Republic of the Philippines
Supreme Court
Manila

EN BANC

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. ECHAVEZ, NAPOLEON L. SINGCO, and RAEYAN M. REPOSAR,

Petitioners,

G.R. No. 252578

- versus -

EXECUTIVE SECRETARY, NATIONAL SECURITY ADVISER, SECRETARY OF FOREIGN AFFAIRS, SECRETARY OF NATIONAL DEFENSE, SECRETARY OF INTERIOR AND LOCAL GOVERNMENT, SECRETARY OF FINANCE, SECRETARY OF JUSTICE, SECRETARY OF INFORMATION AND COMMUNICATIONS TECHNOLOGY, EXECUTIVE DIRECTOR OF THE ANTI-MONEY LAUNDERING COUNCIL (AMLC),

Respondents.

x----------x

REP. EDCEL C. LAGMAN,

Petitioner,

G.R. No. 252579

- versus -

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EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA; ANTI-TERRORISM COUNCIL (ATC); ANTI-MONEY LAUNDERING COUNCIL (AMLC); SENATE OF THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT VICENTE C. SOTTO III; AND THE HOUSE OF REPRESENTATIVES, REPRESENTED BY SPEAKER ALAN PETER S. CAYETANO,
Respondents.
x----------x

MELENCIO S. STA. MARIA, EIRENE JHONE E. AGUILA, GIDEON V. PEÑA, MICHAEL T. TIU, JR., FRANCIS EUSTON R. ACERO, PAUL CORNELIUS T. CASTILLO, EUGENE T. KAW, **G.R. No. 252580**
Petitioners,

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, SECRETARY OF JUSTICE MENARDO I. GUEVARRA, THE ANTI-TERRORISM COUNCIL, ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF FILEMON SANTOS, JR., PHILIPPINE NATIONAL POLICE CHIEF ARCHIE FRANCISCO F. GAMBOA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR., SECRETARY OF FOREIGN AFFAIRS TEODORO L. LOCSIN, JR., SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT EDUARDO M. AÑO, SECRETARY OF DEFENSE DELFIN N. LORENZANA,

SECRETARY OF FINANCE CARLOS G. DOMINGUEZ III, SECRETARY OF INFORMATION AND COMMUNICATIONS TECHNOLOGY GREGORIO HONASAN II, ANTI-MONEY LAUNDERING COUNCIL EXECUTIVE DIRECTOR MEL GEORGIE B. RACELA,

Respondents.

x----------x

BAYAN MUNA PARTY-LIST REPRESENTATIVES CARLOS ISAGANI T. ZARATE, FERDINAND GAITE, AND EUFEMIA CULLAMAT; GABRIELA WOMEN'S PARTY REPRESENTATIVE ARLENE D. BROSAS; ACT-TEACHERS PARTY-LIST REPRESENTATIVE FRANCE L. CASTRO, KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO; BAYAN MUNA PARTY-LIST PRESIDENT, SATURNINO OCAMPO; MAKABAYAN CO-CHAIRPERSON LIZA LARGOZA MAZA; BAYAN MUNA PARTY-LIST CHAIRPERSON NERI J. COLMENARES; ACT-TEACHERS PARTY-LIST PRESIDENT ANTONIO TINIO, AND ANAKPAWIS PARTY-LIST VICE PRESIDENT ARIEL CASILAO, AND MAKABAYAN SECRETARY GENERAL, NATHANAEL SANTIAGO,

G.R. No. 252585

Petitioners,

- versus -

PRESIDENT RODRIGO DUTERTE, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, AND ANTI-TERRORISM COUNCIL, REPRESENTED BY ITS

CHAIRMAN SALVADOR MEDIALDEA,

Respondents.

x----------x

RUDOLF PHILIP B. JURADO, **G.R. No. 252613**

Petitioner,

- versus -

THE ANTI-TERRORISM COUNCIL, THE EXECUTIVE SECRETARY, SECRETARY OF JUSTICE, SECRETARY OF FOREIGN AFFAIRS, SECRETARY OF NATIONAL DEFENSE, THE SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT, SECRETARY OF FINANCE, THE NATIONAL SECURITY ADVISER, CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES, DIRECTOR GENERAL OF THE PHILIPPINE NATIONAL POLICE, THE SENATE OF THE PHILIPPINES, AND THE HOUSE OF REPRESENTATIVES OF THE PHILIPPINES,

Respondents.

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CENTER FOR TRADE UNION AND HUMAN RIGHTS (CTUHR), REPRESENTED BY DAISY ARAGO, PRO-LABOR LEGAL ASSISTANCE CENTER (PLACE), REPRESENTED BY ATTY. NOEL V. NERI, ARMANDO TEODORO, JR., VIOLETA ESPIRITU, AND VIRGINIA FLORES, **G.R. No. 252623**

Petitioners,

- versus -

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HON. RODRIGO R. DUTERTE, IN HIS CAPACITY AS PRESIDENT AND COMMANDER-IN-CHIEF OF THE REPUBLIC OF THE PHILIPPINES; HON. SALVADOR MEDIALDEA, AS EXECUTIVE SECRETARY; ANTI-TERRORISM COUNCIL (ATC); ARMED FORCES OF THE PHILIPPINES (AFP), REPRESENTED BY LT. GEN. FELIMON SANTOS JR. AND THE PHILIPPINE NATIONAL POLICE (PNP), REPRESENTED BY LT. GEN. ARCHIE GAMBOA,

Respondents.

x----------x

CHRISTIAN S. MONSOD, FELICITAS A. ARROYO, RAY PAOLO J. SANTIAGO, AMPARITA STA. MARIA, MARIA ILSEA W. SALVADOR, MARIANNE CARMEL B. AGUNOY, XAMANTHA XOFIA A. SANTOS, MARIA PAULA S. VILLARIN, PAULA SOPHIA ESTRELLA, IGNATIUS MICHAEL D. INGLES, ERNESTO B. NERI, FR. ALBERT E. ALEJO, S.J., PAULA ZAYCO ABERASTURI, WYANET AISHA ELIORA M. ALCIBAR, SENTRO NG MGA NAGKAKAISA AT PROGRESIBONG MANGGAGAWA (SENTRO), REPRESENTED BY ITS SECRETARY-GENERAL JOSUA T. MATA, **G.R. No. 252624**

Petitioners,

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR., DEPARTMENT OF FOREIGN AFFAIRS SECRETARY TEODORO

L. LOCSIN, JR., DEPARTMENT OF NATIONAL DEFENSE SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT SECRETARY EDUARDO M. AÑO, DEPARTMENT OF FINANCE SECRETARY CARLOS G. DOMINGUEZ III, DEPARTMENT OF JUSTICE SECRETARY MENARDO I. GUEVARRA, DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY GREGORIO B. HONASAN II, ANTI-MONEY LAUNDERING COUNCIL EXECUTIVE DIRECTOR MEL GEORGIE B. RACELA, ALL MEMBERS OF THE ANTI-TERRORISM COUNCIL, ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL FILEMON SANTOS, JR., PHILIPPINE NATIONAL POLICE CHIEF GENERAL ARCHIE FRANCISCO F. GAMBOA,
Respondents.

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SANLAKAS, REPRESENTED BY MARIE MARGUERITE M. LOPEZ, **G.R. No. 252646**
Petitioner,

- versus -

RODRIGO R. DUTERTE, AS PRESIDENT AND COMMANDER-IN-CHIEF OF ALL THE ARMED FORCES, SENATE, AND HOUSE OF REPRESENTATIVES,
Respondents.

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FEDERATION OF FREE WORKERS (FFW-NAGKAISA) HEREIN REPRESENTED BY ITS **G.R. No. 252702**

NATIONAL PRESIDENT ATTY. JOSE SONNY MATULA; TRADE UNION LEADERS OF THE NAGKAISA LABOR COALITION (NAGKAISA), NAMELY, ANNIE ENRIQUEZ GERON (PRESIDENT OF THE PUBLIC SERVICES LABOR INDEPENDENT CONFEDERATION), DANIEL EDRALIN (SECRETARY GENERAL OF NATIONAL UNION OF WORKERS IN HOTEL AND RESTAURANT AND ALLIED INDUSTRY), RENATO MAGTUBO (CHAIRMAN OF THE PARTIDO MANGGAGAWA), DEOBEL DEOCARES (PRESIDENT OF THE NATIONAL FEDERATION OF LABOR, DANILO LASERNA (FFW-VP FOR EDUCATION/ HEAD OPERATIONS); CO-CHAIR OF THE CHURCH LABOR CONFERENCE (CLC) JULIUS H. CAINGLET (FFW-VP FOR ADVOCACY & NETWORKING), RUEL POLON (PRESIDENT OF TF LOGISTIC PHILS WORKERS UNION); KILUSANG MAYO UNO (KMU) CHAIRMAN ELMER LABOG, ELEANOR DE GUZMAN (WORKERS' RESISTANCE AGAINST TYRANNY& FOR HUMAN RIGHTS) AND PASCUAL PAUSAL (KILOS NA MANGGAGAWA); TRADE UNION LEADERS OF THE UNI GLOBAL UNION-PHILIPPINE LIAISON COUNCIL NAMELY, JESUS EXEQUIEL NIDEA (PRESIDENT), ROLAND DELA CRUZ (EXECUTIVE VICE PRESIDENT); AND KILUSANG ARTIKULO TRESE (A.13) CONVENOR ROLANDO LIBROJO,

Petitioners,

- versus -

OFFICE OF THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, SENATE OF THE PHILIPPINES, HOUSE OF REPRESENTATIVES, EXECUTIVE SECRETARY, NATIONAL SECURITY ADVISER, SECRETARY OF FOREIGN AFFAIRS, SECRETARY OF NATIONAL DEFENSE, SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT, SECRETARY OF FINANCE, SECRETARY OF JUSTICE, SECRETARY OF INFORMATION AND COMMUNICATIONS TECHNOLOGY, EXECUTIVE DIRECTOR OF THE ANTI-MONEY LAUNDERING COUNCIL SECRETARIAT,

Respondents.

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JOSE J. FERRER, JR., **G.R. No. 252726**

Petitioner,

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, SENATE, AND HOUSE OF REPRESENTATIVES,

Respondents.

