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G.R. No. 252578 – ATTY. HOWARD M. CALLEJA, *et al.*, *Petitioners v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** *et al.*, *Respondents.*

G.R. No. 252579 – REP. EDCEL C. LAGMAN, *Petitioner v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** *et al.*, *Respondents.*

G.R. No. 252580 – MELENCIO S. STA. MARIA, *et al.*, *Petitioners v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** *et al.*, *Respondents.*

G.R. No. 252585 – BAYAN MUNA PARTY-LIST REPRESENTATIVES CARLOS ISAGANI T. ZARATE, *et al.*, *Petitioners v.* **PRESIDENT RODRIGO DUTERTE,** *et al.*, *Respondents.*

G.R. No. 252613 – RUDOLF PHILIP B. JURADO, *Petitioner v.* **THE ANTI-TERRORISM COUNCIL,** *et al.*, *Respondents.*

G.R. No. 252623 -- CENTER FOR TRADE UNION AND HUMAN RIGHTS, *et al.*, *Petitioners v.* **HON. RODRIGO R. DUTERTE,** *et al.*, *Respondents.*

G.R. No. 252624 – CHRISTIAN S. MONSOD, *et al.*, *Petitioners v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** *et al.*, *Respondents.*

G.R. No. 252646 – SANLAKAS, *Petitioner v.* **RODRIGO R. DUTERTE,** *et al.*, *Respondents.*

G.R. No. 252702 – FEDERATION OF FREE WORKERS, *et al.*, *Petitioners v.* **OFFICE OF THE PRESIDENT,** *et al.*, *Respondents.*

G.R. No. 252726 – JOSE J. FERRER, JR., *Petitioner v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** *et al.*, *Respondents.*

G.R. No. 252733 -- BAGONG ALYANSANG MAKABAYAN, *et al.*, *Petitioners v.* **RODRIGO R. DUTERTE,** *et al.*, *Respondents.*

G.R. No. 252736 – ANTONIO T. CARPIO, *et al.*, *Petitioners v.* **ANTI-TERRORISM COUNCIL,** *et al.*, *Respondents.*

G.R. No. 252741 – MARIA CERES P. DOYO, *et al.*, *Petitioners v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*,** *Respondents.*

G.R. No. 252747 – NATIONAL UNION OF JOURNALISTS OF THE PHILIPPINES, *et al.*, *Petitioners v.* **ANTI-TERRORISM COUNCIL, *et al.*,** *Respondents.*

G.R. No. 252755 – KABATAANG TAGAPAGTANGGOL NG KARAPATAN, *et al.*, *Petitioners v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*,** *Respondents.*

G.R. No. 252759 – ALGAMAR A. LATIPH, *et al.*, *Petitioners v.* **SENATE, *et al.*,** *Respondents.*

G.R. No. 252765 – THE ALTERNATIVE LAW GROUPS, INC., *et al.*, *Petitioners v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*,** *Respondents.*

G.R. No. 252767 – BISHOP BRODERICK S. PABILLO, *et al.*, *Petitioners v.* **PRESIDENT RODRIGO R. DUTERTE, *et al.*,** *Respondents.*

G.R. No. 252768 – GENERAL ASSEMBLY BINDING WOMEN FOR REFORMS INTEGRITY, EQUALITY, LEADERSHIP AND ACTION, INC., *et al.*, *Petitioners v.* **PRESIDENT RODRIGO ROA DUTERTE, *et al.*,** *Respondents.*

G.R. No. 252802 – HENRY ABENDAN OF CENTER FOR YOUTH PARTICIPATION AND DEVELOPMENT INITIATIVES, *et al.*, *Petitioners v.* **HON. SALVADOR C. MEDIALDEA, *et al.*,** *Respondents.*

G.R. No. 252809 – CONCERNED ONLINE CITIZENS, *et al.*, *Petitioners v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*,** *Respondents.*

G.R. No. 252903 – CONCERNED LAWYERS FOR CIVIL LIBERTIES, *et al.*, *Petitioners v.* **PRESIDENT RODRIGO DUTERTE, *et al.*,** *Respondents.*

