under Section 29 of the law.

I. Requisites of Judicial Review

When the issue of unconstitutionality of a legislative act is raised, it is the established doctrine that the Court may exercise its power of judicial review only if the following requisites are present: (1) an actual and appropriate case and controversy exists; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question raised is the very lis mota of the case.[1] Here, 33 out of the 37 petitions assailing the constitutionality of RA No. 11479 must be dismissed outright absent actual controversy and legal standing.[2]

An actual case or controversy refers to a "conflict of legal right, an opposite legal claim susceptible of judicial resolution." There must be a real and substantial controversy, with definite and concrete issues involving the legal relations of the parties, and admitting of specific relief that courts can grant. This requirement goes into the nature of the judiciary as a co-equal branch of government. The Court is bound by the doctrine of separation of powers, and will not rule on any matter or cause the invalidation of any act, law, or regulation, if there is no actual or sufficiently imminent breach of or injury to a right. The courts interpret laws, but the ambiguities may only be clarified in the existence of an actual situation. In determining whether there is an actual case or controversy, "the

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pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not merely theoretical question or issue." In the absence of an actual case or controversy, the petitions are akin to pleas for declaratory relief, over which the Court has no original jurisdiction. The case or controversy must likewise be ripe for judicial determination and not merely theoretical. Otherwise, the Court's pronouncement will be advisory in character with no binding effect.[3]

Corollary to actual case or controversy is legal standing, which refers to a personal and substantial interest in the case such that the petitioners have sustained, or will sustain, direct injury as a result of its enforcement.[4] The parties' interest must also be material as distinguished from mere interest in the question involved, or a mere incidental interest. The interest must be personal and not based on a desire to vindicate the constitutional right of some third and unrelated party.[5] However, the Court has taken an increasingly liberal approach to the rule on legal standing, evolving from the stringent requirements of "personal injury" to the broader "transcendental importance" doctrine.[6] The other exceptions are cases involving facial challenges of a law, which is void on its face.

On this score, I echo Chief Justice Gesmundo's observation that in cases of transcendental importance, the Court should "merely relax but not do away with or supplant the actual case or controversy requirement." To successfully invoke transcendental importance, the petitioners must: (1) comply with the actual case or controversy of the Constitution; (2) identify the issue raised; (3) claim its transcendental importance; and (4) explain to the satisfaction of the Court why the issue is sufficiently important for the court to relax the constitutional actual case or controversy requirement.[7] Notably, the 33 petitions mentioned earlier failed to show a justiciable controversy because none of them are prosecuted for violation of RA No. 11479 or at least facing a credible threat of prosecution. At most, these petitions are anticipatory in nature. The pronouncement that there is justiciable controversy "by the mere enactment of the questioned law or the approval of the challenged action"[8] in relation to the Court's exercise of judicial review must be qualified. The petitioners should also explain why the requisite legal standing should be relaxed in cases when they will not be directly injured by showing how they will be affected. This qualification should also be true to facial challenges. Otherwise, the purpose why an actual case or controversy and legal standing are required in the first place would be for naught. Moreover, the petitioners tailed to sufficiently show that they are engaged in any conduct or intended to pursue an activity, which may be covered under provisions of RA No. 11479. Rather, the petitions amount to pleas for declaratory relief based on speculative fear, which is not proper for judicial review.[9] More importantly, there must be sufficient facts to enable the Court to intelligently adjudicate the issues. The possibility of abuse in the implementation of a law cannot be considered as a justiciable controversy.[10] The alleged abuse must be anchored on real events before courts may step in to settle actual controversies involving rights, which are legally demandable and enforceable.[11] Anent the four surviving petitions,[12] the discussion should be limited to the specific issues raised with justiciable controversy. Any ruling on the merits of the unchallenged provisions of the law must be reserved to future cases.

II. Compelling State Interest

In the Philippines, national security is a "condition wherein the people's welfare, well-being, ways of life, government and its institutions, territorial integrity, sovereignty, and core values are enhanced and protected." The most fundamental duties of the State are to ensure public safety, maintain law and order, and dispense social justice. The government is accountable to the people and must ensure that a just, stable, and peaceful society is achieved by protecting the general public from any harm that could endanger their lives, properties, and ways of life.[13] Terrorism is anathema to these core principles as well as to the values of democracy, rule-of-law and human rights. There should be no avenue for those who plan, support or commit terrorist acts to find safe haven,

avoid prosecution, or carry out further attacks.[14]

Thus, the Congress enacted RA No. 11479 to confront terrorism and all allied activities. The legislature found merit in coming up with this legal tool to strengthen the ability of the State to protect society and prevent death, injury, extensive damage or destruction, fear, and chaos. In contrast, the petitions assailing the validity of RA No. 11479 alleged a tension between national security and free speech. Hence, the Court is tasked to examine whether the government can restrict freedom of speech and its cognate rights to further the compelling interest of national security, and to find the delicate balance between individual liberty, on one hand, and public security, on the other. As such, I support the use of "balancing of interests" test espoused in American jurisprudence. This method suggests that "[w]hen a particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interests demand the greater protection under the particular circumstances presented ... We must, therefore, undertake the delicate and difficult task ... to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of rights."[15] If on balance it appears that the public interest served by restrictive legislation is of such a character that it outweighs the abridgement of freedom, then the Court will find the legislation valid. In short, the balance-of-interests theory rests on the basis that the constitutional freedoms are not absolute, and that they may be abridged to sonic extent to serve appropriate and important public interests.[16] The question is not the existence of a constitutional right, which the State already recognizes, but whether the State has a sufficient compelling interest to justify restriction of the fundamental right.

There is no dispute that the state has a compelling interest to prevent terrorism as it involves issues of national security[17] and the survival of the State may be at stake. The threat of terrorism is not fictional, but can be seen in recent events. Thus, in employing the balancing of interest test, the compelling state interest of preventing terrorism as a matter of national security must be given great weight. Moreover, given the profound impact of terrorism, there is a need to evaluate the new counter-terrorism legal framework with a whole-of-society approach. There should be focus on the rights of actual and potential victims of terrorism and not only on the rights of the accused. The constitutionality of RA No. 11479 should not be examined exclusively from the juridical optic of the criminal law and due process model but should be seen as part of the State's protection of the people's right to life and its very existence. Too, every individual owes a duty of justice to others. Individual liberty is ultimately shaped by the horizontal duty one owes another or the community at large, i.e., a duty to refrain from engaging in intentional conduct that would cause others harm. Thus, one fails to fulfill his duty of justice to refrain from harming others if in the exercise of his freedom of speech or expressive conduct, he intended to rouse others to commit acts of terrorism.

Inarguably, freedom of speech is both a "liberty" and a "claim right" — liberty refers to the absence of any competing duty to do or refrain from doing,[18] while a claim right corresponds to another's duty to do or refrain from doing something. In other words, freedom of speech obligates others to abstain from interfering with the speech in question. The value of the freedom of speech should not be limited without meeting a substantial burden of justification. Also, when there is a conduct that relates to the freedom of speech, the onus of limitation justification falls on those who wish to restrict the conduct. An individual is entitled to enjoy freedom of speech and engage in the conduct associated with it, unless a restriction is carefully and convincingly justified.[19]

Relatively, aside from the balance-of-interests theory, I suggest that the Court adopts the "proportionality test" to justify a limitation on the freedom of speech. Proportionality is characterized as a universal criterion of constitutionality[20] and a foundational element of global constitutionalism.[21] The United Nations Human Rights Committee and most jurisdictions in Europe apply the proportionality test when evaluating the

permissibility of limitations. Proportionality is not the distribution of the scope of rights but the justification for its limitation. The test contains four elements: (1) the State must pursue an aim that serves a compelling or legitimate interest when limiting the right; (2) there must be nexus between the measure used to limit the right and the legitimate interest; (3) the measure must be necessary to advance or prevent setbacks to the legitimate interest; and (4) the measure must involve a net gain or beneficial effect when the reduction in the enjoyment of the right is weighed against the level to which the interest is advanced.[22] Limitations that pass the proportionality test do not infringe the Constitution even if nothing is left of an individual right after the balancing test has been carried out.

The first and fourth elements of this approach need elucidation. The first one requires a compelling interest or legitimate aim. Right as constitutional values can only be overruled by other constitutional values. Constitutional rights trump any consideration except factors that also enjoy constitutional status.[23] An aspect of national security is ensuring the State's security, sovereignty, territorial integrity and institutions which are provided in the Constitution. For instance, Article 11, Section 5 of the Constitution mentioned the maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare. These constitutional values are allowed to play out in the balancing stage. The fourth element refers to balancing whereby it is determined whether the importance of the aim pursued justifies the seriousness of the infringement of a right, it is possible to ascribe a higher weight to a certain right than other considerations. However, rights with higher weight do not automatically trump a colliding consideration with lower weight. To illustrate, although freedom of speech enjoys a higher value in our constitutional hierarchy, it is not absolute that it cannot yield to the State's interest. Otherwise, we convert the Bill of Rights into a suicide pact.[24]
To reiterate, not all human rights principles enjoy the same level of protection. They have different legal characteristics as absolute or non-absolute or having inherent limitations. Fundamental human rights like prohibitions on torture, on slavery, and on retroactive criminal laws are absolute, i.e., it is not permitted to restrict these rights by balancing their enjoyment against the pursuit of a legitimate aim. On the other hand, most rights are not absolute in character, which means that the State can limit the exercise of those rights for valid reasons, including the need to counter terrorism. Examples of non-absolute rights are freedom of expression, freedom of association, freedom of assembly, and freedom of movement. These rights are accompanied by various conditions such as national security or public order.[25] Thus, the preferred position of the freedom of speech is just one of the various variables in the phase of balancing.

III. Anatomy of RA No. 11479's penal provisions

The definition of crime has come to be regarded as one of the thorny intellectual problems of the law.[26] It is settled that a statute criminalizing an act must describe the violation with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited. Otherwise, the legislation is utterly vague when it lacks comprehensible standards that common men must necessarily guess at its meaning and differ in its application. Yet, jurisprudence instructed us that a law couched in imprecise language is valid if it can be clarified through proper judicial construction.[27] A simpler test even exists, which provides that there is nothing vague about a penal law that adequately answers the basic query "What is the violation?" Anything beyond - the hows and the whys - are evidentiary matters that the law itself cannot possibly disclose, in view of the uniqueness of every case.[28] Thus, I offer this opinion analyzing Republic Act No. 11479 or The Anti-Terrorism Act of 2020 under the lens of criminal law principles.

To begin, the study of Criminal Law has long divided crimes into acts wrong in themselves called acts mala in se; and acts which would not be wrong but for the fact that positive law forbids them, called acts mala prohibita. This distinction is important with reference to the intent with which a wrongful act is done. The rule is that in acts mala

in se, the intent governs; but in acts mala prohibita, the only inquiry is whether the law was violated.[29] The Court explained that the better approach to distinguish between mala in se and mala prohibita crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime mala in se; on the contrary, if it is not immoral in itself, but there is a statute prohibiting its commission by reasons of public policy, then it is mala prohibita.[30] Applying this approach, the crime of "terrorism" as defined in Section 4 of RA No. 11479 is inherently depraved and immoral, because no amount of reason can justify the commission of violent and despicable acts of such gravity and magnitude against the populace. Hence, proof of the accused's criminal intent is required. On this note, I suggest to adopt a framework in better understanding RA No. 11479's penal provisions through comprehensive examination of the anatomy of its corpus delicti.

Foremost, proof of corpus delicti is indispensable in the prosecution of crimes.[31] The term corpus delicti refers to the body or substance of the crime, or the fact of its commission.[32] It consists of the criminal act and the defendant's agency in the commission of the act. In homicide, for instance, the prosecution must prove: (a) the death of the victim; (b) that the death was produced by the criminal act of person/s other than the deceased and was not the result of accident, natural cause or suicide; and (c) that accused committed the criminal act or was in some way criminally responsible for the act which produced the death.[33] In arson, the corpus delicti rule is satisfied by proof of the bare feet of the fire and of it having been intentionally caused.[34] In other words, corpus delicti primarily describes the act (objective) and the agent (subjective) in relation to the actus reus (AR) and the mens rea (MR) of a crime. Actus reus pertains to the external or overt acts or omissions included in a crime's definition while mens rea refers to the accused's guilty state of mind or criminal intent accompanying the actus reus. Hence, the formula is "Corpus Delicti = Actus Reus + Mens Rea."

Actus reus may have a varied formulation depending on the definition of the crime. Foremost, the crime may or may not consist of a single actus reus. An example is a complex crime when a single act constitutes two or more grave or less grave felonies (compound crime), or when an offense is a necessary means for committing the other (complex crime proper).[35] In the eyes of the law and in the conscience of the offender they constitute only one (1) crime, thus, only one (1) penalty is imposed.[36] Also, in special complex crimes like robbery with rape, there is only one specific crime but the prosecution must prove the commission of external criminal acts of robbery and rape. In offenses which require predicate crimes like a violation of the Anti-Money Laundering Act, the component crimes must be identified to prove the more serious crime of money laundering.

Moreover, the component circumstances may be considered in ascertaining the actus reus. To prove treason under Article 114 of the Revised Penal Code (RPC); for instance, the prosecution must prove that the accused is either a Filipino citizen or a resident alien. On the other hand, to prove murder under Article 248 of the RPC, the qualifying circumstance of treachery, abuse of superior strength, etc., must be established. When it comes to special laws, we need to look for the specific circumstances intended by the legislators for the application of the law. In RA 7610 or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, the law lakes into account the age of the victim who must be below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves.[37] In RA 9475 or the Anti-Torture Act of 2009,[38] the physical or mental torture must be inflicted by a person in authority or agent of a person in authority, in RA 7877 or the Anti-Sexual Harassment Act of 1995,[39] the offender must be a person who has authority, influence or moral ascendancy over another in an education, training, or work environment.

Lastly, the actus reus may include the result or the consequences of the crime. In other jurisdictions, criminal offenses are classified as "conduct crimes" or "resulting crimes." In conduct crimes, only the proof of the commission of the prohibited conduct is required. On the other hand, resulting crimes necessitate proof that the

harmful act leads to a specified consequence.[40] In Philippine Criminal Law, physical injuries under Articles 263, 265 and 266 of the RPC is considered a resulting crime. The determination of whether "physical injuries" is serious, less serious, or slight depends upon the extent of the resulting injuries arising from the infliction of harm to the victim. In Article 263, for example, the crime is always serious physical injuries when it resulted in the insanity, imbecility, impotency, or blindness of the victim. Taken together, the comprehensive anatomy of actus reus can be summarized as: "Actus Reus — act/omission + circumstances + results/consequences."[41]

Anent the "mens rea" of a crime, a distinction must be made between general intent and specific intent. General criminal intent pertains to the dolo required under Article 4[42] of the RPC. It means the accused purpose to do an act prohibited by law regardless of the result. On the other hand, specific criminal intent refers to the particular intent comprising the definition of the crime, as for instance, the specific criminal intent to kill or animus interficendi in homicide or murder.[43] In robbery, the specific intent is "gain", in illegal detention the "deprivation of liberty", in mutilation the deprivation of "essential organ of reproduction" is involved.

Corollarily, the actus reus of RA No. 11479's penal provisions may be analyzed using this framework as follows:

ACTUS REUS of Section 4 of RA 11479 =

Acts

+

Circumstances

+

Results/Consequences

Section 4 of RA 11479

Section 49 of RA 11479

Section 4 last paragraph

Section 15 of RA 11479

Section 4 of RA No. 11479 reads:

SECTION 4. Terrorism. — Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:

(a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;

(b) Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property;

(c) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;

(d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and

(e) Release of dangerous substances, or causing fire, Hoods or explosions

when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or

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> any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code": Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

Here, Section 4 of RA No. 11479 enumerates the specific acts of terrorism, to wit: (a) engaging in acts intended to cause death or serious bodily injury to any person, or endangers a person's life; (b) engaging in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property; (c) engaging in acts intended to cause extensive interference with, damage or destruction to critical infrastructure; (d) developing, manufacturing, possessing, acquiring, transporting, supplying or using weapons, explosives or of biological, nuclear, radiological or chemical weapons; and (e) releasing of dangerous substances, or causing fire, floods or explosions. On the other hand, Sections 15 and 49 of RA No. 11479 refer to circumstances of citizenship, place of commission, and public office, that will make the offender criminally and administratively liable.

Also, I suggest that the phrase "when the purpose of such act, by its nature and context" in last paragraph of Section 4 of RA No. 11479 must be construed in a manner that the commission of specific acts of terrorism must have the effect of (a) intimidating the general public or a segment thereof; (b) creating an atmosphere or spreading a message of fear; (c) provoking or influencing by intimidation the government or any international organization; (d) seriously destabilizing or destroying the fundamental political, economic, or social structures of the country; (e) or creating a public emergency or seriously undermining public safety. This interpretation makes Section 4 of RA No. 11479 a resulting crime. Otherwise, it would be paradoxical to consider a specific act as terrorism absent one of these effects. For instance, a person who engages in acts intended to cause death to any person but does not cause intimidation to the general public or create an atmosphere of fear could hardly be liable for terrorism. At most, the crime may be attempted, frustrated or consummated homicide or murder. Similarly, a person who releases a dangerous substance without creating a public emergency or seriously undermining public safety may be held civilly liable for torts or violation of sanitary ordinances. As a resulting crime, the prosecution must establish a factual link between the specific act of the accused and the result it allegedly caused. In other words, the result would not have occurred but for the action of the accused. If factual causation cannot be established the prosecution for violation of Section 4 of RA No. 11479 will fail.[44]

Anent the "mens rea", the specific intentions in Section 4 paragraphs (a), (b) and (c) of RA No. 11479 are expressly mentioned. Thus, the specific acts of terrorism in these paragraphs must be intended: (a) to cause death or serious bodily injury to any person, or endangers a person's life; (b) to cause extensive damage or destruction to a government or public facility, public place or private property; (c) to cause extensive interference with, damage or destruction to critical infrastructure. Whereas, the mens rea in Section 4 paragraphs (d) and (c) of RA No. 11479 must be framed to the actual purposes mentioned in the last paragraph of Section 4 of RA No. 11479. To reiterate, a violation of Section 4 of RA No. 11479 requires a causal connection between the actus reus and the mens rea. Otherwise, no crime of terrorism under this provision is committed.

> ACTUS REUS of Section 5 of RA 11479 =
>
> Acts
>
> +

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Circumstances

+

Results/Consequences

Section 4 of RA 11479

Section 49 of RA 11479

Section 4 last paragraph

Section 15 of RA 11479

Section 5 of RA No. 11479 reads:

> SECTION 5. Threat to Commit Terrorism. — Any person who shall threaten to commit any of the acts mentioned in Section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years.

Likewise, Section 5 of RA No. 11479 is a resulting crime, which enumerates the specific act of threatening to commit terrorism, subject to circumstances in Sections 15 and 49 of RA No. 11479, and must give rise to the consequences in last paragraph of Section 4 of RA No. 11479. A contrary interpretation may lead to absurdity. For instance, a person who threatens to kill another is not automatically a terrorist absent intimidation to the general public or an atmosphere of fear. At most, the crime is only grave threats. Anent the "mens rea" the specific intent of the crime under Section 5 of RA No. 11479 must be framed to the actual purposes mentioned in the last paragraph of Section 4 of RA No. 11479.

