

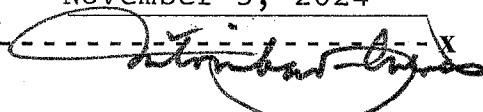
EN BANC

G.R. No. 248680 – MIGRANTE INTERNATIONAL, FELIZA B. BENITEZ, JENNIFER BORBE, MARIA LOVINA CASTRO, MICHELLE CUSTODIO, ERVIE FUENTES, FATIMA MAMPO, ELVIRA MONTERO, ROSARIO J. VALDESCO, VERNA VILLANCIO, NERI COLMENARES, CARLOS ISAGANI T. ZARATE, FERDINAND GAITE, EUFEMIA CULLAMAT, BAYAN MUNA PARTYLIST REPRESENTATIVES; ARLENE D. BROSAS, GABRIELA WOMEN’S PARTY REPRESENTATIVE; FRANCISCA L. CASTRO, ACT-TEACHERS PARTYLIST REPRESENTATIVE; and SARAH JANE I. ELAGO, KABATAAN PARTYLIST REPRESENTATIVE, Petitioners, v. SOCIAL SECURITY SYSTEM, represented by CARLOS G. DOMINGUEZ III, in his capacity as Chairman, AURORA C. IGNACIO, SSS President and Vice-Chairman, DEPARTMENT OF FOREIGN AFFAIRS, represented by TEODORO LOCSIN, JR., in his capacity as Secretary, and DEPARTMENT OF LABOR AND EMPLOYMENT, represented by SILVESTRE H. BELLO III, in his capacity as Secretary, and PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, represented by its Administrator BERNARD OLALIA, Respondents.

Promulgated:

November 5, 2024

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CONCURRING AND DISSENTING OPINION

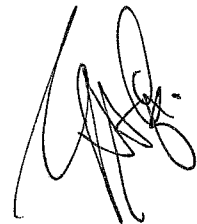
CAGUIOA, J.:

One of the significant amendments introduced by Republic Act No. 11199<sup>1</sup> or the Social Security Act of 2018 is the extension of the compulsory coverage in the Social Security System (SSS) to Overseas Filipino Workers (OFWs), both land-based and sea-based.<sup>2</sup> For this purpose, the law mandates

<sup>1</sup> An Act Rationalizing and Expanding the Powers and Duties of the Social Security Commission to Ensure the Long-Term Viability of the Social Security System, Repealing for the Purpose Republic Act No. 1161, as Amended by Republic Act No. 8282, Otherwise Known as the “Social Security Act of 1997,” approved February 7, 2019.

<sup>2</sup> Section 9-B. *Compulsory Coverage of Overseas Filipino Workers (OFWs)* –

(a) Coverage in the SSS shall be compulsory upon all sea-based and land-based OFWs as defined under Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022: *Provided*, That they are not over sixty (60) years of age.



that land-based OFWs shall be treated in the same manner as self-employed persons under such rules and regulations that the Social Security Commission (SSC) shall prescribe.<sup>3</sup> Meanwhile, the manning agencies, as agents of their principals, shall be considered as the employers of sea-based OFWs.<sup>4</sup> The law also provides that the Department of Foreign Affairs (DFA), Department of Labor and Employment (DOLE), and SSS shall ensure the compulsory coverage of OFWs through bilateral social security and labor agreements (BSS/LA) and other measures for enforcement.<sup>5</sup>

Pursuant to Section 30 of Republic Act No. 11199, the SSC issued the Implementing Rules and Regulations of Republic Act No. 11199 (IRR). Based on the IRR, land-based OFWs, like self-employed persons, shall pay both the employee and employer contributions,<sup>6</sup> until such time that a BSS/LA is negotiated with the host countries of land-based OFWs to ensure that their employers, like the principals of sea-based OFWs, pay the required contributions.<sup>7</sup> Rule 14, Section 7(iii) of the IRR also provides that for land-based OFWs in countries without any BSS/LA with the Philippines, the measures of enforcement shall include the collection of the contributions as a pre-condition to the issuance of the Overseas Employment Certificate (OEC) of land-based OFWs.