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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, FORMER UNIVERSITY OF THE **G.R. No. 252733**

PHILIPPINES (UP) PRESIDENT FRANCISCO NEMENZO, PH.D., FORMER UP DILIMAN CHANCELLOR MICHAEL TAN, KARAPATAN ALLIANCE PHILIPPINES (KARAPATAN) SECRETARY GENERAL CRISTINA E. PALABAY, KARAPATAN CHAIRPERSON ELISA TITA P. LUBI, FORMER NATIONAL COMMISSION ON CULTURE AND THE ARTS CHAIRPERSON FELIPE M. DE LEON, JR., PH.D., FORMER DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (DSWD) SECRETARY PROF. JUDY M. TAGUIWALO, FREE JONAS BURGOS MOVEMENT CHAIRPERSON EDITA T. BURGOS, RENATO R. CONSTANTINO, JR., FORMER NATIONAL ANTI-POVERTY COMMISSION UNDERSECRETARY MA. CORAZON J. TAN, FORMER DSWD UNDERSECRETARY MARIA LOURDES TURALDE JARABE, KILUSANG MAGBUBUKID NG PILIPINAS CHAIRPERSON DANILO HERNANDEZ RAMOS, CAMPAIGN AGAINST THE RETURN OF THE MARCOSES AND MARTIAL LAW (CARMMA) CONVENOR BONIFACIO P. ILAGAN, MOST REV. DEOGRACIAS IÑIGUEZ, D.D., FORMER BAYAN MUNA PARTYLIST REPRESENTATIVE TEODORO A. CASIÑO, MAE P. PANER, VERGEL O. SANTOS, FR. WILFREDO DULAY, M.D.J., PROF. MICHAEL PANTE (ATENEO DE MANILA UNIVERSITY), PROF. TEMARIO C. RIVERA (UNIVERSITY OF THE PHILIPPINES), PROF. JOSEPH ANTHONY Y. LIM (ATENEO DE

MANILA UNIVERSITY), FRANCISCO A. ALCUAZ, FORMER UP CENTER FOR INTERNATIONAL STUDIES DIRECTOR CYNTHIA N. ZAYAS, PH.D., KILUSANG MAYO UNO SECRETARY GENERAL RONALDO M. ADONIS, PAGI-ISANG SAMAHAN NG MGA TSUPER AT OPEREYTOR (PISTON) NATIONWIDE CHAIRPERSON JUANITO AQUINO RANJO, JR., HEALTH ALLIANCE FOR DEMOCRACY CHAIRPERSON EDELINA PADILLA-DELA PAZ, M.D., GABRIELA-YOUTH SECRETARY-GENERAL CLARICE JOY PALCE, VOICES OF WOMEN FOR JUSTICE AND PEACE CONVENOR TINA-AGEL S. ROMERO, AMIHAN NATIONAL FEDERATION OF PEASANT WOMEN SECRETARY GENERAL CATARINA T. ESTAVILLO, PAMALAKAYA CHAIRPERSON FERNANDO L. HICAP, SALINLAHI ALLIANCE FOR CHILDREN'S CONCERNS SECRETARY GENERAL EULE C. RICO BONGANAY, ANAKBAYAN SECRETARY GENERAL VINZHILL PERFAS SIMON, LEAGUE OF FILIPINO STUDENTS DEPUTY SECRETARY GENERAL JOANNA MARIE GASPAR ROBLES, BAHAGHARI SPOKESPERSON REY KRISTOFFER VALMORES SALINAS, CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE) PRESIDENT SANTIAGO Y. DASMARIÑAS, JR., COURAGE SECRETARY GENERAL MANUEL R. BACLAGON, NOEMI LARDIZABAL DADO, PAMILYA

NG DESAPARECIDOS PARA SA KATARUNGAN CHAIRPERSON ERLINDA T. CADAPAN, ASHER P. CADAPAN, HUSTISYA! PAGKAKAISA NG MGA BIKTIMA PARA SA HUSTISYA CHAIRPERSON EVANGELINE P. HERNANDEZ, KALIPUNANG NG DAMAYANG MAHIHIRAP (KADAMAY) CHAIRPERSON-EMERITUS CARMEN "NANAY MAMENG" DEUNIDA, SAMAHAN NG EX-DETAINEES LABAN SA DETENSYON AT ARESTO (SELDA) CHAIRPERSON TRINIDAD G. REPUNO,

Petitioners,

- versus -

H.E. RODRIGO R. DUTERTE, SALVADOR MEDIALDEA, IN HIS CAPACITY AS EXECUTIVE SECRETARY, VICENTE SOTTO III, IN HIS CAPACITY AS THE SENATE PRESIDENT OF THE PHILIPPINES, AND ALAN PETER CAYETANO, IN HIS CAPACITY AS THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OF THE PHILIPPINES,

Respondents.

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ANTONIO T. CARPIO, CONCHITA CARPIO MORALES, JAY L. BATONGBACAL, DANTE B. GATMAYTAN, THEODORE O. TE, VICTORIA V. LOANZON ANTHONY CHARLEMAGNE C. YU, FRANCISCO ASHLEY L. ACEDILLO, TIERONE JAMES M. SANTOS, **G.R. No. 252736**

Petitioners,

- versus -

ANTI-TERRORISM COUNCIL, SENATE OF THE PHILIPPINES, HOUSE OF REPRESENTATIVES OF THE PHILIPPINES, SALVADOR C. MEDIALDEA, HERMOGENES C. ESPERON, JR. TEODORO L. LOCSIN, JR., DELFIN N. LORENZANA, EDUARDO M. AÑO, CARLOS G. DOMINGUEZ III, MENARDO I. GUEVARRA, GREGORIO B. HONASAN II, AND MEL GEORGIE B. RACELA, AND ALL OTHER PERSONS ACTING UNDER THEIR CONTROL, DIRECTION AND INSTRUCTIONS,

Respondents.

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MA. CERES P. DOYO, JOSEFA ANDRES MAGLIPON MARCELO, MARIA A. RESSA, RACHEL E. KHAN, MARIA ROSARIO F. HOFILEÑA, LILIBETH SOCORRO FRONDOSO, MARIA TERESA D. VITUG, MARIO S. NERY, JR., BEATRICE P. PUENTE, FLORANGEL ROSARIO-BRAID, FRANCIS N. PANGILINAN, LEILA M. DE LIMA, JOSE CHRISTOPHER Y. BELMONTE, SERGIO OSMEÑA III, WIGBERTO E. TAÑADA, SR., LORENZO R. TAÑADA III, JOSE MANUEL I. DIOKNO, EDMUNDO G. GARCIA, LUTGARDO B. BARBO, LORETTA ANN P. ROSALES, **G.R. No. 252741**

Petitioners,

- versus -

SALVADOR MEDIALDEA, IN HIS CAPACITY AS EXECUTIVE SECRETARY; HERMOGENES ESPERON, IN HIS CAPACITY AS NATIONAL SECURITY ADVISER;

TEODORO L. LOCSIN, JR., IN HIS CAPACITY AS SECRETARY AS FOREIGN AFFAIRS; DELFIN LORENZANA, IN HIS CAPACITY AS SECRETARY OF NATIONAL DEFENSE; EDUARDO AÑO, IN HIS CAPACITY AS SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT; CARLOS DOMINGUEZ III, IN HIS CAPACITY AS SECRETARY OF FINANCE; MENARDO I. GUEVARRA, IN HIS CAPACITY AS SECRETARY OF JUSTICE; GREGORIO BALLESTEROS HONASAN II, IN HIS CAPACITY AS SECRETARY OF INFORMATION AND COMMUNICATIONS TECHNOLOGY; MEL GEORGIE B. RACELA, IN HIS CAPACITY AS EXECUTIVE DIRECTOR OF THE ANTI-MONEY LAUNDERING COUNCIL; WENDEL E. AVISADO, IN HIS CAPACITY AS THE SECRETARY OF BUDGET AND MANAGEMENT; THE ANTI-TERRORISM COUNCIL (ATC) CREATED UNDER REPUBLIC ACT NO. 11479; THE NATIONAL INTELLIGENCE COORDINATING AGENCY (NICA); AND ANY PERSONS ACTING UNDER THEIR CONTROL, SUPERVISION, OR DIRECTION IN RELATION TO THE ENFORCEMENT OF REPUBLIC ACT NO. 11479,

Respondents.

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NATIONAL UNION OF JOURNALISTS OF THE PHILIPPINES, JOSELITO O. ALTAREJOS, IVY MARIE B. APA, ANNA MAY V. BAQUIRIN, ARNEL BARBARONA, JUNELIE O. BARRIOS, MARIA VICTORIA JOY B. BELTRAN, LIAN NAMI ALOEN P. BUAN, MARA ALYSSABEL D. **G.R. No. 252747**

CEPEDA, RICHARD C. CORNELIO, FRANCES BEA C. CUPIN, ARDEE E. DELOLA, ERNEST JEWELL B. DIÑO, LEONILO O. DOLORICON, CECILIA VICTORIA O. DRILON, GLENDA M. GLORIA, BARTHOLOME TANKEH GUINGONA, ABDULMARI L. IMAO JR., JAZMIN B. LLANA, GRACE MARIE LOPEZ, BIENVENIDO L. LUMBERA, DIANDRA DITMA A. MACARAMBON, GUITERREZ M. MANGANSAKAN II, AMADO ANTHONY G. MENDOZA III, VINCENT MARCO C. MORALES, KRISTINE ONG MUSLIM, ELIZABETH JUDTH C. PANELO, NORBERTO S. ROLDAN, JOSELITO B. SARACHO, RAISA MARIELLE B. SERAFICA, ELIZABETH ROSE O. SIGUION REYNA, LISA I. TAPANG, LUIS V. TEODORO JR., ROLAND B. TOLENTINO, MICHAEL JUDE C. TUMAMAC, EDGIE FRANCIS B. UYANGUREN, MA. SALVACION E. VARONA, AND DENZEL Q. YORONG,

Petitioners,

- versus -

ANTI-TERRORISM COUNCIL, NATIONAL INTELLIGENCE COORDINATING AGENCY, ARMED FORCES OF THE PHILIPPINES, PHILIPPINE NATIONAL POLICE, AND NATIONAL BUREAU OF INVESTIGATION,

Respondents.

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KABATAANG TAGAPAGTANGGOL NG KARAPATAN REPRESENTED BY ITS NATIONAL CONVENER BRYAN EZRA C. GONZALES, YOUTH FOR HUMAN RIGHTS AND DEMOCRACY REPRESENTED BY ITS PRESIDENT CHRISTIAN B. GULTIA, YOUTH ACT NOW AGAINST TYRANNY REPRESENTED BY ITS NATIONAL CONVENER RAOUL DANIEL A. MANUEL, MILLENNIALS PH REPRESENTED BY ITS COMMITTEE HEAD JOSE RIO I. IWASAKI, SAMAHAN NG PROGRESIBONG KABATAAN REPRESENTED BY ITS PRESIDENT IAN RED D. LIGOT, GOOD GOV PH REPRESENTED BY ITS PRESIDENT DEXTER ARVIN E. YANG, YOUTH STRIKE 4 CLIMATE PHILIPPINES REPRESENTED BY ITS PRESIDENT JEFFERSON A. ESTELA, LIBERAL YOUTH OF THE PHILIPPINES, REPRESENTED BY ITS COMMITTEE CHAIR DAVIN RENN S. SANTOS, AKSYON KABATAAN REPRESENTED BY ITS SECRETARY-GENERAL PRINCESS CYNTHIA NATHALIE DRILON, LA SALLE DEBATE SOCIETY REPRESENTED BY ITS PRESIDENT AND TEAM CAPTAIN HANS XAVIER W. WONG, DLSU UNIVERSITY STUDENT GOVERNMENT REPRESENTED BY ITS PRESIDENT LANCE ISIAH C. DELA CRUZ, SANGGUNIAN NG MGA MAG-AARAL NG PAARALANG LOYOLA NG ATENEO DE MANILA REPRESENTED BY ITS PRESIDENT JAMESUN W. BEJARIN, UP DILIMAN

G.R. No. 252755

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UNIVERSITY STUDENT COUNCIL, REPRESENTED BY ITS CHAIRPERSON SEAN ANGELO A. THAKUR, UNIVERSITY OF SANTO TOMAS CENTRAL STUDENT COUNCIL, REPRESENTED BY ITS DIRECTOR FOR ARTLETS THERESE MARIE B. IFURUNG, STUDENT COUNCIL ALLIANCE OF THE PHILIPPINES REPRESENTED BY ITS NATIONAL CHAIRPERSON, JEZA ANTONETTE A. RODRIGUEZ, NATIONAL UNION OF STUDENTS IN THE PHILIPPINES REPRESENTED BY ITS DEPUTY SECRETARY GENERAL JANDEIL B. ROPEROS,

Petitioners,

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, THE MEMBERS OF THE ANTI TERRORISM COUNCIL: HERMOGENES ESPERON IN HIS CAPACITY AS THE NATIONAL SECURITY ADVISER, TEODORO LOCSIN JR. IN HIS CAPACITY AS THE SECRETARY OF FOREIGN AFFAIRS, DELFIN LORENZANA IN HIS CAPACITY AS THE SECRETARY OF NATIONAL DEFENSE, EDUARDO AÑO IN HIS CAPACITY AS THE SECRETARY OF INTERIOR AND LOCAL GOVERNMENT, CARLOS DOMINGUEZ III IN HIS CAPACITY AS THE SECRETARY OF FINANCE, MENARDO GUEVARRA IN HIS CAPACITY AS THE SECRETARY OF JUSTICE, GREGORIO HONASAN IN HIS CAPACITY AS THE SECRETARY OF INFORMATION AND

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COMMUNICATIONS TECHNOLOGY, BENJAMIN DIOKNO IN HIS CAPACITY AS THE EXECUTIVE DIRECTOR OF THE ANTI MONEY LAUNDERING COUNCIL, THE CONGRESS OF THE PHILIPPINES REPRESENTED BY VICENTE SOTTO III IN HIS CAPACITY AS THE PRESIDENT OF THE SENATE AND ALAN PETER CAYETANO IN HIS CAPACITY AS THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,

Respondents.