ACTUS REUS of Sections 6, 7, 8, 9, 10, 11, 12 and 14 of RA 11479 =

Acts

+

Circumstances

Section 6 of RA 11479

Section 49 of RA 11479

Section 7 of RA 11479

Section 15 of RA 11479

Section 8 of RA 11479

Section 9 of RA 11479

Section 10 of RA 11479

Section 11 of RA 11479

Section 12 of RA 11479

Section 14 of RA 11479

On the other hand, Sections 6 7, 8, 9, 10, 11, 12 and 14 of RA No. 11479 are conduct crimes. The commission of the prohibited acts constitute the very actus reus. The prosecution needs only to prove the forbidden conduct.

These provisions penalized the specific acts of: (a) planning, training, preparing, and facilitating the commission of terrorism [Section 6]; (b) conspiracy to commit terrorism [Section 7]; (c) proposal to commit terrorism [Section 8]; (d) inciting to commit terrorism [Section 9]; (e) recruitment to and membership in a terrorist organization [Section 10]; (f) foreign terrorist [Section 11]; (g) providing material support to terrorist [Section 12]; and (h) accessory [Section 14]. Anent the "mens rea", the specific intent of the crimes under Sections 6, 7, 8, 9, 10, 11, 12 and 14 of RA No. 11479 must be framed to the actual purposes mentioned in the last paragraph of Section 4 of RA No. 11479.

In our jurisdiction, crimes may also be classified based on the stage of the act done: inchoate crimes and executory crimes. Inchoate crimes are those committed by doing an overt act towards the commission of a target crime.[45] In other words, inchoate crimes concern itself with preparatory acts for the commission of a crime. Basic examples of inchoate crimes are attempt, proposal and conspiracy to commit a crime. Under the RPC, an attempt to commit a felony is punishable.[46] There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[47] Here, the offender never passes the subjective phase[48] in the commission of the crime. The offender does not arrive at the point of performing all of the acts of execution which should produce the crime. Attempted crimes are subject to penalty of two (2) degrees lower than that prescribed for the consummated felony.[49]

Proposal and conspiracy are generally not punishable; except only when a law specifically provides a penalty for it.[50] There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.[51] Prior to RA No. 11479, there are only three (3) punishable acts of proposal: proposal to commit treason;[52] proposal to commit rebellion or insurrection;[53] and, proposal to commit, coup d'etat.[54] On the other hand, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[55] Under the RPC, there are five (5) punishable acts of conspiracy: conspiracy to commit treason;[56] conspiracy to commit rebellion or insurrection;[57] conspiracy to commit coup d'etat;[58] conspiracy to commit sedition;[59] and conspiracy in restraint of trade.[60] Special penal laws also define and punish several acts of conspiracy.[61] Notably, the conspiracy is treated as a crime, not as a mode of committing crime. Yet, the crime agreed by the conspirators must not be actually committed, otherwise, the offenders are liable for the crime actually committed and not for the crime of conspiring to commit it.[62]

Conversely, executory crimes are in the consummated stage, where all the preparatory acts have been committed through overt acts producing the effects as intended by the offender. The RPC declares that a felony is consummated when all the elements necessary for its execution and accomplishment are present.[63] In relation to inchoate crimes, executory crimes are produced when the overt acts done in an inchoate crime produces the effects intended by the offender. In addition, majority of the crime in the RPC are executory crimes.

Applying these precepts, the Court can determine which among the penal provisions of RA No. 11479 contemplate inchoate or executory crimes. To start, Section 4, which defines and penalizes the crime of terrorism is an executory crime. Noteworthy is that Section 4 punishes terrorism "regardless of the stage of execution." Whether the overt act falls within the attempted or frustrated stage of execution, the offender will still be prosecuted for the consummated crime of terrorism. In other words, there is no attempted or frustrated crime of terrorism. Similarly, Section 5 which defines and penalizes threat to commit terrorism is an executory crime. This offense involves an offender who has not decided to commit terrorism but threatens or declares his intention to commit it whether for coercion, intimidation or otherwise. The offense may not be considered as a preparatory act to the crime of terrorism because the offender had not yet decided to commit terrorism. Also, Section 9 which defines and penalizes inciting to commit terrorism is an executory crime. The act of inciting itself is punishable.

The offender has not decided to commit the crime of terrorism. Instead, the offender intends for other persons to commit the crime. Lastly, Section 14 which defines and penalizes an accessory to terrorism is an executory crime. The overt acts described are done after commission of the target crime of terrorism. Further, the overt acts listed are not in preparation for committing terrorism or any other crime. In contrast, Sections 6, 7, 8, .10, 11, and 12 of RA No. 1 1479 are all inchoate crimes. As discussed earlier, conspiracy and proposal to commit terrorism are examples of inchoate crimes. As for planning, training, preparing and facilitating the commission of terrorism, recruitment to and membership in a terrorist organization, unlawful acts for foreign terrorists, and providing material support to terrorists, all perceptibly comprise preparatory acts to the commission of the target crime of terrorism.

IV. The "Non-intendment Clause"

With respect to the "non-intendment clause" in Section 4 of RA No. 11479, I submit that this provision should not be invalidated. The clause is not distinct from the main provision so as to create another definition of terrorism, but merely serves to clarify the exclusion of the protected civil and political rights. The clause should not be read in isolation from the main provision to make it appear that the freedom of speech and expression are unduly burdened with the vices of vagueness and over broadness. To stress, the common and usual function of a. proviso is to limit or restrict the general language or operation of the statute, not to enlarge it.[64] In this case, the "not intendment clause" acts as a safeguard for allowable conduct as borne by the legislative deliberations.[65] To be sure, the RPC and special laws contain parallel provisions. For instance, arbitrary detention under Article 124, last paragraph of the RPC provides that "[t]he commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal, grounds for the detention of any person." Also, qualified trespass to dwelling under Article 280 of the RPC provides that "[t]he provisions of this article shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself the occupants of the dwelling or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose of rendering some service to humanity or justice, nor to anyone who shall enter cafes, taverns, inn and other public houses, while the same are open."

In Section 8(c) of RA No. 9851 or the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, "a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Act for the attempt to commit the same if he/she completely and voluntarily gave up the criminal purpose." In Section 5 of RA 3019 or the Anti-Graft and Corrupt Practice Acts, the "section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom lie is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law, nor to any act lawfully performed in an official capacity or in the exercise of a profession." In Section 3(a) of RA 9745 or the Anti-Torture Act, torture "does not include pain or Buffering arising only from, inherent in or incidental to lawful sanctions."

V. The phrase "organized for the purpose of engaging in terrorism"

As regards Section 10 of RA No. 11479, the phrase "organized for the purpose of engaging in terrorism" is not vague. The provision punishes voluntary and knowing membership in an organization that is (1) proscribed under Section 26 of the RA No. 11479, (2) designated by the UNSC as a terrorist organization; or (3) organized for the purpose of engaging in terrorism. Using a facial lens analysis, the ponencia ruled that the first two (2) modes of

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membership are neither overbroad nor vague. Yet, the ponencia struck down the third instance of membership because of the vagueness of the phrase "organized for the purpose of terrorism." According to the ponencia, the third instance of membership, without any sufficient parameters, would necessarily fail to accord the people lair notice of what conduct they should avoid, and would give law enforcers unrestrained discretion in ascertaining that an organization, association, or group was organized for the purpose of engaging in terrorism.

Contrary to the ponencia, I submit that Section 10 of RA No. 11479 is not susceptible of facial invalidation. As intimated earlier and consistent with Chief Justice Gesmundo's stand, "a challenge against a regulation of freedom of association does not qualify as a facial challenge merely on the basis of an allegation of incidental interference with protected speech." However, considering that some of the petitioners are members of organizations tagged as terrorist groups, the Court may treat those petitions as an as-applied challenge and, therefore, examine Section 10's constitutionality. With this approach, the validity of the phrase "organized for the purpose of engaging in terrorism" depends on three (3) questions: (1) Is "organized for the purpose of engaging in terrorism" so vague that ordinary citizens must necessarily guess as to its meaning and differ as to its application?;[66] (2) Is the phrase so vague that it prescribes no ascertainable standard of guilt to guide courts in judging those charged of its violation?;[67] and (3) Is the subject phrase so vague that police officers and prosecutors can arbitrarily or selectively enforce it?[68] The answers are in the negative.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.[69] Applying this principle, the Court only need to refer to the definition of terrorism in Section 4 of RA No. 11479 to determine if a group is formed for the purpose of terrorism. In other words, the phrase "organized for the purpose of engaging in terrorism" contemplates membership in an organization with knowledge that the group intends to engage in any of the acts of terrorism. Thus, groups established to commit offenses, which are not defined as terrorism under Section 4, regardless of how serious they are, are excluded from the phrase. Likewise, an association set up for the goal of achieving, through peaceful means, ends that may be contrary to the interest of the government is not sufficient to characterize it as terrorist simply because death, serious bodily injury, extensive damage or destruction is an element of terrorism. Moreover, to consider the phrase as vague or without any sufficient parameters misconceives the function of the "voluntarily and knowingly" requirement.[70] In People vs. Ferrer,[71] the Court has already noted that "[m]embership in an organization renders aid and encouragement to the organization; and when membership is accepted or retained with knowledge that the organization is engaged in an unlawful purpose, the one accepting or retaining membership with such knowledge makes himself a party to the unlawful enterprise in which it is engaged."

Therefore, for an effective counter-terrorism regime, it is vital that our law targets not only voluntarily and knowingly joining a proscribed or designated group but also any group organized for the purpose of engaging in terrorism. Penalizing the first and second instances of membership under Section 10 is a reactive response, while forbidding the third instance of membership addresses the potential for terrorist activity. Notably, terrorist groups do not stand still; they grow or fade depending on the changes in their political, social, economic, and security environments.[72] A case in point is the Abu Sayyaf Group (ASG) established by Abdurajak Janjalani (Janjalani) in 1991 as a breakaway faction of the Moro National Liberation Front (MNLF).[73] The ASG has maintained a membership of approximately 500 members at the height of its strength in the late 1990s. In the first years of the ASG's campaign, the group mostly kidnapped local residents, bombed churches in the area, or killed local Christian residents before they targeted foreign nationals. Many of its members were drawn from the pools of

disgruntled former MNLF or Moro Islamic Liberation Front (MILF) fighters and cadre who fought in Afghanistan against the Soviets during the 1980s.[74] The ASG increased its capabilities in the mid-1990s with external support from Osama bin Laden and his jihad network. The ASG was then able to access money and weapons from networks in Pakistan, Malaysia, and Vietnam. The group then split into several factions, each with a separate leadership.[75]

Clearly, the State faces a terrorist threat that is beyond terrorist groups in existence today since the composition of a terrorist threat can change any time. The government is confronted with the need to protect its citizens from different militant, organizations with varying degrees of hostility and ability to attack the Philippines' interest through any act of terrorism. As a result of this fluidity, the government should not be made to wait for designation or proscription before it can act. To my mind, the phrase "organized for the purpose of engaging in terrorism" in Section 10 is a useful policy prescription from the legislature as part of the State's right, nay, duty to decide an effective counter-terrorism measure.

VI.

Designation of terrorist individual, groups of persons, organizations or associations

Likewise, Section 25 of RA No. 11479 is not unconstitutional. All modes of designation have been imbued with sufficient parameters. The ponencia held that, the provision on designation is susceptible of facial challenge because the looming threat of a potential designation may effectively chill the exercise of free speech, expression, and their cognate rights under the Constitution. The ponencia then determined the validity of Section 25 under a facial lens analysis using the tools of overbreadth and strict scrutiny. I respectfully disagree. Again, a facial invalidation of Section 25 is not necessary because some of the petitioners (especially in G.R. No. 252767) have already been designated as terrorists pursuant to the Anti-Terrorism Council's (ATC) Resolutions. As such, the Court may very well resolve the validity of Section 25 as applied to the affected petitioners.

Also, I submit that Section 25 does not primarily deal with speech and cognate rights. As discussed in the ponencia, designation has the following effects: (a) designation triggers the examination of the designee's records with banks and other financial institutions and the ex parte freezing of their assets by the AMLC on its own initiative or at the request of the ATC; (b) an application for surveillance between members of designated person may already be filed with the CA under Section 16; and (c) criminal liability may arise under Section 10 for those who recruit others to participate in, join, or support, or for those who become members of, organizations, associations, or groups proscribed under Section 26 or those designated by the UNSC. Taken together, it is clear that Section 25 does not pose any immediate threat on the curtailment of speech or other cognate rights which would warrant a facial invalidation. The effects of Section 25 to speech and cognate rights, if any, are merely incidental, as with any penal statute. It should not be forgotten that all penal laws have a general in terrorem effect, which always pose an impending threat on the fundamental rights - especially the life and liberty - of individuals, but this reason alone is insufficient to facially invalidate a penal statute.

Corollarily, the strict scrutiny test cannot be utilized considering that Section 25 does not affect speech and cognate rights. On this score, the intermediate test should be applied in analyzing the provision.[76] Inarguably, the purpose of preventing terrorism is an important governmental interest; and to my mind, the government, through the executive and legislative branches, has extensively examined this interest and has considered the availability of less restrictive measures in crafting and approving the different modes of designation under Section 25 as can be gleaned from the Congressional deliberations. Moreover, I find that all modes of designation under

Section 25 have sufficient parameters giving the ATC no room for "unbridled discretion" in implementing it. To recall, Section 25 provides for three (3) modes of designation of a terrorist individual, group of persons, organizations, or associations, to wit: (1) Designation pursuant to the ATC's automatic adoption of the United Nations Security Council List of designated individuals; (2) Designation pursuant to request for designations by other jurisdictions after the ATC's determination that proposed designee meets the criteria under UNSCR No. 1373; and (3) Designation by the ATC based on probable cause that the designee committed, or attempted to commit, any of the acts under Sections 4-12 of RA No. 11479.

The ponencia declared the first mode as constitutional because UNSCR No. 1373 provides sufficient framework in the execution and implementation of the designation process. The ponencia also ruled that since this mode of designation is provided by the UNSC itself, the country is merely fulfilling its standing obligation under international law to enforce anti-terrorism and related measures. However, the ponencia declared the second and third modes as unconstitutional because "unbridled discretion is given to the ATC in granting requests for designation based on its own determination" and that "there appears to be no sufficient standard that should be observed in granting or denying such requests." I respectfully differ.

The second mode, designation pursuant to request from foreign jurisdictions, is similar to the first in that it also adopts UN SCR No. 1373 as its standards. A crucial difference between the two modes is that instead of automatic adoption of the UN Consolidate List of Designate List of individuals in the first mode, it is the ATC which determines whether the proposed designee meets the criteria laid down in UNSCR No. 1373 under the second mode. In my view, the ATC is already sufficiently guided by the factors laid down in UNSCR No. 1373. As Chief Justice Gesmundo summarized, these factors include: (a) financing of terrorists acts; (b) providing or collecting, by any means, directly or indirectly, of funds with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts; (c) commission, or attempt to commit, terrorist acts or participation the commission of terrorist acts; (d) making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts; (c) financing, planning, supporting, facilitating or committing terrorist acts, or provide safe havens; and (f) Cross borders as FTF or facilitate the movement of said FTFs. Moreover, Rule 6.2 of the IRR of RA No. 11479 specifically provides criteria for designation, to wit:

> RULE 6.2. Designation Pursuant to Requests from Foreign Jurisdictions and Supranational Jurisdictions. —
>
> The ATC may, upon a finding of probable cause that the proposed designee meets the criteria for designation under UNSC Resolution No. 1373, adopt a request for designation by other foreign jurisdictions or supranational jurisdictions.
>
> Among the criteria for designation under this Rule shall be:
>
> a. that an individual, group of persons, organizations or associations, whether domestic or foreign, commits or attempts to commit, or conspire in the commission of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act;
>
> b. that an entity is owned or controlled directly or indirectly by such person/s; or
>
> c. that a person or entity is acting on behalf of, or at the direction of, the individual, group of persons, organization, or association described in paragraph (a) above. (Emphases supplied)

Verily, UNSCR No. 1373 and Rule 6.2 of the IRR of RA No. 11479 provide sufficient guide for the ATC whether to grant requests from foreign jurisdictions. Finally, UNSCR No. 1373 specifically calls upon the states to "cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress

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terrorist attacks," viz.:

> 3. Calls upon all States to;
>
> (a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
>
> (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
>
> (c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;[77] (Emphases supplied)

Hence, the second mode of designation amounts to nothing more than our country's deference to the call for international cooperation, between and among states, in preventing and combatting terrorism. In fact, the second mode of designation even prevents our country from blindly acquiescing to any State's request absent the ATC's prior determination that the proposed designee has indeed met the criteria laid down in UNSCR No. 1373.

Likewise, RA No. 1 1479 and its IRR fixed sufficient standards for the third mode of designation with reference to the penal provisions of Sections 4. 5, 6, 7, 8, 9, 10, 11, and 12 of the law, thus: "The ATC may designate an individual, group of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, group of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act." Section 25 makes it clear that before the ATC makes a decision on whether to designate a person, organizations, or groups as terrorist, it must First examine the elements of these penal provisions and their applicability to the prospective designee, The elements of the various penal provisions guide the ATC in exercising the third mode of designation. Differently stated, the probable cause requirement and the integration of penal provisions, along with Rule 6.3 of the IRR, constitute sufficient standards to guide the ATC in exercising its power to designate under third mode. At any rate, Rule 6.3 of the IRR clearly enumerates the criteria for designation under this mode, to wit:

> RULE 6.3. Domestic Designation by the ATC through a Determination of Probable Cause. —
>
> Upon a finding of probable cause, the ATC may designate:
>
> a. an individual, group of persons, entity, organization, or association, whether domestic or foreign, who commit, or attempt to commit, or conspire or who participate in or facilitate the commission of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act;
>
> b. an entity owned or controlled directly or indirectly by such individual, group of persons, entity, organization, or association under paragraph (a) of this Rule; and
>
> c. a person or entity acting on behalf of, or at the direction of, the individual, group of persons, entity, organization, or association under paragraph (a) of this Rule. (Emphases supplied)

VII.

Proscription of Terrorist Organization, Association, or Group of Persons

The Court is unanimous that an order of proscription declaring as a terrorist or outlaw an organization,

association, or group of persons is not unconstitutional. RA No. 11479 explicitly authorizes the Court of Appeals to issue an order of proscription, whether preliminary or permanent, only "with due notice and opportunity to be heard" given to the respondent and on the basis of "probable cause". Moreover, the IRR placed the burden of proof to the DOJ to establish that the "the respondent is a terrorist and an outlawed organization or association"[78] for having committed any of the acts penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of RA No. 11479, or that it was organized for the purpose of engaging in terrorism. Lastly, the IRR provides the requirements that must be submitted along with the application for proscription, to wit:

> RULE 7.2. Requirements. —
>
> A group of persons, organization, or association shall be proscribed or declared as terrorist and outlawed by the authorizing division of the Court of Appeals, upon satisfaction of the following requirements:
>
> a. recommendation from the NICA that said group of persons, organization, or association be proscribed or declared as terrorist and outlawed;
>
> b. authority from the ATC to cause the filing of an application for proscription or declaration of said group of persons, organization, or association as terrorist and outlawed;
>
> c. verified application of the DOJ to proscribe or declare a group of persons, organization, or association as terrorist and outlawed, with an argent prayer for the issuance of a preliminary order of proscription; and
>
> d. due notice and opportunity to be heard given to the group of persons, organization or association to be declared as terrorist and outlawed. (Emphases supplied.)

Contrary to the petitioners' claim, the ATC cannot subject any organization or group to proscription. Suffice it to say that the conditions and circumstances tor the issuance of an order of proscription must be judicially determined upon observance of due process.