The *ponencia* upholds the constitutionality of the aforementioned provisions of Republic Act No. 11199 and its IRR, except Rule 14, Section 7(iii) of the IRR insofar as it requires the payment of SSS contributions before an OEC may be issued to a land-based OFW.<sup>8</sup> According to the *ponencia*, contrary to the allegations of petitioners, the assailed provisions of the law and the IRR do not violate the equal protection clause.<sup>9</sup> However, it declares that Rule 14, Section 7(iii) of the IRR constitutes an invalid exercise of police

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All benefit provisions under this Act shall apply to all covered OFWs. The benefits include, among others, retirement, death, disability, funeral, sickness and maternity.

<sup>3</sup> Section 9-B. *Compulsory Coverage of Overseas Filipino Workers (OFWs)* –

.....

(c) Land-based OFWs are compulsory members of the SSS and considered in the same manner as self-employed persons under such rules and regulations that the Commission shall prescribe.

<sup>4</sup> Section 9-B. *Compulsory Coverage of Overseas Filipino Workers (OFWs)* –

.....

(b) Manning agencies are agents of their principals and are considered as employers of sea-based OFWs.

For purposes of the implementation of this Act, any law to the contrary notwithstanding manning agencies are jointly and severally or solidarity liable with their principals with respect to the civil liabilities incurred for any violation of this Act.

The persons having direct control, management or direction of the manning agencies shall be held criminally liable for any act or omission penalized under this Act notwithstanding Section 28(f) hereof.

<sup>5</sup> Section 9-B. *Compulsory Coverage of Overseas Filipino Workers (OFWs)* –

(e) The DFA, the DOLE and, the SSS shall ensure compulsory coverage of OFWs through bilateral social security and labor agreements and other measures for enforcement.

<sup>6</sup> IRR, Rule 14, sec. 5(iv).

<sup>7</sup> IRR, Rule 14, sec. 5, *id.*

<sup>8</sup> *Ponencia*, p. 38.

<sup>9</sup> *Id.* at 24–30.

power and rule-making power, and violates the land-based OFWs' right to travel.<sup>10</sup>

Ultimately, I concur in the result.

I write this Opinion merely to offer added discussion on the equal protection clause and to raise my reservations as to the finding of violation of the right to travel.

### ***Equal Protection Clause***

Parsed, petitioners' arguments in relation to the equal protection clause is two-pronged. First, they argue that Section 9-B(a), (c), and (e) of Republic Act No. 11199 and its related provisions in the IRR violate the equal protection clause because land-based OFWs are treated in the same manner as local employees, inasmuch as both are now subject to the compulsory coverage of SSS, even though they are actually not similarly situated since the employers of land-based OFWs are outside the Philippines and are thus beyond the ambit of our laws.<sup>11</sup> Second, they posit that the same provisions unduly discriminate against land-based OFWs because unlike local employees and sea-based OFWs, land-based OFWs are treated in the same manner as self-employed persons, such that they are required to pay both the employee and employer contributions to SSS. On the other hand, local employees have their local employers, while sea-based OFWs have their respective manning agencies, to shoulder the employer's share and remit the premiums to SSS.<sup>12</sup>

According to the *ponencia*, there is no violation of the equal protection clause since there is reasonable basis to warrant a differential treatment among local employees, land-based OFWs, and sea-based OFWs. The policy behind Republic Act No. 11199 is to extend social security protection to all Filipino workers, both local and overseas. In order to achieve this, however, the State must address the differences in the nature of employment of local employees and overseas workers.<sup>13</sup> The *ponencia* explains that the difference in the treatment of local employees, land-based OFWs, and sea-based OFWs arises not from discrimination, but out of practical necessity,<sup>14</sup> thus:

Land-based OFWs occupy a unique position. Indubitably, they have the right to social security protection, just like any other employee. However, as correctly pointed out by the respondents, the absence of social security agreements or bilateral labor agreements leaves the Philippine government without a means to compel foreign employers to contribute the employer's share of SSS premiums. Consequently, land-based OFWs find themselves compelled to bear the supposed employer's share, akin to self-employed

<sup>10</sup> *Id.* at 30-37.

<sup>11</sup> *Rollo*, pp. 22-26.

<sup>12</sup> *Id.* at 22-30.