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ALGAMAR A. LATIPH, BANTUAS M. LUCMAN, MUSA I. MALAYANG, DALOMILANG N. PARAHIMAN, **G.R. No. 252759**

Petitioners,

- versus -

SENATE, REPRESENTED BY ITS PRESIDENT, VICENTE C. SOTTO III, HOUSE OF REPRESENTATIVES, REPRESENTED BY ITS SPEAKER, ALAN PETER S. CAYETANO, OFFICE OF THE PRESIDENT, AND ANTI-TERRORISM COUNCIL (ATC) BOTH REPRESENTED BY EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, RESPECTIVELY, AS ALTER EGO OF THE PRESIDENT AND CHAIRPERSON OF THE ATC,

Respondents.

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THE ALTERNATIVE LAW GROUPS, INC. (ALG), **G.R. No. 252765**
Petitioner,

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,
Respondent.
x----------x

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 AND THE SISTERS' ASSOCIATION IN MINDANAO, **G.R. No. 252767**
Petitioners,

- versus -

PRESIDENT RODRIGO R. DUTERTE, SENATE OF THE REPUBLIC OF THE PHILIPPINES REPRESENTED BY SEN. VICENTE SOTTO III, THE HOUSE OF REPRESENTATIVES REPRESENTED BY SPEAKER ALAN PETER CAYETANO,

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, AS CHAIRMAN OF THE ANTI-TERRORISM COUNCIL,
Respondents.

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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, LEONORA O. CALUBAQUIB, MONICA ANNE E. WILSON, SILAHIS M. TEBIA, **G.R. No. 252768**
Petitioners,

- versus -

PRESIDENT RODRIGO ROA DUTERTE; ANTI-TERRORISM COUNCIL, REPRESENTED BY ITS CHAIRPERSON AND EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA; SENATE OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT VICENTE C. SOTTO III; AND THE HOUSE OF REPRESENTATIVES, REPRESENTED BY SPEAKER ALAN PETER S. CAYETANO,
Respondents.

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LAWRENCE A. YERBO, **UDK No. 16663**
Petitioner,

- versus -

OFFICES OF THE HONORABLE SENATE PRESIDENT AND HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF THE PHILIPPINES,

Respondents.

x----------x

HENDY ABENDAN OF CENTER FOR YOUTH PARTICIPATION AND DEVELOPMENT INITIATIVES, CALVIN DHAME LAGAHIT OF CEBU NORMAL UNIVERSITY – STUDENT DEMOCRATIC PARTY, CHRISTIAN LOUIE ILUSTRISIMO OF CEBU NORMAL UNIVERSITY – STUDENTS REPUBLIC PARTY, BENNA LYN RIZON OF CEBU NORMAL UNIVERSITY – REFORMATIVE LEADERS (RELEAD) PARTY, LYRNIE REGIDOR OF UP CEBU – UNION OF PROGRESSIVE STUDENTS, HANNSON KENT J. NAMOC OF UP CEBU – NAGKAHIUSANG KUSOG SA ESTUDYANTE, GILBERT G. APURA, JR. OF UNIVERSITY OF SAN CARLOS – STUDENT POWER PARTY, DAVID C. SUICO OF UNIVERSITY OF SAN CARLOS – STUDENT ALLIANCE FOR NATIONALISM AND DEMOCRACY, AND MARY THERESE T. MAURIN OF UNIVERSITY OF CEBU LAW STUDENT SOCIETY,

Petitioners,

G.R. No. 252802

- versus -

HON. SALVADOR C. MEDIALDEA, IN HIS CAPACITY AS EXECUTIVE SECRETARY AND CHAIRPERSON OF THE ANTI-TERRORISM COUNCIL; ALL MEMBERS OF

THE ANTI-TERRORISM COUNCIL NAMELY: HON. HERMOGENES ESPERON, NATIONAL SECURITY ADVISER; HON. TEODORO LOCSIN, JR., SECRETARY OF FOREIGN AFFAIRS; HON. DELFIN N. LORENZANA, SECRETARY OF NATIONAL DEFENSE; HON. EDUARDO AÑO, SECRETARY OF INTERIOR AND LOCAL GOVERNMENT; HON. CARLOS DOMINGUEZ, SECRETARY OF FINANCE; HON. MENARDO GUEVARRA, SECRETARY OF JUSTICE; HON. GREGORIO B. HONASAN II, SECRETARY OF INFORMATION AND COMMUNICATIONS TECHNOLOGY; AND HON. MEL GEORGIE B. RACELA, EXECUTIVE DIRECTOR OF THE ANTI-MONEY LAUNDERING COUNCIL (AMLC) SECRETARIAT,

Respondents.

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CONCERNED ONLINE CITIZENS REPRESENTED AND JOINED BY MARK L. AVERILLA, NOELLE THERESA E. CAPILI, ROBBY DERRICK S. CHAM, VICTOR LOUIS E. CRISOSTOMO, ANTHONY IAN M. CRUZ, MARITA Q. DINGLASAN, THYSSEN C. ESTRADA, MARK ANGELO C. GERONIMO, BALBINO PADA GUERRERO JR., JOVER N. LAURIO, JOHN CARLO T. MERCADO, RAYMOND DE VERA PALATINO, LEAN REDINO P. PORQUIA, MARCEL DAR STEFAN T. PUNONGBAYAN, ALBERT LOUIS R. RAQUEÑO, OLIVER RICHARD V. ROBILLO, JULIUS D. ROCAS, JUAN MIGUEL R. SEVERO, MA. GIA GRACE B. SISON, **G.R. No. 252809**

Petitioners,

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, SECRETARY OF JUSTICE MENARDO I. GUEVARRA, THE ANTI-TERRORISM COUNCIL, ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF FILEMON SANTOS, JR., PHILIPPINE NATIONAL POLICE CHIEF ARCHIE FRANCISCO F. GAMBOA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR., SECRETARY OF FOREIGN AFFAIRS TEODORO L. LOCSIN, JR., SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT EDUARDO M. AÑO, SECRETARY OF DEFENSE DELFIN N. LORENZANA, SECRETARY OF FINANCE CARLOS G. DOMINGUEZ III, SECRETARY OF INFORMATION & COMMUNICATIONS TECHNOLOGY GREGORIO HONASAN II, ANTI-MONEY LAUNDERING COUNCIL EXECUTIVE DIRECTOR MEL GEORGIE B. RACELA,

Respondents.

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CONCERNED LAWYERS FOR CIVIL LIBERTIES (CLCL) MEMBERS RENE A.V. SAGUISAG, PACIFICO A. AGABIN, JEJOMAR C. BINAY, EDRE U. OLALIA, ANNA MARIA D. ABAD, ANACLETO REI A. LACANILAO III, J. V. BAUTISTA, ROSE-LIZA EISMA-OSORIO, EMMANUEL R. JABLA, **G.R. No. 252903**

Petitioners,

- versus -

PRESIDENT RODRIGO ROA DUTERTE, EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, THE SENATE OF THE REPUBLIC OF THE PHILIPPINES REPRESENTED BY SENATE PRESIDENT VICENTE SOTTO III, AND THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY HOUSE SPEAKER ALAN PETER CAYETANO,

Respondents.

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BEVERLY LONGID, SAMIRA GUTOC, JOANNA K. CARIÑO, AMIRAH ALI LIDASAN, NORA P. SUKAL, ABDUL HAMIDULLAH ATAR, JUMORING BANDILAN GUAYNON, FRANCISCA TOLENTINO, WINDEL B. BOLINGET, DRIEZA A. LININDING, TERESA DE LA CRUZ, LORENA BAY-AO, CHAD ERROL BOOC, JEANY ROSE L. HAYAHAY, AND JUDITH PAMELA A. PASIMIO,

Petitioners,

G.R. No. 252904

- versus -

ANTI-TERRORISM COUNCIL, SENATE OF THE PHILIPPINES, HOUSE OF REPRESENTATIVES OF THE PHILIPPINES, SALVADOR C. MEDIALDEA, HERMOGENES C. ESPERON, JR., DELFIN N. LORENZANA, MENARDO I. GUEVARRA, EDUARDO M. AÑO, TEODORO L. LOCSIN, JR., CARLOS G. DOMINGUEZ III, GREGORIO B. HONASAN II, MEL GEORGIE B. RACELA,

Respondents.