VIII. Detention without Judicial Warrant of Arrest

Also, I join the majority in affirming the validity of Section 29 of RA No. 11479 on detention without judicial warrant of arrest. The assailed provision and its IRR does not empower the ATC to issue warrants of arrest, which remains a judicial function as prescribed in Article III, Section 2 of the Constitution.[79] Rather, the ATC's "written authority" in favor of law enforcement agents or military personnel is limited only to sustaining the detention of the suspected terrorist for the extended periods under the law. Absent any written authority, the law enforcement agents must follow the periods set in Article 125 of the RPC, thus:

> RULE 9.1. Authority from ATC in Relation to Article 125 of the Revised Penal Code. —
>
> Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (c) of Rule 9.2, has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period often (10) calendar days if it is established that (a) further detention of the person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.
>
> The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon

> submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.
>
> If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply. (Emphasis supplied)

Also, the questioned provision and its IRR enumerated instances when a warrantless arrest may be made similar to Section 5, Rule 113 of the Rules of Court,[80] to wit:

> RULE 9.2. Detention of a Suspected Person without Warrant of Arrest.
>
> A law enforcement officer or military personnel may, without a warrant, arrest:
>
> a. a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;
>
> b. a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which has just been committed; and
>
> c. a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the nets defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another.

Lastly, the determination of the extended detention periods is legislative in nature. The judiciary cannot step in to give a suggestion or other alternatives[81] as to what periods of temporary incarceration are sufficient to effectively prevent or counter terroristic attacks. In any case, the 14-calendar day detention period is not prohibited by the Constitution or any other statute. On the other hand, the 3-day limitation provided for under Section 18, Article VII of the Constitution pertains to situations where the privilege of the writ of habeas corpus is suspended.[82] No other similar prohibition exists with respect to terrorism. Furthermore, clear safeguards were put in place to protect the right of the detainee. The assailed provision mandates that the law enforcement agents give an immediate written notification to the CHR, ATC, and the judge of the court nearest the place of apprehension or arrest as regards (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities.

To conclude, I reiterate that criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed solely because fundamental rights are restricted, the State may well be prevented from enacting laws against socially harmful conduct, more so those aimed to preserve the security of the State which protect our fundamental rights. Also, applying the proposed framework and the use of proper judicial construction, the penal provisions of RA No. 11479 are cleared from any supposed vagueness and ambiguity. The statute can hardly be repugnant to the Constitution for it gives fair notice of what conduct to avoid and docs not leave law enforcers unbridled discretion in carrying out its provisions.

FOR THESE REASONS, I vote to DENY the petitions.

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[1] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452 (2010). See also Philippine Constitution Association v. Enriquez, 305 Phil. 506 (1994); Luz Farms v. Secretary of the Department of Agrarian Reform, 270 Phil. 151 (1990); Dumlao v. COMELEC, 180 Phil. 369 (1980).

[2] G.R. No. 252578, G.R. No. 252279, G.R. No. 252580, G.R. No. 252613, G.R. No. 252623, G.R. No 252264, G.R. No. 252646, G.R. No. 252702, G.R. No. 252726, G.R. No. 252733, G.R. No. 252736, G.R. No. 252741, G.R. No. 252747, G.R. No. 252755, G.R. No. 252759, G.R. No. 252765, UDK No. 16663, G.R. No. 252802, G.R. No. 252809, G.R. No. 252903, G.R. No. 252904, G.R. No. 252905, G.R. No. 252916, G.R. No. 252921 G.R. No. 252984, G.R. No. 253018, G.R. No. 253100, G.R. No. 253118, G.R. No. 253124, G.R. No 253352, G.R. No. 253254, G.R. No. 253420, and UDK No. 16714.

[3] Kilusang Mayo Uno v. Aquino III, G.R. No. 210500, April 2, 2019.

[4] Cruz, Philippine Political Law, 2002 Ed., p. 259, See also Angara v. Electoral Commission 63 Phil. 139 (1936); Board of Optometry v. Colet, 328 Phil. 1187 (1996); Macasiano v. National Housing Authority, 296 Phil. 56 (1993); Santos III v. Northwestern Airlines, 285 Phil. 734 (1992); and National Economic Protectionism Association v. Ongpin, 253 Phil. 643 (1989).

[5] Aguinaldo v. Aquino III, 806 Phil. 187 (2016).

[6] Pimentel v. Legal Education Board, G.R. Nos. 230642, 242954, September 10, 2019 citing Private Hospitals, Association of the Philippines, Inc. v. Medialdea, G.R. No. 234448, November 6, 2018. See also Integrated Bar of the Philippines v. Zamora, 392 Phil. 618 (2000); Kilosbayan v. Morato, 316 Phil. 652 (1995); and Public Interest Center, Inc. v. Roxas, 542 Phil. 443 (2007).

[7] CJ Gesmundo's Separate Opinion, Page 15.

[8] CJ Gesmundo's Separate Opinion p. 9 citing Pimentel, Jr. v. Aguirre, 391 Phil. 84 (2000).

[9] Information Technology Foundation of the Philippines v. COMELEC, 499 Phil. 281 (2005).

[10] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452 (2010).

[11] Parcon-Song v. Parcon, G.R. No. 199582, July 07, 2020.

[12] G.R. No. 253452, G.R. No. 252585, G.R. No. 252767, and G.R. No. 252768.

[13] National Security Policy 2017-2022.

[14] Report of the High Commissioner submitted pursuant to the United Nations General Assembly Resolution 48/141, February 27, 2002.

[15] American Communications Association v. Daud, 339 U.S. 382 (1950) quoted in Joaquin Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 p. 243.

[16] Joaquin Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 p. 243 quoting Kauper, Civil Liberties and the Constitution 113 (1966) cited in 27 SCRA at 899. See also Dissenting Opinion of Justice Kapunan, Social Weather Station, Incorporated v. Commission on Elections, 409 Phil. 571 (2001).

[17] Sec. 2. Declaration of Policy. - It is declared a policy of the State to protect life, liberty and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the Law of Nations. x x x

[18] Isaiah Berlin's conception of "negative liberty" which he describes as the area within which a person is or should be left to do or be what he is able to do or be without interference (1969).

[19] G. Gunatilleke, "Justifying Limitations on the Freedom of Expression", Hum Rights Rev 22, 91-108 (2021).

[20] David M. Beatty, "The Ultimate Rule of Law" (2004).

[21] Alec Stone Sweet and Jud Mathews, "Proportionality Balancing and Global Constitutionalism", 47 Colum. J. Transnat'l L. 72, 160 (2008).

[22] K. Moller K, "Constructing the Proportionality Test: An Emerging Global Conversation" in L. Lazarus C. McCrudden and N. Bowles (cds.), "Reasoning Rights: Comparative Judicial Engagement", Hart Publishing London (2014).

[23] Robert Alexy, "A Theory of Constitutional Rights" (2002).

[24] Terminiello v. Chicago, 337 U.S. 1, 37 (1949), Jackson, J., dissenting. "The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact."

[25] UNODC, "Limitations Permitted by Human Rights Law", available at unodc.org (last accessed: December 2, 2021).

[26] The Definition of Crime, Glanville Williams, M.A., LL.D., Current Legal Problems, Volume 8, Issue 1, 1955, Pages 107130, https://doi.org/10.1093/clp/8.1.107 Published: December 1, 1955.

[27] Romualdez v. Sandiganbayan, 479 Phil. 265 (2004).

[28] Dans v. People, 349 Phil. 434 (1998).

[29] An example is Technical Malversation.

[30] Dungo v. People, 762 Phil. 630 (2015).

[31] People v. Oliva, 395 Phil. 265 (2000).

[32] Rimorin, Sr. v. People, 450 Phil. 465 (2003).

[33] Quinto v. Andres, 493 Phil. 643 (2005).

[34] People v. Murcia, 628 Phil. 648 (2010). See also People v. Bravo 695 Phil. 711 (2012).

[35] Article 48 of the Revised Penal Code.

[36] People v. Nelmida, 694 Phil. 529, 581 (2012).

[37] Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act Republic Act No. 7610, June 17, 1992.

[38] Anti-Torture Act of 2009, Republic Act No. 9745, November 10, 2009.

[39] Anti-Sexual Harassment Act of 1995, Republic Act No. 7877, February 14, 1995.

[40] https://www.lexisnexis.co.uk/legal/guidance/causation-intervening-acts-in-criminal-cases

[41] Criminal Law (Fifth Edition), Janet Loveless, p. 38.

[42] RPC, Article 4 provides that "[c]riminal liability shall be incurred: (1) by any person committing a felony (delito) although the wrongful act done be different from that which he intended; and (2) by any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or an account of the employment of inadequate or ineffectual means."

[43] People v. Malinao y Nobe, 467 Phil. 432 (2004).

[44] https://www.lexisnexis.co.uk/legal/guidance/causation-intervening-acts-in-criminal-cases

[45] See Inchoate Offense, https://www.law.cornell.cdu/wex/inchoate_offense, Legal Information Institute, accessed on December 2, 2021.

[46] RPC, Article 6, 1[st] paragraph.

[47] RPC, Art. 6, 3[rd] paragraph.

[48] The subjective phase in the commission of a crime is that portion of the acts constituting the crime included between the act which begins the commission of the crime and the last act performed by the offender which, with prior acts, should result in the consummated crime. Thereafter, the phase is objective. [Epifanio v. People, 552 Phil. 620 (2007)]

[49] Epifanio v. People, 552 Phil. 620 (2007).

[50] RPC, Article 8, 1[st] paragraph.

[51] RPC, Article 8, 3[rd] paragraph.

[52] Art. 115, RPC.

[53] 2[nd] par., Art. 136, RPC.

[54] 1[st] par., Art. 136, RPC, as amended by R.A. No. 6968 or the Coup d'Etat Law.

[55] 2[nd] par., Art. 8, RPC.

[56] Art. 115, RPC.

[57] 2[nd] par., Art. 136, RPC.

[58] 1st par., Art. 136, RPC, as amended by R.A. No. 6968 or the Coup d'Etat Law.

[59] Art. 141, RPC.

[60] Art. 186(1), RPC, as amended by R.A. No. 1956.

[61] See Sec. 5, C.A. No. 616; Sec. 16, R.A. No. 4188; Sec. 12, R.A. No. 6260; Sec. 261 (b), B.P. Blg. 881; Sec. 11, R.A. No. 8484; Sec. 26, R.A. No. 9165; Sec. 4, R.A. No. 9372; Sec. 15(h), R.A. No. 9775; and, 2[nd] par., Sec. 5, R.A. No. 10168.

[62] Reyes, L., Revised Penal Code Book I, (2021).

[63] 2[nd] par., Art. 6, RPC.

[64] Ruben Agpalo, Statutory Construction p. 341 citing Chartered Bank of India v. Imperial, 48 Phil. 931 (1921).

[65] Ponencia, pp. 104-106.

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[66] Connally v. General Constr. Co., 269 U.S. 385 (1926), cited in Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, 128 Phil. 473 (1967).

[67] Grayned v. City of Rockford, 408 U.S. 104 (1972).

[68] Id.

[69] Philippine International Trading Corporation v. COA, 635 Phil. 447 (2010).

[70] People v. Ferrer, 150-C Phil. 551 (1972).

[71] Supra

[72] Kim Cragin and Sara A. Daly, The Dynamic Terrorist Threat An Assessment of Group Motivations and Capabilities in a Changing World, Prepared for the United States Air Force (2004).

[73] Kim Cragin and Peter Chalk, Terrorism & Development: Using Social and Economic Development to Inhibit a Resurgence of Terrorism, Santa Monica, Calif: RAND Corporation, MR-1630-RC, 2003, pp. 15-22. See also "Abu Sayyaf," Jane's Terrorism Intelligence, March 4, 2003, and Robert Reid, "The Philippines' Abu Sayyaf: Bandits or International Terrorists?" Associated Press, April 6, 1995.

[74] See John McBeth, "The Danger Within," Far Eastern Economic Review, September 27, 2001, and Lira Dalangin, "Bin Laden Kin Denies Hand in RP Terror Cells," INQ7.net, May 15, 2002.

[75] Abu Sayyaf Will Take over a Year to Regroup (1998); "Who Are the Abu Sayyaf?" BBC News [online], June 1, 2001.

[76] See White Light Corp. v. City of Manila, 596 Phil. 444 (2009).

[77] UNSCR No. 1373, September 28, 2001.

[78] Section 7.4, Rule VII, IRR of R.A. No. 11479 (2020).

[79] Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (Emphasis supplied)

[80] Section 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances dial, the person to be arrested has committed it; and (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. In cases falling under paragraph (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

[81] Tañada v. Cuenco, 103 Phil. 1051 (1957).

[82] During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

SEPARATE CONCURRING AND DISSENTING OPINION

GAERLAN, J.:

For the most part, I concur with the majority on the result, and congratulate the ponente for her well-reasoned, exquisitely written Decision. Nothing could perhaps be more poetic than punctuating a stellar career in the Judiciary with a nuanced and carefully crafted Decision on a case that has received much national attention. Nevertheless, I feel compelled to write a Separate Opinion in order that I may: first, express my reservations with the majority's decision to uphold the constitutionality of Section 29 of Republic Act (R.A.) No. 11479, otherwise known as the "Anti-Terrorism Act of 2020" (ATA), and second, provide additional thoughts on the third mode of designation under Section 25 of the ATA.

I.

Section 29 of the ATA is Unconstitutional insofar as it Authorizes the Anti-Terror Council (ATC) to Issue a Warrant of Arrest or a Commitment Order.

Section 29 of the ATA states:

> SECTION 29. Detention without Judicial Warrant of Arrest. — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period often (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.
>
> Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.
>
> The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities.
>
> The penalty of imprisonment often (10) years shall be imposed upon the police or law enforcement agent or military personnel who foils to notify any judge as provided in the preceding paragraph.

The Anti-Terror Council (ATC) and the Department of Justice (DOJ), to effectively implement the ATA,[1]

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issued the ATA's Implementing Rules and Regulations (ATA-IRR). In relation to Section 29 of the ATA, the ATA-IRR, among others, states:

> RULE 9.1. Authority from ATC in Relation to Article 125 of the Revised Penal Code. —
>
> Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (c) of Rule 9.2, has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period often (10) calendar days if it is established that (a) further detention of the person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.
>
> The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.
>
> If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply.
>
> RULE 9.2. Detention of a Suspected Person without Warrant of Arrest. —
>
> A law enforcement officer or military personnel may, without a warrant, arrest:
>
> - a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;
>
> - a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 or 12 of the Act, which has just been committed; and
>
> - a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another.[2]

As it turns out, the ATA-IRR formed the foundation of the declaration by the majority that Section 29 of the ATA is not unconstitutional. To be precise, the majority held that when Section 29 is read together with Rules 9.1 and 9.2 of the ATA-IRR, it is supposedly patent that the proviso does not provide for an executive warrant of arrest. Otherwise stated, the majority placed much stock in the interpretation of the Executive of the intent of Congress in creating Section 29 of the ATA. Thus, the majority held:

> [T]he Court's construction is that under Section 29, a person may be arrested without a warrant by law enforcement officers or military personnel for acts defined or penalized under Sections 4 to 12 of the ATA but only under any of the instances contemplated in Rule 9.2, i.e., arrest in flagrante delicto, arrest in hot pursuit, and arrest of escapees, which mirrors Section 5, Rule 113 of the Rules of Court. Once arrested without a warrant under those instances, a person may be detained for up to 14 days, provided that the ATC issues a written authority in favor of the arresting officer pursuant to Rule 9.1, upon submission of a sworn statement

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> stating the details of the person suspected of committing acts of terrorism and the relevant circumstances as basis for taking custody of said person. If the ATC does not issue the written authority, then the arresting officer shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the RPC - the prevailing general rule. The extended detention period - which, as will be explained in the ensuing discussions, is the crux of Section 29 - is therefore deemed as an exception to Article 125 of the RFC based on Congress' own wisdom and policy determination relative to the exigent and peculiar nature of terrorism and hence, requires, as a safeguard, the written authorization of the ATC, an executive agency comprised of high-ranking national security officials.[3] (Emphasis and underscoring in the original)

As construed by the majority, therefore, the Written Authorization issued by the ATC in Section 29 of the ATA bears the following characteristics: one, it is issued after a valid warrantless arrest is made by a law enforcement office or military personnel, and two, it authorizes the detention of an individual arrested for a period of fourteen (14) days, subject to a ten (10)-day extension. I believe that this interpretation is erroneous. As I shall demonstrate below, the language of Section 29 of the ATA already clearly and unmistakably reveals that what Congress intended is that the Written Authorization comes before the arrest is made.

A.

Section 29 of the ATA is Clear and Unambiguous, Requiring No Extrinsic Aid for its Construction.

It bears emphasizing that as a general proposition, this Court and other subordinate courts determine the intent of the law from the literal language of the law, i.e., within the four corners of the law itself.[4] Thus, resort to extrinsic aids must be avoided,[5] except in the narrow exception "that there be doubt or ambiguity in [the law's] language."[6] Stated differently, "[w]here the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction."[7] It is my submission that Section 29 of the ATA is clear and unambiguous which should have given this Court pause from looking beyond the language proviso.

A cursory examination of the language of Section 29, specifically the first sentence thereof, immediately makes apparent that what the ATA contemplates is that before a law enforcement officer or military personnel arrests an individual suspected of violating any of the acts defined and penalized under Sections 4 to 12 of the ATA, they must first be armed with a previously issued Written Authority by the ATC. This is evident in the law's use of the phrase "having been duly authorized in writing by the ATC" and its interaction with the phrase "has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act[.]"

To expound, the phrase "having been duly authorized in writing by the ATC" is a perfect gerund—a phrase that combines the words "having been" plus the past participle form of a verb. Such phrases refer to the completion of an action at some point in the past, before another verb in the main clause.[8] For instance, "having been trained" is a perfect gerund phrase. If the phrase "having been trained" is followed by a verb in past tense, e.g., "having been trained, she knew," this indicates that the training was complete at the time the subject of the sentence "knew."

Applying the foregoing to Section 29 of the ATA, the phrase "having been duly authorized in writing by the ATC" is a perfect gerund, followed by the main verb "take" in the past participle tense, "has taken custody," which indicates that the officer in question had been authorized in writing by the ATC prior to the taking of a suspect into custody. Otherwise stated, under the procedure detailed in Section 29 of the ATA, the issuance of a

Written Authority by the ATC is a condition sine qua non before agents of the State may arrest any individual "suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of [the ATA]."[9]

However, even if we were to resort to extrinsic aids, specifically the Records of the legislative deliberations,[10] one would find that the construction given by the majority on Section 29 of the ATA (with respect to the Written Authority) is without basis. I have exhaustively poured through the Records of the deliberations of the Philippine Senate on the ATA. In both the Records of Committee hearing and the Records of at least fourteen (14) days of deliberations conducted, there is no mention that an arresting officer must request for the issuance of a Written Authority from the ATC after a valid warrantless arrest. Significantly, whenever Section 29 is discussed, it only highlights that the obligation of the apprehending law enforcement officer and/or military personnel post-arrest are primarily twin fold: first, to notify the judge of the court nearest the place of the apprehension of the details surrounding the arrest; and second, to furnish the ATC a copy of the notice sent to the aforementioned judge.[11] It was only after an amendment introduced by Senator Risa Hontiveros that the Commission on Human Rights (CHR) was also furnished a copy of the notice to the judge.[12]

B.

The ATA-IRR Should Not Form as the Main Basis to Support the Finding that the Written Authorization is not an Executive Warrant of Arrest.