<sup>13</sup> *Ponencia*, pp. 24-30.

<sup>14</sup> *Id.* at 28.



individuals. This arrangement arises not from discrimination, but from practical necessity.

As to the differential treatment of land-based OFWs and sea-based OFWs, the Court has already settled in *Joint Ship Manning Group, Inc.* that Section 9-B of Republic Act No. 11199 does not violate the equal protection clause due to the presence of substantial distinction:

.....

Thus, the liability of manning agencies with respect to the contribution of SSS premiums of sea-based OFWs under Section 9-B of Republic Act No. 11199, is founded on legal and contractual obligations. In contrast, there is no singular or uniform employment contract applicable to land-based OFWs, which would justify imposing the same solidary liability to pay SSS contributions on their recruitment agencies.

Thus, the Court finds that the classification in Section 9-B of Republic Act No. 11199 is grounded on substantial distinctions and rationally furthers a legitimate State interest. Importantly, this classification is also germane to the purpose of the law. Similarly, the assailed provisions do not apply only to existing conditions. All land-based OFWs are completely covered by the SSS, without any conditions. Hence, the third and fourth requisites—that the classification must not be limited to existing conditions only and that it must apply equally to all members of the same class—are complied with. There is therefore no violation of the equal protection clause.<sup>15</sup>

While I agree with the conclusion drawn by the *ponencia*, I submit this Opinion to fully address the issues that were raised by petitioners in relation to the equal protection clause. Considering that the present case touches upon the Constitutional rights of our modern-day heroes, it would be a disservice to them if the Court's decision does not fully eliminate their doubts and leave out some of their questions. Thus, with due respect, I offer the following thoughts.

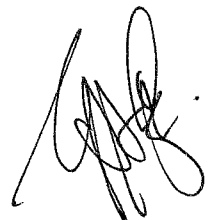
*A. The SSS compulsory coverage may be extended to land-based OFWs even though their employers are situated outside the Philippines*

For the first issue presented by petitioners—that land-based OFWs should not be subjected to the compulsory coverage of SSS because unlike local employees, their employers are outside our jurisdiction—I respectfully opine that petitioners' reliance on the equal protection clause is misplaced.

The Constitutionally enshrined right to equal protection requires that all persons or things similarly situated should be treated alike, both as to rights

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<sup>15</sup> *Id.* at 28–30.



conferred and responsibilities imposed.<sup>16</sup> However, the Court has time and again ruled that the equal protection clause does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed.<sup>17</sup> In other words, the law is not required to provide for equality among all persons if they are not similarly situated. Verily, it recognizes that “inherent in the right to legislate is the right to classify.”<sup>18</sup> Accordingly, the legislature is allowed to classify the subjects of legislation, provided the classification is reasonable and not arbitrary, based on the following requirements: (1) it must be based on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions; and (4) it must apply equally to all members of the class.<sup>19</sup>

“The problem, thus, in equal protection cases is one of determining the validity of the classification made by law.”<sup>20</sup> Stated differently, if a law is made applicable to all without favoring or discriminating a particular class, then there could be no violation of the equal protection clause, as in the present case insofar as Republic Act No. 11199 extends the compulsory coverage of SSS to all OFWs.

Through Republic Act No. 11199, coverage in SSS is now compulsory upon all Filipino workers, whether local or overseas. Thus, social security protection in the form of retirement, death, disability, funeral, sickness and maternity benefits, among others, is now available to all Filipino workers, even to land-based OFWs.<sup>21</sup> It is therefore clear that Republic Act No. 11199 does not discriminate. On the contrary, it is one of the State’s responses to the growing clamor for a more vigorous effort towards the elimination of inequalities. This is even more true because as early as 1988, sea-based OFWs are already covered by SSS pursuant to the Memorandum of Agreement between SSS and DOLE stating that one of the conditions of the Standard Employment Contract of seafarers would be that sea-based OFWs shall be covered by SSS.<sup>22</sup>

Verily, while it is not the business of the Court to comment on the wisdom of a particular law, I respectfully submit that the policy behind Republic Act No. 11199 towards making the SSS benefits accessible to all, regardless of the nature, location, or status of employment, is noble. Our land-based OFWs, as well as their families and other beneficiaries, also need social security protection, regardless of the fact that their employers are beyond the reach of Philippine laws. Indeed, for purposes of providing social security protection, one should not distinguish between local employees and overseas workers, much less between land-based and sea-based OFWs.