G.R. No. 252904 – BEVERLY LONGID, *et al.*, *Petitioners v.* **ANTI-**

TERRORISM COUNCIL, ***et al.,*** *Respondents.*

G.R. No. 252905 – CENTER FOR INTERNATIONAL LAW, INC., ***et al.,*** *Petitioners v.* **SENATE OF THE PHILIPPINES,** ***et al.,*** *Respondents.*

G.R. No. 252916 – MAIN T. MOHAMMAD, ***et al.,*** *Petitioners v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** ***et al.,*** *Respondents.*

G.R. No. 252921 – BRGY. MAGLAKING, SAN CARLOS CITY, PANGASINAN SANGGUNIANG KABATAAN CHAIRPERSON LEMUEL GIO FERNANDEZ CAYABYAB, ***et al.,*** *Petitioners v.* **RODRIGO R. DUTERTE,** ***et al.,*** *Respondents.*

G.R. No. 252984 – ASSOCIATION OF MAJOR RELIGIOUS SUPERIORS IN THE PHILIPPINES, ***et al.,*** *Petitioners v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** ***et al.,*** *Respondents.*

G.R. No. 253018 – UNIVERSITY OF THE PHILIPPINES SYSTEM FACULTY REGENT DR. RAMON GUILLERMO, ***et al.,*** *Petitioners v.* **H.E. RODRIGO R. DUTERTE,** ***et al.,*** *Respondents.*

G.R. No. 253100 – PHILIPPINE BAR ASSOCIATION, INC., *Petitioner v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** ***et al.,*** *Respondents.*

G.R. No. 253118 – BALAY REHABILITATION CENTER, INC., ***et al.,*** *Petitioners v.* **RODRIGO R. DUTERTE,** ***et al.,*** *Respondents.*

G.R. No. 253124 – INTEGRATED BAR OF THE PHILIPPINES, ***et al*** *, Petitioners v.* **SENATE OF THE PHILIPPINES,** ***et al.,*** *Respondents.*

G.R. No. 253242 – COORDINATING COUNCIL FOR PEOPLE'S DEVELOPMENT AND GOVERNANCE, INC., ***et al.,*** *Petitioners v.* **RODRIGO R. DUTERTE,** ***et al.,*** *Respondents.*

G.R. No. 253252 – PHILIPPINE MISEREOR PARTNERSHIP, INC., ***et al.,*** *Petitioners v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** ***et al.,*** *Respondents.*

G.R. No. 253254 – PAGKAKAISA NG MGA KABABAIHAN PARA SA KALAYAAN, *et al.*, *Petitioners* *v.* ANTI-TERRORISM COUNCIL, *et al.*, *Respondents.*

G.R. No. 253420 – HAROUN ALRASHID ALONTO LUCMAN, JR., *et al.*, *Petitioners v.* EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*, *Respondents.*

G.R. No. 254191 [Formerly UDK 16714] – ANAK MINDANAO PARTY-LIST REPRESENTATIVE AMIHILDA SANGCOPAN, *et al.*, *Petitioners* *v.* EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*, *Respondents.*

UDK 16663 – LAWRENCE A. YERBO, *Petitioner* *v.* HONORABLE SENATE PRESIDENT, *et al.*, *Respondents.*

Promulgated:

December 7, 2021

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SEPARATE OPINION

INTING, *J.*:

In a country dubbed as a haven for terrorists,[1] there is a constant threat on human security, the nation's economy and social order. Although steps have been taken to mitigate the effects of terrorism in this country, the peril seemingly evolves and expands exponentially pushing nation countries to adopt more draconian measures to address this borderless crime against humanity. It is a struggle which is not limited to the local landscape. Relentlessly, unified efforts are gearing towards a global framework; after all, we have a common humanity to protect, with the attainment of international peace and security as our shared goal.

The *ponencia* highlighted the peculiar nature of terrorism and the global approach to combat it. Indeed, to address the massive and prolonged atrocities caused by terrorist acts, counterterrorism measures, including the enactment of stringent anti-terror laws, are undertaken

[1] See *The Cost of Terrorism: Bombings by the Abu Sayyaf Group in the Philippines* by Amparo Pamela Fabe <https://www.jstor.org/stable/43486362> (last accessed on December 14, 2021).

worldwide. It does not mean, however, that by adopting these measures, basic rights are to be disregarded. Definitely, laws must, at all times and at all cost, be in consonance with the Constitution, especially the basic rights to life and liberty enshrined under the very first Section of our Bill of Rights.