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CENTER FOR INTERNATIONAL LAW (CENTERLAW), INC., REPRESENTED BY ITS PRESIDENT, JOEL R. BUTUYAN, WHO IS ALSO SUING IN HIS OWN BEHALF; AND MEMBERS ROGER R. RAYEL, GILBERT T. ANDRES, CRISPIN FRANCIS M. JANDUSAY, KIMBERLY ANNE M. LORENZO, GELIE ERIKA P. ESTEBAN, ELREEN JOY O. DE GUZMAN, NICOLENE S. ARCAINA, AND SHAWN DUSTIN B. COSCOLUELLA; G.R. No. 252905

FOUNDATION FOR MEDIA ALTERNATIVES, INC., REPRESENTED BY ITS EXECUTIVE DIRECTOR, LIZA GARCIA; DEMOCRACY.NET.PH, INC., REPRESENTED BY ITS TRUSTEE, CARLOS ADRIAN A. NAZARENO; VERA FILES, INC., REPRESENTED BY ITS PRESIDENT, ELLEN T. TORDESILLAS, WHO IS ALSO SUING IN HER OWN BEHALF, AND ITS JOURNALISTS MEEKO ANGELA R. CAMBA, ANTHONY L. CUAYCONG, REIVEN C. PASCASIO, MERINETTE A. RETONA, ROSALIA C. REVALDO, ELIJAH J. RODEROS, CELINE ISABELLE B. SAMSON, IVEL JOHN M. SANTOS, AND ESTRELITA C. VALDERAMA; AND

PROFESSORS OF THE LYCEUM OF THE PHILIPPINES UNIVERSITY COLLEGE OF LAW, NAMELY, DEAN MA. SOLEDAD DERIQUITO-MAWIS, PROFESSOR CARLO L. CRUZ, PROFESSOR MARILYN P. CACHO-DOMINGO, PROFESSOR SENEN AGUSTIN S. DE SANTOS,

PROFESSOR MARLA A. BARCENILLA, PROFESSOR ROMEL REGALADO BAGARES, PROFESSOR JUAN CARLOS T. CUNA, AND PROFESSOR JOHN PAUL ALZATE DELA PASION
Petitioners,

- versus -

SENATE OF THE PHILIPPINES; HOUSE OF REPRESENTATIVES OF THE PHILIPPINES; ANTI-TERRORISM COUNCIL; EXECUTIVE SECRETARY AS REPRESENTED BY SALVADOR C. MEDIALDEA; ANTI-MONEY LAUNDERING COUNCIL AS REPRESENTED BY EXECUTIVE DIRECTOR ATTY. MEL GEORGIE B. RACELA; DEPARTMENT OF JUSTICE AS REPRESENTED BY SECRETARY MENARDO I. GUEVARRA; DEPARTMENT OF BUDGET AND MANAGEMENT AS REPRESENTED BY SECRETARY WENDEL E. AVISADO; PHILIPPINE NATIONAL POLICE AS REPRESENTED BY GENERAL ARCHIE FRANCISCO F. GAMBOA; ARMED FORCES OF THE PHILIPPINES AS REPRESENTED BY LIEUTENANT GILBERT CAPAY; AND NATIONAL BUREAU OF INVESTIGATION AS REPRESENTED BY DIRECTOR ERIC BITO-ON DISTOR,
Respondents.

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MAIN T. MOHAMMAD, JIMMY P. BLA, NAZR S. DILANGALEN, PHILIPPINE ALLIANCE OF HUMAN RIGHTS ADVOCATES (PAHRA) (REPRESENTED BY ROSEMARIE R. TRAJANO), RUPERT AXEL M. CRUZ, MARIA **G.R. No. 252916**

PATRICIA CERVANTES-POCO, LEO ANGELO R. AÑONUEVO, TAKAHIRO KENJIE C. AMAN AND MUHAMMAD MUKTADIR A. ESTRELLA,

Petitioners,

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR., DEPARTMENT OF FOREIGN AFFAIRS SECRETARY TEODORO L. LOCSIN, JR., DEPARTMENT OF NATIONAL DEFENSE SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT SECRETARY EDUARDO M. AÑO, DEPARTMENT OF FINANCE SECRETARY CARLOS G. DOMINGUEZ III, DEPARTMENT OF JUSTICE SECRETARY MENARDO I. GUEVARRA, DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY GREGORIO B. HONASAN II, ANTI-MONEY LAUNDERING COUNCIL EXECUTIVE DIRECTOR MEL GEORGIE B. RACELA, AND ALL MEMBERS OF THE ANTI-TERRORISM COUNCIL, ARMED FORCES CHIEF OF STAFF GENERAL FILEMON SANTOS, JR., PHILIPPINE NATIONAL POLICE CHIEF ARCHIE FRANCISCO F. GAMBOA, AND THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE PHILIPPINES AS COMPONENT HOUSES OF THE CONGRESS OF THE PHILIPPINES,

Respondents.

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BRGY. MAGLAKING, SAN CARLOS CITY, PANGASINAN SANGGUNIANG KABATAAN (SK) CHAIRPERSON LEMUEL GIO FERNANDEZ CAYABYAB; BRGY. LAMABAN, CEBU CITY SK COUNCILOR JOAHANNA MONTA VELOSO; BRGY. TALAYAN, QUEZON CITY SK COUNCILOR NESTIE BRYAL COSIPAG VILLAVIRAY; BRGY. DOLORES, TAYTAY, RIZAL SK COUNCILOR FRANCHESCA IL CAMONIAS PERSIA; BRGY. MALHACAN, MEYCAUAYAN CITY, BULACAN SK COUNCILOR JELLY BEAN AIRAN SANGUIR SANTIAGO; BRGY. MAYBUNGA, PASIG CITY SK CHAIRPERSON PATRICIA MAE ANGELES TORRES; BRGY. SAN JOAQUIN, PASIG CITY SK CHAIRPERSON JAMES PAUL T. JOYNER; BRGY. ORANBO, PASIG CITY SK CHAIRPERSON PAULO D. TUMLOS; BRGY. KAPITOLYO, PASIG CITY SK CHAIRPERSON ALEXIS RAFAEL M. TORRES; BRGY. POBLACION ILAWOD, LAMBUNAO, ILOILO SK CHAIRPERSON LOVELYN Q. LOSARIA; SK FEDERATION OF THE MUNICIPALITY OF LEGANES, ILOILO PRESIDENT ILOILO NIEL JOSHUA J. RAYMUNDO; PASIG CITY LOCAL YOUTH DEVELOPMENT COUNCIL GOVERNANCE COMMITTEE CHAIRPERSON IRISH E. TAGLE; ALYANSA NG KABATAANG PASIGUEÑO REPRESENTATIVE MARTIN LOUISE S. TUNGOL; KILOS PASIG AND JOVITO R. SALONGA (JRS) POLICY STUDIES MEMBERS RAM ALAN CRUZ; ELEAZAR SALONGA; **G.R. No. 252921**

MARGARITA SALONGA SALANDANAN, ROBERT JOHN OCAMPO ROBAS; EDISON LATI; MARIA ANTHEA BALUTA, AND ADRIAN SOMIDO,

Petitioners,

- versus -

RODRIGO R. DUTERTE, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY AND CHAIRPERSON OF THE ANTI-TERRORISM COUNCIL; EDUARDO M. AÑO, SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT; DELFIN N. LORENZANA, SECRETARY OF NATIONAL DEFENSE, AND MENARDO I. GUEVARRA, SECRETARY OF JUSTICE,

Respondents.

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ASSOCIATION OF MAJOR RELIGIOUS SUPERIORS IN THE PHILIPPINES (REPRESENTED BY ITS CO-CHAIRPERSONS, FR. CIELITO R. ALMAZAN OFM AND RSR. MARILYN A. JAVA RC AND ITS CO-EXECUTIVE SECRETARIES, FR. ANGELITO A. CORTEZ, OFM AND SR. CRISVIE T. MONTECILLO, DSA), RAFAEL VICENTE R. CALINISAN, NOEL R. DEL PRADO AND ADRIAN N. VIVAS,

G.R. No. 252984

Petitioner,

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR., DEPARTMENT OF FOREIGN AFFAIRS SECRETARY TEODORO L. LOCSIN, JR., DEPARTMENT OF NATIONAL DEFENSE SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT SECRETARY EDUARDO M. AÑO, DEPARTMENT OF FINANCE SECRETARY CARLOS G. DOMINGUEZ III, DEPARTMENT OF JUSTICE SECRETARY MENARDO I. GUEVARRA, DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY GREGORIO B. HONASAN II, ANTI-MONEY LAUNDERING COUNCIL EXECUTIVE DIRECTOR MEL GEORGE B. RACELA, ALL MEMBERS OF THE ANTI-TERRORISM COUNCIL, ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL FILEMON SANTOS, JR. AND PHILIPPINE NATIONAL POLICE CHIEF GENERAL ARCHIE FRANCISCO F. GAMBOA,

Respondents.

x----------x

UNIVERSITY OF THE PHILIPPINES (UP)- SYSTEM FACULTY REGENT DR. RAMON GUILLERMO, EXECUTIVE BOARD MEMBER, EDUCATION INTERNATIONAL AND ALLIANCE OF CONCERNED TEACHERS (ACT)-PHILIPPINES SECRETARY-GENERAL RAYMOND BASILIO, DE LA SALLE UNIVERSITY (DLSU)-MANILA PROFESSOR AND ACT PRIVATE SCHOOLS PRESIDENT

G.R. No. 253018

DR. ROWELL MADULA, UNIVERSITY OF SANTO TOMAS (UST) FACULTY ASSOCIATION OF SENIOR HIGH SCHOOL PRESIDENT AND ACT-PRIVATE SCHOOLS SECRETARY-GENERAL JONATHAN V. GERONIMO, UP-DILIMAN DIRECTOR OF OFFICE OF COMMUNITY RELATIONS AND CONGRESS OF TEACHERS AND EDUCATORS FOR NATIONALISM AND DEMOCRACY-UP (CONTEND-UP) CHAIRPERSON DR. GERRY LANUZA, ACT-NCR UNION TREASURER ANNARIZA C. ALZATE, ACT-NCR UNION SECRETARY AND QUEZON CITY PUBLIC SCHOOL TEACHERS' ASSOCIATION (QCPSTA) VICE-PRESIDENT RUBY ANA BERNARDO, QCPSTA PRESIDENT AND ACT-NCR UNION REGIONAL COUNCIL MEMBER KRISTHEAN A. NAVALES, ACT-NCR UNION CALOOCAN CHAPTER PRESIDENT AND ACT-NCR UNION REGIONAL COUNCIL MEMBER GRACE EDORA, FORMER DIRECTOR AT KOMISYON SA WIKANG FILIPINO (KWF) DR. AURORA BATNAG, UP-DILIMAN VICE CHANCELLOR FOR COMMUNITY AFFAIRS DR. ALELI BAWAGAN, ALL UP ACADEMIC EMPLOYEES UNION NATIONAL PRESIDENT AND UP ASST. PROF. CARL MARC RAMOTA, UP-DILIMAN COLLEGE OF SCIENCE DEAN DR. GIOVANNI A. TAPANG, POLYTECHNIC UNIVERSITY OF THE PHILIPPINES (PUP)-MANILA INSTITUTE OF TECHNOLOGY DEAN PROF. RAMIR M. CRUZ, ATENEO DE MANILA UNIVERSITY (ADMU) FULL PROFESSOR AND TANGGOL

KASAYSAYAN LEAD CONVENER DR. FRANCIS GEALOGO, DLSU-MANILA PROFESSOR AND TANGGOL WIKA LEAD CONVENER DR. DAVID MICHAEL SAN JUAN, UP-DILIMAN ACTING DIRECTOR OF CAMPUS MAINTENANCE OFFICE MS. PERLITA C. RANA, ALL UP ACADEMIC EMPLOYEES UNION BOARD MEMBER DR. MELANIA FLORES, PUP-MANILA CENTER FOR HUMAN RIGHTS STUDIES CHIEF PROF. PAULO BENEDICTO C. VILLAR, UST SIMBAHAYAN COMMUNITY DEVELOPMENT OFFICE DIRECTOR DR. ARVIN EBALLO, UST SIMBAHAYAN ASSISTANT DIRECTOR PROF. FROILAN ALIPAO, PUP-MANILA DEPARTMENT OF COOPERATIVES AND SOCIAL DEVELOPMENT CHAIRPERSON DR. HILDA F. SAN GABRIEL, PUP-MANILA DEPARTMENT OF COMMUNICATION RESEARCH CHAIRPERSON KRUPSKAYA T. VALILA, PUP-MANILA DEPARTMENT OF SOCIOLOGY CHAIRPERSON LOUIE C. MONTEMAR, UP-DILIMAN DEPARTAMENTO NG FILIPINO AT PANITIKAN NG PILIPINAS CHAIRPERSON DR. VLADIMEIR GONZALES, DLSU-MANILA DEPARTAMENTO NG FILIPINO CHAIRPERSON DR. RHODERICK NUNCIO, DLSU-MANILA PROFESSORS DR. RAQUEL SISON-BUBAN, DR. ERNESTO V. CARANDANG II, DR. DOLORES TAYLAN, PROF. RAMILITO CORREA, DR. MARIA LUCILLE ROXAS, MON KARLO MANGARAN, DEBORRAH ANASTACIO, JECONIAH DREISBACH, BILLY DE GUZMAN, AND ROMAN GALLEGO, DON