<sup>16</sup> *Garcia v. Judge Drilon*, 712 Phil. 44, 90 (2013) [Per J. Perlas-Bernabe, *En Banc*].

<sup>17</sup> *Zomer Development Company v. Court of Appeals*, 868 Phil. 93, 108 (2020) [Per J. Leonen, *En Banc*].

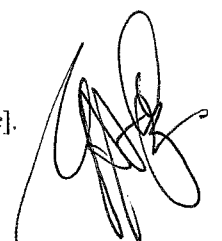
<sup>18</sup> JOAQUIN G. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 139 (2009).

<sup>19</sup> *Garcia v. Judge Drilon*, *supra* note 16, at 90–91.

<sup>20</sup> BERNAS, *supra* note 18, at 139.

<sup>21</sup> Republic Act No. 11199, sec. 9-B(a).

<sup>22</sup> *See Joint Ship Manning Group, Inc. v. SSS*, 876 Phil. 596, 607 (2020) [J. Gesmundo, *En Banc*].



*B. Requiring land-based OFWs to pay both the employee and employer contributions does not violate their right to equal protection*

Anent the second issue, I opine as well that requiring land-based OFWs to pay both the employee and employer contributions to SSS does not violate the land-based OFWs' right to equal protection. As aptly ruled by the *ponencia*, this arrangement arises not from discrimination, but from administrative feasibility.<sup>23</sup>

It is settled that for all compulsory members of SSS, both the employer and the employee should contribute to the employee's monthly premium contributions.<sup>24</sup> This is true for all. In the case of local employees, their employers are required by law to withhold their employees' share and remit the same to SSS together with the employer's contributions.<sup>25</sup> For sea-based OFWs, their manning agencies, who by law are considered as their employers, are also required to remit both the employee and employers share to SSS.<sup>26</sup> On the other hand, since the shares of the employers of land-based OFWs are beyond the jurisdiction of Philippine laws, the duty to pay both employee and employer contributions is placed on the land-based OFWs.<sup>27</sup> It is therefore clear that Republic Act No. 11199 treats local employees, sea-based OFWs, and land-based OFWs equally since all their monthly SSS premiums comprise of both the employee and the employer contributions.

While it is true that the current set-up is burdensome to land-based OFWs since they have to actually shell out money for their and their employer's SSS contributions pending execution of a BSS/LA with their host countries, this difference in treatment was carefully considered by the legislative branch. At the risk of being repetitive, unlike local employees, the employers of land-based OFWs are outside the Philippines and cannot therefore be compelled to remit the contributions. In the same vein, the Court in *Joint Ship Manning Group, Inc. v. SSS*,<sup>28</sup> explained that unlike land-based OFWs, all sea-based OFWs have only one standard contract, which provides for the rights and obligations of the manning agencies, and which includes the

<sup>23</sup> See *ponencia*, p. 28.

<sup>24</sup> *Haveria v. SSS*, 839 Phil. 237, 248 (2018) [Per J. Caguioa, Second Division].

<sup>25</sup> Social Security Law, secs. 18 and 19.

<sup>26</sup> IRR, Rule 14, sec. 3(iv) provides:

iv. Manning agencies shall be responsible for performing functions of the employer under the Social Security Act of 2018 and this IRR that include, among others, the timely reporting for coverage of sea-based OFWs, regular remittance of required contributions and advance payment of short-term benefits.

<sup>27</sup> IRR, Rule 14, sec. 5(iv) provides:

iv. A land-based OFW member shall pay both the employer and the employee contributions; and [Sec 19-A, 1st proviso]

<sup>28</sup> *Joint Ship Manning Group Inc. v. SSS*, *supra* note 22.

duty to remit the SSS contributions of and for the sea-based OFWs. In other words, the difference in the manner or means by which the premium contributions are collected from local employees, land-based OFWs, and sea-based OFWs rests on substantial distinctions.