The Court is once again faced with the colossal task of preventing violations of the Constitution and, in the process, must observe the balance between the nation's need for order and the citizen's exercise of individual liberties.

It bears stressing that while I concur in the results of the Court's Decision, I agree that only four *out of the 37* petitions should be given due course. I vote that only G.R. Nos. 252585, 252767, 252768 and 253242 must be given due course considering that they are the only ones which present a justiciable controversy in relation to legal standing and actual or direct injury.

As the court of last resort, petitions filed before the Supreme Court, especially those filed directly and in the first instance, must conform *strictly* with the requisites of judicial review before they could be given due course.

The Court's power of judicial review which is inherent in all courts is vested no less by the Constitution under Section 1,[2] Article VIII thereof. The exercise of the power of judicial review has the following requisites: (1) there must be an actual case or justiciable controversy before this Court; (2) the question before this Court must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *lis mota* of the case.[3]

With respect to the first requisite, an actual case or controversy is "one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a

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[2] Section 1, Article VIII of the Constitution provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[3] *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019, citing *Araullo v. President Aquino III*, 737 Phil. 457, 532 (2014); see also *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003); *Garcia v. Executive Secretary*, 281 Phil. 572 (1991), citing *Dumlao v. Commission on Elections*, 184 Phil. 369 (1980), *Corales v. Republic*, 716 Phil. 432 (2013).

hypothetical or abstract difference or dispute.'"[4] This requirement must be coupled with "ripeness," meaning the act being challenged has had a direct adverse effect on the individual challenging it.[5] A petitioner must show that he/she has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[6]

In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other, concerning a real and not a mere theoretical question or issue.[7] An actual and substantial controversy admitting of a specific relief through a decree conclusive in nature must exist, in contrast to an opinion advising what the law would be upon a hypothetical state of facts.[8] "*Courts, thus, cannot decide on theoretical circumstances. They are neither advisory bodies, nor are they tasked with taking measures to prevent imagined possibilities of abuse.*"[9]

Ripeness as an aspect of an actual case or controversy correlates to the second requisite of judicial review which is legal standing. As defined, a petitioner must allege a personal stake in the outcome of the controversy in that the interest of a person assailing the constitutionality of a statute must be direct and personal.[10] A party must be able to show, not only that the law or any government act is invalid, but also that he/she sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he/she suffers thereby in some indefinite way.[11] It must appear that the person complaining has been or is about to be denied some right or privilege to which he/she is lawfully entitled or that he/she is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[12]

Only four out of the 37 petitions have presented a justiciable controversy or a personal stake in the outcome of the case.

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4 *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*, 721 Phil. 416, 519 (2013), citing *Province of North Cotabato v. Gov't. of the Rep. of the Phils. Peace Panel on Ancestral Domain (GRP)*, 589 Phil. 387, 481 (2008).

5 *Id.*

6 *Sps. Imbong v. Hon. Ochoa, Jr.*, 732 Phil. 1, 127 (2014).

7 *Information Technology Foundation of the Phils. v. COMELEC*, 499 Phil. 281, 305 (2005), citing *Vide: De Lumen v. Republic*, 50 OG No. 2, February 14, 1952, p. 578.

8 *Id.*, citing *Aetna Life Insurance Co. v. Hayworth*, 300 U.S. 227 (1937).

9 *Kilusang Mayo Uno v. Aquino III*, *supra* note 3.

10 *Araullo v. President Aquino III*, 737 Phil. 457, 535 (2014), citing *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 677-678 (2010), further citing *Agan, Jr. v. Phil. International Air Terminals Co., Inc.*, 450 Phil. 744, 802 (2003).

11 *Id.*

12 *Id.*

Veritably, I agree with Chief Justice Alexander G. Gesmundo that the Court may exercise the power of judicial review only after it has satisfied itself that a party with legal standing raised an actual controversy in a timely manner and after recourse to the hierarchy of courts, and that the resolution of the case pivots on a constitutional question.