BOSCO TECHNICAL INSTITUTE OF MAKATI TEACHER ERSELA CARILLO, PHILIPPINE NORMAL UNIVERSITY (PNU)-MANILA PROFESSOR DR. JOEL COSTA MALABANAN, UNIVERSITY OF MAKATI PROFESSOR KEVIN PAUL D. MARTIJA, PUP-MANILA PROFESSORS PATRICIA CAMILLE VILLA, EMY RUTH GIANAN, MARVIN LOBOS AND SONNY M. VERSOZA, COLEGIO DE SAN JUAN DE LETRAN PROFESSOR LYRRA I. MAGTALAS, ADMU PROFESSORS DR. GARY DEVILLES, DR. VINCENZ SERRANO AND MARK BENEDICT LIM, ADMU TEACHER ELLA MARA MELANIE DONAIRE, UP-DILIMAN PROFESSORS SHARON ANNE PANGILINAN, DR. ROMMEL RODRIGUEZ, AND DR. GRACE CONCEPCION, ASST. PROF. CLOD MARLAN KRISTER V. YAMBAO, ASST. PROF. LOUISE JHASHIL SONIDO, AND PROF. SOFIA G. GUILLERMO, UP-MANILA PROFESSOR REGINALD VALLEJOS, BULACAN STATE UNIVERSITY (BULSU) PROFESSORS MARY DEANE DC CAMUA, MARICRISTH T. MAGALING, JAIME V. VILLAFUERTE, ISRAEL DC SAGUINSIN, JENNIFER DELFIN, JENINA S. REYES, KEANU HAROLD G. REYES, BOIE L. LOPEZ, JEVINSON B. FERNANDEZ, JUSTINE G. MENESES, ANGELO O. SANTOS, REGGIE REY C. FAJARDO, EDUCATORS MARIEL S. QUIOGUE AND DANIM R. MAJERANO, UST-MANILA INSTRUCTORS/ PROFESSORS/ TEACHERS ADRIAN ROMERO, LEONARDO GUEVARRA, JR., JOHN CHRISTIAN VALEROSO,

AND DR. CHUCKBERRY PASCUAL,

Petitioners,

- versus -

H.E. RODRIGO R. DUTERTE, SALVADOR MEDIALDEA IN HIS CAPACITY AS EXECUTIVE SECRETARY, VICENTE SOTTO III, IN HIS CAPACITY AS THE SENATE PRESIDENT OF THE PHILIPPINES AND ALAN PETER CAYETANO IN HS CAPACITY AS SPEAKER OF THE HOUSE OF REPRESENTATIVES OF THE PHILIPPINES,

Respondents.

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PHILIPPINE BAR ASSOCIATION, **G.R. No. 253100**

Petitioner,

- versus -

THE EXECUTIVE SECRETARY, NATIONAL SECURITY ADVISER, SECRETARY OF FOREIGN AFFAIRS, SECRETARY OF NATIONAL DEFENSE, SECRETARY OF INTERIOR AND LOCAL GOVERNMENT, SECRETARY OF FINANCE, SECRETARY OF JUSTICE, SECRETARY OF INFORMATION AND COMMUNICATIONS TECHNOLOGY, ANTI-MONEY LAUNDERING COUNCIL EXECUTIVE DIRECTOR, AS MEMBERS OF THE ANTI-TERRORISM COUNCIL, ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF LT. GENERAL GILBERT GAPAY AND PHILIPPINE NATIONAL POLICE

CHIEF GENERAL CAMILO PANCRATIUS PASCUA CASCOLAN,
Respondents.
x----------x

BALAY REHABILITATION CENTER, INC. (BALAY), CHILDREN'S LEGAL RIGHTS AND DEVELOPMENT CENTER, INC. (CLRDC), COALITION AGAINST TRAFFICKING IN WOMEN-ASIA PACIFIC (CATW-AP), DR. BENITO MOLINO, MEDICAL ACTION GROUP (MAG), TASK FORCE DETAINEES OF THE PHILIPPINES (TFDP), GREGORIO V. BITUIN, JR., FAMILIES OF VICTIMS OF INVOLUNTARY DISAPPEARANCE (FIND),
Petitioners,

G.R. No. 253118

- versus -

RODRIGO R. DUTERTE, IN HIS CAPACITY AS PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, SALVADOR C. MEDIALDEA, IN HIS CAPACITY AS EXECUTIVE SECRETARY & CHAIRPERSON OF THE ANTI-TERRORISM COUNCIL (ATC),
Respondents.
x----------x

INTEGRATED BAR OF THE PHILIPPINES, IBP NATIONAL PRESIDENT DOMINGO EGON Q. CAYOSA AND IBP GOVERNORS BURT M. ESTRADA, DOROTHEO LORENZO B. AGUILA, BABY RUTH F. TORRE, ELEAZAR S. CALASAN, ERIC C. ALAJAR, GIL G. TAWAY IV, GINA H. MIRANO-JESENA, JAMES JAYSON J. JORVINA, AND CHRISTY JOY S.

G.R. No. 253124

SOLLESTA,

Petitioners,

- versus -

SENATE OF THE PHILIPPINES, THE HOUSE OF REPRESENTATIVES, THE ANTI-TERRORISM COUNCIL COMPOSED OF THE EXECUTIVE SECRETARY, THE NATIONAL SECURITY ADVISER, THE SECRETARY OF FOREIGN AFFAIRS, THE SECRETARY OF NATIONAL DEFENSE, THE SECRETARY OF THE INTERIOR OF THE LOCAL GOVERNMENT, THE SECRETARY OF FINANCE, THE SECRETARY OF JUSTICE, THE SECRETARY OF INFORMATION AND COMMUNICATIONS TECHNOLOGY AND THE EXECUTIVE DIRECTOR OF THE ANTI-MONEY LAUNDERING SECRETARIAT AS MEMBERS, THE NATIONAL INTELLIGENCE COORDINATING AGENCY, ARMED FORCES OF THE PHILIPPINES, REPRESENTED BY CHIEF OF STAFF LT. GEN. GILBERT GAPAY, AND PHILIPPINE NATIONAL POLICE, REPRESENTED BY LT. GEN. CAMILO CASCOLAN,

Respondents.

x----------x

COORDINATING COUNCIL FOR PEOPLE'S DEVELOPMENT AND GOVERNANCE, INC. (CPDG) REPRESENTED BY VICE PRESIDENT ROCHELLE M. PORRAS; KALIKASAN PEOPLE'S NETWORK FOR THE ENVIRONMENT (KPNE) REPRESENTED BY NATIONAL **G.R. No. 253242**

COORDINATOR JOSE LEON A. DULCE; CENTER FOR ENVIRONMENTAL CONCERNS-PHILIPPINES (CEC) REPRESENTED BY EXECUTIVE DIRECTOR LIA MAI T. ALONZO; CLIMATE CHANGE NETWORK FOR COMMUNITY-BASED INITIATIVES, INC. (CCNCI) REPRESENTED BY EXECUTIVE DIRECTOR KARLENMA M. MENDOZA; UNYON NG MANGGAGAWA SA AGRIKULTURA (UMA) REPRESENTED BY CHAIRPERSON ANTONIO L. FLORES; MAGSASAKA AT SIYENTIPIKO PARA SA PAGUNLAD NG AGRIKULTURA (MASIPAG) REPRESENTED BY NATIONAL COORDINATOR CRISTINO C. PANERIO; PHILIPPINE NETWORK OF FOOD SECURITY PROGRAMMES, INC. (PNFSP) REPRESENTED BY OFFICER-IN-CHARGE BEVERLY P. MANGO; CHILDREN'S REHABILITATION CENTER (CRC) REPRESENTED BY DEPUTY DIRECTOR NIKKI P. ASERIOS; IBON FOUNDATION, INC., REPRESENTED BY EXECUTIVE DIRECTOR JOSE ENRIQUE A. AFRICA; SAMAHAN AT UGNAYAN NG MGA KONSYUMERS PARA SA IKAUUNLAD NG BAYAN (SUKI) REPRESENTED BY CONVENOR ROLANDO D. CALIMLIM; AND EUFEMIA P. DORINGO,

Petitioners,

- versus -

RODRIGO R. DUTERTE, PRESIDENT AND CHIEF EXECUTIVE AND THE

COMMANDER-IN-CHIEF OF THE ARMED FORCES OF THE PHILIPPINES, SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY AND CHAIRPERSON OF THE ANTI-TERRORISM COUNCIL (ATC), VICENTE SOTTO III, IN HIS CAPACITY AS SENATE PRESIDENT OF THE PHILIPPINES AND ALAN PETER CAYETANO, IN HIS CAPACITY AS THE SPEAKER OF THE HOUSE OF THE REPRESENTATIVES OF THE PHILIPPINES,

Respondents.

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PHILIPPINE MISEREOR PARTNERSHIP, INC., REPRESENTED BY YOLANDA R. ESGUERRA; CAUCUS OF DEVELOPMENT NGO NETWORKS, INC., REPRESENTED BY SANDINO SOLIMAN; CATHOLIC BISHOPS CONFERENCE OF THE PHILIPPINES-CARITAS FILIPINAS FOUNDATION INC., REPRESENTED BY ANTONIO JR. E. LABIAO; AND DISASTER RISK REDUCTION NETWORK PHILIPPINES, REPRESENTED BY SUSANA M. BALINGIT,

Petitioners,

G.R. No. 253252

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, THE MEMBERS OF THE ANTI-TERRORISM COUNCIL: HERMOGENES C. ESPERON JR. IN HIS CAPACITY AS THE NATIONAL SECURITY ADVISER, TEODORO L. LOCSIN, JR. IN HIS CAPACITY AS THE SECRETARY OF FOREIGN AFFAIRS, DELFIN N.