In finding Section 29 of the ATA as not unconstitutional, the majority moored its reasoning on the principle of executive or contemporaneous construction, i.e., the interpretation of a law by the administrative agency charged with its implementation.[13] Doubtlessly, the issuance by the Executive, through an implementing agency, of the implementing rules and regulations is an exercise of contemporaneous construction.[14] Concededly, it is elementary that the Executive's construction of a law must be entitled to full respect and should be accorded great weight by this Court.[15] Nevertheless, executive construction is not binding upon the courts. Indeed, it is equally elementary that "courts may disregard contemporaneous construction in instances where the law or rule construed possesses no ambiguity, where the construction is clearly erroneous, where strong reason to the contrary exists, and where the court has previously given the statute a different interpretation."[16]

In this case, even if it were to be assumed—without conceding—that ambiguity in the language of Section 29 of the ATA exists which thus requires the use of extrinsic aids of construction,[17] the contemporaneous construction of the ATC, as seen in the language of the ATA-IRR, does not hold water. Indeed, it is not only inconsistent with the clear and unambiguous language of the ATA (as discussed in the immediately preceding section), but also conflicts with the intention of Congress as indicated in its legislative deliberations. I offer two (2) points in this regard.

First, while there is a paucity of discussion in the Records of the Philippine Senate on the phrase "who, having been duly authorized in writing by the ATC" in Section 29 of the ATA, the Records on Section 18 of R.A. No. 9372 or the "Human Security Act of 2007" (HSA) is enlightening. Notably, Section 18 of the HSA was amended by Section 29 of the ATA, with the latter maintaining the aforequoted phrase despite amendment.

An examination of the Records with respect to Section 18 of the HSA would show that the phrase "who, having been duly authorized in writing by the Anti-Terrorism Council[,]"[18] was crafted to authorize "any police or law enforcement personnel" to only take into custody "a person charged with or suspected of the crime of terrorism or

the crime of conspiracy to commit terrorism" upon the confluence of two circumstances: (1) that a written authority is issued by the Anti-Terrorism Council, and (2) an arrest premised upon the conduct of surveillance under Section 7 and examination of bank deposits under Section 27 of the HSA.[19] These two requisites, especially the second, combine to ensure that there is sufficient "basis to arrest without a warrant," and the charge or arrest is not "whimsical."[20] Worth mentioning that during the deliberations on Section 18 of the HSA, the late Senator Miriam Defensor Santiago cautioned the Senate to carefully craft the proviso in view of its nature as a grant of "judicial police function."[21] These discussions make clear that the intention of Congress is for the ATC to issue the Written Authorization prior to an arrest.

Second, and related to the first, the deliberations of the ATA reveal that this intent remains unchanged. Notably, one of the key amendments to Section 18 of the HSA, now Section 29 of the ATA, was to remove the phrase "[p]rovided, [t]hat the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act."[22] According to Senator Panfilo Lacson, the deletion, of the clause was necessary to enable the State, through the ATC, to be more "proactive" in the fight against terrorism.[23] To be precise, "to prevent the occurrence of acts of terrorism because the damage is so huge—loss of lives and properties."[24]

Accordingly, Congress, in deleting the requirement of prior surveillance from the HSA when it crafted Section 29 of the ATA, presumed that no act of terrorism has yet been made. The Written Authorization was to serve as the basis to arrest an individual in an attempt to suppress the initiation of acts that could lead to a terroristic attack. Under these circumstances, it is once more patent that the intent of Congress is that the Written Authority should be given by the ATC before an arrest is made, and not after, so as to effectively quell any potential terrorist attack. Any other construction would undermine the intention of Congress to enable the Executive to be "proactive" in the fight against terrorism.

Flowing from the foregoing, this Court finds itself in a situation where it has determined that the language of the statute is unclear and ambiguous; has sought assistance from extrinsic aids to untangle the ambiguity; and is now confronted with the problem of two (2) extrinsic aids offering diverging conclusions. In particular, the extrinsic aid of contemporaneous construction suggests that the Written Authority referred to in Section 29 of the ATA is to be issued post-arrest, while the ATA's legislative history insinuates that such Written Authority is issued prior to arrest. In my opinion, under such circumstance, this Court must give preference to the law's legislative history over that of the Executive's contemporaneous construction.[25] Indeed, this Court's constitutionally mandated function of interpreting the law necessarily commands that it must do so in a manner that will not conflict with the intention of Congress[26]—the great branch of government charged with the function to create laws and declare policy.[27] To hold that the contemporaneous construction of the Executive is superior to the Congressional intent, as gleaned from the statute's legislative history, leads to a regime where the Executive determines "what the law is" and "how that law should be interpreted."[28] Accordingly, I am of the opinion that what Section 29 of the ATA contemplates, as far as the Written Authorization is concerned, is that the same is to be issued preceding an arrest in order to equip State agents with the ability to quickly suppress a potential terrorist attack.

C.

Since the Written Authorization is Issued Prior to Arrest, it Partakes of the Nature of a Warrant of Arrest or a Commitment Order, Both of which may only be Properly Issued by a Judge.

I wish to state that I am completely mindful of the rule that whenever this Court is confronted with the question of

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constitutionality of a statute, or any provision thereof, it "should favor that interpretation of legislation which gives it the greater chance of surviving the test of constitutionality."[29] Nevertheless, this Court's solemn duty to interpret the law is not unbounded[30]—it must interpret the law in a manner consistent with the intent of Congress,[31] while crucially maintaining the resolve to strike down the law should it be inconsistent with the Constitution.[32] Thus, having presented what I believe is the appropriate construction of Section 29 of the ATA, this begs the question: does our Constitution, allow the Congress to grant the Executive the authority to order the arrest and detention of an individual that is suspected to be undertaking terroristic acts? The answer is unequivocally in the negative.

Our Constitution exclusively commits the power to issue warrants of arrest to the judges of the courts of law.[33] In Viudez II v. Court of Appeals,[34] this Court held that the power of a judge "to issue a warrant of arrest upon the determination of probable cause is exclusive[,]" extending to judges even the authority to order the suspension of its implementation after issuance. Otherwise stated, outside the context of a lawful warrantless arrest, judges are vested with the sole authority to direct that an individual be taken into custody in order that such individual may be bound to answer for the commission of an offense.[35] Thus, in Salazar v. Achacoso,[36] this Court struck down a provision of the old Labor Code which authorized the ministry of labor to issue warrants of arrest; to wit:

> The Court finds that a lone issue confronts it: May the Philippine Overseas Employment Administration (or the Secretary of Labor) validly issue warrants of search and seizure (or arrest) under Article 38 of the Labor Code? It is also an issue squarely raised by the petitioner for the Court's resolution.
>
> Under the new Constitution, which states:
> no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

it is only a judge who may issue warrants of search and arrest. In one case, it was declared that mayors may not exercise this power:

> x x x x
>
> But it must be emphasized here and now that what has just been described is the state of the law as it was in September, 1985. The law has since been altered. No longer does the mayor have at this time the power to conduct preliminary investigations, much less issue orders of arrest. Section 143 of the Local Government Code, conferring this power on the mayor has been abrogated, rendered functus officio by the 1987 Constitution which took effect on February 2, 1987, the date of its ratification by the Filipino people. Section 2, Article III of the 1987 Constitution pertinently provides that "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the person or things to be seized." The constitutional proscription has thereby been manifested that thenceforth, the function of determining probable cause and issuing, on the basis thereof, warrants of arrest or search warrants, may be validly exercised only by judges, this being evidenced by the elimination in the present Constitution of the phrase, "such other responsible officer as may be authorized by law" found in the counterpart provision of said 1973 Constitution, who, aside from judges, might conduct preliminary investigations and issue warrants of arrest or search warrants.

Neither may it be done by a mere prosecuting body:

> We agree that the Presidential Anti-Dollar Salting Task Force exercises, or was meant to exercise, prosecutorial powers, and on that ground, it cannot be said to be a neutral and detached "judge" to determine

> the existence of probable cause for purposes of arrest or search. Unlike a magistrate, a prosecutor is naturally interested in the success of his case. Although his office "is to see that justice is done and not necessarily to secure the conviction of the person accused," he stands, invariably, as the accused's adversary and his accuser. To permit him to issue search warrants and indeed, warrants of arrest, is to make him both judge and jury in his own right, when he is neither. That makes, to our mind and to that extent, Presidential Decree No. 1936 as amended by Presidential Decree No. 2002, unconstitutional.
>
> x x x x

On January 26, 1986, he, Mr. Marcos, promulgated Presidential Decree No. 2018, giving the Labor Minister search and seizure powers as well:

> (c) The Minister of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-licensee or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Minister shall order the search of the office or premises and seizure of documents, paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishment and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.

The above has now been etched as Article 38, paragraph (c) of the Labor Code.

The decrees in question, it is well to note, stand as the dying vestiges of authoritarian rule in. its twilight moments.

We reiterate that the Secretary of Labor, not being a judge, may no longer issue search or arrest warrants. Hence, the authorities must go through the judicial process. To that extent, we declare Article 38, paragraph (c), of the Labor Code, unconstitutional and of no force and effect.[37] (Emphasis supplied; citations omitted)

Ineluctably, therefore, case law provides that the exclusive authority to issue warrants of arrest vests with the judiciary and its judges. However, even if it were to be assumed, without conceding, that the Written Authority is issued post-arrest, the conclusion would not be different. As a post-arrest issuance, the Written Authority will then partake of the nature of a commitment order, which is similar in effect to a warrant of arrest. The difference is that in a commitment order, the continued detention of a person is premised upon a previously valid warrantless arrest of a person.[38] In other words, individuals subject to a commitment order refer to those already in official custody. Nevertheless, the goal is the same: to authorize the detention of an individual, temporarily depriving him/her of his/her liberty. Thus, like a warrant of arrest, a commitment order can also only be properly issued by a judge, and not by any administrative agency.[39]

At this point, it bears to emphasize that the Constitutional injunction that only judges can issue warrants of arrest was deliberately placed to avoid the situation wherein the liberty of an individual would be subject to the whim of State officers charged with the duty to prosecute the arrested individual. Thus, in Presidential Anti-Dollar Salting Task Force v. Court of Appeals:[40]

> We agree that the Presidential Anti-Dollar Salting Task Force exercises, or was meant to exercise, prosecutorial powers, and on that ground, it cannot be said to be a neutral and detached "judge" to determine the existence of probable cause for purposes of arrest or search. Unlike a magistrate, a prosecutor is naturally interested in the success of his case. x x x To permit him to issue search warrants and indeed, warrants of arrest, is to make him both judge and jury in his own right, when he is neither. x x x[41] (Emphasis supplied; citation omitted)

Not coincidentally, the ATC, the agency charged with the obligation to determine whether an arrestee may be detained for periods beyond those mandated under Article 125 of the RPC is likewise tasked to "[d]irect the

speedy investigation and prosecution of all persons detained or accused for any crime defined and penalized under this Act[.]"[42] Otherwise stated, if Section 29 of the ATA is allowed to stand, this Court is permitting the ATC to act as both judge and jury. Certainly, this should not be allowed.

For the foregoing reasons, I am of the opinion that Section 29 of the ATA should be struck down as unconstitutional. Lest it be forgotten, the Constitutional prescription that warrants of arrest be issued only by a judge is firmly moored in our country's history:

> THE PRESIDENT: Thank you, Mr. Vice-President Ambrosio Padilla.
>
> x x x x
>
> The Marcos provision that search warrants or warrants of arrest may be issued not only by a judge but by any responsible officer authorized by law is discarded. Never again will the Filipino people be victims of the much-condemned presidential detention action or PDA or presidential commitment orders, the PCOs, which desecrate the rights to life and liberty, for under the new provision a search warrant or warrant of arrest may be issued only by a judge. x x x[43] (Emphasis supplied)

For the foregoing reasons, I vote that Section 29 of the ATA be declared as unconstitutional for unduly infringing on the exclusive right of the Judiciary to issue warrants of arrest and commitment orders.

II.

The Third Mode of Designation under Section 25 of the ATA is not Unconstitutional.

Section 25 of the ATA is equally as controversial as Section 29 thereof. Section 25 is the provision which permits the designation of individuals, groups, organizations or associations as terrorist by the ATC. It provides for three modes of designation: "first, through the automatic adoption by the ATC of the designation or listing made by the UNSC [United Nations Security Council]; second, through the ATC's approval of requests made by other jurisdictions or supranational jurisdictions to designate individuals or entities that meet the criteria under UNSC Resolution No. 1373; and third, designation by the ATC itself, upon its own finding of probable cause that the person or organization commits, or is attempting to commit, or conspired in the commission of, the acts defined and penalized under Sections 4 to 12 of the ATA."[44] Concurring with the majority in that the third mode of designation is not unconstitutional, I endeavour some additional discussion below.

Under the third, mode of designation, the ATC is empowered to characterize any individual, group, organization, or association as terrorists if it finds "probable cause that the individual, groups of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act."[45] I agree with the ponencia that designation is an exercise of police power,[46] and must thus be assessed on the basis of reasonableness.[47]

Under Rule 6.3 of the ATA-IRR, the ATC may only designate "an individual, groups of persons, entity, organization, or association" upon a showing of probable cause that such "an individual, groups of persons, entity, organization, or association" can be reasonably believed to have committed, or attempted to commit, or conspired or participated in or facilitated the commission of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the ATA.[48] As a consequence of such designation, "[t]hc assets of the designated individual, groups of persons, organization, or association under the [ATA] shall be subject to the authority of the AMLC [Anti-Money Laundering Council] to freeze pursuant to Sections 35 and 36 of the [ATA] and Section 11

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of [R.A.] No. 10168."[49]

To my mind, Section 25 of the ATA and Rules 6.3 and 6.4 are appropriate and reasonably-necessary to accomplish the goal of combatting the domestic terrorism and its "pernicious and widespread effects.[50] The ATA and the ATA-IRR provide a narrowly tailored standard to permit the designation of an individual or group as a terrorist organization by the ATC, i.e., that there is probable cause. Nevertheless, the petitioners bewail that such probable cause determination lacks a discernable criterion. However, to my mind, the criterion to determine the "probable cause" under Section 25 is easily identified when one considers the proviso together with Section 11 of R.A. No. 10168 or "The Terrorism Financing Prevention and Suppression Act of 2012."

To expound, Section 11 of R.A. No. 10168, the AMLC may freeze funds if "(a) property or funds that are in any way related to financing of terrorism or acts of terrorism; or (b) property or funds of any person, group of persons, terrorist organization, or association, in relation to whom there is probable cause to believe that they are committing or attempting or conspiring to commit, or participating in or facilitating the commission of financing of terrorism or acts of terrorism as defined herein."[51] In other words, if there are reasonable grounds to believe that an individual or group have engaged or will engage in terrorist acts, then freezing the assets may follow. This standard is essentially what is observed in designation albeit differently worded in Rule 6.3 of the ATA-IRR, i.e., that there is sufficient evidence to cause the freezing of the assets of the individual or group. Congress could not have contemplated another standard for probable cause since that would render Section 25 inutile. Indeed, if the determination of probable cause in Section 25 is not in sync with the probable cause threshold needed to trigger Section 11 of R.A. No. 10168, then the former would have no practical effect in the fight against terrorism—a situation that Congress, in its wisdom, could not have contemplated.

Another concern raised by petitioners is that there exists no remedy available to question or challenge an erroneous designation. Suffice it to state that this is erroneous since the extraordinary remedy of certiorari under Rule 65 is available. Relevantly, the determination of probable cause is essentially an exercise of quasi-judicial function,[52] and the lack of evidence to support a probable cause determination is arguably grave abuse of discretion amounting to lack or excess of jurisdiction.

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[1] REPUBLIC ACT No. 11479, Anti-Terrorism Act of 2020, Section 54.

[2] Id., IMPLEMENTING RULES AND REGULATIONS, Rules 9.1-9.2.

[3] Decision, pp. 199-200.

[4] Ramirez v. Court of Appeals, 318 Phil. 701 (1995).

[5] League of Cities of the Phils. v. Commission on Elections, 592 Phil. 1 (2008).

[6] United Paracale Mining Co., Inc. v. Dela Rosa, 293 Phil. 117, 123-124 (1993).

[7] Insular Lumber Co. v. Court of Tax Appeals, 192 Phil. 221, 231 (1981).

[8] Jose Carillo, The Perfect Gerund And Its Uses, The Manila Times Website, available at https://www.manilatimes.net/2020/01/02/campus-press/the-perfect-gerund-and-its-uses/669877 (last visited November 10, 2021).

[9] ANTI-TERRORISM ACT OF 2020, Section 29.

[10] See e.g. Senate of the Philippines, Legislative History of The Anti-Terrorism Act of 2020, Senate of the Philippines, 18[th] Congress Website, available at

http://legacy.senate.gov.ph/lis/bill_res.aspx?congress=18&q=SBN-1083 (last visited December 11, 2021).

[11] Records dated February 18, 2020, pp. 54-55; Records dated January 29, 2020, pp. 26-28; Records dated January 23, 2020, p. 43; Records dated January 22, 2020, pp. 32-33, 54-58; Records dated October 2, 2019, pp. 34-35. See Records dated June 7, 2006, p. 16.

[12] Records dated February 18, 2020, pp. 54-55; Records dated February 3, 2020, p. 43.

[13] Dante B. Gatmaytan, Legal Method Essentials 4.0 (2020), p. 315.

[14] AFP General Insurance Corporation v. Molina, 579 Phil. 114 (2008); Alvarez v. Guingona, Jr., 322 Phil. 774 (1996); In re Allen, 2 Phil. 630 (1903).

[15] Nestle Philippines, Inc. v. Court of Appeals, 280 Phil. 548 (1991).

[16] Adasa v. Abalos, 545 Phil. 168 (2007).

[17] Supra note 13 at 297.

[18] REPUBLIC ACT NO. 9372, Human Security Act of 2007, Section 18.

[19] Records dated December 5, 2006, pp. 43-44; Id.

[20] Id. at 44.

[21] Records dated November 14, 2006, pp. 54-55. See Edward A. Tomlinson, Symposium: Comparative Criminal Justice Issues in the United States, West Germany, England, and France: Nonadversarial Justice: The French Experience, 42 MD. L. REV. 131, 157 (1983) (defining "judicial police function" as investigating offenses by gathering proof and apprehending offenders).

[22] Supra note 18.

[23] Records dated February 3, 2020, pp. 40-43.

[24] Id.

[25] Re: Vicente S.E. Veloso, 760 Phil. 62 (2015); Director of Lands v. Arruza, 63 Phil. 559 (1936). Note the version of the Philippine Senate of both the HSA and the ATA was adopted by the House of Representatives (for reference see Supra note 10 and Records dated February 8, 2007).

[26] Corpuz v. People, 734 Phil. 353 (2014).

[27] Belgica v. Ochoa, 721 Phil. 416 (2013); Cruz v. Franco, 146 Phil. 554 (1970).

[28] Cf. Boumediene v. Bush, 553 U.S. 723 (2008).

[29] Decision, p. 199, citing San Miguel Corp. v. Avelino, 178 Phil. 47 (1979).

[30] People v. Quijada, 328 Phil. 505 (1996).

[31] Corpuz v. People, 734 Phil. 353 (2014).

[32] Endencia v. David, 93 Phil. 696 (1953); Angara v. Electoral Commission, 63 Phil. 139 (1936).

[33] 1987 CONSTITUTION, Article III, Section 2.

[34] 606 Phil. 337 (2009).