To clarify, however, nothing in the law states that land-based OFWs are compelled to bear the burden of their employers' share or that they could not collect the same from their employers. Verily, until such time BSS/LAs are executed, land-based OFWs are not prevented from collecting from their employers the latter's share in the monthly SSS contributions, or from demanding a higher salary to cover for their employers' share in the SSS premium. While I recognize that these solutions may be arduous to some, I respectfully submit that mere inconvenience cannot trump the presumption of constitutionality that Republic Act No. 11199 enjoys. "A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality."<sup>29</sup>

In view of the foregoing, I opine that extending the compulsory coverage of SSS to land-based OFWs and requiring payment of both the employee and employer contributions from them do not violate the land-based OFWs' right to equal protection.

### ***Right to Travel***

As regards Rule 14, Section 7(iii) of the IRR, I submit that, contrary to the *ponencia*, this does not violate the land-based OFWs' right to travel.

Rule 14, Section 7(iii) of the IRR provides:

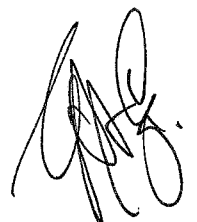
iii. For land-based OFWs in countries without any SSA or BLA with the Republic of the Philippines, the measures for enforcement of compulsory coverage shall include, among others, the collection of contribution payments by the [POEA] and/or the concerned attached DOLE agencies, through its applicable documentation and deployment processes such as the issuance of [OEC], as follows:

- a) For new hires, direct/name hires and government-to-government hires—one (1) monthly contribution; and
- b) For re-hires/returning workers/Balik-Manggagawa—three (3) monthly contributions.

The constitutional right to travel is part of liberty, which a citizen cannot be deprived of without due process of law. However, this right is not absolute, as it is subject to constitutional, statutory, and inherent limitations.<sup>30</sup>

<sup>29</sup> *Garcia v. Judge Drilon*, *supra* note 16, at 90.

<sup>30</sup> *Sy v. Sandiganbayan*, 841 Phil. 475, 484 (2018) [Per J. Perlas-Bernabe, Second Division].



Article III, Section 6 of the Constitution provides that right to travel may be impaired in the interest of national security, public safety, or public health, as may be provided by law. In *Leave Division, OAS, OCA v. Heusdens*,<sup>31</sup> the Court enumerated some of the statutory limitations on the right to travel:

- 1) The Human Security Act of 2010 or [Republic Act No. 9372]. The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail.
- 2) The Philippine Passport Act of 1996 or [Republic Act No. 8239]. Pursuant to said law, the Secretary of Foreign Affairs or his [or her] authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.
- 3) The “Anti-Trafficking in Persons Act of 2003” or [Republic Act No. 9208]. Pursuant to the provisions thereof, the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued Memorandum Order Radjr No. 2011-011, allowing its Travel Control and Enforcement Unit to “offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking” from our ports.
- 4) The Migrant Workers and Overseas Filipinos Act of 1995 or [Republic Act No. 8042], as amended by [Republic Act No. 10022]. In enforcement of said law, the [POEA] may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country.
- 5) The Act on Violence against Women and Children or [Republic Act No. 9262]. The law restricts movement of an individual against whom the protection order is intended.
- 6) Inter-Country Adoption Act of 1995 or [Republic Act No. 8043]. Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee’s right to travel “to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child.”<sup>32</sup> (Citation omitted)

On the other hand, an example of an inherent limitation to the right to travel is the power of courts to prohibit persons charged with a crime from leaving the country. For instance, “the court’s power to prohibit a person admitted to bail from leaving the Philippines is a necessary consequence of the nature and function of a bail bond. As a result, a person with a pending criminal case and provisionally released on bail does not have an unrestricted right to travel.”<sup>33</sup>

In ruling that Rule 14, Section 7(iii) of the IRR impairs the right to travel of land-based OFWs, the *ponencia* rules:

<sup>31</sup> 678 Phil. 328 (2011) [Per J. Mendoza, *En Banc*].

<sup>32</sup> *Id.* at 339–340.

<sup>33</sup> *Sy v. Sandiganbayan*, *supra* note 30, at 484–485.