LORENZANA IN HIS CAPACITY AS THE SECRETARY OF NATIONAL DEFENSE, EDUARDO M. AÑO IN HIS CAPACITY AS THE SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT, CARLOS G. DOMINGUEZ III IN HIS CAPACITY AS THE SECRETARY OF FINANCE, MENARDO I. GUEVARRA IN HIS CAPACITY AS THE SECRETARY OF JUSTICE, GREGORIO B. HONASAN II IN HIS CAPACITY AS THE SECRETARY OF INFORMATION AND COMMUNICATIONS TECHNOLOGY, AND MEL GEORGIE B. RACELA IN HIS CAPACITY AS THE EXECUTIVE DIRECTOR OF THE ANTI MONEY LAUNDERING COUNCIL,

Respondents.

x----------x

PAGKAKAISA NG KABABAIHAN PARA SA KALAYAAN (KAISA KA) ACTION AND SOLIDARITY FOR THE EMPOWERMENT OF WOMEN (ASSERT-WOMEN), DAP-AYAN TI BABBAI, KAISA KA YOUTH, PAGKAKAISA NG MGA SAMAHAN NG MANGINGISDA (PANGISDA-WOMEN), ORIANG, PAMBANSANG KONGRESO NG KABABAIHAN SA KANAYUNAN (PKKK), SARILAYA, WORKERS FOR PEOPLE'S LIBERATION – WOMEN, WOMEN'S LEGAL AND HUMAN RIGHTS BUREAU (WLB), THE YOUNG WOMEN INITIATIVES (YOUWIN), LUALHATI BAUTISTA, CAITLIN LOUISE M. CASEÑAS, NIZA CONCEPCION, PRECY D. DAGOOC, CORAZON V. FABROS, MYLEN F. GOYAL, PROF. MARIA LAYA T. LARA, CLAIRE DE LUNE LOPEZ, MARIA JOCELYN KARA MAGSANOC, AIDA SANTOS

G.R. No. 253254

MARANAN, DR. JUNICE LIRZA D. MERGAL, ANA MARIA NEMENZO, ATTY. CLARA RITA PADILLA, TERESITA ANG SEE, ROSEMARIE D. TRAJANO AND RHODA URIZAR VIAJAR,
Petitioners,

- versus -

ANTI-TERRORISM COUNCIL, SENATE OF THE PHILIPPINES, HOUSE OF REPRESENTATIVES OF THE PHILIPPINES, SALVADOR C. MEDIALDEA, HERMOGENES C. ESPERON, JR. TEODORO L. LOCSIN, JR., EDUARDO M. AÑO, CARLOS G. DOMINGUEZ III, MENARDO I. GUEVARRA, GREGORIO B. HONASAN II, AND MEL GEORGIE B. RACELA, AND ALL OTHER PERSONS ACTING UNDER THEIR CONTROL, DIRECTION, AND INSTRUCTIONS,
Respondents.

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ANAK MINDANAO (AMIN) PARTY-LIST REPRESENTATIVE AMIHILDA SANGCOPAN; DEPUTY SPEAKER MUJIV S. HATAMAN; ATTY'S. SATRINA MOHAMMAD, JAMAR M. KULAYAN ALMAN-NAJAR L. NAMLA AND BENSAUD O. DEGUSMAN; RAMEER TAWASIL; AND SHEIKH JAMSIRI T. JAINAL, **G.R. No. 254191**
Petitioners,

- versus -

THE EXECUTIVE SECRETARY, HON. SALVADOR MEDIALDEA; NATIONAL SECURITY ADVISER,

RET. GEN. HERMOGENES ESPERON JR.; SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS, HON. TEODORO L. LOCSIN JR.; SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE, GEN. DELFIN N. LORENZANA; SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RET. GEN. EDUARDO AÑO; SECRETARY OF THE DEPARTMENT OF FINANCE, HON. CARLOS DOMINGUEZ III; SECRETARY OF THE DEPARTMENT OF JUSTICE, HON. MENARDO I. GUEVARRA; SECRETARY OF THE DEPARTMENT OF INFORMATION AND COMMUNICATION TECHNOLOGY, HON. GREGORIO HONASAN; THE EXECUTIVE DIRECTOR OF THE ANTI-MONEY LAUNDERING COUNCIL (AMLC); THE NATIONAL INTELLIGENCE COORDINATING AGENCY (NICA); SENATE OF THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT VICENTE C. SOTTO III; THE HOUSE OF REPRESENTATIVES, REPRESENTED BY SPEAKER ALAN PETER S. CAYETANO, THEIR AGENTS AND ALL PERSONS ACTING IN THEIR BEHALF,

Respondents.

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HAROUN ALRASHID ALONTO LUCMAN, JR., JAYVEE S. APIAG, TYRONE A. VELEZ, LEONARDO VICENTE B. CORRALES, MARIO MAXIMO J. SOLIS AND SALUGPONGAN TA' TANU IGKANOGON COMMUNITY LEARNING CENTER, INC., REPRESENTED BY ITS

G.R. No. 253420

EXECUTIVE DIRECTOR MA. EUGENIA VICTORIA M. NOLASCO,

Petitioners,

- versus -

SALVADOR C. MEDIALDEA IN HIS CAPACITY AS EXECUTIVE SECRETARY, THE ANTI-TERRORISM COUNCIL THOUGH ITS CHAIRMAN, SALVADOR C. MEDIALDEA, THE SENATE OF THE PHILIPPINES THROUGH VICENTE SOTTO III, IN HIS CAPACITY AS SENATE PRESIDENT, THE HOUSE OF REPRESENTATIVES THROUGH ALAN PETER CAYETANO IN HIS CAPACITY AS HOUSE SPEAKER,

Respondent.

Present:

GESMUNDO, *C.J.*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO, and
MARQUEZ, *JJ.*

Promulgated:

December 7, 2021

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DECISION

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 due 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 19th 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 20th 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

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1 Ljupka Petrevska, *et al.*, Plurality of Definitions and Forms of Terrorism Through History, 6 Int'l J. Econ. & L., pp. 71, 72 (2016).

2 Mark Burgees, A Brief History of Terrorism, Center for Defense Information, <https://web.archive.org/web/20120511140810/http://www.cdi.org/friendlyversion/printversion.cfm?documentID=1502> accessed on July 2, 2021.

3 Id.

4 Ljupka Petrevska, *et al.*, Plurality of Definitions and Forms of Terrorism Through History, supra note 1 at 75.

5 Id.

6 Mark Burgees, A Brief History of Terrorism, Center for Defense Information, supra note 2.

7 Ljupka Petrevska, *et al.*, Plurality of Definitions and Forms of Terrorism Through History, supra note 1 at 76.

8 Id.

9 Id.

10 William Shugart II, An Analytical History of Terrorism, 1945 – 2000, Public Choice at 14, <https://www.jstor.org/stable/30026632> accessed on July 2, 2021.

11 Ljupka Petrevska, *et al.*, Plurality of Definitions and Forms of Terrorism Through History, supra note 1 at 76.

Nations to prevent and punish terrorism and to establish an international criminal court.[12]

Fast-forward to the 21st 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 modern world, terrorism is considered the most

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12 Mark Burgees, A Brief History of Terrorism, Center for Defense Information, supra note 2.

13 Ljupka Petrevska, *et al.*, Plurality of Definitions and Forms of Terrorism Through History, supra note 1 at 77.

14 September 11 Attacks, History <https://www.history.com/topics/21st-century/9-11-attack> Accessed on July 2, 2021; Peter Bergen, September 11 Attacks, Britannica <https://www.britannica.com/event/September-11-attacks/The-attacks> accessed on July 2, 2021.

15 Legal sources and the United Nations Counter-Terrorism Strategy (A Module Made by the UNODC), <https://www.unodc.org/e4j/en/terrorism/module-3/key-issues/legal-sources-and-un-ct-strategy.html> accessed on July 2, 2021.

16 The Synagogue Bombings in Istanbul: Al-Qaeda's New Front?, The Washington Institute for Near East Policy <https://www.washingtoninstitute.org/policy-analysis/synagogue-bombings-istanbul-al-qaedas-new-front> accessed on July 2, 2021; Kevin J. Strom and Joe Eyerman, Interagency Coordination: A Case Study of the 2005 London Train Bombings, National Justice of Institute <https://nij.ojp.gov/topics/articles/interagency-coordination-case-study-2005-london-train-bombings> accessed on July 2, 2021.

17 Artem Krechetnikov, Moscow Theatre Siege: Quastions Remain Unanswered, BBC, <https://www.bbc.com/news/world-europe-20067384> accessed on July 2, 2021; Shanthie D'Souza, Mumbai Terrorist Attacks of 2008, Britannica <https://www.britannica.com/event/Mumbai-terrorist-attacks-of-2008> accessed on July 2, 2021.

18 321 Civilians Killed in 2009 Massacre in Congo, NBC News <https://www.nbcnews.com/id/wbna36068643> accessed on July 2, 2021; IS Camp Speicher Massacre: Iraq Sentences 40 to Death, BBC News < https://www.bbc.com/news/world-middle-east-35607179> accessed on July 2, 2021.

19 Mark Burgees, A Brief History of Terrorism, Center for Defense Information, supra note 2.

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	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,

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20 Ljupka Petrevska, *et al.*, Plurality of Definitions and Forms of Terrorism Through History, supra note 1 at 72.

21 Global Terrorism Index 2020, Institute for Economics & Peace, p. 47 <https://visionofhumanity.org/wp-content/uploads/2020/11/GTI-2020-web-1.pdf> accessed on July 2, 2021.

22 Michelle Abad, FAST FACTS: Terrorism in the Philippines, Rappler <https://www.rappler.com/newsbreak/iq/things-to-know-about-terrorism-philippines> accessed on July 2, 2021.

23 The UN Refugee Agency, Marawi Crisis <https://www.unhcr.org/ph/marawi-crisis> accessed on July 2, 2021.

24 OSG's Memorandum (Vol. I), p. 53.

25 Michelle Abad, FAST FACTS: Terrorism in the Philippines, supra note 22.

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 10th worldwide, and remains to be the only country in Southeast Asia to be a part of the top 10.[30]

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26 Michael Hard, A Year After Marawi, What's Left of ISIS in the Philippines?, The Diplomat <https://thediplomat.com/2018/10/a-year-after-marawi-whats-left-of-isis-in-the-philippines/> accessed on July 2, 2021.

27 Global Terrorism Index 2020, Institute for Economics & Peace, supra note 21 at 28.

28 UNSC Resolution No. 1373 (2001).

29 Id. at 2.

30 Global Terrorism Index 2020, Institute for Economics & Peace, supra note 27.

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]

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31 JC Gotinga, 14 People Killed, 75 Wounded as Twin Blasts Hit Jolo Town Center, Rappler, <https://www.rappler.com/nation/deadly-twin-explosions-jolo-town-center> accessed on July 2, 2021.

32 Id.

33 Senate Oks bill repealing the Anti-Terrorism Law, February 26, 2020, <http://legacy.senate.gov.ph/press_release/2020/0226_prib5.asp#:~:text=Press%20Release%20%2D%20PRIB%3A%20Senate%20OKs,repealing%20the%20Anti%2DTerrorism%20Law&text=The%20Senate%2C%20voting%2019%2D2,Human%20Security%20Act%20of%202007> accessed on April 15, 2021; OSG's Memorandum (Vol. I), p. 73.

34 House Bill/Resolution History, HB No. 6875, <www.congress.gov.ph/legisdocs/?v=billresults#17>.

35 Krissy Aguilar, Duterte certifies as urgent anti-terror bill, June 1, 2020. <https://newsinfo.inquirer.net/1284472/duterte-certifies-as-urgent-anti-terror-bill> accessed on April 15, 2021.

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 ₱500,000.00 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

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36 House Bill/Resolution History, supra note 33.

37 HB No. 6875 (18th Congress) <https://www.congress.gov.ph/legisdocs/third_18/HBT6875.pdf> accessed on July 2, 2021.

38 Filane Mikee Cervantes, House Approves Anti-terror Bill on 3rd Reading <https://www.pna.gov.ph/articles/1104838> accessed on July 2, 2021.

39 DJ Yap, 20 Lawmakers Step Back from Terror Bill < https://newsinfo.inquirer.net/1287797/20-lawmakers-step-back-from-terror-bill> accessed on July 2, 2021.