[35] RULES OF COURT, Rule 113, Section 1.

[36] Salazar v. Achacoso, 262 Phil. 160 (1990).

[37] Id. at 164-167.

[38] Villa Gomez v. People, G.R. No. 216824, November 10, 2020; People v. Cariño, G.R. No. 234155, March 25, 2019; Sayo v. Chief of Police, 80 Phil. 859 (1948).

[39] Carandang v. Base, 573 Phil. 198 (2008).

[40] 253 Phil. 344 (1989).

[41] Id. at 362.

[42] ANTI-TERRORISM ACT OF 2020, Section 46(c).

[43] RECORD, CONSTITUTIONAL COMMISSION 1009 (October 15, 1986).

[44] Decision, pp. 141-142.

[45] ANTI-TERRORISM ACT OF 2020, Section 25.

[46] Decision, p. 153.

[47] Land Transportation Franchising and Regulatory Board v. Stronghold Insurance Co., Inc., 718 Phil. 660 (2013). The use of the test of reasonableness to assess claims of violations of substantive due process rights vis-a-vis the exercise of police power is illustrated in the case of Ermita-Malate Hotel & Motel Operators Association, Inc. v. The City Mayor of Manila, 128 Phil. 473 (1967).

[48] ANTI-TERRORISM ACT OF 2020 IMPLEMENTING RULES AND REGULATIONS, Rule 6.3.

[49] Id., Rule 6.4.

[50] Decision, pp. 153 and 171.

[51] REPUBLIC ACT No. 10168, The Terrorism Financing Prevention and Suppression Act of 2012, Section 11.

[52] Amarga v. Abbas, 98 Phil. 739 (1956).

SEPARATE CONCURRING AND DISSENTING OPINION

LOPEZ, J., J.:

"Our responses to terrorism, as well as our efforts to thwart and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms, and the rule of law are essential tools in the effort to combat terrorism-not privileges to be sacrificed at the lime of tension." - Kofi Anan, Former United Nations Secretary-General, special meeting of the United Nations Security Council, March 6, 2003.

The Court, as the sworn protector of justice and the rule of law, is once again at a crossroads. As with many cases before it, the crucial questions for consideration shall pave not only the legal and political landscape, but also the societal conditions and the preservation of fundamental freedoms for generations to come.

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The determination of whether Republic Act No. 11479, otherwise known as the "Anti-Terror Act of 2020" (R.A. No. 11479), passes constitutional muster is by no means an easy task in light of several factors — the limited power of this Court to act on certain issues raised in the 37 petitions, national interests that intersect with that of the international community, the urgency to enact innovative counter-terrorist measures in response to the evolving methods employed by terrorists, and more importantly, the protection of human rights and liberties. With due regard to the far-reaching implications of these cases, this Court is all the more vigilant to ensure that despite the compelling need to curtail terrorist attacks, such measures shall always yield to the rights and ideals that our Constitution has sworn to protect.

Given the stakes involved, this Court is not one to shirk from its responsibility to resolve issues on the constitutionality of statutes, ever mindful of proceeding with caution and forbearance. As emphasized in Estrada v. Sandiganbayan,[1] "if there is reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority."[2]

Considering the foregoing, I concur with the ponencia's disquisitions, particularly, in giving due course to the joint petitions and in declaring the phrase in the proviso of Section 4 that reads: "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety" as UNCONSTITUTIONAL. I, however, vote to declare the first and third modes of designation under Section 25 as CONSTITUTIONAL.

Upon a circumspect study of the parties' respective pleadings, it is my view that ALL of the modes of designation under Section 25 are NOT constitutionally infirm as will be discussed hereunder. More, while I concede with the majority that the Anti-Terrorism Council (ATC) Order under Section 29 is not akin to a warrant of arrest as contemplated by the Rules of Court, the provision remains constitutionally offensive with respect to the intended effects of the ATC Order and the extended detention period provided therein.

The Facial Analysis of R.A. No. 11479 must be confined to the four corners of the statute, and should not consider the Implementing Rules and Regulations.

In giving due course to these petitions, the ponencia permitted a limited facial challenge only insofar as particular provisions of R.A. No. 11479 raised chilling effects on free expression and its cognate rights.[3] I agree that a facial challenge of R.A. No. 11479 should indeed be limited to provisions affecting freedom of expression and cognate rights. Yet, in testing the constitutionality of certain provisions, specifically Sections 4,[4] 5,[5] and 8, in relation to 3(g),[6] and 9,[7] the ponencia also relied on the Implementing Rules and Regulation (IRR) to fill certain statutory gaps, eventually sustaining the validity of these provisions.

I respectfully submit that the Court could do away with such analysis. Disregarding the IRR and limiting the analysis to the provisions of R.A. No. 11479 could have altogether led to different conclusions regarding the vagueness or overbreadth, and ultimately the constitutionality of such provisions.

Former Chief Justice Teresita Leonardo-De Castro expressed it best in her concurring opinion in Imbong v. Ochoa[8] asserting that a facial analysis must be limited to the four corners of a statute, viz.:

> I wish to add that, in general, a facial challenge is a constitutional challenge asserting that a statute is invalid on its face as written and authoritatively construed, when measured against the applicable constitutional doctrine,

> rather than against the facts and circumstances of a particular case. The inquiry uses the lens of relevant constitutional text and principle and focuses on what is within the four corners of the statute, that is, on how its provisions are worded. The constitutional violation is visible on the face of the statute. Thus, a facial challenge is to constitutional law what res ipsa loquitur is to facts — in a facial challenge, lex ipsa loquitur, the law speaks for itself.[9]

Such should be the case if the Court is to maintain fair play between the litigants, while upholding the efficacy of judicial review. To begin with, a facial challenge is "the most difficult-challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."[10] Relative to the overbreadth doctrine, a "statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants."[11]

As such, using the IRR to supplement the analysis of R.A. No. 11479 restricts the Court's power of judicial review to an executive circumscription of statutory language. More concretely, what constitutional vices the Court might have otherwise attributed to patently defective statutory language would be ruled out, simply because the Executive made the assurance that the law would operate within constitutional bounds. This would be akin to undertaking an as-applied challenge when what petitioners bring is a facial challenge: "a facial invalidation is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."[12]

For instance, the ponencia points out that, although not found in Section 5 of R.A. No. 11479, Rule 4.5 of the IRR adopts a "credibility" standard as an added element to threats to commit to terrorism,[13] so that threats made in jest or as a form of satire would be protected.

But therein lies the danger. Considering the expediency with which they may be adopted, amended, or supplemented, IRRs provide no lasting assurance. At least compared (o legislative enactments, which, with more careful and participative deliberations, are ascribed more permanence, IRR-defined implementation standards can just as easily change, altering the levels of protection granted to the people, eluding the Court's exercise of judicial review, and reviving issues which should already be put to rest if the Court were to analyze only the statute. This also sets a dangerous precedent for future constitutional litigation wherein pending petitions would be mooted simply because the Executive had superveningly adopted IRRs to save the ambiguous statutes.

From a separation of powers perspective, allowing IRRs to save statutes from overbreadth or vagueness in facial challenges would risk giving the Executive the license to create, modify, supplant, or even enhance substantive rights, when all it should do is faith fully execute the law. R.A. No. 11479 is already a "complete law"[14] and a penal statute at that, enactments of which are exclusively lodged in Congress.[15]

More crucially, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all.[16] Supposing that Sections 4, 5, 8 in relation to 3(g), and 9 were null and void for vagueness or overbreadth on the face only of R.A. No. 11479, then there would be no business reviving dead letters by executive fiat.

Finally, as noted by former Chief Justice Leonardo-De Castro, lex ipsa loquitor. Using the IRR to rescue RA 11479 from unconstitutionality, or at least clarify or delimit its application, seems to be a tacit admission as to the vagueness or overbreadth of the subject provisions. Instead, in a limited facial challenge hinged on vagueness or overbreadth, these provisions should stand or fall by their own merit.

The Phrase in the Proviso of Section 4 Must Be Struck Down as Unconstitutional.

Upon a careful review of the law, I find that the portion in the proviso in Section 4 of R.A. No. 11479 was appropriately struck down for being impermissibly vague and sweeping into protected freedoms, thereby foiling the strict scrutiny test.

Using the principles of statutory construction, the phrasing of the proviso convinces one, into interpreting it as an exception clause, as it carves out certain acts from Section 4 by virtue of being constitutionally protected, i.e., advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights. Dangerously however, what follows is a qualifying phrase, termed by the ponencia as the Not Intended Clause, through which protection is only duly granted when these activities are performed "without the intention of causing death or serious physical harm to a person, endangering a person's life, or creating a serious risk to public safety." Conversely, when performed with such intentions, the exercise of these freedoms would be penalized under Section 4. In reality, the net effect of the proviso is, instead of extending a protective mantle, to expand the punishable acts under Section 4.

As aptly recognized by the ponencia, and as drawn from the interpellations of the Office of the Solicitor General (OSG), the proviso reverses the constitutionally-enshrined presumption of innocence,[17] and forces would be rallyists, protesters, and advocates to arm themselves to the teeth with legal defenses even before taking to the streets. The reality is that tensions and passions run high in the parliament of the streets, and the assertiveness of legitimate dissent meets law enforcers' maximum tolerance head on. Still, the freedoms of expression and assembly guarantee that people should be able to air out their grievances with neither mental nor emotional reservation, much less fear of apprehension.

It bears stressing that the formulation of the proviso fails to adhere to the standard laid down in Brandenburg v. Ohio[18] in that advocacy is outlawed only when "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[19] Evidently, the proviso lacks the imminence and likelihood aspects of Brandenburg, already penalizing the exercise of constitutional freedoms when done with a certain intent.

I also hasten to point out that R.A. No. 11479's IRR has unduly expanded the terrorist acts punishable under Section 4. Subparagraph (f) of Rule 4.4, captioned as Acts Not Considered Terrorism, includes "creative, artistic, and cultural expressions" in the enumeration. Again, while at first blush, it purports to exempt these expressions from the coverage of Section 4, when conversely conjoined with the Not Intended Clause, i.e., done with a particular intent, the IRR actually adds these forms of expression to the list of penalized acts.

Granted, the inclusion of "creative, artistic, and cultural expressions" in Rule 4.4(1) of the IRR appears superfluous considering that, pursuant to the principle of ejusdem generis,[20] this item would fall under "other similar exercises of civil and political rights" in Section 4 of R.A. No. 11479. Still, the Executive has no authority to make such insertion. The settled rule is that "regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer[.]"[21] More on point is the following pronouncement from Valenzuela v. People[22] on the legislature's exclusive domain to define punishable acts, to wit:

> The foremost predicate that guides us as we explore the matter is that it Vies in the province of the legislature, through statute, to define what constitutes a particular crime in this jurisdiction. It is the legislature, as representatives of the sovereign people, which determines which acts or combination of acts are criminal in nature. Judicial interpretation of penal laws should be aligned with what was the evident legislative intent, as expressed primarily in the language of the law as it defines the crime. x x x[23]

However, these consolidated petitions only assail R.A. No. 11479 and contain no prayers asking that certain portions of the IRR be struck down as ultra vires. To do so would be tantamount to judicial overreach. Still, the Constitution has entrusted to the Court "the power to be the final arbiter of all questions of law and the rule of law

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demands that as disputes ought to reach an end in the interest of societal peace, submission should follow this Court's final fiat."[24] Thus, the IRR cannot go against the Court's pronouncement on the provisions of the law, which it seeks to implement.

The Modes of Designation Under Section 25 Must Be Declared Constitutional.

There is no argument that the adoption of both designation and even of proscription under RA 11479 was done pursuant to the State's legitimate exercise of police power. As pointed out by the ponencia:

> x x x it cannot be denied that the institution of designation and proscription in the ATA is an exercise of police power. Designation and proscription, as preventive counterterrorism measures, are made necessary because of the pernicious and widespread effects of even one single terrorist act, which can happen anytime, anywhere. As the Court has discussed before in as many words, terrorism is never just an ordinary crime and a terrorist is never just an ordinary criminal — terrorism, very simply, is sui generis, and its extraordinary nature demands extraordinary measures.[25]

Characterized as the most essential, insistent, and the least limitable of powers,[26] police power is the inherent and plenary power lodged in the legislature, "enabling it to prohibit all that is hurtful to the comfort, safety, and welfare of society."[27] In the exercise of such power, the State is emboldened to interfere with personal liberty, property, lawful businesses and occupations in order to promote the general welfare, as long as such interference is both reasonable and not arbitrary.[28] This particular power is a growing and expanding power, as it was developed to be elastic and responsive to various conditions.[29] Further, as civilization develops and intricate issues arise within the society, such power may be extended.

Regardless of this expansive power, this Court is not oblivious to the limits of police power. This power stops short when it tramples upon and unduly intrudes in the private lives of the citizens. After all, "the power to prescribe such regulations to promote the health, morals, education, good order or safety, and general welfare of the people (lows from the recognition that salus populi est suprema lex — the welfare of the people is the supreme law."[30] As early as 1924, in People v. Pomar,[31] it has been established that police power may not be exercised in contravention to the Constitution as the supreme law of the land; verily, neither public sentiment nor a sincere desire to suppress any societal evil can justify the promulgation of a law that runs in opposition to the fundamental law of the people. Citing the US case of Mugler v. Kansas,[32] it expounded, thus:

> Without further attempting to define what are the peculiar subjects or limits of the police power, it may safely be affirmed, that every law for the restraint and punishment of crimes, for the preservation of the public peace, health, and morals, must come within this category. But the state, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to and is controlled by the paramount authority of the constitution of the state, and will not be permitted to violate rights secured or guaranteed by that instrument or interfere with the execution of the powers and rights guaranteed to the people under their law - the constitution.

Noticeably, the first mode of designation, which is the automatic adoption of the United Nations Security Council Consolidated List, pursuant to the United Nations Security Council (UNSC) Resolution No. 1373, was constitutionally upheld by the Court.

To be sure, the act of designation as a method to suppress terrorism is nowhere near novel and has long been constitutionally upheld. In Republic Act No. 10168, (R.A. No. 10168), otherwise known as the Terrorism Financing Prevention and Suppression Act of 2012, Section 3(e) provides for the definition of who are designated

persons and entities, thus:

> Section 3. Definition of Terms. — As used in this Act:
>
> x x x x
>
> (e) Designated persons refers to:
>
> (1) any person or entity designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group under the applicable United Nations Security Council Resolution or by another jurisdiction or supranational jurisdiction;
>
> (2) any organization, association, or group of persons proscribed pursuant to Section 17 of the Human Security Act of 2007; or
>
> (3) any person, organization, association, or group of persons whose funds or property, based on probable cause are subject to seizure and sequestration under Section 39 of the Human Security Act of 2007.[33]

Readily perceptible, the act of designating terrorist organizations or groups pursuant to the UN Security Council resolutions has long been part of the legal landscape since 2012. As surveyed by the ponencia:

> At the outset, the Court notes that the challenged measures are not entirely novel and even, hardly recent. The designation, proscription, listing, blacklisting, outlawing, banning, exclusion, or sanction of individuals or organizations, and such other equivalent terminologies that broadly refer to the set or series of legal instruments or powers which permit a government agent to prohibit the presence of, or support for, an identified terrorist or terrorist organization within its jurisdiction have already existed before the enactment of the ATA, and have been adopted and operationalized in many other countries.[34]

In upholding the first mode of designation, the ponencia merely recognized what has been systematized all along. As emphasized, this mode "merely confirms a finding already made at the level of the UNSC, and affirms the applicability of sanctions existing in present laws."[35] Unlike the second and third modes of designation, the power of the ATC is not expanded to allow it to exercise any degree of discretion in accepting or denying the listing. The ponencia also adds that neither does the ATC "wield any power nor authority to determine the corresponding rights and obligations of the designee."[36]

Of equal significance, the adoption of the UNSC Listing is in compliance to the country's international obligations. Pursuant to the express wording of Section 25, the Philippines, as a UN member-state, is obligated to take part in the collective efforts to deter terrorists from achieving their objectives. Hence, it is enjoined to adhere to UNSC Resolution No. 1373, which in simple terms, embodies a broad mandate on counter-terrorism in recognizing the threat it presents to international peace and security, thereby necessitating international cooperation through the use of all legitimate means. Particularly, the Philippines is one with all UN member-states in its obligations to:

> (a) Prevent and suppress the financing of terrorist acts;
>
> (b) Criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
>
> (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled

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> directly or indirectly by such persons and associated persons and entities;
>
> (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons x x x.[37]

Under these terms, it must be recalled that one of the primary consequences of designation is that "the assets of such designated individual groups of persons, organization or association above-mentioned shall be subject to the authority of the Anti-Money Laundering Council (AMLC) to freeze, pursuant to Section 11 of R.A. No. 10168."[38] Unmistakably, this conforms to the State obligations under paragraph 1 of UNSC Resolution No. 1373, specifically (b) thereof, requiring States to freeze, without delay, funds and other financial assets or economic resources of persons involved or who facilitate any act of terrorism.

Aside from the directives enshrined in UNSC Resolution No. 1373, the ponencia supplies an exhaustive list of sources from which we draw our international obligations against terrorism, such as the General Assembly Resolution No. 2625 (XXV), or the "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among Stales in Accordance with the Charter of the United Nations," UNSC Resolution No. 1189 (1998), and the UN Charter itself, which affirmed the following obligations:

> Article 48
>
> 1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by sonic of them, as the Security Council may determine.
>
> 2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.[39]

Now, on the second mode of designation.

With due respect, I digress from the majority opinion. The second mode allows the ATC to adopt requests for designations by other jurisdictions or supranational jurisdictions, "upon its determination that the proposed designee meets the criteria for designation under UNSC Resolution No 1373."

The ponencia posits that, while there are legitimate State interests involved, the means employed to achieve such compelling interests are neither least restrictive nor narrowly tailored as required by law.[40] In effect, the ATC is practically left unchecked to grant such requests for designation based on its sole determination, which shall be based "loosely on the criteria for designation of UNSC Resolution No. 1373." Further finding infirmity, the ponencia points out the absence of a remedy or relief for hapless victims in cases of wrongful designation under this mode. Practicably, the ATC is left to go scot-free should an erroneous designation be committed with its own hands.[41]

I disagree.

Similar to the first mode, the concept of designating persons as a terrorist as declared by another jurisdiction or a supranational jurisdiction is not a novel creation of R.A. No. 11479. Under Section 3(e) of RA 10168, designated persons have been referred to as "any person or entity designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group under the applicable United Nations Security Council Resolution or by another jurisdiction or supranational jurisdiction."

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Of more significance, there appears to be no indication under Section 25 that the ATC, in adopting requests for designations, shall base such decision "loosely" on the criteria for designation under UNSC Resolution No. 1373. A plain reading of the provision would appear categorical — that the ATC shall only exercise its discretion to adopt such requests "after determination that the proposed designee meets the criteria for designation of UNSC Resolution No. 1373."[42] Thus, it is misplaced and without basis to speculate that the ATC would only use such established criteria liberally. If at all, R.A. No. 11479 actually mandates the ATC to use such criteria as its yardstick in exercising such a discretion. Echoing Chief Justice Gesmundo's opinion, the criteria laid down under UNSC Resolution No. 1373 is comprehensive, and internationally recognized. To be specific, the criteria shall apply to those who:

- Finance terrorist acts;

- Provide or collect, by any means, directly or indirectly, of funds with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

- Commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts;

- Make any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate, or participate in the commission of terrorist acts;

- Finance, plan, support, facilitate, or commit terrorist acts, or provide safe havens; and

- Cross borders as FTF [foreign terrorist lighters] or facilitate the movement of said FTFs.[43]

Clearly, these parameters are not arbitrary and have been consistently relied upon by the international community, similar to the Consolidated List, whose automatic adoption has been found constitutional by this Court. Thus, there appears to be nothing unreasonable in allowing the ATC to apply such standards in adopting requests for designations by other jurisdictions or supranational jurisdictions.

On another point, it bears pointing out that a corresponding remedy for the second mode actually exists; in fact, its remedy appears to be more reliant vis-a-vis the first method.

As raised by Chief Justice Gesmundo, an examination of UNSC Resolution No. 2368, which finds application to several other resolutions including UNSC Resolution No. 1373, provides for a mechanism of delisting.[44] Simply, anyone, or through an authorized representative, may submit a request for delisting to the Office of the Ombudsperson.[45] In fact, the Ombudsperson, who is entitled to review such delisting, shall conduct its evaluation in an "independent and impartial manner." To maintain such impartiality, it shall "neither seek nor receive instructions from any government." In encouraging collaboration, State participation is not disregarded — the Ombudsperson is mandated to immediately forward the delisting request to the members of the Committee, the designating State, States of residence and nationality or incorporation, relevant UN bodies, and any other state deemed relevant by the Ombudsperson.[46]

Given the definite procedure and systems established under international law, it is highly erroneous to assert the lack of remedy against those who may be designated under the second mode; one may even argue that persons designated under the second mode may have more confidence in terms of seeking relief vis-a-vis those designated under the first mode. It must be pointed out that delisting does not appear in the provisions of R.A. No. 11479 itself, but in the IRR itself,[47] which, as asserted in this opinion, cannot provide reassurance or mooring, being subject to revisions at any moment.

Lastly, I join the majority in finding that the third mode of designation should not be struck down as

unconstitutional.

Straying from the majority opinion, the ponencia hastily concludes that the ATC is conferred with the power to make a "carte blanche" determination in designating persons or organizations as terrorists.[48] As a foreseeable consequence, the ATC can now designate just about anyone that it deems to have met the requirements of designation.[49] As further corroborated by amicus curiae, former Chief Justice Reynato S. Puno, this stark absence of guiding principles poses a real danger that the ATC's findings may lack sufficient evidentiary basis.[50] Worse, there appears to be no proper procedural safeguards and remedies for an erroneous designation, thereby creating a "chilling effect on speech and its cognate rights and unduly exposes innocent persons to erroneous designation with all its adverse consequences."[51]

At the outset, this Court cannot close its eyes to the nature of terrorism as an act that is suis generis. As astutely reached by the ponencia, terrorism is no ordinary crime which cannot be confined to a particular space and time and is often "shrouded by uncertainty and invisibility."[52] Correspondingly, it is incumbent upon the government, in light of its responsibility to protect its citizens, to come up with more innovative measures to fortify its efforts to outsmart terrorists, whose methods to carry out their deplorable operations have become more sophisticated over time. The ponencia further recognizes that "there has been a noticeable shift in the approach of the government in suppressing terrorism from criminalization to preventive or precautionary."[53]

Unprecedented times call for unprecedented measures. Thus, in response to the demand for more creative and precautionary regulations is the third mode of designation, which grants the ATC with the authority to "designate an individual, groups of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause."[54] Consistent with other executive agencies, the ATC owes its inception to the principle enunciated in Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration:[55]

> xxx The growth of society has ramified its activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them.[56]

It is worth noting that prior to R.A. No. 11479, the ATC has already been granted certain powers consistent with the State's battle against terrorism. Under Sections 10 and 11 of R.A. No. 10168, it may request the ALMC to investigate or issue an ex parte order to freeze without delay "(a) any property or funds that are, in any way, related to financing of terrorism or acts of terrorism; and (b) any property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of terrorism or acts of terrorism as defined herein."[57]
Also similar to other executive agencies, its powers only operate within certain bounds.

To recall, the ATC's determination of probable cause triggers the ex parte issuance of a surveillance order under Section 16. It, likewise, prompts the AMLC to exercise its power to investigate, inquire, and examine bank deposits of designated persons under Section 35, and the freezing of assets under Section 25, in relation to Section 36 of R.A. No. 11479.

Under Section 16, a written order from the Court of Appeals (CA) should be acquired prior to the issuance of a surveillance order to capacitate law enforcement or military personnel to "secretly wiretap, overhear, and listen to, intercept, screen, read, surveil, record or collect"[58] any private communications or information. The issuance of

such written order from the CA is by no means an empty or ceremonial act. Complementary thereto is Section 17, which thoroughly outlines the procedure and requirements to obtain judicial authorization, to wit:

> (a)
>
> Filing of an ex parte written application by a law enforcement agent or military personnel, who has been duly authorized in writing by the Anti-Terrorism Council (ATC); and
>
> (b)
>
> After examination under oath or affirmation of the applicant and the witnesses he/she may produce, the issuing court determines:
>
> (1)
>
> That there is probable cause to believe based on personal knowledge of facts or circumstances that the crimes defined and penalized under Sections 4, 5, 6, 8, 9, 10, 11 and 12 of this Act has been committed, or is being committed, or is about to be committed; and
>
> (2)
>
> That there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained.[59]

The effectivity of such written order is by no means unlimited. Also under judicial determination is the period within which the written order may operate, which shall not exceed a period of 60 days from the date of the receipt of the written order by the applicant law enforcement agent or military personnel. Such period may also be extended or renewed anew by the CA to a period not exceeding 30 days from the expiration of the original period.[60]

Under Section 20, the applicant law enforcement agent or military personnel is enjoined to surrender all communications obtained under judicial authorization to the CA within 48 hours after the expiration of the period fixed in the written order or the extension thereof. Any person who tampers with such items subject of surrender shall suffer the penalty of imprisonment of 10 years. Also suffering the same penalty are law enforcement agents or military personnel who conduct surveillance activities absent a valid judicial authorization, while making all information maliciously procured, available to the aggrieved party.[61]

The power to examine, investigate and inquire into a designated person's bank deposits is similarly not without any safeguards. Section 37 is unequivocal in meting out the penalty of 4 years imprisonment for any person who "maliciously, or without authorization, examines deposits, placements, trust accounts, assets, or records in a bank or financial institution."[62] In terms of the freeze order, the law limits the period of effectivity to one not exceeding 20 days, with a possible extension, only upon obtaining an order from the CA.[63]

While these consequences prove worrisome, the aforementioned limitations indubitably curtail what is to be believed as an undue power granted to the ATC. Primarily, such limitations serve as a check on the propriety of the ATC's determination of probable cause. Thus, it cannot be said that the ATC possesses "carte blanche" authority to designate, with the effects of such authority restricted at every turn, as expressly installed by law.

Section 29 entitled "Detention without Judicial Warrant of Arrest" must be struck down as unconstitutional.

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Section 29 of R.A. No. 11479 reads:

> Section 29. Detention Without Judicial Warrant of Arrest. - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period of (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.
>
> Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military, personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.
>
> The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities.
>
> The penalty of imprisonment often (10) years shall be imposed upon the police or law enforcement agent or military personnel who fails to notify any judge as provided in the preceding paragraph.

Rules 9.1, 9.2, 9.3, and 9.5 of Rule IX of the IRR in turn, provides:

> RULE IX. DETENTION WITHOUT WARRANT OF ARREST
>
> Rule 9.1. Authority from ATC in relation to Article 125 of the Revised Penal Code
>
> Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (c) of Rule 9.2, has taken custody of a person suspected of committing any of the acts defined and penalized Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period often (10) calendar days if it is established that (a) further detention of the person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.
>
> The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.
>
> If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the period specified under Article 125 of the

> Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply.
>
> Rule 9.2 Detention of a suspected person without warrant of arrest.
>
> A law enforcement officer or military personnel may, without a warrant, arrest:
>
> - A suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;
>
> - A suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which as just been committed; and
>
> - A prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another.
>
> Rule 9.3. Immediate notification to the nearest court
>
> Immediately after taking custody of the suspected person, the law enforcement agent or military personnel, shall, through personal service, notify in writing the judge of the trial court nearest the place of apprehension or arrest the following facts:
>
> - The time, date, and manner of arrest;
>
> - The exact location of the detained suspect; and
>
> - The physical and mental condition of the detained suspect.
>
> For purposes of this rule, immediate notification shall mean a period not exceeding forty-eight (48) hours from the time of apprehension or arrest of the suspected person.
>
> x x x x
>
> Rule 9.5 Notification to the ATC and CHR
>
> The law enforcement agent or military personnel shall furnish the ATC and the Commission on Human Rights (CUR) copies of the written notification given to the judge in such manner as shall ensure receipt thereof within forty-eight (48) hours from the time of apprehension or arrest of the suspected person.

In justifying that Section 29 be retained, the ponencia asserts that the ATC does not issue a warrant of arrest, nor does it deviate from the long-standing rule that only judges may issue a warrant of arrest. Instead, what it issues is a written authorization to law enforcement agents that permits the extended detention of a person arrested after a valid warrantless arrest is made under Rule 9.2, echoing Section 5, Rule 113 of the Rules of Court.[64] In practical terms, the ponencia attempts to harmonize Section 29 with existing law by clarifying that "the written authority under Section 29 is not an authority to arrest a person suspected of committing acts in violation of R.A. No. 11479. Instead, there must first be a valid warrantless arrest under Section 5, Rule 113 of the Rules of Court."[65] Upon the warrantless arrest of the person and there is probable cause to believe that the crime committed was a terrorist act under Sections 4 to 12 of R.A. No. 11479, a written authorization may be issued by the ATC in order to detain the suspect for a period longer than what is allowable under Article 125 of the Revised Penal Code (RPC).[66] The ponencia explains that in the event that the ATC does not issue the written authority, the arresting officer shall then abide by the periods specified under Article 125 of the RPC.

I respectfully disagree for the following reasons.

While the written authorization of the ATC is not a warrant of arrest per se, it carries with it similar effects absent-sufficient safeguards.

While I agree with the ponencia that Section 29 of R. A. No. 11479 does not equate to an authority to issue a warrant of arrest, but rather as an authority to extend the period of detention as allowed by law, the absence of sufficient safeguards to allow this extended period of detention clothes it with the effects accompanying an arrest.

As with the earlier provisions and as reiterated previously, the ponencia once again heavily relies on the provisions of the IRR in attempting to differentiate the written authorization by the ATC vis-a-vis a warrant of arrest. The conclusion that the written authorization of the ATC is conditioned on the existence of the grounds for a valid warrantless arrest under Section 5, Rule 113 of the Rules of Court is hinged on Rule 9.2 of the IRR. On the other hand, Rule 9.1 serves to purge the impression that the ATC may motu proprio issue a written authorization; under the rule, the ATC shall only issue a written authority in favor of an apprehending law enforcement officer or military personnel upon a submission of a sworn statement detailing the identity of the person/s arrested, and other relevant circumstances. Regrettably, it is only under Rule 9.1 that Sections 125 and 29 are somehow reconciled with R.A. No. 11479, stating "if the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the period specified under Article 125 of the Revised Penal Code."[67] While the ponencia lays down several safeguards in favor of the suspected person/s, the same is likewise anchored on the IRR:

> As a further safeguard, Section 29 provides that the arresting officer is likewise duty-bound under Rule 9.3 to immediately notify in writing, within a period not exceeding 48 hours, the judge of the court nearest the place of apprehension of the details of such arrest. The ATC and CHR must be furnished copies of the written notification given to the judge, which should be received by the said agencies within the same 48-hour period, as provided in Rule 9.5. Section 29, as reflected in Rule 9.1, allows the extension of the detention period to a maximum period of 10 calendar days if the grounds to allow the extension are established.[68]

Stripped from its reliance to the IRR, which may be subject to modification at any given instance. Section 29 gravely suffers from several gaping holes subject to abuse that the IRR cannot possibly assuage. As will be discussed below, the construction of the provision failed to supply and fill in certain omissions that prove to be material.

While statutes cannot possibly foresee each and every intricacy, especially in terms of implementation, it cannot be denied that rules and regulations cannot alter, expand, or even engraft additional requirements that were not even contemplated by the law itself. As earlier argued, the IRR cannot enlarge or go beyond the provisions of the statute; it cannot be used as a recourse to save or even cure an already defective provision. As iterated in People v. Maceren,[69] "rules that subvert the statute cannot be sanctioned."

Section 29, construed in its own terms, does not mention, nor even allude to, the condition that a valid warrantless arrest must first take place prior to the ATC's determination of whether to issue a written authorization to detain the suspected person/s for a longer period. Moreover, neither does the provision instruct the apprehending agent or military personnel to abide by the periods under Section 125 of the RPC, absent a written authority by the ATC. Independent from its IRR, it is plain that Section 29 enables a law enforcement agent or military personnel to lake custody of a person/s suspected of terrorism for an unprecedented period of 14 days, extendible to 10 days, only by virtue of a written authorization of the ATC. Assuming the person was arrested without a warrant as

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explained in the ponencia, no justification lies as to why the ATC, a mere executive agency, is empowered to cause a person to be deprived of his/her liberty beyond the periods prescribed by law. Verily, regardless of whatever it may be called, the imprimatur of the ATC still results to the custody of a person sans the safeguards under existing law, which are interestingly operative in periods shorter than what is allowed under R.A. No. 11479. Thus, this extended period of custody falls squarely within the definition of an arrest under Section 1, Rule 113 of the Rules of Court:

> Section 1. Definition of arrest. - Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense. (1)

Following the argument of the ponencia, if probable cause is still the standard for apprehending suspected persons following the rule on lawful warrantless arrests, Section 29 makes no mention as to the standard employed by the ATC, or even the quantum of proof required, in order to extend the period of detention from what is allowed under Section 125 of the RPC. Glaringly, the IRR is silent with regard to such standards or even the limitations that the ATC must abide by in making such unilateral decision. While Rule 9.1 thereof requires that the law enforcement officer or military personnel submit a sworn statement stating the details of the suspected person and the basis for taking custody, there appears to be no guiding principles to inform the ATC on how to give weight to such sworn statement. It bears to note that while the law enforcement officer or military personnel may proffer a sworn statement, the suspected person has no way to challenge the veracity of such sworn statement. To my mind, it is this Jack, of opportunity accorded to the suspected person that may serve to open the floodgates of abuse.

More pressing, Section 29 does not seem to provide sufficient safeguards for suspected persons subject of the written authority; had the legislators intended to provide the same, they would have explicitly done so. It must be pointed out that whatever protections in place are belatedly provided, being effective after the fact of arrest, e.g., notifying the judge regarding the arrest, furnishing a-copy of such written notice to the ATC and the CHR, ensuring that the detained suspect is informed of his/her rights as a detainee, ensuring access to his/her counsel, etc.

To put suspected persons in a more precarious situation, the amicus in his position paper,[70] discerned that Section 29 seems to have empowered the ATC to cause the detention of a person absent a judge's independent evaluation of the evidence of the guilt of the respondent.[71] It is observed that periods of detention shorter than the 14 days as prescribed by R.A. No. 11479 would require judicial intervention; in fact, delay in the delivery of detained persons is tantamount to a criminal offense under Article 125 of the RPC. Whereas in the present, case, judges are relegated to being merely informed that an arrest has been effected and that the suspected terrorist shall be detained for 14 days, extendible to 10 days. Such was the intention of the legislature, as gleaned from the Senate hearings that led to the enactment of R.A. No. 11479:

> Senator Lacson: I think what Senator Pangilinan had mentioned is upon arrest, the person, instead of just informing the judge in writing, should be presented before the judge nearest the place of arrest, if I understand it correctly, Mr. President. My response is that there is no need to present the arrested suspect upon arrest, but only that the judge should be informed in writing. And there are other safeguards aside from informing the judge in writing.[72]

As earlier stated, the efficacy of such safeguards is questionable, given that they become operative post-arrest. On this score, a concern arises as to whether merely informing the judge or furnishing the ATC and the CHR of a notice of arrest are indeed potent solutions towards the protection of suspected persons. In contrast to the present law, under Section 18 of the repealed Republic Act No. 9372, otherwise known as the "Human Security Act of 2007," judges were accorded a more proactive role, as detained persons were required to be presented before them prior to detention. More particularly, Section 18. which was deleted under R.A. No. 11479, provides that prior to

detaining a person suspected of the crime of terrorism, he/she shall be presented before any judge, whose duty, among other things, is to "ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why."[73] It is this intervention pre-arrest that seems to serve more of a deterrent against possible abuses.

Given its pernicious effects, the meaning of Section 29 cannot be stretched to the point of infringing rights and causing oppression. Evidently, a provision infected with much infirmity cannot be upheld as valid. While this Court is one with the desire to become more creative in apprehending possible terrorists, this should not come at the expense, of derogating the rights of the suspects, who are still considered innocent in the eyes of the law.

The maximum detention period under Section 29 exceeds the maximum period established by the Constitution.

Lastly, and yet of equal significance, the maximum detention period under Section 29 dangerously exceeds the maximum period set by the Constitution for warrantless arrest and detention without a judicial charge under extraordinary situations.

By design, R.A. No. 11479 approximates the extreme circumstances "of invasion or rebellion, when the public safety requires it" described in Article VII, Section 18 of the 1987 Constitution. During these situations, the Chief Executive is permitted to "suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law." More importantly, "[d]uring the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days[.]"

In fact, in Lagman v. Medialdea,[74] the Court recognized that "[t]he factual basis for the extension of martial law is the continuing rebellion being waged in Mindanao by Local Terrorist Rebel Groups (LTRG) - identified as the ASG, BIFF, DI, and other groups that have established affiliation with ISIS/DAESH, and by the Communist Terrorist Rebel Groups (CTRG)[.]" Further still, in Lagman v. Pimentel III,[75] the Court recognized the overlap between rebellion and terrorism: "Under R.A. No. 9372 or the Human Security Act of 2007, rebellion may be subsumed in the crime of terrorism; it is one of the means by which terrorism can be committed."

More notably, the Court, in David v. Macapagal-Arroyo,[76] tackled a preliminary dilemma as the assailed General Order therein was issued in order to stamp out "acts of terrorism and lawless violence." However, at the time, terrorism had yet to be statutorily-defined: "Unlike the term 'lawless violence' which is unarguably extant in our statutes and the Constitution, and which is invariably associated with 'invasion, insurrection or rebellion,' the phrase 'acts of terrorism' is still an amorphous, and vague concept. Congress had yet to enact a law defining and punishing acts of terrorism." Hence, the Court declared as void, the General Order to the extent that it would be used to suppress purported acts of terrorism. In other words, had "terrorism" already been defined at the time, then the Court would have found no issue with the invocation of the Commander-in-Chief powers in order to suppress the same.

The foregoing pronouncements lead to the undeniable conclusion that R.A. No. 11479 is to be interpreted in pari materia with Article VII, Section 18 of the Constitution, as "they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter."[77] Consequently, a statute vis-a-vis other related laws "must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system."[78]

Furthermore, constitutional supremacy dictates that "the Constitution is the basic law to which all other laws must conform to."[79]

In accordance with the foregoing, the effect of Section 29 of R.A. No. 11479 is akin to the suspension of the privilege of the writ of habeas corpus and even martial law, but without the need to comply with the strict requirements imposed by the Constitution. As admitted by Senate President Vicente Sotto III:

> Ang sabi sa amin sa mga hearings, ang sabi ng Department of National Defense, pagkameron ng [sic] anti-terror law na pwede nilang habulin yung mga terrorista [sic], at magkaroon sila ng ngipin at hindi na takot yung mga enforcer natin na labanan itong mga terrorista [sic] na ito, hindi na nila hihilingin ang martial law. Hindi na kailangan ang martial law. Yun ang sinabi ko, bakit, akala ba nila buong Pilipinas?[80]

The provision for a maximum of 24 days-detention without charges being filed against the suspect arrested, without warrant far exceeds the three-day period provided by Article VII, Section 18 of the Constitution even for the suspension of the privilege of the writ of habeas corpus.

To glean from the proceedings of the 1986 Constitutional Commission, Commissioner Crispino De Castro originally proposed a five-day period for warrantless detention during the suspension of the writ of habeas corpus. He had in mind "the actual operation, actual shooting, actual theater of war, when the authorities may be able to prepare the necessary charge, the necessary affidavits, the necessary evidence so that the court may accept the complaint" - the very same considerations when it comes to the detention of suspected terrorists. Commissioner Rene Sarmiento, however, proposed a three-day period as an acceptable compromise because of the country's experience with martial law, during which "torture and other human rights violations happened immediately after the arrest, on the way to the safehouses or to Camp Aguinaldo, Fort Bonifacio or Camp Crame." Commissioner De Castro posed no objection.[81]

R.A. No. 11479 has obviously created a more potent power than the martial law powers of the President, since even if the latter does not declare a state of martial law, the executive, through the ATC, could take custody of persons based on suspicion of engaging in terrorist activities. This constitutes a circumvention of the limitations imposed by the - Constitution on the martial law powers of the President. Yet, there is no showing of a substantive difference to place terrorism in a much higher regard than the most extreme cases of invasion and rebellion - qualified further with the phrase "when public safety requires it" - that the Constitution contemplates. Thus, the oppressiveness and arbitrariness of R.A. No. 11479 does not satisfy the substantive due process requirements.

On another score, the writ of habeas corpus serves as a judicial remedy for the courts "to inquire into all manner of involuntary restraint, as distinguished from, voluntary, and to relieve a person therefrom if such restraint is illegal."[82] The possible limitations on its invocation has been very carved out in Section 15, Article III of the Constitution which states: "[t]he privilege of the writ of habeas corpus shall not be suspended, except in cases of invasion or rebellion, when public safety requires it."

Section 18 of Article VII further clarifies that it is the President that has the power to suspend the privilege of the writ of habeas corpus for a period not exceeding 15 days, provided that there is an invasion or rebellion and that the public safety requires it.

The Constitution is also abundantly clear in the same Section that the suspension of the privilege of the writ shall only apply to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion. Furthermore, during the suspension of the privilege of the writ, any person arrested or detained shall be judicially charged within three days, otherwise, he shall be released. Commissioner Ambrosio Padilla, also a framer of the Constitution, elucidates that the purpose for requiring a judicial charge "is to prevent a situation similar to the past regime when innocent persons were arrested, detained, and confined in prison sometimes for

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one month, one year, or even more, without any criminal charge filed against them who oftentimes did not even understand why they had been arrested or detained."[83] Former Chief Justice Roberto Concepcion, who took part in the 1986 Constitutional Commission, explained that the purpose for the said provision is "to require all those detained to be immediately turned over to the judicial authorities. Therefore, the suspension of the privilege will not apply to them until they are placed in the custody of a judicial officer."[84]

One cannot help but to compare this to Section 29 of R.A. No. 11479, which sanctions the ATC to cause the warrantless arrests and detentions of suspected terrorists for 14 days, extendible to 10 days, if it is established that (i) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (ii) further detention of the person/s is necessary to prevent the commission of another terrorism; and (iii) the investigation is being conducted properly and without delay.

Worse, a person can be arrested for terrorism and detained for a total of 24 days before he must be judicially charged for an offense punishable by life imprisonment or otherwise, While the detainee may file a petition in court for a writ of habeas corpus, the custodian, may simply present the written authority for arrest or detention issued by the ATC, and pursuant to Rule 102, Section 14 of the Rules of Court, the court would have to dismiss the petition. This is in stark contrast to Section 18, Article VII of the Constitution, which sets a three-day maximum limit for detentions without judicial charge for all kinds of crimes and under all circumstances. If, even in exceptional circumstances, a three-day limit is set by the Constitution, with more reason should the limit be maintained in cases of terrorism or any other crime under ordinary circumstances. The Constitution could not have intended to grant to a mere statutory creation, a power it has explicitly withheld from one of the great branches of government. The legal system cannot countenance such a legal absurdity.

It is also worth noting that, in enacting Section 19 of the R.A. No. 9372, the predecessor of R.A. 11479, the earlier Congress maintained the detention without judicial charge to a maximum of three days which adheres to the maximum period for detention under the extreme circumstances provided by Section 18, Article VII of the 1987 Constitution. More tellingly, the deliberations for R.A. No. 9372 reveal that the legislators codified the three-day period precisely in deference to the Constitutional order.

Precursor bills of R.A. No. 9372 initially embodied a 15-day detention period, to which several legislators and resource persons expressed their reservations.[85] On a practical note, amidst the debates regarding safeguards against torture tactics during interrogations, and the counterbalancing need for law enforcers to gather information, the resource person for the National Bureau of Investigation significantly admitted the expediency by which a detainee could be judicially charged:

> CHAIRMAN DATUMANONG. Thank you for the information. Now I will ask thcNBI having...have the authority of the...of investigation and even of arresting and possibly of charging the person in the proper court. In the experience of the NBI, how long does it take to charge a suspect in court after his arrest?
>
> MR. REYNALDO WYCOCO (Director, National Bureau of Investigation). Thank you, your Honor, Mr. Chairman, in the NBI we normally charge a person immediately after the arrest.
>
> CHAIRMAN DATUMANONG. Within the 36 hours?
>
> MR. WYCOCO. Within the 36 hours.[86]

But more in line with Section 18, Article VII of the Constitution, the resource person for law enforcement, a representative of the Department of Justice at that, alluded to the three-day detention period as a Constitutional upper limit, thus:

> MS. TERESITA DOMINGO. (Assistant Secretary, Department of Justice) Thank you, Your Honor. There are

> two apprehensions about...there are two provisions of which I am really apprehensive about the bill. One is the period of detention.
>
> x x x x
>
> And a longer period of detention, I agree with the Task Force, would be subject to abuse. Second, even in our Constitution, under Martial Law powers, the maximum period that the person can be detained without charge is only three days. And under our Revised Penal Code, even in cases of rebellion which I think is more grievous than terrorism because this is an outdraw of the government, to overthrow the government, does not provide for that period of detention.
>
> I agree with Congressman Baterina that we have sufficient period provided under the Revised Penal Code and there is really no need to put a time frame on this. Thank you, Your Honor.[87]

Curiously, the justifications for the initially proposed 15-day detention period under earlier iterations of R.A. No. 9372 are the same for the 14 to 24-day detention period under R.A. No. 11479, e.g., the need for intelligence-gathering, securing witnesses, cross-border verification procedures. However, it has been 14 years since the enactment of R.A. No. 9372 and, surely, law enforcement has gotten more advanced and sophisticated, especially with the utilization of information and communications technology.

Withal, as against the three-day maximum period of detention under Section 18, Article VII of the Constitution, and considering the technological advances in law enforcement and streamlining of criminal prosecution, the detention period under Section 29 of R.A. No. 11479 is too lengthy, thereby subverting the Constitutional order and constituting an oppressive deprivation of liberty.

A Final Note.

This Court does not question the wisdom or the competence of the legislature in crafting the provisions of R.A. No. 11479. It is not its province to override legitimate legislative policy. In fact, to junk R.A. No. 11479 wholesale would be to ignore the harsh reality that terrorism is right on our country's doorstep. As cited by the ponencia, "Filipinos are no strangers to acts of terrorism."[88] According to the Global Terrorism Index of 2020, out of the 7,000 reported deaths due to terrorism in the Asia-Pacific Region, it is alarming that over 3,000 deaths have occurred in the country.[89]

Aside from a robust defense sector, the lack of legislation against terrorism would indubitably leave our country vulnerable to attacks. Nevertheless, it would be self-defeating if the very law which aims to protect its citizens become the direct source of harm. It would be the height of legal heresy to completely disregard basic human rights and constitutional freedoms that should dictate, and not obstruct, the formulation of such laws.

To balance these seemingly competing interests, it is the role of the Court to ensure that certain unconstitutional sections that trample on such rights be excluded in order to embody what it was created for at the outset. This is as it should be — that laws that aim to attain public good and national security should never come at the steep price of infringing on constitutional rights.

ACCORDINGLY, I vote to PARTIALLY GRANT the petitions. The phrase in the proviso of Section 4 that states: "which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create serious risk to public safety" must be declared UNCONSTITUTIONAL. Section 25, on the designation of terrorist individual, groups of persons, organizations, or associations, is CONSTITUTIONAL, while Section 29, which provides for an extended period of detention that is more than what is allowed by the Constitution and the laws, without a judicial warrant of arrest, should be declared UNCONSTITUTIONAL.

[1] 421 Phil. 290 (2001).

[2] Id. at 342.

[3] See ponencia, p. 79.

[4] Id. at 109.

[5] Id. at 116-117.

[6] Id. at 121-122.

[7] Id. at 122-123.

[8] 732 Phil. 1, 152-153 (2014). Note that the majority opinion in this case decreed that IRRs cannot "redefine" statutes, although the issue was whether certain IRR insertions were ultra vires relative to the statutory text:

At this juncture, the Court agrees with ALFI that the authors of the RH-IRR gravely abused their office when they redefined the meaning of abortifacient. The RH Law defines "abortifacient" as follows:

x x x x

The above-mentioned section of the RH-IRR allows "contraceptives" and recognizes as "abortifacient" only those that primarily induce abortion or the destruction of a fetus inside the mother's womb or the prevention of the fertilized ovum to reach and be implanted in the mother's womb.

This cannot be done.

In this regard, the observations of Justice Brion and Justice Del Castillo are well taken. As they pointed out, with the insertion of the word "primarily," Section 3.01(a) and G) of the RH-IRR must be struck down for being ultra vires.

Evidently, with the addition of the word "primarily," in Section 3.01(a) and G) of the RH-IRR is indeed ultra vires. It contravenes Section 4(a) of the RH Law and should, therefore, be declared invalid. There is danger that the insertion of the qualifier "primarily" will pave the way for the approval of contraceptives which may harm or destroy the life of the unborn from conception/fertilization in violation of Article II, Section 12 of the Constitution. With such qualification in the RH-IRR, it appears to insinuate that a contraceptive will only be considered as an "abortifacient" if its sole known effect is abortion or, as pertinent here, the prevention of the implantation of the fertilized ovum.

[9] Id. at 221. (Emphasis and underscoring supplied; citations omitted)

[10] Madrilejos v. Gatdula, G.R. No. 184389, September 24, 2019.

[11] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452, 490 (2010).

[12] Separate Opinion of Justice Leonen, Samahan ng mga Progresibong Kabataan v. Quezon City, 815 Phil. 1067, 1165 (2017).

[13] Ponencia, p. 117.

[14] Abakada Guro Party List v. Ermita, 506 Phil. 1, 144 (2005).

[15] Baylosis v. Chavez, Jr., 279 Phil. 448 (1991).

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[16] Philippine Coconut Producers Federation, Inc. v. Republic, 679 Phil. 508, 625 (2012).

[17] Constitution, Art. III, Sec. 14(2).

[18] 395 U.S. 444 (1969).

[19] Id. at 447.

[20] Liwag v. Happy Glen Loop Homeowners Association, Inc., 690 Phil. 321, 333 (2012): "The basic statutory construction principle of ejusdem generis states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include - or to be restricted to - things akin to or resembling, or of the same kind or class as, those specifically mentioned." (Italics in the original)

[21] Purisima v. Lazatin, 801 Phil. 395, 425 (2016).

[22] 552 Phil. 381 (2007).

[23] Id. at 414. (Italics supplied)

[24] Guieb v. Civil Service Commission, 299 Phil. 829, 838-839 (1994).

[25] Supra note 3 at 154.

[26] Ichong v. Hernandez, 101 Phil. 1155, 1163 (1957).

[27] Ermita-Malate Hotel and Motel Operators Association, Inc. v. Mayor of Manila, 127 Phil. 306, 316 (1967).

[28] Manila Memorial Park, Inc. v. Secretary of the Department of Social Welfare and Development, 722 Phil. 538, 576 (2013).

[29] Philippine Long Distance Telephone Company v. City of Davao, 122 Phil. 478, 489 (1965).

[30] Metro Manila Development Authority v. Viron Transportation Co., Inc., 557 Phil. 121, 140 (2007).

[31] 46 Phil. 440, 445; 455 (1924) (Emphasis supplied).

[32] 123 U.S. 623 (1887).

[33] Emphasis supplied.

[34] Ponencia, p. 146 (Citations omitted)

[35] Id. at 161.

[36] Id.

[37] United Nations Security Council Resolution No. 1373 (2001), par. 1.

[38] R.A. No. 11479, Sec. 25.

[39] United Nations Charter, Art. 48, Chapter VII.

[40] Ponencia, p. 169.

[41] Id.

[42] R.A. No. 11479, Sec. 25. (Italics supplied).

[43] See Opinion of Chief Justice Alexander G. Gesmundo, p. 168.

[44] Adopted by the Security Council at its 8007[th] meeting on July 20, 2017.

[45] UNSC Resolution No. 2368, p. 16.

[46] Id. at 28.

[47] See R.A. No. 11479, IRR, Rules 6.9-6.11.

[48] Ponencia, p. 174.

[49] Id.

[50] Oral Arguments on the R.A. No. 11479, March 9, 2021, p. 9. (Emphasis in the original)

[51] Id. at 127.

[52] Ponencia, p. 231.

[53] Id.

[54] R.A. No. 11479, Sec. 25.

[55] 248 Phil. 762 (1988).

[56] Id. at 773.

[57] R.A. No. 10168, Secs. 10 and 11.

[58] R.A. No. 11479, Sec. 16.

[59] R.A. No. 11479, Sec. 17.

[60] R.A. No. 11479, Sec. 19.

[61] R.A. No. 11479, Sec. 24.

[62] Section 37, R.A. No. 11479.

[63] R.A. No. 11479, Sec. 36.

[64] Ponencia, p. 203.

[65] Id. at 201-202. (Emphasis supplied)

[66] Id. at 205.

[67] See R.A. No. 11479, IRR, Rule 9.1.

[68] Ponencia, p. 203. (Emphasis supplied)

[69] 169 Phil. 437, 448 (1977).

[70] Supra note 50.

[71] Id. at 14.

[72] TSN, Senate Deliberations on Senate Bill No. 1083, p. 30. (Emphasis supplied)

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[73] R.A. No. 9372, Sec. 18. (repealed).

[74] G.R. Nos. 243522, 243677, 243745 & 243797, February 19, 2019, 893 SCRA 242, 332. (Underscoring supplied)

[75] 825 Phil. 112, 242 (2018).

[76] 522 Phil. 705, 796 (2006).

[77] Office of the Solicitor General v. Court of Appeals, 735 Phil. 622, 628 (2014).

[78] Id.

[79] Tawang Multi-purpose Cooperative v. La Trinidad Water District, 661 Phil. 390, 402 (2011).

[80] Transcript of Interview of Senate President Vicente C. Sotto III with Mike Enriquez of DZBB, Senate of the Philippines, June 8, 2020, available at https://www.senate.gov.ph/press_release/2020/0608_prib1.asp

[81] Record of the Constitutional Commission No. 44 (July 31, 1986).

[82] Villavicencio v. Lukban, 39 Phil. 778, 790 (1919).

[83] Record of the Constitutional Commission No. 44 (July 31, 1986).

[84] Id.

[85] Transcript, Committee on Justice joint with Committee on Foreign Affairs, August 3, 2005, pp. 55-56:

REP. HONTIVEROS-BARAQUEL, x x x

x x x x

You made, mention also, Undersecretary Blancaflor, about the revised Penal Code which Atty. Dizon-Reyes spoke at, a bit of length about, maybe that is also an alternative track to take is to update the circa 1930s body of criminal law. If in Britain they detain, they have detained recently suspects without trial for 28 days, then il is a graver abuse of the civil and political rights of the citizens, then what Prof. Dean Agabin already says in our bill extending the period of detention to 15 days as a deprivation of liberty without due process of law just because the U.K. can detain suspects for the recent bombings to 28 days doesn't make it right or something that is exemplary for us.

[86] Transcript, Committee on Justice joint with Committee on Foreign Affairs, May 11, 2005, p. 66.

[87] Transcript, Committee on Justice joint with Committee on Foreign Affairs, May 25, 2005, p. 34. (Emphasis and underscoring supplied)

[88] Ponencia, p. 44.

[89] Id.

SEPARATE CONCURRING AND DISSENTING OPINION

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DIMAAMPAO, J.:

At the vortex of these consolidated petitions is a deceivingly simple query: Should Republic Act No. 11479, notoriously known as the Anti-Terrorism Act of 2020 (ATA), be declared unconstitutional for infringing upon most of our civil liberties?

Prefatorily, the ponente's efforts to address the intricate web of procedural and substantive issues presented by the petitioners is highly laudable. While I concur in most of the results, I respectfully dissent from the explication made in the ponencia concerning the validity of Section 29, chiefly because the provisions thereof are antithetical to the constitutional tenet of due process.

Simply put, I vote to strike down Section 29 of the ATA.

Section 29 encompasses the rule on detention without judicial warrant of arrest, framed in this wise:

> Detention without Judicial Warrant of Arrest. - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period often (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without, delay.
>
> Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.
>
> The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities.
>
> The penalty of imprisonment of ten (10) years shall be imposed upon the police or law enforcement agent or military personnel who fails to notify any judge as provided in the preceding paragraph.

Concomitantly, its counterpart provisions in the Implementing Rules and Regulations (IRR) provide:

> RULE 9.1. Authority from ATC in Relation to Article 125 of the Revised Penal Code. - Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (c) of Rule 9.2, has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period often (10) calendar days if it is established that (a) further detention of the

> person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.
>
> The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.
>
> If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply.
>
> xxx xxx xxx
>
> RULE 9.3. Immediate Notification to the Nearest Court. - Immediately after taking custody of the suspected person, the law enforcement agent or military personnel shall, through personal service, notify in writing the judge of the trial court nearest the place of apprehension or arrest of the following facts:
>
> - the time, date, and manner of arrest;
>
> - the exact location of the detained suspect; and
>
> - the physical and mental condition of the detained suspect.

For purposes of this rule, immediate notification shall mean a period not exceeding forty-eight (48) hours from the lime of apprehension or arrest of the suspected person.

xxx xxx xxx

RULE 9.5. Notification to the ATC and CHR. - The law enforcement agent or military personnel shall furnish the ATC and the Commission on Human Rights (CUR) copies of the written notification given to the judge in such manner as shall ensure receipt thereof within forty-eight (48) hours from the time of apprehension or arrest of the suspected person.

In determining whether Section 29 should be nullified for restraining or chilling the exercise of freedom of expression and its cognate rights, the ponencia did not utilize the void-for-vagueness doctrine since "petitioners have not sufficiently presented any demonstrable claim that the wording or text of the assailed provision is ambiguous, or that it fails to specify what is prohibited or required to be done so that one may act accordingly."[1]

However, considering that petitioners have impugned Section 29 for transgressing the right to due process,[2] a right which is appurtenant to the void-for-vagueness doctrine, I humbly submit that this doctrine should have been applied in analyzing the constitutionality of Section 29 notwithstanding the paucity of averments regarding the ambiguity of its text.

Indeed, the scope of facial challenges in this jurisdiction remains narrow in construction and almost surgical in application; these are generally allowed only in cases where freedom of speech and its cognate rights are asserted before this Court. The dictum of this Court in SPARK v. Quezon City[3] is clear, that "the application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases."[4]

Nevertheless, in Disini v. Secretary of Justice,[5] this Court refined the admissible extent of facial challenges, such that "[w]hen a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the

void-for-vagueness doctrine is acceptable."[6] The rationale for such an exception is patently discernible, which is to counter the "chilling effect" on protected speech that inevitably arises from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged with a crime. The overbroad or vague law thus chills him into silence.[7]

Taken altogether, a facial challenge on the basis of overbreadth may only proceed against a law or regulation specifically addressing the freedom of speech or its cognate rights. Upon the other hand, a facial challenge on the ground of void-for-vagueness is permissible against penal statutes that seemingly impinge upon the freedom of speech and its associated rights. At this juncture, a statute or act may be unconstitutionally vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: first, it violates due process for failing to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and second, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[8]

A fortiori, it is axiomatic that due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. A criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute, or is so indefinite that it encourages arbitrary and erratic arrests and convictions, is void for vagueness. The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning.[9]

In the case at bench, to echo the sterling elucidation by our esteemed colleague Justice Caguioa, it is readily perceptible from the clear wording of Section 29 of the ATA the utter failure to provide the standards and restrictions for the issuance of a written authority to detain a person suspected of committing any of the punishable offenses under Sections 4 to 12 of the same statute for the initial fourteen (14) day period. On its face, Section 29 merely inaugurates a ministerial duty upon the Anti-Terrorism Council (ATC) to issue a written authority for detention based exclusively on the account of the law enforcement officer or military personnel that the detainee is suspected of committing terrorist acts. In this regard, it is ineludible that the application of the void-for-vagueness doctrine is warranted.

Perhaps equally significant is the fact that the text of Section 29 decrees a standard of arrest lower than that of probable cause, i.e., upon mere suspicion that a person is committing speech-related terrorist crimes, such as but not limited to inciting to terrorism (Section 9), proposal to commit terrorism (Section 8), and threat to commit terrorism (Section 5).

The foregoing illuminations further underscore that the period of the warrantless detention contemplated by Section 29 is not only repugnant to the Constitution, but is also unconscionable, unnecessarily long, and incompatible with human dignity. Under this provision, the suspected individual has virtually no means of questioning the legality of his or her arrest and extended detention before the ATC or the courts. Elsewise stated, it expressly removed the processes that would allow the judiciary to review the validity and propriety of the detention. These intellections will be discussed hereinafter in seriatim.

Philippine case law is replete with decisions which acknowledge that prolonged detention without charge or trial severely undermines constitutional rights. For example, in Mejoff v. The Director of Prisons,[10] this Court opined:

> It was said or insinuated at the hearing of the petition at bar, but not alleged in the return, that the petitioner

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> was engaged in subversive activities, and fear was expressed that he might join or aid the disloyal elements if allowed to be at large. Bearing in mind the Government's allegation in its answer that "the herein petitioner was brought to the Philippines by the Japanese forces," and the fact that Japan is no longer at war with the United States or the Philippines nor identified with the countries allied against these nations, the possibility of the petitioner's entertaining or committing acts prejudicial to the interest and security of this country seems remote.
>
> If we grant, for the sake of argument, that such a possibility exists, still the petitioner's unduly prolonged detention would be unwarranted by law and the Constitution, if the only purpose of the detention is to eliminate a danger that is by no means actual, present, or uncontrollable. xxx[11]

Accordingly, to curb the risks of arbitrary detention, Article 125 of the Revised Penal Code dictates that a public officer or employee shall deliver a detained person to the proper judicial authorities within the period of twelve (12) hours for crimes or offenses punishable by light penalties; eighteen (18) hours for crimes or offenses punishable by correctional penalties; and thirty-six (36) hours for crimes or offenses punishable by afflictive or capital penalties.

Au contraire, Section 29 of the ATA protracts such a period for eleven (11) days, and under the appropriate circumstances even extending the detention for a further ten (10) days without delivery of such detainee to the proper judicial authority, where the detainee is suspected of committing terrorism or other terror-related offenses.

Significantly, the IRR itself does not remedy the vagueness attending Section 29. While Rule 9.1 instructs law enforcement officers or military personnel to procure a written authority from the ATC by submitting a sworn statement declaring "the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of the said person," the feet remains that there is in the plain language of either Section 29 or Rule 9.1 no poignant reference to any clear standards and qualifications that must be applied by the said body to authorize the initial detention of fourteen (14) days.

Withal, law enforcement officers or military personnel are not commanded to furnish the detainee a copy of the sworn statement under Rule 9.1. Worse, the detainee is neither notified of the basis for the evaluation made by the ATC, nor given any opportunity to answer or refute its findings. These infirmities unquestionably embody a gross violation of due process and pose a threat to the liberty of all persons in light of the scope of the punishable acts under the ATA.

Appositely, the following exchanges between the Office of the Solicitor General (OSG) and members of this Court during the oral arguments are enlightening:

> ASSOCIATE JUSTICE GAERLAN:
>
> Okay, let us move on to judicial writs. Now, if a person is detained on the basis of the ATC's authority, will an application For a writ of habeas corpus prosper, or will it be held with the same standard as applications for writ of habeas corpus for people restrained by legal process?
>
> ASSISTANT SOLICITOR GENERAL RIGODON:
>
> If there is an ATA authorization for extended detention, Your Honor, habeas corpus will not lie because a habeas corpus proceeding inquires into the validity of the detention and since such extended definition is authorized by Congress itself through the mechanism of the ATC, Your Honor, then the detention would be valid and therefore the writ will not issue.[12]
>
> xxx xxx xxx
>
> ASSOCIATE JUSTICE DELOS SANTOS:

> My next question: Can Congress, through the Anti-Terror Act, impose an additional function on judges without the authority or consent of the Supreme Court? Moreover, this case, did the Anti-Terror effectively reduce the function of a judge to receiving clerk? As nothing in the Anti-Terror Act states that a judge concerned who would be determining whether there is probable cause to detain a suspected terrorist or to overrule the ATC's written authority ordering his arrest?
>
> ASSISTANT SOLICITOR GENERAL GALANDINES:
>
> Your Honor, we submit that the judge was not given the role of determining whether the continuous detention is warranted. The judge, as mentioned in Rule 9.3 and as mentioned in Section 29, was to be notified of the fact that there is a person held for questioning by the law enforcement agents and this person could probably be charged for terrorism. But there is no additional function imposed upon the judge, Your Honor.[13]
>
> xxx xxx xxx
>
> ASSOCIATE JUSTICE LAZARO-JAVIER:
>
> The ATC is just an administrative body, can it validly pass upon the validity or invalidity of a warrantless arrest?
>
> ASSISTANT SOLICITOR GENERAL GALANDINES:
>
> We submit that it can validly pass upon the validity of a warrantless arrest as law because the ATC is with the, the ATC would have to evaluate if the detention was by virtue of any of the circumstances provided for under Rule 113 for purposes of extension, Your Honor.[14]
>
> xxx xxx xxx
>
> ASSOCIATE JUSTICE LAZARO-JAVIER:
>
> Alright. I'll go to the next question. Will the suspected terrorist be informed of the application for extension of his/her detention?
>
> ASSISTANT SOLICITOR GENERAL GALANDINES:
>
> Yes, Your Honor.
>
> ASSOCIATE JUSTICE LAZARO-JAVIER:
>
> Yes? Or if so, will the suspected terrorist be allowed to present countervailing evidence before the ATC for purposes of proving that the requirements or the requisites for extension have not been satisfied?
>
> ASSISTANT SOLICITOR GENERAL GALANDINES:
>
> Your Honor, he has remedies to question his continued detention, but he cannot question his continued detention before the ATC.[15]

Ineluctably, Section 29 is tainted with ambiguity, considering that the State itself, through the OSG, appears at a loss as to how a detainee may judiciously question his detention under this provision. This is a clear derogation of the constitutional mandate to protect each person's right against arbitrary detention and right to due process as enshrined in the Bill of Rights,[16] because the detainee is effectively deprived of any meaningful opportunity to be heard.

Even in the realm of international law, the right to due process is encapsulated in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which the Philippines is a State-Party. The prolonged detention under Section 29 of the ATA transgresses such right, and in the same vein, violates the right against

arbitrary detention codified under Article 9 of the same covenant, viz.:

> - Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
>
> - Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
>
> - Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release, it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
>
> - Anyone who is deprived of his liberty by arrest or detention shall be entitled to lake proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
>
> - Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Undisputedly, a detainee possesses the right to question the legality of his or her arrest before the ATC or the courts during the prolonged detention. Likewise, in the event of unlawful arrest or detention, the detainee has the right to compensation which shall be enforceable upon action filed with judicial authority. As presently worded, Section 29 is found wanting such invaluable safeguards.

Furthermore, the United Nations (UN) Human Rights Committee highlighted that the ICCPR "is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc."[17] Evidently, Article 9(1) of the ICCPR also envisages administrative or preventive detention, such as the one set out under Section 29 of the ATA. Perforce, the fail-safes embodied in Article 9 of the ICCPR should be extended to detainees under Section 29, such as court control of the detention, as well as compensation in the case of a breach.[18]

To be sure, Section 29 is tellingly violative of the universal right against arbitrary detention under Article 9 of the ICCPR, thus:

> The second sentence of paragraph 1 prohibits arbitrary arrest and detention, while the third sentence prohibits unlawful deprivation of liberty, i.e., deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as established by law. The two prohibitions overlap, in that arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful. Arrest or detention that lacks any legal basis is also arbitrary. Unauthorized confinement of prisoners beyond the length of their sentences is arbitrary as well as unlawful; the same is true for unauthorized extension of other forms of detention.[19]

In delivering its opinion on human rights, terrorism, and counter-terrorism, the Office of the UN High Commissioner for Human Rights accentuated that detained persons must have the ability "to have the lawfulness of their detention determined by a judicial authority."[20] So too, civilian courts must have jurisdiction to supervise the application of counter-terrorist measures without any pressure or interference, particularly from the other branches of government."[21]

To drive home the point, illustrative cases from other systems serve as our jurisprudential polestar on the right, against arbitrary and prolonged detention in the context of an anti-terrorism campaign, as follows:

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In Ocalan v. Turkey,[22] the European Court of Human Rights (ECHR) decreed that the bare invocation of terrorism does not automatically grant sweeping authority to arrest suspects for questioning without limits, viz.:

> The Court has already noted on a number of occasions that the investigation of terrorist offences undoubtedly presents the authorities with special problems. xxx This does not mean, however, that the investigating authorities have carte blanche under Article 5 to arrest suspects for questioning, free from effective control by the domestic courts and, ultimately, by the Convention supervisory institutions, whenever they choose to assert that terrorism is involved xxx.[23]

Likewise, in Al-Nashif v. Bulgaria,[24] the ECHR expounded the delicate balance between national security and deference to human rights, thus:

> Even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence, if need be[,] with appropriate procedural limitations on the use of classified information xxx.
>
> The individual must be able to challenge the executive's assertion that national security is at stake. While the executive's assessment of what poses a threat to national security will naturally be of significant weight, the independent authority must be able to react in cases where invoking that concept has no reasonable basis in the facts or reveals an interpretation of 'national security' that is unlawful or contrary to common sense and arbitrary.
>
> Failing such safeguards, the police or other State authorities would be able to encroach arbitrarily on rights protected by the Convention.[25]

Moreover, in Aksoy v. Turkey[26] and Brogan and Others v. United Kingdom,[27] the ECHR reckoned that detention without judicial intervention for fourteen (14) days, and four (4) days and six (6) hours, respectively, is unlawful. It ratiocinated that a fourteen (14) day period is exceptionally long and left the detainee vulnerable not only to arbitrary interference with his right to liberty, but also to torture.[28] "The undoubted fact that arrest and detention of the applicants were, inspired by the legitimate aim of protecting the community as a whole from terrorism is not on its own sufficient to ensure compliance with the specific requirements of Article 5 para. 3 (art. 5-3)."[29]

Meanwhile, in Boumediene v. Bush[30] the petitioners therein were able to establish before the United States Supreme Court the constitutional infirmities from which the Detainee Treatment Act of 2005 suffered, such as the absence of provisions allowing them to challenge the President's authority to detain them for a longer period under the Authorization for Use of Military Force (AUMF), to contest the Combatant Status Review Tribunal's (CSRT)[31] findings of fact, and to supplement the record on review with exculpatory evidence discovered after the CSRT proceedings. The Court pertinently held:

> In considering both the procedural and substantive standards used to impose detention to prevent acts of terrorism, proper deference must be accorded to the political branches. xxx The law must accord the Executive substantial authority to apprehend and detain those who pose a real danger to our security.
>
> Officials charged with daily operational responsibility for out-security may consider a judicial discourse on the history of the Habeas Corpus Act of 1679 and like matters to be far removed from the Nation's present, urgent concerns. Established legal doctrine, however, must be consulted for its teaching. Remote in time it may be irrelevant to the present it is not. Security depends upon a sophisticated intelligence apparatus and the ability of our Armed Forces to act and to interdict. There are further considerations, however. Security subsists, too, in fidelity to freedom's first principles. Chief among these are freedom from arbitrary and unlawful restraint and the personal liberty that is secured by adherence to the separation of powers. It is from these principles that the

judicial authority to consider petitions for habeas corpus relief derives.[32]

In obeisance to the foregoing concatenate of jurisprudence, there must also be a robust system of challenging unreasonable prolonged detentions in our jurisdiction to ensure fidelity and adherence to the primacy of protecting the right to due process. Detainees under the ATA should be afforded a prompt and meaningful opportunity to challenge the facts giving rise to detention and to offer evidence in rebuttal thereof before a neutral arbiter.[33] "Meaningful" in this context entails, inter alia, the participation of legal counsel or independent representation, as well as a genuine opportunity for the detainee to respond to the factual basis of his or her detention.[34] Anent the promptness requisite, "detainees must have at least a preliminary opportunity to contest their detention within a matter of days, not months."[35]

On that score, the process delineated in Section 29 and the assertions made by the OSG during the oral arguments, when juxtaposed with the aforecited pronouncements, despondently fall short of according detainees a tangible opportunity to contest, the legality of their protracted detention before the ATC as well as the courts.

Given the foregoing disquisition, the polemics against Section 29 carry sufficient weight and conviction. While there is an undeniable need to strengthen the State's efforts to combat terrorism, promote the nation's security, and ensure the safety of all, counter-terrorism measures should still be formulated within constitutional bounds and in reverence of our human rights obligations.

In epitome, I accede that the law in question was crafted out of the necessity to mitigate the legitimate threats of terrorism both from within and outside our borders. Still and all, the peace and security of the nation's people should not come at the expense of their constitutionally-guaranteed freedoms. Hence, in fealty to this Court's mandate as the final beacon of justice and civil liberties, I join Justices Caguioa and Gaerlan in voting to declare Section 29 of the ATA as unconstitutional.

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[1] See Majority Opinion, p. 193.

[2] See Petitioners' Memorandum (Cluster V), pp. 19-20.

[3] 815 Phil. 1067 (2017).

[4] Id. at 1104; citing Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452 (2010).

[5] 727 Phil. 28 (2014).

[6] Id. at 121.

[7] Id. at 122; citing Justice Antonio T. Carpio's dissent in Romualdez v. Commission on Elections, 576 Phil. 357 (2008).

[8] See Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra note 4 at 488; citing People v. Nazario, 247-A Phil. 276 (1988).

[9] See People v. Dela Piedra, 403 Phil. 31, 47-48 (2001); citing Connally v. General Construction Co., 269 U.S. 385, 46 S. Ct. 126, 70 L Ed 322 (1926); Colautti v. Franklin, 439 U.S. 379, 99 S. Ct. 675, 58 L Ed 2d 596 (1979); and American Communications Asso. v. Douds, 339 U.S. 382 70 S. Ct. 674, 941, Ed 925 (1950).

[10] 90 Phil. 70 (1951).

[11] Id. at 76-77. Emphasis supplied.

[12] TSN, 4 May 2021, pp. 64-65. Emphasis supplied.

[13] Id. at 77-78. Emphasis supplied.

[14] TSN, 11 May 2021, pp. 50-51.

[15] Id. at 55-56. Emphasis supplied.

[16] Article III, 1987 Constitution

[17] See UN Human Rights Committee, 16th Sess., UN Human Rights Committee, CCPR General Comment No. 8: Article 9 (Right to Liberty and Security of Persons), No. 8, 30 June 1982, par. 1. Available at: <http://ccprcentre.org/page/view/general_comments/27851>.

[18] Id. at par. 4.

[19] See UN Human Rights Committee, 112th Sess., CCPR General Comment No. 35: Article 9 (Right to Liberty and Security of Persons), CCPR/C/GC/35, 16 December 2014, par. 11. Available at: <https://digitallibrary.un.org/record/786613?ln=en>. Emphasis supplied; original citations omitted.

[20] See Office of the UN High Commissioner for Human Rights, Human Rights, Terrorism, and Counter-terrorism: Fact Sheet No. 32, 2007, pp. 36-37. Available at: <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>. Original citations omitted.

[21] Id. at 44. Original citation omitted.

[22] Application No. 46221/99 (Eur. Ct. H.R. 12 May 2005). Available at: <http://hudoc.echr.coe.int/eng?i=001-69022>.

[23] Id. at par: 104. Emphasis supplied; original citations omitted.

[24] Application No. 50963/99 (Eur. Ct. H.R. 20 September 2002). Available at <http://hudoc.echr.coe.int/eng?i=001-60522.

[25] Id. at pars. 123-124. Emphases supplied; original citation omitted.

[26] Application No. 21987/93 (Eur. Ct. H.R. 18 December 1996). Available at: <http://hudoc.echr.coe.int/eng?i=001-58003.

[27] Application Nos. 11209/84, 11234/84, 11266/84, 11386/85 (Eur. Ct. H.R. 29 November 1988). Available at: <https://www.asylumlawdatabase.eu/en/content/ecthr-brogan-ors-v-united-kingdom-application-nos-1120984-1123484-1126684-1138685>.

[28] Supra note 26 at par. 78. Original citation omitted.

[29] Supra note 27 at par. 62. Art. 5-3 of the Convention for the Protection of Human Rights and Fundamental Freedoms reads: "Everyone arrested or detained in accordance with the provisions of paragraph 1 (e) of this Article (art. 5-1-c) shall be brought promptly before a judge or other officer authorised by law to exercise judicial-power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

[30] 553 U.S. 723, 128 S. Ct. 2229, 171 L Ed. 2d 41 (2008). Available at: <https://www.law.cornell.edu/supct/pdf/06-1195P.ZO>

[31] Combatant: Status Review Tribunals were established by the United States Defense Department to determine

whether individuals detained at the U.S. Naval Station at Guantanamo Bay, Cuba, were "enemy combatants."

[32] Supra note 30. Emphasis supplied; original citation omitted.

[33] See Monica Hakimi, International Standards for Detaining Terrorism Suspects: Moving Beyond the Armed Conflict-Criminal Divide, CASE W. RES. J. INT'L, B. 40, NO. 3 (2009), p. 642. Available at: <https://repository.law.umich.edu/cgi/viewcontent.cgi?article-1123&context=articles>

[34] Id. at 642-643. Original citation omitted.

[35] Id. at 642. Original citations omitted.

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