To be sure, the petitioners in the four petitions (G.R. Nos. 252585, 252767, 252768 and 253242) are either identified or tagged as terrorists (Bayan Muna Party-List Representatives Carlos Isagani Zarate, Bishop Broderick S. Pabillo, *et al.*, General Assembly Binding Women for Reforms, Integrity, Equality, Leadership and Action (GABRIELA), Inc., *et al.*, and Coordinating Council for People's Development and Governance, Inc., Ferdinand Gaite, and Eufemia Cullamat, *et al.*), or cited as members of terrorist groups and are lined up for arrest and prosecution, or are individuals whose bank accounts are under investigation pursuant to The Anti-Terrorism Act of 2020[13] (ATA) (Bishop Broderick S. Pabillo, *et al.*).[14] Considering that they face actual, direct and real effects of the enforcement of the ATA, their cases must be given due course, as opposed to those petitions which only invoke the possibility of infringement of rights should the ATA be enforced against them.

The Court recognizes the exceptions to legal standing as carved out by jurisprudence, one of which is the doctrine of transcendental importance. However, as earlier established, there are already four petitions which presented a justiciable controversy in compliance with the requisites of judicial review. Thus, the transcendental importance doctrine, being the exception, has no application in the case and should not be applied liberally. Otherwise, the Court will be swamped with petitions filed by parties with no actual or direct injury with the effect of reducing court pronouncements to mere advisory opinions with no binding force. Ultimately, the resolution of the four petitions which presented concrete actual settings and factual matters would lead to a more intelligent appreciation by the Court of the issue at hand.

The case of *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*[15] (*Southern Hemisphere*), explained this aspect of justiciability in this wise:

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[13] Republic Act No. (RA) 11479, approved on July 3, 2020.
[14] See Concurring and Dissenting Opinion of Chief Justice Alexander G. Gesmundo, pp. 77-79.
[15] 646 Phil. 452 (2010).

> Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.
>
> The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. . . . Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.[16] (Emphasis, underscoring and citations omitted.)

Another exception to the legal standing rule is the facial challenge as espoused by all the petitioners herein.[17] However, a facial challenge does not apply to penal statutes.[18] The questioned law herein, ATA, is by no mistake, a penal law.

In *Southern Hemisphere*, the Court, quoting the Concurring Opinion of Associate Justice Vicente V. Mendoza in *Estrada v. Sandiganbayan*,[19] elucidated on the parameters of a facial challenge, thus:

> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

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[16] *Id.* at 482-483.

[17] See Dissenting Opinion of retired Senior Associate Justice Antonio T. Carpio in *Romualdez v. COMELEC*, 576 Phil. 357 (2008). It states in part:

> "The U.S. Supreme Court has created a notable exception to the prohibition against third-party standing. Under the exception, a petitioner may mount a 'facial' challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute. To mount a "facial" challenge, a petitioner has only to show violation under the assailed statute of the rights of third parties not before the court. This exception allowing "facial" challenges, however, applies only to statutes involving free speech. The ground allowed for a "facial" challenge is overbreadth or vagueness of the statute."

[18] See *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, *supra* note 14.

[19] 421 Phil. 290 (2001).

> This rationale does not apply to penal statutes. Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.
>
> **The overbreadth and vagueness doctrines then have special application only to free speech cases.** They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment." In *Broadrick v. Oklahoma,* the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it has been held that "a facial challenge to a legislative act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."
>
> In sum, **the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or**, as they are called in American law, **First Amendment cases.** They cannot be made to do service **when what is involved** is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, **while statutes found vague** as a matter of due process typically **are invalidated [only] 'as applied' to a particular defendant**." x x x.[20] (Emphasis and underscoring in the original.)

To distinguish, a facial challenge is allowed upon a vague or overbroad statute where there is a possibility of chilling effect on protected speech. Under the facial challenge, the Court may invalidate a

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[20] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra* note 14 at 485-487.

statute and declare it unconstitutional in its entirety on the ground that they might be applied to persons who are not before the Court but whose activities are constitutionally protected.[21]

As with penal laws like the ATA, the Court held in *Disini, Jr. v. The Secretary of Justice*[22] that "[w]hen a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable."[23] The Court, adopted the view of then Associate Justice Antonio T. Carpio in his dissent in *Romualdez v. Commission on Elections*[24] that "we must view these statements of the Court on the inapplicability of the overbreadth and vagueness doctrines to penal statutes as appropriate only insofar as these doctrines are used to mount 'facial' challenges to penal statues not involving free speech."[25]

On the other hand, an "as applied" challenge is applicable where the subject statute must be considered in the light of specific acts alleged to be committed by or against the petitioners.[26] Under the "as applied" challenge, a person can assail the constitutionality of a statute provided that one alleges an actual breach of his/her rights, not a violation of the rights of persons who are not before the court.[27]

Thus, petitioners cannot facially challenge the ATA to render it unconstitutional in its entirety because it is a penal law governing conduct and not speech. Emphasis must also be placed on the first requisite of judicial review on actual case or controversy to petitions involving penal laws.

> *[A]n "on-its-face" invalidation of criminal statutes would result in a mass acquittal of parties whose cases may not have even reached the courts. Such invalidation would constitute a departure from the usual requirement of "actual case and controversy" and permit decisions to be made in a sterile abstract context having no factual concreteness.* x x x[28]

Nevertheless, in analyzing the provisions of the ATA, I find that the facial challenge applies *but* only insofar as freedom of expression

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[21] See Concurring Opinion of Justice Vicente V. Mendoza in *Estrada v. Sandiganbayan*, *supra* note 19 at 430.

[22] 733 Phil. 717 (2014).

[23] *Id.* at 121.

[24] 576 Phil. 357 (2008).

[25] *Id.* at 409. As quoted in *Disini, Jr. v The Secretary of Justice*, *supra* note 22 at 121.

[26] See Concurring Opinion of Associate Justice Vicente V. Mendoza in *Estrada v. Sandiganbayan*, *supra* note 20 at 433.

[27] *Sps. Imbong v. Hon. Ochoa, Jr.*, *supra* note 6.

[28] *Romualdez v. Hon. Sandiganbayan*, 479 Phil. 265, 283 (2004).

and its cognate rights are involved. Specifically, I agree with Associate Justice Rodil V. Zalameda that facial analysis shall apply "only [to] those portions of the ATA which expressly implicated speech, *e.g.*, the Not Intended Clause."[29]

For provisions affecting the exercise of the freedom of expression and its cognate rights, I join Associate Justice Rodil V. Zalameda in his conclusion:

> x x x "*I find the delimited facial analysis framework acceptable as this allowed for a review of the law in light of the serious issues raised against its provisions, especially in relation to speech, but one that was limited enough to be respectful of long established principles, such as locus standi, actual case and controversy, and the hierarchy of courts, which are themselves rooted in considerations of justice and due process.*"[30]

In this regard, I further concur with the *ponencia* that the Not Intended Clause in Section 4 is unconstitutional applying the facial challenge.

For clarity, the Not Intended Clause under Section 4 of the ATA pertains to this particular portion of the proviso: "*which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.*" This portion is immediately preceded by the phrase: "*Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights.*"

The proviso: "*Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety,*" involves freedom of speech and expression and its cognate rights of freedom of assembly and association, which are covered by a facial challenge. Notably, in mentioning the phrase "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercise of civil and political rights," the framers of the law intended to limit the definition of terrorism to exclude any legitimate exercise of basic rights. For which reason, the portion of the proviso which contains "which are

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[29] See Separate Opinion of Associate Justice Rodil V. Zalameda, p. 7.

[30] *Id.*

not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety" is a mere surplusage which would only create confusion as it tends to criminalize legitimate acts under the ATA.

I concur with the *ponencia* that the Not Intended Clause is ambiguous and void for vagueness as there are no sufficient standards that render it capable of judicial construction. I agree that "[w]ithout any sufficient parameters, people are not guided whether or not their impassioned and zealous propositions or the intense manner of government criticism or disapproval are intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."[31]

Further, insofar as Section 4 of the ATA applies to the petitioners in the four remaining petitions, I find that the Not Intended Clause under Section 4 of the ATA is unconstitutional considering that it violates one of the fundamental rules under the Bill of Rights of the Constitution that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved."[32] Specifically, as aptly explained in the *ponencia*, "the 'Not Intended Clause' shifts the burden upon the accused to prove that his actions constitute an exercise of civil and political rights."[33] The constitutional presumption of innocence in favor of the accused dictates that it should be the government proving the guilt of the accused rather than the accused proving his innocence.

Overall, in resolving the subject four petitions, I, nonetheless, find in order the conclusion of the *ponencia* that the provisions of the ATA, for most parts, is not unconstitutional, especially Section 29 of the law.

As regards Section 29 of the ATA, I share the view of Associate Justice Rodil V. Zalameda that the vagueness test may be invoked both in a "facial" and "as applied" challenges. Specifically, vagueness test lies where a statute is deemed invalid if persons of common intelligence must necessarily guess at the meaning and differ as to the application of the law. In an "as applied" challenge, the vagueness test finds application in so far as the due process clause is cited in challenging the law.[34]

With this in mind, I concur with the *ponencia*, particularly in the determination that Section 29 of the ATA is not unconstitutional. The

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[31] *Calleja v. Exec. Sec. Medialdea, et al.*, G.R. Nos. 252578, *et al.*, p. 109.
[32] Section 14(2), Article III, CONSTITUTION.
[33] *Calleja v. Exec. Sec. Medialdea, et al.*, G.R. Nos. 252578, *et al.*, p. 108.
[34] See Separate Opinion of Associate Justice Rodil V. Zalameda, p. 14.

fear of a chilling effect caused by the warrantless arrest and the resulting detention of fourteen (14) days, with possible extension of ten (10) days, is more imaginary than real. In fact, sufficient safeguards are in place to protect fundamental rights.

The arrest without a warrant under Section 29 of the ATA is in accordance with Section 5, Rule 113 of the Rules of Court as follows:

> SEC. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

Section 29 of the ATA does not abandon the requirement of probable cause as threshold in warrantless arrests. The contemplated lawful warrantless arrests cover three instances: "(a) an arrest of a suspect *in flagrante delicto*; (b) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his [or her] case or has escaped while being transferred from one confinement to another."[35] These provisions on lawful warrantless arrests are reflected in Rule 9.2[36] of the Implementing Rules and Regulations of

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[35] *Miguel v. People*, 814 Phil. 1073, 1085 (2017), citing *Sindac v. People*, 794 Phil. 421, 429 (2016), further citing *Comerciante v. People*, 764 Phil. 627, 634-635 (2015).

[36] Rule 9.2 of the Implementing Rules and Regulations of RA 11479 reads:

> RULE 9.2. *Detention of a Suspected Person without Warrant of Arrest.* —
> A law enforcement officer or military personnel may, without a warrant, arrest:
> a. 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;

the ATA. Suffice it to state that Section 18[37] of RA 9372[38] or the Human Security Act of 2007, the predecessor law of the ATA, also provides for detention without judicial warrant, which no court of law has categorically declared unconstitutional.

The warrantless arrest under Section 29 of the ATA is justified because the arresting person must have with him/her facts and circumstances which—had they been before a judge—would amount to sufficient basis for a finding of probable cause for the commission of any of the punishable acts under the ATA. There must be overt acts constitutive of the offenses punishable under the ATA that would, in turn,

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

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

[37] Section 18 of RA 9372 provides:

SEC. 18. *Period of Detention Without Judicial Warrant of Arrest.* — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel: Provided, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.

The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: Provided, That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify and judge as provided in the preceding paragraph.

[38] Approved on March 6, 2007.

arouse the need for the arrest of an individual.[39] Verily, the threat or fear of arrest without a judicial warrant and of prolonged detention of those *legitimately* exercising their rights remains unfounded.

Moreover, the detention period under Section 29 of the ATA does not run counter to the three-day detention limit under Section 18, Article VII of the Constitution. Unlike the situation under Section 29 of the ATA, Section 18, Article VII of the Constitution requires two specific conditions, namely: (1) a state of rebellion or invasion, when public safety so warrant; and (2) an order suspending the privilege of the writ of *habeas corpus*:

> Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. x x x
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> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.
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> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The distinction between terrorism, on the one hand, and a state of rebellion or invasion, on the other hand, places the situations under Section 29 of the ATA and Section 18, Article VII of the Constitution under different categories.

Terrorism is described in the *ponencia* as an "attack on the state and its exclusive right to the legitimate use of violence. Unlike a murderer or robber, the terrorist or assassin does not just kill: he [or she] claims a legitimacy, even a lawfulness, in doing so. Such acts do not 'break the law, but seek to impose a new or higher law."[40] Moreover, Section 4 of the ATA enumerated the particular acts that would amount

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[39] See Dissenting Opinion of Associate Justice Florentino P. Feliciano in *Lacson v. Perez*, 410 Phil. 78, 109 (2001).

[40] *Calleja v. Exec. Sec. Medialdea, et al.*, G.R. Nos. 252578, *et al.*, p. 142, citing *Fresh Perspectives on the 'War on Terror'*, edited by Miriam Gani and Penelope Mathew, ANU Press, 2008, pp. 27–44.

to terrorism:

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

Meanwhile, rebellion is defined under Article 134[41] of the Revised

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[41] Article 134 of the Revised Penal Code provides:

Art. 134. *Rebellion or insurrection; How committed.* — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

Penal Code and requires the concurrence of the following requisites: "(1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives."[42] On the other hand, invasion is defined as entering "a country by force with large number of soldiers in order to take possession of it."[43]

It cannot, thus, be denied that terrorism, rebellion and invasion are different from each other. They have varying elements and are punishable under different laws.

Section 29 of the ATA is *not* inconsistent with the detention limit under Section 18, Article VII of the Constitution as shown by the fact that the privilege of the writ of *habeas corpus* may be availed of under Section 29 of the ATA, which privilege is ordered suspended under Section 18, Article VII of the Constitution. It must be noted that the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his/her liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.[44] This remedy is available under Section 29 of the ATA to a detainee arrested without a warrant for acts defined as terrorism or to a person on his/her behalf as long as it could be shown that the confinement was illegal or that the detainee was illegally deprived of his or her liberty. Simply stated, and as correctly argued by the Office of the Solicitor General, Section 29 of the ATA does not contemplate an extraordinary situation where the privilege of the writ of *habeas corpus* has been suspended, otherwise, in such case, the three-day rule under the Constitution will apply. This makes the 14/24 days period justifiable.

With this obvious difference in circumstances, then there is indeed no bar when a person is arrested—provided that he/she committed overt acts constitutive of any of those punishable acts under the ATA—is detained for 14/24 days without judicial charge under Section 29 of the ATA.

To be sure, the Constitution especially provided the requirements

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[42] *Rep. Lagman v. Senate Pres. Pimentel III*, 825 Phil. 112, 210 (2018), citing *Lagman v. Medialdea*, 812 Phil. 179 (2017).

[43] Available on <https://dictionary.cambridge.org/dictionary/english/invade> (last accessed November 10, 2021).

[44] Section 1, Rule 102 of the Rules of Court.

under which the three-day detention limit shall apply. These requirements are wanting in the situation under Section 29 of the ATA. The Court should abide by such explicit provision requiring a state of rebellion or invasion and suspension of the privilege of writ of *habeas corpus* when the three-day limit for detention without judicial charge is allowed. Certainly, where the law, or in this case, the Constitution does not distinguish, neither should the Court.

By the plain wording of Section 18, Article VII of the Constitution, the three-day period must be interpreted to apply only under specific conditions, *i.e.*, an arrestee commits either rebellion or offenses inherent in or directly connected with the invasion and in both instances, there must be a suspension of the privilege of the writ of *habeas corpus*. There is nothing in Section 18, Article VII to indicate that the three-day period was meant to serve as a ceiling on the detention periods that may be legislated by Congress. In the same vein, there is no provision in the Constitution that prohibits detention longer than three days for circumstances not contemplated under Section 18, Article VII. "What the law does not prohibit, it allows."[45]

This is not to say that such interpretation of Section 18, Article VII of the Constitution gives Congress a blanket license to legislate detention periods of any length. Ultimately, in an appropriate case, the Court is not precluded from making a pronouncement on whether a legislated detention period violates the constitutional rights of detainees. In this particular case, however, the Court finds no *undue* deprivation of liberty under Section 29 of the ATA.

The ATA is a law of necessity. It was enacted because there is an urgent need to address the pressing global threat of terrorism with a recognition that dealing with terrorism is laden with inherent difficulties and complexities. Section 2 of the ATA is clear as to the State's policy which is "to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the Law of Nations."[46] As significantly observed in the *ponencia,* terrorism is not an ordinary crime. Most terrorist activities, including training, financing, and other forms of intricate preparation, involve months or even years of clandestine planning. In enacting the ATA, the Congress recognized that "the fight against terrorism requires a comprehensive approach,

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[45] See *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia*, 494 Phil. 515, 520 (2005).
[46] See Section 2 of RA 11479.

comprising political, economic, diplomatic, military and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities."[47]

Forming part of this comprehensive approach to fight terrorism is Section 29 of the ATA. The power to determine the period of resulting detention of a person arrested under Section 29 is within the power of Congress. To reiterate, this period of detention is not determined and limited by the Constitution. Indeed, when our security and national interest is greatly endangered, the state must adopt extraordinary and extensive measures to protect itself.

It must also be pointed out that sufficient safeguards are in place in the enforcement of Section 29 of the ATA. As enumerated in the *ponencia*, "(1) it only operates when the [Anti-Terrorism Council or ATC] issues a written authorization; (2) the detaining officer incurs criminal liability if he [or she] violates the detainee's rights; and (3) the custodial unit must diligently record the circumstances of the detention."[48] In fact, the arresting officer must also execute a sworn statement stating the complained acts of terrorism and other relevant circumstances necessitating the custody of the arrestee.[49] With these built-in safeguards, the fear for violation of basic constitutional rights is ward off. Furthermore, considering the procedure laid down under Section 29 as regards the manner of arrest and detention, the threat against the legitimate exercise of constitutional rights is put to rest.

Lastly, the *ponencia* acknowledges that existing procedural rules may not be satisfactorily appropriate for the process of proscription under Sections 26 and 27 of the ATA. Invoking the Court's rule-making power, the *ponencia* directs the Court of Appeals to formulate guidelines to be observed in applying for a proscription order under Section 26 to guide the bench, bar, and public.[50]

In similar regard, pursuant to the Court's rule-making power under Section 5(5),[51] Article VIII of the Constitution, a formulation of

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[47] *Id.*

[48] *Calleja v. Exec. Sec. Medialdea, et al.*, G.R. Nos. 252578, *et al.*, p. 211.

[49] *Id.* at 186.

[50] *Id.* at 182.

[51] Section 5(5) of the Constitution provides:

Section 5. The Supreme Court shall have the following powers:

x x x x

(5) *Promulgate rules concerning the protection and enforcement of constitutional rights,* pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a

guidelines governing *Detention Without a Judicial Warrant of Arrest* under Section 29 would also be proper, more particularly on the *extension of the period of detention* beyond the three (3) days by the ATC.

Without a doubt, the Court's rule-making power encompasses the right to promulgate rules concerning the protection and enforcement of constitutional rights. Considering that what is involved under Section 29 is deprivation of liberty, as opposed to proscription which merely seeks deprivation of property rights (*i.e.*, may give rise to freezing of assets, surveillance under Section 16, examination of banking records, *etc.*), it is with more reason that guidelines be formulated governing the extension of detention proceeding from arrests without a judicial warrant. The necessary guidelines would address the apprehensions against the extended period of detention proceeding from a warrantless arrest, and would likewise guide the courts in resolving actual controversies arising therefrom. Indeed, the guidelines would provide clearer safeguards to fundamental rights, the protection of which is a constitutional duty of the Court through its rule-making power.

Specifically, I propose the following measures to be incorporated in the guidelines which the Court may promulgate:

1. Taking into consideration that from the warrantless arrest under Section 29 of the ATA, the resulting detention may last for fourteen (14) days and extendible to an additional period of ten (10) days, the law enforcement agents or military personnel who have custody of the detainee shall periodically present the detainee to the court nearest the place of detention (concerned trial court), *i.e.*, on the 7th and 14th day of detention for questioning on his or her physical and mental condition and for the submission of the detainee's medical certificate issued by a government hospital or facility;

2. During the detention, the detainee should not be transferred from one detention facility to another without notifying the concerned trial court and the transferring court nearest to the new place of detention;

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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.

3. The law enforcement agents or military personnel who have custody of the detainee must also report to the concerned trial court the specific reasons for the additional period of ten (10) days detention. Let it be noted that Section 29 of the ATA only requires the police or military personnel to notify the concerned trial court of the circumstances of the arrest of the detainee without need for a report of the justification for the extended period of ten (10) days from the original fourteen (14) days detention under the ATA;

4. The detainee should be immediately placed in a medical and or mental facility upon the recommendation of the examining government doctor, subject to the court's approval.

IN VIEW OF THE FOREGOING, I concur in the results of the Court's decision.

HENRI JEAN PAUL B. INTING
Associate Justice