40 Panfilo M. Lacson, Sponsorship Speech for the Anti-Terrorist Act (17th Congress), <legacy.senate.gov.ph/pressrelease/2019/1002lacson1.asp> accessed on May 8, 2020.

41 Senate Deliberations dated January 22, 2020.

42 Mutual Evaluation Report of 2019, <fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-Philippines.pdf> p. 2, accessed on July 2, 2021.

43 APG Members & Observers <http://www.apgml.org/members-and-observers/members/details.aspx?m=63a7bacb-daa2-47ee-9ac3-1e27a9eff73f.> accessed on July 2, 2021.

financing set by the Financial Action Task Force (FATF)."[44] Its members undergo a regular mutual evaluation mechanism 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]

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44 Mutual Evaluation Report, supra note 41 at 2.

45 Mutual Evaluation Report, supra note 41 at 20.

46 Id.

47 *Rollo* (G.R. No. 252904), p. 25; *rollo* (G.R. No. 252736), pp. 4-8, 29-48; *rollo* (G.R. No. 252759), pp. 64-67; *rollo* (G.R. No. 252767), pp. 39-67; *rollo* (G.R. No. 252580), pp. 27-42; *rollo* (G.R. No. 252585), pp. 21-29; *rollo* (G.R. No. 252624), pp. 18-22.

48 *Rollo* (G.R. No. 252736), p. 81.

49 *Rollo* (G.R. No. 252585), pp. 6-8.

50 *Rollo* (G.R. No. 252579), p. 14; *rollo* (G.R. No. 252585), pp. 6-8; *rollo* (G.R. No. 252741), pp. 11-12.

51 *Rollo* (G.R. No. 252802), pp. 5-6; *rollo* (G.R. No. 252733), pp. 7-13; *rollo* (G.R. No. 252768), pp. 7-9.

52 *Rollo* (G.R. No. 252759), p. 8.

53 *Rollo* (G.R. No. 252741), pp. 10-16; *rollo* (G.R. No. 252747), p. 9.

54 *Rollo* (G.R. No. 252578), pp. 6-7; *rollo* (G.R. No. 252904), pp. 5-7; *rollo* (G.R. No. 252802), pp. 5-6; *rollo* (G.R. No. 252905), pp. 8-11; *rollo* (G.R. No. 252736), pp. 10-12; *rollo* (G.R. No. 252759), p. 11; *rollo* (G.R. No. 252580), p. 8; *rollo* (G.R. No. 252613), p. 35; *rollo* (G.R. No. 252624), pp. 6-7, 11.

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.k.a 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]

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55 *Rollo* (G.R. No. 252904), pp. 92-147
56 *Rollo* (G.R. No. 252736), p. 16.
57 Id. at 16-17.
58 Id. at 17.
59 Id.

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]

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60 *Rollo* (G.R. No. 252767), pp. 19, 35.
61 Id. at 19, 31.
62 Id. at 19-20, 30-31.
63 Id. at 31-32.
64 Id. at 33.
65 Id. at 34.
66 Id. at 20-21, 31-32.

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]

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67 *Rollo* (G.R. No. 252768), pp. 11-27.

68 *Rollo* (G.R. No. 252736), p. 18; *rollo* (G.R. No. 252580), pp. 67, 71-72.

69 Hallare, Katrina (2020), DOJ releases IRR of anti-terror law, Inquirer.net <https://newsinfo.inquirer.net/1349078/doj-releases-irr-of-anti-terror-law> accessed on July 2, 2021;<https://www.doj.gov.ph/files/2020/news%20articles/IRR%20ATA%202020%20-%20CTC.PDF> accessed on July 2, 2021.

70 Anti-Terrorism Council Resolution No. 10 (2020) <https://www.officialgazette.gov.ph/downloads/2020/09sep/20200923-ATC-Resolution-10-RRD.pdf> accessed on July 2, 2021.

71 Id.

72 Anti-Terrorism Council Resolution No. 12 (2020) <https://www.officialgazette.gov.ph/downloads/2020/12dec/20201209-ATC-12-RRD.pdf> accessed on July 2, 2021.

73 Anti-Terrorism Council Resolution No. 13 (2020) <https://www.officialgazette.gov.ph/downloads/2020/12dec/20201209-ATC-13-RRD.pdf> accessed on July 2, 2021.

74 Id.

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 Committee"(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

1. Whether petitioners have legal standing to sue;

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

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

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75 Anti-Money Laundering Council Resolution No. TF-33 (2020) <http://www.amlc.gov.ph/images/PDFs/TF%20Reso%20No.%2033.pdf> accessed on July 2, 2021.

76 Anti-Money Laundering Council Resolution No. TF-34 (2020) <http://www.amlc.gov.ph/images/PDFs/TF%20Reso%20No.%2034.pdf> accessed on July 2, 2021.

77 Anti-Terrorism Council Resolution No. 16 (2021) <https://www.officialgazette.gov.ph/downloads/2021/02feb/20210224-ATC-RESO-16-RRD.pdf> accessed on July 2, 2021.

78 Id.

79 Anti-Terrorism Council Resolution No. 17 (2021) <https://www.officialgazette.gov.ph/downloads/2021/04apr/20210421-ATC-RESO-17-RRD.pdf> accessed on July 2, 2021.

80 Id.

81 Penned by Presiding Judge Melani Fay V. Tadili.

82 Id.

4. Whether facial challenge is proper; and

5. 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

1. 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.

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:

    a. 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

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

3. 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;

4. 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;

5. 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*;

6. Whether the following powers of the ATC are unconstitutional:

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

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

ii. 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

iii. 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.

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

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

d. 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;

e. 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 counterterrorism operations under Section 46(e) 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.

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 (RPC), 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, or the "Anti-Torture Act of 2009;"

10. 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;

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 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;

13. 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;

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

15. 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 due 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

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83 Arturo D. Brion, *The Supreme Court*, Manila Bulletin, 27 September 2017, <https://www.pressreader.com/philippines/manila-bulletin/20170927/281736974643720> accessed on August 27, 2021.

84 899 Phil. 492, 513-514 (2019).

> 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.
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> 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.

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85 Id., citing *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 137-138 (2016).

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 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

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86 732 Phil. 1 (2014).
87 Id. at 126.
88 OSG's Memorandum (Vol. I), p. 162.
89 712 Phil. 44 (2013).
90 OSG's Memorandum (Vol. I), p. 163.
91 103 Phil. 1051 (1957).
92 Id. at 1067.
93 338 Phil. 546 (1997).

> 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 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 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

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94 Id. at 574-575.

95 *See* RECORD of the 1986 Constitutional Commission, 439 (July 10, 1986), as cited in *Araullo v. Aquino III*, 752 Phil. 716 (2014).

(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

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96 *Philippine Constitution Association v. Enriquez*, 395 Phil. 546, 562 (1994), as cited in *Arceta v. Mangrobang*, 476 Phil. 106 (2004).

97 *Ocampo v. Enriquez*, 798 Phil. 227, 627 (2016), Separate Opinion of Justice Jose Mendoza.

98 G.R. No. 217910, September 3, 2019.

99 Id.

100 *Ocampo v. Enriquez*, supra note 96 at 288.

101 *Falcis III v. Civil Registrar General*, supra note 97.

102 *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, 815 Phil. 1067 (2017); *Belgica v. Executive Secretary Ochoa*, 721 Phil. 416 (2013); *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 589 Phil. 387 (2008); and *Didipio Earth Savers' Multi-Purpose Association, Inc. (DESAMA) v. Gozun*, 520 Phil. 457 (2006).

103 *Garcia v. Executive Secretary*, 602 Phil. 64 (2009)

104 *Falcis III v. Civil Registrar General*, supra note 97, citing *Serrano v. Amores*, 159 Phil. 69, 71 (1975).

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

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105 *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, 815 Phil. 1067 (2017), citing *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116 (2016).

106 *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 146 (2016).

107 *Ifurung v. Carpio-Morales*, 831 Phil. 135, 152-153 (2018).

108 *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, supra note 102, citing *Imbong v. Ochoa*, supra note 85.

109 Petitioners' Memorandum for Cluster I Issues, pp. 77-84.

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

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110 *Acosta v. Ochoa*, G.R. No. 211559, October 15, 2019.
111 *Ferrer, Jr. v. Bautista*, 762 Phil. 233, 249 (2015).
112 Id.
113 Id.
114 Petitioners' Memorandum for Cluster I Issues, pp. 50-54.
115 Id. at 43-49.

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]

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

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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.

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:

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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).

> 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 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.[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]

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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).

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*

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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.

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 person named "Phil Robertson"[140] with no proper reference therefor and similarly, no particular reasons why he 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 discussions of his co-petitioners for lack of time since he was 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)

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139 *Rollo* (UDK 16663), pp. 7, 8.
140 Id. at 8-9.
141 Id. at 12.

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

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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).

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**

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).

> **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 plaintiff's particular circumstances.**"[153] Put in another way, the plaintiff argues that "a statute

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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 Wm. & Mary Bill Rts. J. 657 (2010), p. 657, <https://scholarship.law.wm.edu/wmborj/vol18/iss3/4> accessed on August 14,

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

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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 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/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/stable/1342351> 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).

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.

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 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**

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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.

> **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 fact 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

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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).

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)

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173 Id., citing *Chicago v. Morales*, 527 U.S. 41 (1999).

174 Id., *Krafl 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); *Murdock 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).

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 preventing 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:
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> > "[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."

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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.

> 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**

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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.

> **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 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. 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 netizens 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 after *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.*:

> 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

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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).

> 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

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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.

> 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:

> 2. 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.
>
> 3. 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
>
> 5. Whether judicial authorization to conduct surveillance under Section 17 x x x forecloses the remedies under the rules on *amparo* and *habeas data*;

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195 Id. at 3-4.
196 Id.

6. 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

e. 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 counterterrorism operations under Section 46 (e) 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

9. 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

13. 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;

14. 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 fact 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.

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

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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.

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 state 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]

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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.

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 parts – 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

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209 Id. at 30.

210 Id. at 30-31.

> 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.

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[211] An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code.

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**

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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)*, 274 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); *Murdock 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*, 377 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 1158, Separate Opinion of Associate Justice Marvic Mario Victor F. Leonen.

> **free speech, political expression, press, assembly, and so forth**, the right to travel, and the right to vote.
>
> Because Strict Scrutiny involves statutes which either 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 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 flexing of the Government muscle. [225]

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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.

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.

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]

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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, 6th 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*, 377 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

explaining 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***."[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]

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236 Id. Emphasis supplied.

237 <https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/defining-terrorism.html> accessed on July 2, 2021.

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.

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238 Id.

> President, what is the difference between this and the crime of grave threats under the Revised Penal Code?
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> **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

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239 Senate Deliberations, TSN December 17, 2019, pp. 48-49.
240 552 Phil. 381, 396 (2007).

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 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,

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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.

> 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 either 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

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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.

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

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257 *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997).

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

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258 As found in Section 4(a).

259 See Black's Law Dictionary, 4th Ed., p. 221.

260 As found in Section 4(b).

261 See Black's Law Dictionary, 4th 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, GR 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*, 158-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.

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, flying 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

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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, <https://www.ijhcs.com/> and <https://lawshelf.com/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., 18th 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.

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 [See, 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

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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.

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

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281 *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 200-201 (2012).