[T]he assailed provision of the IRR provides that land-based OFWs are required to pay in advance their SSS contributions for the issuance of the OEC. However, without the OEC, a land-based OFW's right to travel abroad is significantly restricted, as their right to work overseas hinges on obtaining the OEC. Without the OEC, a land-based OFW cannot be deployed to their place of work. Since the primary purpose of a land-based OFW's travel abroad is to work, requiring them to pay their SSS contributions in advance to obtain their OEC effectively deprives them of their right to travel and, consequently, their livelihood. Thus, the assailed provision of the IRR poses an actual restriction on the right to travel, although primarily imposed to enforce collection of SSS contributions. Additionally, this impairment on the land-based OFWs' right to travel does not serve the interest of national security, public safety or public health; rather, it primarily aims to enforce the collection of the required SSS contributions.<sup>34</sup>

Contrary to the position taken by petitioners and the *ponencia*,<sup>35</sup> I believe there is nothing in Rule 14, Section 7(iii) of the IRR that prevents land-based OFWs from travelling. To be sure, they are still allowed to travel for work, subject only to certain conditions, such as the payment of SSS premium in this case. I respectfully submit that these conditions, such as the requirement to obtain a passport, to go through immigration checks, to pay travel taxes, or in the case of OFWs, to secure an OEC, are only administrative requirements and not impairments to the right to travel.

### **Conclusion**

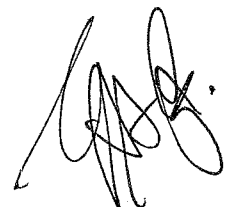
That said, I join the *ponencia* in still declaring Rule 14, Section 7(iii) of the IRR as unconstitutional. To this end, I express my full concurrence with the *ponencia*'s view that Rule 14, Section 7(iii) of the IRR is an invalid exercise of police power.<sup>36</sup> While the objective or purpose of the rule is lawful, the manner or means employed is far from reasonably necessary and unduly oppresses against land-based OFWs. The *ponencia* explains thus:

Additionally, requiring the land-based OFWs to pay in advance their SSS contributions for the issuance of their OECs is not reasonably necessary to accomplish the State's objective of affording them social security protection. **As correctly pointed out by [petitioners], land-based OFWs who have not even commenced employment yet, much less received their salaries, are compelled to advance their SSS contributions. It is also noteworthy that, in fact, prior to the issuance of an OEC, a worker is technically not considered an OFW yet. The OEC serves as proof that the worker has been processed by the POEA for deployment. However, despite this, they are being compelled to prepay the required SSS contributions; otherwise, they cannot leave the country due to the absence of an OEC. This situation places an undue**

<sup>34</sup> *Ponencia*, p. 35.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 34.



**burden on our OFWs, who often resort to borrowing money to cover costly deployment expenses.**<sup>37</sup> (Emphasis supplied, citation omitted)

Moreover, the *ponencia* also correctly pointed out that Rule 14, Section 7(iii) of the IRR is an invalid exercise of the SSC's rule-making power and is therefore *ultra vires*, viz:

As correctly pointed out by [petitioners], this is beyond the rule-making power delegated by the legislature to respondents the SSS, the DFA, and the DOLE. Section 9-B(e) of Republic Act No. 11199 provides that the DFA, DOLE, and SSS shall ensure compulsory coverage of OFWs through bilateral social security and labor agreements and other measures for enforcement.

.....

In this case, the general phrase "other measures for enforcement" follows the enumeration of "bilateral social security and labor agreements." These bilateral social security and labor agreements are established with countries hosting OFWs to safeguard their welfare and social security rights. **Applying the principle of *ejusdem generis*, the "other measures of enforcement" should be of a similar nature to bilateral social security and labor agreements. Notably, the use of OECs does not fall within the same category as bilateral social security and labor agreements.**<sup>38</sup> (Emphasis supplied)

**ACCORDINGLY**, I vote to only **PARTIALLY GRANT** the instant Petition. While the constitutionality of Section 9-B(a), (c), and (e) of Republic Act No. 11199 and its related provisions in the IRR should be upheld, Rule 14, Section 7(iii) of the IRR should be declared unconstitutional.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>37</sup> *Id.* at 33.

<sup>38</sup> *Id.* at 31–32.