Convention on International Terrorism[282] which defines terrorism under Article 2(1) 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**;

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282 <https://undocs.org/en/A/59/894> accessed on September 3, 2021.

283 European Union, Directive (EU) 2017/541, Title II, Art. 3, March 15, 2017.

> (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 falls within subsection (2),
> (b) the use or threat is designed to **influence the government or an international governmental**

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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 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 property 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.

> **organization or to intimidate the public 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;

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287 Id.

288 <https://sso.agc.gov.sg/Act/TSFA2002> accessed on September 4, 2021.

> (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 HSA 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

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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.

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 case 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)

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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 d. 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.

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

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296 R.A. No. 11479, Section 4.

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 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 sa 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 nating 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?

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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.

> **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

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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.

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

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303 *U.S. v. Bustos*, 13 Phil. 690 (1909).

304 *Diaz v. People*, 551 Phil. 192 (2007).

305 Black's Law Dictionary, Revised 4th Edition. (1968), p. 75, 1387.

> 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 palpable.[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] 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

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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

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-à-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:

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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)

> 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 test* 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,

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313 Id.

314 TSN Oral Arguments dated April 27, 2021, pp. 56-57;

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:

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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.

> 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 advocacy is directed to inciting or producing imminent lawless action and***

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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).

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.

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321 Id.

322 Other areas with constitutionally proscribable content are obscenity and libel. See *Chavez v. Gonzales*, supra note 133, stating 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.

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]

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325 Id.
326 14 Phil. 450, 451-452 (1909).
327 599 Phil. 717 (2009).
328 394 U.S. 705 (1969).
329 Id.
330 Id.

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,**

[331] G.R. No. 99327, May 27, 1993.

> **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.

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332 *Rollo* (G.R. No. 252580), p. 68.

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.

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:

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333 Id.

> 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 suffer 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

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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).

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

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338 *Dennis v. United States*, 71 S. Ct. 857 (1951).

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, this 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

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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.

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 naman po siguro puwedeng masaklaw nitong batas.
>
> **Senator Hontiveros:** No problem, Mr. President. Paano po natin 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 occurring***."[345] It also

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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

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**

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 D0c. 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 D0c. A/63/337, paragraph 62, <https://unispal.un.org/UNISPAL.NSF/0/549DE4D8937F3459852574DE0052C973> accessed on July 2, 2021.

> **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 for 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.

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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.

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

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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* <https://crsreports.congress.gov/product/pdf/R/R46829>, *accessed* 19 August 2021.

354 468 U.S. 609, 622 (1984).

> 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)**

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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).

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**

[357] Phil. Const., Article III, Section 8.

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.

[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, 9th 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, 3rd ed., p. 1143).

> **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 for 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]

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359 Senate Deliberations dated February 3, 2020, p. 31.

360 150-C Phil. 531 (1972).

361 Id. at 577-578.

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.

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.

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362 344 U.S. 183 (1952).

> **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.
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> 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**.

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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).

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.

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365 *Dennis v. United States*, 341 U.S. 494 (1951).

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. Self-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.

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366 *People v. Hon. Ferrer*, 180-C Phil. 551, 577 (1972), citing *Dennis v. United States*, 341 U.S. 494, 509 (1951).

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*

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367 Chief Justice Alexander G. Gesmundo's Concurring and Dissenting Opinion.

joining any organization, knowing that such organization has been ***organized for the 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 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". 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**

368 Petitioners' Memorandum, Cluster II, p. 40.

> **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.

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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.

> 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 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).

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371 Section 17. *Proscription of Terrorist Organizations, Association, or Group of Persons.* – Any organization, association, or group of persons organized for 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.

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

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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 property, 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.

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.

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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-104publ132/html/PLAW-104publ132.htm> accessed on September 4, 2021.

380 Enacted on October 28, 1977 (Pub. L. 95-223, 91 Stat. 1625, 50 U.S.C. 1701).

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 sarin 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

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381 <https://www.govinfo.gov/content/pkg/PLAW-104publ132/html/PLAW-104publ132.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.

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.

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

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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 <https://www.legislation.gov.uk/ukpga/2000/11/part/II> and <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2/proscribed-terrorist-groups-or-organisations-accessible-version> accessed 10 September 2021.

> (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.

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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.

> (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 infer 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

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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.

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.

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]

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399 <https://sso.agc.gov.sg/Act/TSFA2002> accessed on September 10, 202121.

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.

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 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 police 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, either 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

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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).

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.

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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.

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**;

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414 379 Phil. 165, 241-242 (2000).

415 *Bayan Muna v. Romulo*, 656 Phil. 246, 267-268 (2011).

x x x x

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 be 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

416 <https://www.un.org/ruleoflaw/files/3dda1f104.pdf> accessed on August 12, 2021.

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

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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/3dda1f104.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.

> 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**

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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 on17 February 1995.

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 State'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.

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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).

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) Refrain 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;
>
> (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 using 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 materiel 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

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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).

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

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.

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 name(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 releasable, 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).

> Following consideration by the 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 date 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.*

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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

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

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432 292-A Phil. 669, 679-771 (1993).

433 *See Southern Hemisphere v. Anti-Terrorism Council*, supra note 119 at 488.

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 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**:
>
> 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.

434 Chief Justice Alexander G. Gesmundo's Concurring and Dissenting Opinion.

> 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 designee 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 identify 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

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435 733 Phil. 603, 610 (2014), citing *People of the Philippines v. Castillo*, 607 Phil. 754 (2009).

> 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

436 OSG's Memorandum, p. 301.

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.
>
> **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:

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437 TSN of the Oral Arguments dated April 27, 2021, pp. 85-86.

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 (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**
>
> 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 Bank 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

438 *Republic v. Eugenio*, G.R. No. 174629, February 14, 2008.
439 Id.
440 Id.

> 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 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.

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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.

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]

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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

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

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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).

> 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 due 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

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451 Petitioners' Memorandum, Cluster II, p. 46.

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 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:

1. 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.

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452 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 119 at 481.

453 CONSTITUTION, Article VIII, Section 5(5).

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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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**

454 Rule 7.9, Implementing Rules and Regulations of the R.A. No. 11479.
455 802 Phil. 314, 375 (2016).

> **(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 (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.

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:

a. the time, date, and manner of arrest;
b. the exact location of the detained suspect; and

> c. 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

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456 Petitioners' Memorandum for Cluster II Issues, p. 49.
457 Id. at 50.
458 Id. at 51.
459 Id.
460 Id. at 50-51.
461 Id. at 53-54.
462 Id. at 56-57.

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

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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.

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.**

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467 *Estrada v. Sandiganbayan*, supra note 158.

468 G.R. No. 167011, April 30, 2008, citing *Romualdez v. Sandiganbayan*, supra note 183 at 285.

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]

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

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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.

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

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471 Records of the Constitutional Commission No. 109, October 15, 1986.
472 Records of the Constitutional Commission No. 032, July 17, 1986.

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

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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).

> 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.[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:
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> (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

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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.

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.
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> 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

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483 *People v. Villareal*, 706 Philo. 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).

> Criminal Procedure is based on his personal knowledge of facts or circumstances that the person 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:

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491 Supra note 430.

> 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:

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492 Id.

> 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. (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 be read into every law to harmonize them within the bounds of proper construction.

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493 *San Miguel Corp. v. Avelino*, 178 Phil. 47, 53 (1979).

494 *Mecano v. Commission on Audit*, 290-A Phil. 272, 283 (1992).

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:**
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> 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 ATC would come 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**

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495 TSN of the Oral Arguments dated April 27, 2021, p. 94.

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

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496 746 Phil. 301, 326 (2014).

497 Id.

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 IRR, 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." He 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

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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.

rule of law that all acts *in pari 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

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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.

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 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;
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> 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;
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> 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;

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503 384 U.S. 436 (1966).

504 362 Phil. 86 (1991).

> 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;
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> 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;
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> 9. That the person arrested must be informed that he may indicate in any manner at any time or stage of 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;
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> 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.

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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.

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

509 Id. at 147.
510 Id.

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

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511 Senate Deliberations, TSN dated January 22, 2020, p. 30.

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,

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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).

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 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

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517 Petitioners' Memorandum, Cluster II, p. 53.

518 *Zadvydas v. Davis*, 533 U.S. 678 (2001).

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***

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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 House 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.

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

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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, 628-6245, at 628.

526 Id. at 401.

"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.

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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/DetentionCounteringTerrorism.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.1/Rev.4 (2007), para. 13.

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 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 ₱500,000.00 of damages for each

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530 Id. at 1-3.

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

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531 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: 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.

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;

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532 Petitioners' Memorandum of Arguments for Cluster IV Issues, p. 25.
533 Id. at 26.
534 Id.
535 Id. at 24.

> (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 for 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 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.

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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.

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

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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.

> 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 lack 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

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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.

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 House 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]

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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.

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

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552 675 Phil. 316 (2011).

553 Id. at 352

554 Krissy Aguilar, Duterte certifies as urgent anti-terror bill, supra note 35.

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 (18th 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

555 Senate Deliberations, TSN dated January 22, 2020, p. 28.

> 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 House 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.

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556 OSG's Memorandum (Vol. I), p. 155.
557 506 Phil. 1, 89 (2005).
558 Id.

Resumé 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:

1. Whether to grant due course to 35 out of 37 petitions;
2. Whether a facial challenge or an as applied challenge should be used in analyzing the ATA;
3. Whether the "Not Intended Clause" in the *proviso* of Section 4 is constitutional;
4. Whether the phrase "organized for the purpose of engaging in terrorism" in the third paragraph of Section 10 is constitutional;
5. Whether the first mode of designation under Section 25 is constitutional;
6. Whether the second mode of designation under Section 25 is constitutional;
7. Whether the third mode of designation under Section 25 is constitutional;
8. Whether the provisions on proscription in Sections 26 to 28 are constitutional; and
9. Whether Section 29 on arrest and detention without judicial warrant is constitutional.

The votes of the members of the Court are summarized as follows:

1. 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 Gesmundo, Justices Inting, Zalameda, M. Lopez, Gaerlan, J. Lopez, and Marquez.

2. 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.

3. 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.**

4. 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.

5. Fourteen (14) members of the Court, namely, Chief Justice Gesmundo, Senior Associate Justice Perlas-Bernabe, Justices Caguioa, Hernando, Carandang, Lazaro-Javier, Inting, 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.

6. 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.

7. 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.

8. The Court unanimously voted that Sections 26, 27, and 28 of the ATA on judicial proscription are **not unconstitutional.**

9. 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 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

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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, *Neiman 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.

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.

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560 Id. at 26.

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.

ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:

Please see separate concurring and dissenting opinion

ALEXANDER G. GESMUNDO
Chief Justice

See Concurring & Dissenting Opinion — I join the concurring and dissenting opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

See Separate Concurring & Dissenting opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

See Separate Opinion

AMY C. LAZARO-JAVIER
Associate Justice

See separate opinion

HENRI JEAN PAUL B. INTING
Associate Justice
see concurring and dissenting opinion

See Separate Opinion

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

See Separate Concurring and Dissenting Opinion

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

See Separate Concurring & Dissenting Opinion !

JHOSEP Y. LOPEZ
Associate Justice

See Separate Concurring and Dissenting opinion

JAPAR B. DIMAAMPAO
Associate Justice

I join the Concurring & Dissenting Opinion of CJ Gesmundo

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice