

REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
MANILA

En Banc

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,  
AND TIERONE JAMES M. SANTOS,  
*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.*

X-----X

G.R. No. \_\_\_\_\_  
For: *Certiorari* and  
Prohibition under Rule  
65 of the Rules of Court,  
with: (1) Urgent  
Application for a *Status  
Quo Ante Order* and/or  
Temporary Restraining  
Order and/or Writ of  
Preliminary Injunction;  
and (2) Motion for  
Special Raffle and Oral  
Arguments

**PETITION FOR CERTIORARI  
AND PROHIBITION**  
(with Application for *Status Quo Ante Order*,  
Temporary Restraining Order,  
and/or Writ of Preliminary Injunction)

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Petitioners, by counsel, respectfully state:

### SUMMARY OF ARGUMENTS

Petitioners are one with the Government's quest to stamp out and prevent terrorism. Peace, security, and public order are goals everyone can unite under. But, in our legal system, details matter – the Constitution matters. Petitioners' challenge to Republic Act No. 11479, also known as "The Anti-Terrorism Act of 2020 ("ATA"), recognizes the legitimate state interest it advances; but, questions the unconstitutional means by which this legitimate interest is sought to be accomplished.

The ATA heavily burdens protected speech by the vagueness and overbreadth that permeate its text, creating a chilling effect that suppresses expressive freedom in violation of Article III, Section 4 of the Constitution. It curtails other constitutional liberties such as the rights to due process, to presumption of innocence, to bail, against incommunicado detention, against unreasonable searches and seizures, to privacy of communication and correspondence, to association, to public information, and not to be subjected to an *ex post facto* law and bill of attainder. Finally, it transgresses the principle of separation of powers.

For these reasons, the ATA is facially unconstitutional.

#### **1. Reasons for voiding the ATA as a whole**

- a) The ATA is unconstitutional as written. It is mired by vagueness and overbreadth that repress protected speech, justifying its facial invalidation.
- b) Section 45 is void for violating the Constitution's deliberate separation of powers by creating the Anti-Terrorism Council ("ATC") and conferring it with powers greater than what the Constitution gives to the President in times of invasion and rebellion, including the power to order (a) the arrest and detention of individuals on mere suspicion for a maximum period of twenty-four (24) days, and (b) the search and seizure of their property (in both cases without court intervention). Without the ATC, its cornerstone, the ATA cannot be enforced.

- c) The essential provisions animating the ATA are impaired by unconstitutionality. Their exclusion would leave the ATA without any reason to exist since its legislative purpose could no longer be served.

## 2. Reasons for voiding specific provisions of the ATA

- a) **Sections 3(b), 3(h), 3(k), 3(m), and 25 (specifically the first and second paragraphs)**, violate the Constitutional guarantees of due process and the right to association as they declare an individual guilty of a crime by mere affiliation. These provisions taken together assume the character of a bill of attainder and an *ex post facto* law.
- b) **Section 3(h)** condemns an individual, organization, association, or group of persons as terrorists based on the mere say-so of the United Nations Security Council ("UNSC") without the benefit of hearing, contrary to the Constitutional guarantees of due process and presumption of innocence. To the extent that it makes the aforesaid persons guilty by association, the provision bears the hallmarks of an *ex post facto* law and a bill of attainder.
- c) **Section 3(i)**, in relation to **Section 16**, grants law enforcers overbroad discretionary powers to tap, listen, intercept, and record any messages, conversations, discussions, spoken or written words, without distinction and based on mere suspicion, creating a chilling effect that inhibits protected speech. It also disregards the right against unreasonable searches and seizures, the right to privacy of communication and correspondence, and the right to be presumed innocent.
- d) **Section 4** in relation to **Sections 3(a), 3(e), 3(g), 3(h), and 3(k)** defines "terrorism" and its variants in ways so broad and ambiguous that it denies due process for lack of notice, deters free speech, and grants law enforcers unbridled discretion to define criminal conduct.
- e) **Section 5** penalizes "threats" to commit terrorism but neglects to define the forbidden act. Unsure as to what utterances constitute "threats", individuals will abstain from speech for fear of state sanction, effectively silencing protected speakers.
- f) **Section 6**, which prohibits the act of "participat[ing] in the planning, training, preparation and facilitation in the commission of terrorism",

and of "collecting or making documents connected with the preparation of terrorism," is void for vagueness and overbreadth as it fails to draw the limits of the prohibited acts, in effect, vesting law enforcers with unrestrained discretion to implement the provision based on their subjective understanding.

- g) **Section 7** penalizes any conspiracy to commit terrorism. Although the term "conspiracy" is defined, the provision suffers from serious ambiguity due to the nebulous characterizations of terrorism in Section 4.
- h) **Section 8**, in relation to **Section 3(g)**, is sweeping in its reach, invading even protected speech and conduct because of lack of standards. Its failure to define the act being punished (*i.e.*, the act of proposing to execute a crime) creates a fatal ambiguity that leaves a person of ordinary intelligence guessing what speech is permitted and what is not and places citizens at the mercy of law enforcers.
- i) **Section 9** punishes any person who, without taking any direct part in the commission of terrorism, shall "incite" others to execute an act of terrorism by means of speeches, proclamations, writings, emblems, banners, or other representations. What constitutes "inciting" or "incitement" is left to guesswork as neither of these terms is defined in the ATA, tainting the provision with vagueness and overbreadth.
- j) **Section 10** strays far away from acceptable limits, punishing with life imprisonment the vague act of "recruiting" another to participate in, join, commit, or support terrorism or a terrorist individual or group. With no standards narrowing the term "recruiting", the provision dissuades protected speech because of its sweeping and unclear language.
- k) **Section 11** punishes a person for (a) traveling or attempting to travel to a state other than his or her state of residence for the purpose of perpetrating, planning, training, preparing, or participating in terrorism; (b) organizing or facilitating the travel of individuals committing the acts in Section 6; or (c) coming to the Philippines to commit any of the acts in Section 6. It punishes the act of traveling, attempting to travel, or facilitating the travel of others with life imprisonment upon mere suspicion that it is for the purpose of perpetrating, planning, training, preparing, or participating in terrorism. This offends due process, presumption of innocence, and freedom to travel.

- l) **Section 12** exceeds legal boundaries by punishing the giving of “material support” to terrorists or terrorist groups who commit any of the acts in Section 4. Considering the open-ended definition of “material support” in **Section 3(e)**, these provisions will potentially restrain innocent acts, including protected speech.
- m) **Section 26**, which authorizes a Court of Appeals division to declare an individual, organization, or association a terrorist without a full-blown trial and adherence to the basic rights granted to an accused, defies the guarantees enshrined in Article III, Section 14 of the Constitution.
- n) **Section 27**, which allows the Court of Appeals to issue a provisional declaration that the “respondent is a terrorist and an outlawed organization or association” based on the verified application of a Department of Justice (“DOJ”) representative (who may not be swearing based on personal knowledge) and without affording the respondent the opportunity to be heard, is an outright prejudgment that offends fundamental rights to due process and presumption of innocence.
- o) **Section 29** authorizes law enforcers to arrest any individual on mere suspicion without judicial warrant and without regard to Rule 113, Section 5 of the Rules of Court on warrantless arrests, and to detain him for a maximum period of 24 days, all in violation of the individual’s rights to be secure in his person, to be presumed innocent, and to due process. It also constitutes usurpation by executive officials of the prerogative of a judge to issue arrest warrants upon probable cause, and invades the rule-making powers exclusively vested in the Supreme Court, thereby offending separation of powers. Further, the detention for as long as 24 days following a warrantless arrest is a disguised suspension of the privilege of the writ of *habeas corpus*, unfettered by the requirements of Article VII, Section 18 of the Constitution.
- p) **Section 30** is unconstitutional being an outgrowth of **Section 29** which permits arrests in contravention of the Constitution.
- q) **Section 34** partly states “[w]hile under house arrest, he/she may not use telephones, cellphones, e-mails, computers, the internet, or other means of communications with people outside the residence until otherwise ordered by the court”, amounts to prior restraint on speech and *incommunicado* detention. Imposing indefinite house

arrest in cases where the individual is entitled to bail as a matter of right negates the very right itself.

- r) **Section 35** grants the Anti-Money Laundering Council Authority ("AMLC") the power "to inquire into or examine deposits and investments with any banking institution or non-bank financial institution and their subsidiaries and affiliates without a court order." By thus excluding judicial intervention, this provision enables the AMLC to (i) usurp the constitutional power of courts to issue search warrants upon probable cause, (ii) disregard the requirements for a warrantless search, (iii) breach a person's right to privacy of communication and correspondence, and (iv) deprive such person of his property without due process of law.
- s) **Section 36**, which permits the AMLC and the ATC to issue an "*ex parte* order to freeze" is an unlawful search and seizure, a usurpation of a judicial function, and a deprivation of property without due process of law.
- t) **Section 45** grants to the ATC unbridled discretion to impose security classifications on all its records, effectively undermining the right of citizens (including ATA victims) to access such records pursuant to their right to public information under Article III, Section 7 of the Constitution.
- u) **Section 46** authorizes the ATC to "establish and maintain comprehensive database information systems on terrorism, terrorist activities, and counterterrorism operations." The sweeping scope of this authority engenders fear that conversations and messages may be monitored and recorded by the government, creating a chilling effect on protected speech. It further renders possible the invasion of privacy and unreasonable searches and seizures.
- v) **Section 49** raises *ex post facto* and bill of attainder concerns. The criminalization of mere membership in an organization later tagged as terrorist by the UNSC or ATC, a circumstance not heretofore a crime under Philippine law, enables the ATC to punish individuals for past conduct.

## NATURE OF THE PETITION

1. This is a *Petition* under the expanded *certiorari* jurisdiction of the Honorable Court under Article VIII, Section 1 of the 1987 Constitution in relation to Rule 65 of the Rules of Court, praying for the issuance of writs of *certiorari* and prohibition, to:
  - a. Declare the ATA void and unconstitutional in its entirety, or in parts, for violating separation of powers and offending fundamental civil liberties enshrined in the Constitution;
  - b. Issue a *status quo ante* order, temporary restraining order and/or writ of preliminary injunction enjoining Respondents from implementing the ATA pending final resolution of this case; and
  - c. After due proceedings, permanently enjoin Respondents and all parties acting on their behalf or under their direction from enforcing the ATA.

## THE PARTIES

### The Petitioners

2. Petitioner **ANTONIO T. CARPIO** (“Petitioner Carpio”) is a Filipino, of legal age, and may be served with notices, papers and other processes of the Honorable Court at the address of undersigned counsel at 901 One Corporate Center, Doña Julia Vargas Avenue cor. Meralco Avenue, Ortigas Center, Pasig City. He is a retired Senior Associate Justice of this Honorable Court, a member of the Philippine Bar, an advocate of civil and political rights, and a scholar of Philippine maritime rights over the West Philippine Sea (“WPS”). He has openly criticized the administration of President Rodrigo R. Duterte (“Duterte Administration”) on the issues of enforcing the Philippines’ rights over the WPS<sup>1</sup> and its favoring interests of the People’s Republic of China (“PROC”) to the prejudice of Philippine sovereign rights.<sup>2</sup> He is suing as a jurist, a citizen whose public rights are affected, a member of the Philippine Bar, a taxpayer, a long-serving former government official,

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<sup>1</sup> See Antonio Carpio, *The WPS: A Long Struggle Ahead*, Stratbase ADR Institute, June 9, 2020, available at <https://adrinstitute.org/2020/06/09/closing-remarks-of-justice-antonio-carpio-for-adri-vrtd-debunking-chinas-new-normal-a-year-after-the-reef-bank-incident/> (accessed on July 15, 2020).

<sup>2</sup> See Llanesca Panti, *Carpio: Philippines should sue China for damages over non-compensation of Gem-Vir crew*, June 11, 2020, available at <https://www.gmanetwork.com/news/news/nation/742130/carpio-philippines-should-sue-china-for-damages-over-non-compensation-of-gem-vir-crew/story/> (accessed on July 15, 2020).

and as an individual who stands to sustain or is in imminent danger of sustaining direct injury from the ATA.

3. Petitioner **CONCHITA CARPIO MORALES** (“Petitioner Carpio Morales”) is a Filipino, of legal age, and may be served with notices, papers and other processes of the Honorable Court at the address of undersigned counsel at 901 One Corporate Center, Doña Julia Vargas Avenue cor. Meralco Avenue, Ortigas Center, Pasig City. She is a former Associate Justice of this Honorable Court, a former Ombudsman, a member of the Philippine Bar, and a staunch advocate of the rule of law. She has defied the Duterte Administration’s policies in relation to the PROC by filing a Complaint with the International Criminal Court (“ICC”) against PROC President Xi Jinping to stop the PROC’s acts of impunity over the WPS.<sup>3</sup> She is suing as a jurist, a citizen whose public rights are affected, a member of the Philippine Bar, a taxpayer, a long-serving former government official, and as an individual who stands to sustain or is in imminent danger of sustaining direct injury from the ATA.

4. Petitioner **JAY L. BATONGBACAL** (“Petitioner Batongbacal”) is a Filipino, of legal age, and may be served with notices, papers and other processes of the Honorable Court at the address of undersigned counsel at Malcolm Hall, University of the Philippines (“UP”) Diliman, Quezon City. He is the Associate Dean of the University of the Philippines’ College of Law (“UP Law”) and the Director of the UP Institute for Maritime Affairs and Law of the Sea. He is regarded as an expert on the Philippines’ maritime rights in the WPS,<sup>4</sup> in which capacity he has consistently contradicted the policies of the Duterte Administration on the WPS in media and in the academe. He is suing as an academic, a citizen whose public rights are affected, a member of the Philippine Bar, a taxpayer, and as an individual who stands to sustain or is in imminent danger of sustaining direct injury from the ATA.

5. Petitioner **DANTE B. GATMAYTAN** (“Petitioner Gatmaytan”) is a Filipino, of legal age, and may be served with notices, papers and other processes of the Honorable Court at the address of undersigned counsel at Malcolm Hall, UP Diliman, Quezon City. He

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<sup>3</sup> See Sofia Tomacruz, Del Rosario, Morales still pursuing ICC complaint vs. China, Rappler, December 6, 2019, available at <https://www.rappler.com/nation/246558-albert-del-rosario-conchita-carpio-morales-pursue-icc-complaint-vs-china> (accessed on July 15, 2020).

<sup>4</sup> See Jay Batongbacal, Maritime Philippines in the Asian Century: Global Environmental Change, Regional Economic Integration, Geo-political Realities, and Contested Legal Spaces (Jaime V. Ongpin Memorial Lecture, October 24, 2012), pp. 19-21 available at <http://www.ateneo.edu/sites/default/files/JVO%2011%20-%20Lecture%20by%20Dr%20Jay%20Batongbacal%20-%20Manuscript%20with%20photos.doc> (accessed on July 15, 2020).



is a Professor of Law at UP Law, the Director of the UP Institute for the Administration of Justice, a prolific researcher and writer of issues affecting the rule of law, and the author of various publications that are critical of government action.<sup>5</sup> He is suing as an academic, a citizen whose public rights are affected, a member of the Philippine Bar, a taxpayer, and as an individual who stands to sustain or is in imminent danger of sustaining direct injury from the ATA.

6. Petitioner **THEODORE O. TE** ("Petitioner Te") is a Filipino, of legal age, and may be served with notices, papers and other processes of the Honorable Court at the address of undersigned counsel at Malcolm Hall, UP Diliman, Quezon City. He is a Professor of Law at UP Law teaching Criminal Law. As such, he provokes discussions among his students over government policies and actions, and encourages dialogue on public interest issues. He is suing as an academic, a citizen whose public rights are affected, a member of the Philippine Bar, a taxpayer, and as an individual who stands to sustain or is imminent danger of sustaining direct injury from the ATA.

7. Petitioner **VICTORIA V. LOANZON** ("Petitioner Loanzon") is a Filipino, of legal age, and may be served with notices, papers and other processes of the Honorable Court at the address of undersigned counsel at Malcolm Hall, UP Diliman, Quezon City. She teaches Constitutional Law as a Professorial Lecturer at UP Law. As such, she provokes discussions among her students over government policies and actions, and encourages dialogue on public interest issues. She is suing as an academic, a citizen whose public rights are affected, a member of the Philippine Bar, a taxpayer, and as an individual who stands to sustain or is imminent danger of sustaining direct injury from the ATA.

8. Petitioner **ANTHONY CHARLEMAGNE C. YU** ("Petitioner Yu") is a Filipino, of legal age, and may be served with notices, papers and other processes of the Honorable Court at the address of undersigned counsel at Malcolm Hall, UP Diliman, Quezon City. He teaches Constitutional Law as a Professorial Lecturer at UP Law. As such, he provokes discussions over government policies and actions among his students, and encourages dialogue on public interest issues. He is suing as an academic, a citizen whose public rights are affected, a member of the Philippine Bar, a taxpayer, and as

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<sup>5</sup> See Dante Gatmaytan, *Abusive judicial review in the Philippines*, New Mandala, August 24, 2018, available at <https://www.newmandala.org/abusive-judicial-review-philippines/> (accessed on July 15, 2020); Dante Gatmaytan, *Constitutional Deconsecration: Enforcing an Imposed Constitution in Duterte's Philippines*, 62 *Ateneo L.J.* 311 (2017), available at <http://ateneolawjournal.com/Media/uploads/5cf4d41a1efd71b15cc0e7a1080cabe1.pdf> (accessed on July 15, 2020).

an individual who stands to sustain or is in imminent danger of sustaining direct injury from the ATA.

9. Petitioner **FRANCISCO ASHLEY L. ACEDILLO** ("Petitioner Acedillo") is a Filipino, of legal age, and may be served with notices, papers and other processes of the Honorable Court at the address of undersigned counsel at 901 One Corporate Center, Doña Julia Vargas Avenue cor. Meralco Avenue, Ortigas Center, Pasig City. He is a graduate of the Philippine Military Academy and was an officer of the Philippine Air Force, a former member of the House of Representatives, and now a student at UP Law. He writes analyses and commentaries on issues of national defense and security based on broad research and open deliberations with stakeholders, including positions opposed to the government's handling of the Philippine-PROC relations. He is suing as a researcher and policy formulator, a citizen whose public rights are affected, a former legislator, a taxpayer, and as an individual who stands to sustain or is in imminent danger of sustaining direct injury from the ATA.

10. Petitioner **TIERONE JAMES M. SANTOS** ("Petitioner Santos") is a Filipino, of legal age, and may be served with notices, papers and other processes of the Honorable Court at the address of undersigned counsel at 901 One Corporate Center, Doña Julia Vargas Avenue cor. Meralco Avenue, Ortigas Center, Pasig City. He is a student of the UP Diliman School of Statistics and is an incumbent Councilor of the University Student Council ("USC"). He is a member of the Student Alliance for the Advancement of Democratic Rights in UP ("STAND UP"), an organization that has long been openly labelled as left-leaning. He is an activist, an outspoken critic of the government, and is an organizer and leader of rallies and protests actions against the Duterte Administration. He is suing as a citizen who is at the frontline of sustaining a direct injury from the ATA.

11. Petitioners Carpio, Carpio Morales, Batongbacal, Gatmaytan, Te, Loanzon, Yu, Acedillo, and Santos are hereinafter referred to collectively as "Petitioners", unless individually specified.

### The Respondents

12. Respondent **ANTI-TERRORISM COUNCIL ("ATC")** is a government entity created by virtue of the ATA and charged with the enforcement and implementation of the law. Its address is at Mabini Hall, J.P. Laurel St., San Miguel, Manila.

13. Respondent **SENATE OF THE PHILIPPINES** ("Senate") is one of the two Chambers comprising the Congress of the Philippines. Its address is at GSIS Bldg., Financial Center, Diokno Blvd., Pasay City.

14. Respondent **HOUSE OF REPRESENTATIVES OF THE PHILIPPINES** ("House") is the other Chamber comprising the Congress of the Philippines. Its address is at Constitution Hills, Quezon City 1126.

15. Respondent **SALVADOR C. MEDIALDEA** is the Executive Secretary and is being impleaded in his official capacity as Chairperson of the ATC, with office address at the Ground Floor, Premier Guest House, J.P. Laurel St. San Miguel, Manila.

16. Respondent **HERMOGENES C. ESPERON, JR.** is the National Security Adviser and is being impleaded in his official capacity as Vice-Chairperson of the ATC, with address at the NICA Compound, NIC Building, 5 V. Luna Road, corner East Avenue, Quezon City, 1101 Metro Manila.

17. Respondent **TEODORO L. LOCSIN, JR.** is the Secretary of Foreign Affairs and is being impleaded in his official capacity as Member of the ATC, with address at Department of Foreign Affairs, 2330 Roxas Boulevard, Pasay City.

18. Respondent **DELFIN N. LORENZANA** is the Secretary of National Defense and is being impleaded in his official capacity as Member of the ATC, with address at the DND Building, Segundo Ave. Camp General Emilio Aguinaldo, Quezon City, Philippines 1110.

19. Respondent **EDUARDO M. AÑO** is the Secretary of Interior and Local Government and is being impleaded in his official capacity as Member of the ATC, with address at the DILG-NAPOLCOM Center, EDSA cor. Quezon Ave., Barangay West Triangle, Quezon City.

20. Respondent **CARLOS G. DOMINGUEZ III** is the Secretary of Finance and is being impleaded in his official capacity as Member of the ATC with address at the DOF Bldg., BSP Complex, Roxas Blvd., Manila 1004.

21. Respondent **MENARDO I. GUEVARRA** is the Secretary of Justice and is being impleaded in his official capacity as Member of

Respondent ATC, with address at the DOJ, Padre Faura Street, Ermita, Manila 1000.

22. Respondent **GREGORIO B. HONASAN II** is the Secretary of Information and Communications Technology and is being impleaded in his official capacity as Member of Respondent ATC, with address at the Department of Information and Communications Technology, C.P Garcia Ave., Diliman, Quezon City, Philippines 1101.

23. Respondent **MEL GEORGIE B. RACELA** is the Executive Director of the AMLC and is being impleaded in his official capacity as Member of Respondent ATC, with address at the 5/F EDPC Bldg., Bangko Sentral ng Pilipinas Complex, Mabini cor. Vito Cruz Sts., Malate, Manila.

24. Respondents, and all other persons acting under their control, direction and instructions, are collectively served copies of this *Petition* through their statutory counsel, the Office of the Solicitor General, at 134 Amorsolo St., Legaspi Village, Makati City where they may be served with summons, notices, papers, and other processes of the Honorable Court.

### ANTECEDENT PROCEEDINGS

25. On February 26, 2020, the Senate approved on third and final reading Senate Bill No. 1083 providing for an "Act to Prevent, Prohibit and Penalize Terrorism, Thereby Repealing Republic Act No. 9372, Otherwise known as the Human Security Act of 2007".<sup>6</sup>

26. On February 27, 2020, Senate Bill No. 1083 was endorsed to the House for its concurrence.

27. On June 3, 2020, the House approved House Bill No. 6875 on third reading.<sup>7</sup>

28. On June 5, 2020, the House adopted Senate Bill No. 1083 as an amendment to House Bill No. 6875.<sup>8</sup> The final copy of the approved House Bill No. 6875 was transmitted to the Senate on June 8, 2020.<sup>9</sup>

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<sup>6</sup> Legislative History Record for Senate Bill No. 1083, available at [https://senate.gov.ph/lis/bill\\_res.aspx?congress=18&q=5BN-1083](https://senate.gov.ph/lis/bill_res.aspx?congress=18&q=5BN-1083) (accessed on July 15, 2020).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

29. A copy of the bill signed by the signatories of the House was received by the Senate on June 9, 2020.<sup>10</sup> Senate President, Vicente Sotto III confirmed that he signed the enrolled consolidated version of House Bill No. 6875 and Senate Bill No. 1083, which had been transmitted for signature of the President.<sup>11</sup>

30. On July 3, 2020, the ATA was signed into law by President Rodrigo Duterte and will take effect on July 22, 2020, fifteen (15) days after it was published in the Official Gazette on 6 July 2020.<sup>12</sup>

### JURISDICTIONAL BASIS

#### The Petition is cognizable by the Honorable Court.

31. This *Petition* is being filed directly before the Honorable Supreme Court in view of the public interest involved, the significant controversy generated by the passage of the ATA, and by virtue of Article VIII, Section 4(2) of the Constitution, which states: “[a]ll cases involving the constitutionality of a...law...shall be heard by the Supreme Court *en banc*.”

32. There is no other plain, speedy, and adequate remedy but a direct recourse to the Honorable Court assailing the constitutionality of the ATA.

33. It is respectfully submitted that this *Petition* is cognizable under the Honorable Court’s traditional judicial review power, as well as under its expanded *certiorari* power under Article VIII, Section 1, paragraph 2 of the Constitution.

#### Petitioners, individually and collectively, possess locus standi.

34. Petitioners possess *locus standi* as they stand to suffer “immediate, or imminent danger of sustaining some direct injury as a result of”<sup>13</sup> the ATA and its enforcement. Petitioners are “about to be denied some right or privilege” and they are “about to be subjected to some burdens or penalties by reason of the”<sup>14</sup> ATA.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *cf.* Annexes “A” and “A-1”.

<sup>13</sup> Ferrer v. Bautista, G.R. No. 210551, June 30, 2015.

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

### Individual standing

35. The personal circumstances, and political, academic, or professional pursuits of the individual Petitioners as above said are repleaded here by reference.

36. Petitioner Carpio has criticized the Duterte Administration's inability to defend the rights of the Philippines over the WPS, as well as its catering to PROC's interests. He once described the Duterte Administration's WPS policy as being in "total disarray", stating: "[t]he Philippines will never offend China, and the Philippines will always appease China. The Duterte administration has set aside the arbitral ruling in the expectation of receiving loans and investments from China."<sup>15</sup>

37. Petitioner Carpio's impassioned activism may, without intention, convey in the mind of the hearer the message that, to preserve the WPS for the country, the people must withdraw support from the Duterte Administration by means drastic, violent, or terroristic, if need be. Among other provisions, Section 8 of the ATA exposes Petitioner Carpio to prosecution for Inciting to Commit Terrorism. Further, his words may be misconstrued under Section 4(c) of the ATA as "extensive interference" with "critical infrastructure" (*i.e.*, the diplomatic machinery of the country) intended to "provoke or influence" the government to take a particular action.

38. In a Facebook post now deleted, Presidential son, House Representative Paolo Duterte, accused Petitioner Carpio, among others, in an alleged conspiracy to oust the President in a purported rebellion or destabilization plot.<sup>16</sup>

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<sup>15</sup> Antonio Carpio, *The WPS: A Long Struggle Ahead*, Stratbase ADR Institute, June 9, 2020, available at <https://adrinstitute.org/2020/06/09/closing-remarks-of-justice-antonio-carpio-for-adri-vrtd-debunking-chinas-new-normal-a-year-after-the-recd-bank-incident/> (accessed on July 15, 2020).

<sup>16</sup> Addie Pobre, *MISLEADING: Paolo Duterte 'reveals' ouster plot vs President Duterte*, Rappler, July 12, 2019, available at <https://www.rappler.com/newsbreak/fact-check/234989-paolo-reveals-ouster-plot-against-president-duterte> (accessed on July 15, 2020); Screenshots of Rep. Duterte's post are available at: <https://www.interaksyon.com/rumor-cop/2018/12/11/140210/listing-the-inconsistencies-in-paolo-dutertes-list-of-destabilizers/> and <https://www.facebook.com/sabong2022/posts/1953126428328168> (accessed on July 15, 2020). Copies are attached as Annexes "B" and "B-1".

ANTI-ADMINISTRATION GROUP "OUST DUTERTE MOVEMENT"				
LIBERAL PARTY				
Civil Society Groups	CBCP/Opus Dei	Leftist(RA & RI- AKBAYAN 3RD Bloc	Government Officials- Yellow Group	
Movement Against Tyranny	Francisco "Kit" Tarad	Militant/cause oriented groups	Ret. Gen. Victor Corrao	Secedems (underground LLP)
TINDIG PILIPINAS	Bishop Broderick Padilo		Ret. Gen. Cujanan	
MAKABAYAN Bloc	Bishop Leo M. Diosa		Ret. Gen. Jaoppe	Norberto Gonzales Acting CI Antonio Carpio
Opus Dei (Funds)	Tobias	United Opposition led by VP Leni Robredo		
Imelda Nicolas (Php 1B)	Bishop Desgracias Inguan	Meeting venues: Maryhill School of Theology in New Manila LLC Club Filinvest		F. Kit Tarad Jim "Ducky" Parasdes
PAGCOR Div. Carmen	Bishop (Emeritus) Jolo			
Pedrosa	Xavier Labayan			
	Bishop Pablo Vinglio David			
	Bishop Arturo Santos			

39. On the other hand, Petitioner Carpio Morales is likewise in danger of being accused of terrorist acts or support thereof, such as "extensive interference" into "critical infrastructure" that is meant to "destabilize" "fundamental political structures" under Section 4(c) of the ATA, as she has recently filed a disruptive ICC complaint against PROC President Xi Jinping with intent or effect, as the ATC can now say, of severely damaging the diplomatic infrastructure between the Philippines and PROC. The President has called Carpio Morales a "spokesman of the criminals".<sup>17</sup>

40. President Duterte has further claimed that the advocacy efforts of Petitioners Carpio and Carpio Morales have resulted in escalated tensions with the PROC, and blamed these Petitioners for any violence that may erupt in Palawan which lays proximate to the Chinese military installations in the WPS.<sup>18</sup> National Security Advisor Hermogenes Esperon described Petitioner Carpio as a warmonger over the WPS dispute.<sup>19</sup>

<sup>17</sup> Pia Ranada, Duterte to Ombudsman: Shut up, don't be like Obama, Rappler, July 17, 2017, available at <https://www.rappler.com/nation/175857-duterte-ombudsman-morales-shut-up-not-be-like-obama> (accessed on July 15, 2020) "Since when did you anoint yourself spokesman of the criminals?" A copy of this article is attached as Annex "B-2".

<sup>18</sup> Transcript of Speech of President Rodrigo Duterte during the Inauguration of the Chen Yi Agriventures Rice Processing Complex, 5 July 2019, available at: <https://pcoo.gov.ph/wp-content/uploads/2019/07/Speech-of-President-Rodrigo-Roa-Duterte-during-the-inauguration-of-Chen-Yi-Agventures-Rice-Processing-Complex.pdf> (accessed on July 15, 2020): "Itong, itong, itong si Carpio, si Albert, sila si --- pati isang Carpio, si Morales... Now he wants us to tickle China at kapag pumutok itong --- ang masakripisyo, papasabugin nila 'yung Palawan kasi nandiyan 'yan sila lahat ngayon eh because it's facing the China Sea."

<sup>19</sup> Transcript of Public Briefing hosted by PCOO Secretary Martin Andanar and Undersecretary Rocky Ignacio with PTV, Presidential Communications Operations Office, April 28, 2020, available at <https://pcoo.gov.ph/press-briefing/public-briefing-laginghandaph-hosted-by-presidential-communications-operations-office-secretary-martin-andanar-and-pcoo-undersecretary-rocky-ignacio-3/> (accessed on July 15, 2020): "eh huwag na siyang masyadong pumapel sa pakikipag-giyera."

41. Petitioner Batongbacal is openly critical of the administration's handling of the WPS issue<sup>20</sup> and has asserted that "the Philippines has lost some of its credibility with how it has handled the [WPS arbitration award]." <sup>21</sup> He claimed that PROC's use of marine scientific research was a means of "develop[ing] and project[ing] maritime power,"<sup>22</sup> and that the Chinese COVID 19-related aid was a front "to expand its control in the disputed waters."<sup>23</sup> Then Presidential Spokesperson Harry Roque, in an interview on March 1, 2018, accused Petitioners Carpio and Batongbacal of warmongering for allegedly tempting war with PROC.<sup>24</sup>

42. Petitioner Gatmaytan has also criticized the Duterte Administration, particularly President Duterte, and implied that not all his orders should be followed.<sup>25</sup> He, together with Petitioners Loanzon, and Yu are all professors of Constitutional Law. They conduct their law classes, and hold lectures and fora, in which they encourage open, defiant, and no-holds barred conversations of government actions and policies, interlaced with cases and assignments on the topics that cover societal movements like the Communist Party of the Philippines<sup>26</sup> and past rebellions involving the Reform the Armed Forces Movement<sup>27</sup> and the Oakwood Mutiny,<sup>28</sup> among others. When all these academic views are combined through the long spectrum of admittedly divisive and socially disturbing issues from WPS, to extra-judicial killings ("EJK"), to federalism, to political dynasties and the constitutionality of the ATA, the ATC will likely

<sup>20</sup> Pia Ranada, Maritime expert hits Panelo for downplaying China ship harassment, Rappler, November 4, 2019, available at <https://www.rappler.com/nation/244097-maritime-law-expert-response-panelo-downplaying-china-harassment-filipino-crewed-ship> (accessed on July 15, 2020). He called for someone to "stop [then-Presidential Spokesperson] Pano from speaking out of turn on matters of foreign policy."

<sup>21</sup> Interview of Petitioner Batongbacal with Christian Esguerra of ANC, ABS-CBN, August 27, 2019, available at <https://news.abs-cbn.com/video/news/08/27/19/maritime-law-expert-ph-lost-credibility-with-handling-of-s-china-sea-arbitral-victory> (accessed on July 15, 2020).

<sup>22</sup> Frances Mangosing, Be wary of Chinese research vessel deployment to South China Sea, analyst says, Inquirer.net, March 12, 2020, available at <https://globalnation.inquirer.net/186099/be-wary-of-chinese-research-vessel-deployment-to-south-china-sea-analyst-says> (accessed on July 15, 2020).

<sup>23</sup> Manila Standard, China pushes sea aggression, uses virus aids as camouflage, Manila Standard, April 28, 2020, available at <https://manilastandard.net/mobile/article/322496> (accessed on July 15, 2020).

<sup>24</sup> Transcript of Interview of Presidential Spokesman Harry Roque with Karen Davila, Presidential Communications Operations Office, March 1, 2018, available at <https://pcoo.gov.ph/media-interview/interview-presidential-spokesman-harry-roque-karen-davila-headstart-anc/> (accessed on July 15, 2020) Roque said: "I'm sorry, if Professor Batongbacal wants to be antagonistic to China, go ahead, arm himself and declare war there. And he can go and fight his war together with Justice Carpio if he wants to."

<sup>25</sup> Xave Gregorio, 2019: The year Duterte further strengthened his grip on the country, CNN Philippines, December 30, 2019, available at <https://cnnphilippines.com/news/2019/12/30/2019-Rodrigo-Duterte-Congress.html> (accessed on July 15, 2020); Petitioner said: "He doesn't seem to be familiar with the procedures of government which is why he thinks everyone should follow any and all of his orders— and that's really not how the system was built or designed. [...] That does have very serious implications sa rule of law because if he thinks he has all these powers, he is in effect usurping the functions of other branches of government." A copy of this Article is attached as Annex "B-3".

<sup>26</sup> *People v. Ferrer*, G.R. No. 1-32613, December 27, 1972.

<sup>27</sup> *People v. De Gracia*, G.R. No. 102009, July 6, 1994.

<sup>28</sup> *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 522 Phil. 705.



finds acts of terrorism under any of the overbroad and vague provisions of the ATA, including Section 10(d) of the ATA that penalizes “facilitating or promoting the recruitment of persons to serve in any capacity in or with such armed force,” and Section 12 in relation to Section 3(e) of the ATA which penalizes providing “material support” that encompasses “intangible properties” such as ideas, lectures, research, and scholarly works and publications.

43. Petitioner Te, as a human rights lawyer, has been vocal against the Duterte administration’s handling of the “drug war” in the Philippines. He asserts that the current war on drugs lacks a genuine probe into the alleged EJK.<sup>29</sup> As, he was one of the many individuals charged by the Philippine National Police for inciting to sedition last July 18, 2019,<sup>30</sup> Petitioner Te faces more than just a “credible threat of prosecution” under the ATA.

44. Petitioner Acedillo has criticized the policies of the Duterte Administration as “populist, quick-fix, strongman approaches,”<sup>31</sup> and once remarked that the “only kind of governance President Duterte knows is authoritarianism.”<sup>32</sup> He denounced<sup>33</sup> National Security Adviser Hermogenes Esperon Jr. for dismissing Petitioner Carpio’s proposal for joint Southeast Asian patrols<sup>34</sup> in the WPS, branding as “false dichotomy” the government’s choice of “acquiesce and accommodate China to preserve the peace” or “resist their aggression and end up going to war and eventual defeat.” These vocal protestations can be subsumed under several provisions of the ATA, including “extensive interference” with “critical infrastructure” intended to “provoke or influence” the government, or meant to “destabilize” “fundamental political structures,” both punished under Sec. 4(c) of the ATA.

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<sup>29</sup> Lian Buan, Initial tokhang documents show lack of genuine probe into killings – lawyers, Rappler, April 4, 2019, available at: <https://rappler.com/nation/lawyers-say-initial-oplan-tokhang-documents-show-lack-genuine-probe-killings> (accessed on July 15, 2020).

<sup>30</sup> Tetch Torres-Tupas, Sedition case filed vs Robredo, 35 others over ‘Bikoy’ videos, Phil. Daily Inquirer, July 18, 2019 available at: <https://newsinfo.inquirer.net/1143292/pnp-cidg-files-sedition-case-vs-robredo-over-totoong-narcolist-video> (accessed on July 15, 2020).

<sup>31</sup> Nikko Dizon, Guard against martial law abuses, security experts urge public, Philippine Daily Inquirer, May 24, 2017, available at <https://newsinfo.inquirer.net/899238/guard-against-martial-law-abuses-security-experts-urge-public> (last accessed July 15, 2020) A copy of this Article is attached as Annex “B-4”.

<sup>32</sup> Charmaine Deogracias, Former solon says Martial Law fits Duterte’s authoritarian bent, Vera Files, July 11, 2017, available at <https://www.verafiles.org/articles/former-solon-says-martial-law-fits-dutertes-authoritarian-be> (accessed on July 1, 2020).

<sup>33</sup> Francisco Acedillo, Foisting False Dilemmas on China, Rappler, May 4, 2020, available at <https://www.rappler.com/views/imho/259388-opinion-foisting-false-dilemmas-china> (accessed on July 1, 2020).

<sup>34</sup> Sofia Tomacruz, Joint patrols can counter Chinese intimidation during pandemic – Carpio, Rappler, April 27, 2020, available at <https://www.rappler.com/nation/259200-carpio-joint-naval-operations-can-counter-chinese-intimidation-south-china-sea-pandemic> (accessed on July 1, 2020).

45. Petitioner Santos has been active in the UP Diliman USC and in STAND UP, a known militant student political party. STAND UP is composed of several UP Diliman-based student organizations, including the League of Filipino Students, Anakbayan, and the Union of Journalists of the Philippines, which have been tagged by the National Task Force to End Local Communist Armed Conflict (“NTF-ELCAC”) as among the “creations of the CPP itself.”<sup>35</sup> As his duty under the USC Constitution and House Rules is to “defend and promote the rights and general welfare of the University studentry and the Filipino people,”<sup>36</sup> he joined coordinated protest actions in partnership with various movements against the ATA. Petitioner Santos shared the details of his bank accounts to receive donations for the logistics of the “June 12 Grand Mañanita.”<sup>37</sup> Petitioner Santos is one clear target of the ATC under Section 25 and other provisions of the ATA.

46. The University of the Philippines System has been branded as “recruiting ground” of purportedly radical organizations such as the “Communist Party of the Philippines-New People's Army-National Democratic Front[,]”<sup>38</sup> and “providing cover for the recruitment of our impressionable youth into armed movements,”<sup>39</sup> acts indubitably classified as “terrorism” and penalized under Section 10 of the ATA. Petitioners alumni, faculty, and students of the UP are burdened with choosing between the free expression of their thoughts and beliefs, on the one hand, and their insulation from criminal prosecution as “terrorists”, “supporters of terrorists” or “inciters to terrorism” under the ATA by censoring themselves now and cutting controversial topics from their academic and professional pursuits.

47. The Honorable Court pointed out in *Southern Hemisphere v. Anti-Terrorism Council*<sup>40</sup> that “a reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge.” For the foregoing reasons, Petitioners are sufficiently clothed with standing to institute the *Petition* and assail the constitutionality of the ATA.

<sup>35</sup> See REDS freeride on ABS-CBN issue, Post on NTF-ELCAC Facebook Page, May 12, 2020, available at <https://www.facebook.com/ntfelcac/posts/reds-freeride-on-abs-cbn-issue-for-52-years-the-communist-party-of-the-philippine/232763348162057/> (accessed on July 1, 2020).

<sup>36</sup> University of the Philippines Diliman University Student Council 1920 Constitution and House Rules, Art. II, Sec. 2, available at [bit.ly/USC1920CHR](http://bit.ly/USC1920CHR) (accessed on July 1, 2020).

<sup>37</sup> See Post on UP Diliman University Student Council Facebook Page, June 10, 2020, available at <https://www.facebook.com/USCUPDiliman/posts/3110245185702501> (accessed on July 15, 2020).

<sup>38</sup> See NTF-ELCAC’s Response to the Statement of UPLB’s Chancellor Fernando Sanchez, Jr. Dated 27 May 2020, Post on NTF-ELCAC Facebook Page, May 29, 2020, available at <https://m.facebook.com/ntfelcac/posts/244139283691130> (accessed on July 15, 2020). A copy of this Article is attached as Annex “B-5”.

<sup>39</sup> *Id.*

<sup>40</sup> G.R. Nos. 178552, 178554, 178581, 178890, 179157 & 179461, October 5, 2010, 646 Phil. 452.

### Collective Standing

48. Independently of the foregoing, this *Petition* can nevertheless proceed under firmly established doctrines on standing.

#### Petitioners are citizens invoking public rights, and, by such circumstance, have standing to sue.

49. *David v. Macapagal-Arroyo*<sup>41</sup> instructs that “[i]n matter of mere public right, however...the people are the real parties...It is at least the right, if not the duty, of every citizen to interfere and see that...a public grievance be remedied.” *Valentin v. Civil Service Commission*<sup>42</sup> further simplifies the requirement such that when the proceeding involves the assertion of a public right, the “mere fact that the petitioner is a citizen” satisfies the requirement of personal interest.

50. The ATA’s provisions are challenged for collectively violating Petitioners’ (as well as every individual Filipino’s) constitutionally guaranteed freedoms such as the right: (a) to due process of law;<sup>43</sup> (b) against warrantless arrests and detention;<sup>44</sup> (c) against unreasonable searches and seizures;<sup>45</sup> (d) to freedom of expression;<sup>46</sup> (e) to bail;<sup>47</sup> (f) to presumption of innocence;<sup>48</sup> (g) to freedom of assembly;<sup>49</sup> (h) to privacy of communication and correspondence;<sup>50</sup> (i) to freedom of association;<sup>51</sup> (j) to public information;<sup>52</sup> and (k) against *ex post facto* laws and bills of attainder.<sup>53</sup>

#### The ATA deters protected speech and other fundamental rights thus enabling a facial challenge.

51. Further, Petitioners assail the ATA for violating separation of powers considering that it diminishes the constitutional powers held by the Judiciary and vests them in a creation of Congress. Thus, Petitioners are also filing in behalf of the Judicial Branch which is unable to file petitions before itself even for its own protection.

<sup>41</sup> G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 522 Phil. 705.

<sup>42</sup> G.R. No. L-72119, May 29, 1987.

<sup>43</sup> Const. art. III, sec. 1.

<sup>44</sup> Const. art. III, sec. 2.

<sup>45</sup> Const. art. III, sec. 2.

<sup>46</sup> Const. art. III, sec. 4.

<sup>47</sup> Const. art. III, sec. 13.

<sup>48</sup> Const. art. III, sec. 14.

<sup>49</sup> Const. art. III, sec. 4.

<sup>50</sup> Const. art. III, sec. 3.

<sup>51</sup> Const. art. III, sec. 8.

<sup>52</sup> Const. art. III, sec. 7.

<sup>53</sup> Const. art. III, sec. 22.

52. In *Romualdez v. COMELEC*,<sup>54</sup> the Honorable Court *en banc* clarified that the inapplicability of facial challenges to penal laws cannot be invoked when a penal statute infringes upon “free speech, religious freedom, and other fundamental rights”. Thus, the Honorable Court has ruled that a facial challenge can be mounted, not just on free speech grounds, but even on violations of other fundamental rights. This was recently reiterated in *Nicolas-Lewis v. COMELEC*.<sup>55</sup>

53. *Southern Hemisphere v. Anti-Terrorism Council*<sup>56</sup> confirmed that “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**.” In *Disini v. Secretary of Justice*,<sup>57</sup> the Honorable Court ruled that “[w]hen a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable.” With vagueness and overbreadth as tools, Sections 4 to 12 of the ATA succeed in silencing deserving speakers who, for fear of state sanctions, will resort to self-censorship. The ATA hangs a sword of Damocles over the heads of the outspoken Petitioners, and their speech is deterred not because the sword might fall, but because it hangs.<sup>58</sup>

**The enactment of an unconstitutional penal statute like the ATA is an actual controversy that is ripe for adjudication.**

### **Ripeness under Traditional Judicial Review**

54. The *Petition* challenges the ATA (1) as an unconstitutional curtailment of civil liberties; and (2) as an invalid intrusion into Judicial prerogatives by the political branches. Both aspects render the *Petition* ripe for adjudication and present an actual controversy.

55. “Because of the sensitive nature of constitutionally protected expression”, it is not required that “those subject to overbroad regulations risk prosecution to test their rights.”<sup>59</sup> Where the law has “the potential to repeatedly chill the exercise of expressive activity by

<sup>54</sup> G.R. No. 167011 December 11, 2008.

<sup>55</sup> G.R. No. 223705, August 14, 2019.

<sup>56</sup> G.R. Nos. 178552, 178554, 178581, 178890, 179157 & 179461, October 5, 2010.

<sup>57</sup> G.R. Nos. 203335, 203299, 203306, 203359, 203378, 203391, 203407, 203440, 203453, 203454, 203469, 203501, 203509, 203515 & 20351, February 11, 2014.

<sup>58</sup> J. Marshall’s dissent in *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974).

<sup>59</sup> *Dombrowski v. Pfister*, 380 U.S. 479 (1965).

many individuals,”<sup>60</sup> the strategic goal of preventing a chilling effect justifies a facial invalidation. Thus, a criminal statute may be reviewed prior to enforcement where parties are able to substantiate a “credible threat of prosecution” and therefore, “should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.”<sup>61</sup> The ATA constitutes a serious threat to fundamental rights, including those of speech and its concomitant rights: assembly and association. Its provisions impose severe penalties on a wide range of protected speech.<sup>62</sup> Its mere existence demands constitutional scrutiny.

56. That the ATA poses a “credible threat of prosecution” is plainly apparent considering that law enforcers have already expressed their intent to use its provisions to hunt down persons or organizations perceived as “terrorists”. Even before the enactment of the ATA, official social media channels of the PNP have featured prominent posters singling out specific individuals and groups as “terrorists” or alleged conspirators or fronts of the “terrorist” CPP-NPA-NDF. In a post made on June 9, 2020, the Butuan City Police Station III accused several politicians, including an incumbent member of the House, of being “terrorists.”<sup>63</sup>



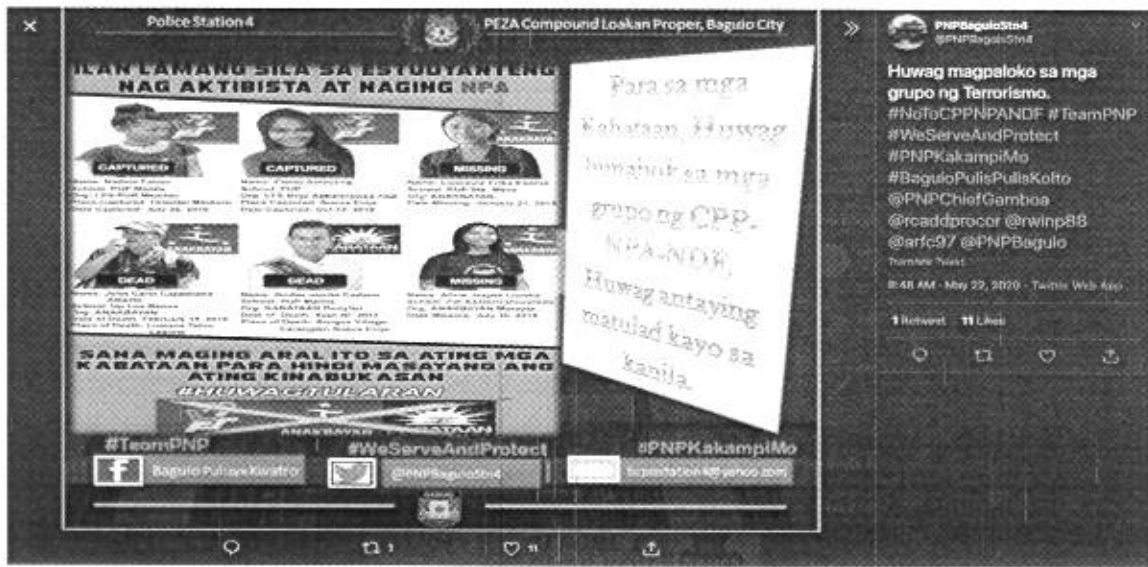
<sup>60</sup> *New York v. Ferber*, 458 U.S. 747 (1982).

<sup>61</sup> *Southern Hemisphere v. Anti-Terrorism Council*, G.R. Nos. 178552, 178554, 178581, 178890, 179157 & 179461, October 5, 2010; see also *Doe v. Bolton*, 410 U.S. 179 (1973).

<sup>62</sup> *Disini v. Secretary of Justice*, G.R. Nos. 203335, 203299, 203306, 203359, 203378, 203391, 203407, 203440, 203453, 203454, 203469, 203501, 203509, 203515 & 20351; *Nicolas-Lewis v. COMELEC*, G.R. No. 223705, August 14, 2019; *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

<sup>63</sup> Philippine National Police Butuan City Police Station III Facebook page, available at <https://www.facebook.com/photo.php?fbid=3263765477181812&set=t.100006451761072&type=1&theater> (last accessed on June 29, 2020).

57. In another post on May 22, 2020, the PNP Baguio Station, through its Twitter account “PNPBaguioStn4”, posted:<sup>64</sup>



58. These messages that explicitly describe dissident individuals and organizations as “terrorists” are direct imputations to them of criminality. Under the ATA, any person, who is “affiliated” with them or “supports” them, including possibly the Petitioners for reasons already said, is at risk of prosecution under the overbroad and vague terms of Sections 4 to 12 of the ATA.

59. Just recently, an Army Colonel called out an Inquirer.net journalist for supposedly favoring the New People’s Army in the course of news reporting<sup>65</sup> which simply quoted a CHR Commissioner decrying the red-tagging of supposedly leftist individuals and organizations.<sup>66</sup> That journalist, under the wide discretion provided for in the ATA to law enforcers, could well be apprehended for “supporting a terrorist group” under Section 12 of the ATA.

60. This Honorable Court has consistently ruled that concrete acts are not the measure of ripeness, but rather the existence of an immediate or threatened injury to oneself as a result of the challenged

<sup>64</sup> PNPBaguioStn4, Tweet posted on May 22, 2020, available at: <https://twitter.com/PNPBaguioStn4/status/1263632759219601408/photo/1> (accessed on July 15, 2020).

<sup>65</sup> Harold Cabunoc, PROPAGANDISTA KA BA NG NPA?, Post on Harold Cabunoc’s Facebook Page, June 27, 2020, available at <https://www.facebook.com/rangercabunzky/posts/3383320538345311> (accessed on July 15, 2020).

<sup>66</sup> Consuelo Marquez, NUJP calls out Army officer over Facebook post vs Inquirer reporter, Inquirer.net, June 27, 2020, available at <https://newsinfo.inquirer.net/1298423/nujp-calls-out-army-officer-over-facebook-post-vs-inquirer-reporter> (accessed on July 15, 2020).

action.<sup>67</sup> That the ATA will take effect on July 22, 2020, fifteen (15) days after its publication on July 6, 2020 with the Official Gazette, renders the instant case as ripe for adjudication.

### “Duty” to act under Expanded Judicial Review

61. By way of alternative reasoning, Petitioners invoke the Honorable Court’s expanded judicial review jurisdiction under the Article III, Section 1 of the 1987 Constitution stating: “Judicial power includes the duty of courts...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.”

62. This new addition to previous definitions of traditional judicial power was a deliberate choice of the Framers of the Constitution to cover “acts” of the political branches that might otherwise evade judicial scrutiny. As clearly explained during the Constitutional Commission proceedings:<sup>68</sup>

“CHIEF JUSTICE ROBERTO CONCEPCION: “As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: ‘Well, since it is political, we have no authority to pass upon it.’ The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. x x x **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. x x x**” [Emphasis supplied]

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<sup>67</sup> *Province of Cotabato v. Government of the Republic of the Philippines*, G.R. Nos. 183591, 183752, 183893, 183951 & 183962, October 14, 2008.

<sup>68</sup> *Francisco v. House of Representatives*, G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, 160360, 160362, 160370, 160376, 160392, 160397, 160403 & 160405, November 10, 2003, November 10, 2003 *citing* I Record of the Constitutional Commission 434-436.

63. The 1987 Constitution differs sharply from previous Constitutions. Unlike its predecessors, the “judicial power granted to the Supreme Court [by the 1987 Constitution] is not just a power but also a duty.”<sup>69</sup> This “duty” requires the Honorable Court to be the “arbiter of disputes between factions and instruments of government.”<sup>70</sup> The Honorable Court has thus firmly established that, under the 1987 Constitution, the enactment of an unconstitutional law partakes of an actual case or controversy that, of itself, is enough to “awaken judicial duty”.<sup>71</sup>

64. Petitioners submit that the conditions for a proper judicial intervention exist. The passage of the ATA gives rise to the existence of: (1) a dispute between branches as the Judiciary has been diminished by an intrusive act of its co-equal branches; and (2) an immediate or threatened deprivation of Petitioners’ right to life, liberty, and property, and violation of their right against unreasonable arrests, freedom of speech, freedom of association, freedom of assembly, and others guaranteed by the Bill of Rights.

65. In *Pimentel v. Aguirre*,<sup>72</sup> the Honorable Court granted the petition to prohibit the implementation of Administrative Order Nos. 372 and 43, rejecting the argument that “people should await the implementing evil to befall on them before they can question acts that are illegal or unconstitutional.” It held that “[b]y the mere enactment of the questioned law ..., the dispute is said to have ripened into a judicial controversy even without any other overt act.”

66. In *Tañada v. Angara*,<sup>73</sup> the Honorable Court stressed that 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 (as in the instant case).” In *Macalintal v. Commission on Elections*,<sup>74</sup> the Honorable Court emphasized that this “duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld.” Indeed,

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<sup>69</sup> *Francisco v. House of Representatives*, G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, 160360, 160362, 160370, 160376, 160392, 160397, 160403 & 160405, November 10, 2003.

<sup>70</sup> *In re: Amado P. Macasaet*, A.M. No. 07-09-13-SC, August 8, 2008.

<sup>71</sup> *Imbong v. Ochoa*, G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 & 207563, April 8, 2014, 732 Phil. 1; *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000.

<sup>72</sup> G.R. No. 132988, July 19, 2000.

<sup>73</sup> G.R. No. 118295, May 2, 1997.

<sup>74</sup> G.R. No. 157013, July 10, 2003.



the Honorable Court ruled that “any alleged violation of the Constitution by any branch of government is a proper matter for judicial review.”<sup>75</sup>

### Direct recourse to the Honorable Court is justified

67. Direct recourse to the Honorable Court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time.<sup>76</sup> In *Ifurung v. Carpio-Morales*,<sup>77</sup> the Honorable Court ruled that “direct resort to this court includes availing of the remedies of *certiorari* and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government.”

68. The present case raises serious constitutional issues involving an act of Congress that sweeps away fundamental freedoms guaranteed by the Bill of Rights and transgresses the separation of powers enshrined in the Constitution.<sup>78</sup> When a branch of government, such as Congress, breaches defined constitutional limits, it is the exclusive power and duty of the Honorable Court to take cognizance of the issue and strike it down as unconstitutional.<sup>79</sup>

69. Moreover, this *Petition* presents purely legal questions that can be resolved through a facial scrutiny of the ATA’s provisions.

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<sup>75</sup> *Province of Cotabato v. Government of the Republic of the Philippines*, G.R. Nos. 183591, 183752, 183893, 183951 & 183962, October 14, 2008.

<sup>76</sup> *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015.

<sup>77</sup> G.R. No. 232131, April 24, 2018

<sup>78</sup> *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992: “The Constitution expressly confers on the judiciary the power to maintain inviolable what it decrees. As the guardian of the Constitution we cannot shirk the duty of seeing to it that the officers in each branch of government do not go beyond their constitutionally allocated boundaries and that the entire Government itself or any of its branches does not violate the basic liberties of the people.” [Emphasis and underscoring supplied]

<sup>79</sup> *Gutierrez v. House of Representatives*, G.R. No. 193459, February 15, 2011

## SUBSTANTIVE ARGUMENTS

### I.

THE ATA SUPPRESSES A SUBSTANTIAL AMOUNT OF PROTECTED SPEECH THROUGH VAGUENESS AND OVERBREADTH, RENDERING IT FACIALLY UNCONSTITUTIONAL.

### II.

THE CREATION OF THE ATC—WITH ITS INTEGRAL POWER TO ORDER THE WARRANTLESS ARREST OF “SUSPECTED” TERRORISTS—IS INVALID AS IT (1) INFRINGES THE BASIC PRINCIPLE OF SEPARATION OF POWERS AND, WHILE EMULATING THE PRESIDENT’S COMMANDER-IN-CHIEF POWERS, (2) VESTS THE ATC WITH POWERS THAT FAR EXCEED THOSE CONSTITUTIONALLY-GRANTED TO THE PRESIDENT.

### III.

THE ATA’S PROVISIONS ALLOWING FOR THE “DESIGNATION” OF TERRORISTS, PARTICULARLY SECTIONS 3(B), 3(H), 3(K), 3(M), 10, 11, 12, 25, 26, 27, 29 AND 49, ARE UNCONSTITUTIONAL AS THEY UNDULY INFRINGE UPON THE CONSTITUTIONAL RIGHTS TO (1) CRIMINAL DUE PROCESS, (2) BAIL, (3) PRESUMPTION OF INNOCENCE, (4) PROHIBITIONS AGAINST BILL OF ATTAINDER AND *EX POST FACTO* LAWS, AND (5) AGAINST *INCOMMUNICADO* DETENTION.

### IV.

OTHER MAJOR VIOLATIONS OF THE BILL OF RIGHTS FOUND IN SECTIONS 3(H), 3(I) IN RELATION TO 16, 25, 35, 36, 45, AND 46(E) RENDER THE ATA UNCONSTITUTIONAL.

### V.

SINCE ITS OPERATIONAL PROVISIONS ARE UNCONSTITUTIONAL FOR CONSTITUTING RESTRICTIONS TO LIBERTY THAT FAIL STRICT SCRUTINY, THE ATA CANNOT BE IMPLEMENTED AND MUST BE VOIDED IN ITS ENTIRETY.

## DISCUSSION

### I. The ATA suppresses a substantial amount of protected speech through vagueness and overbreadth, rendering it facially unconstitutional.

#### A. The definitions of “terrorism” and its variants in Section 4 are vague and overbroad.

70. Petitioners recognize the compelling need for an effective legal framework to prevent terrorism at its inception. However, such a law requires clear and precise wording. A vague and overbroad law is not only unconstitutional but fails to achieve the peace and security desired by the Government for the People.

71. The Honorable Court has consistently held that a law is utterly vague when obscurity is evident on its face. Neither can said law be clarified by either a saving clause or by construction.<sup>80</sup> The evils caused by “vagueness” are also firmly established in the Honorable Court’s rulings. Such a law “impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on *ad hoc* and subjective basis[.]”<sup>81</sup> Vague standards “result in erratic and arbitrary application based on individual impressions and personal predilections.”<sup>82</sup> This Honorable Court has condemned such laws because they vested law enforcers with “unbridled discretion”<sup>83</sup> resulting in “arbitrary and discriminatory enforcement”.<sup>84</sup> A vague law empowers law enforcers who could then use any hypothetical scenario that can be generated from the wording of the law and penalize citizens thereunder.

72. The Honorable Court’s time-tested standards prohibiting overbroad statutes are equally stringent. This Honorable Court has never hesitated to strike down any law if it “needlessly restricts even constitutionally-protected rights.”<sup>85</sup> The Honorable Court has denounced such laws as they offend the constitutional principle “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

<sup>80</sup> *Disini, Jr. v. Secretary of Justice*, G.R. Nos. 203335, 203299, 203306, 203359, 203378, 203391, 203407, 203440, 203453, 203454, 203469, 203501, 203509, 203515 & 203518, February 18, 2014.

<sup>81</sup> *Samahan ng mga Progresibong Kabataan v. Quezon City*, G.R. No. 225442, August 8, 2017.

<sup>82</sup> *Id.*

<sup>83</sup> *Imbong v. Ochoa*, <sup>83</sup> G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 & 207563, April 8, 2014, 732 Phil. 1.

<sup>84</sup> *Disini, Jr. v. Secretary of Justice*, *supra*.

<sup>85</sup> *Nicolas-Lewis v. COMELEC*, G.R. No. 223705, August 14, 2019.

area of protected freedoms.”<sup>86</sup> The rule is that “general words are understood in a general sense” and therefore the lack of limiting language means that the law can be interpreted to cover all those falling within its general or ordinary meaning.<sup>87</sup> Other top officials’ public statements (*i.e.*, those who say that critics must be “supporters” of terrorists) leave no room for doubt that the ATA’s bare text already “sweeps unnecessarily broadly”, invades protected freedoms and chills citizens into silence. “An overbroad law that ‘chills one into silence’ should be invalidated on its face”.<sup>88</sup>

73. As will be discussed, the ATA offends all of these standards, which the Honorable Court has painstakingly protected through decades of careful adjudication. The ATA’s key provisions are so obscure that as early as now, the President’s interpretation is contested by the ATA’s principal author.<sup>89</sup> With a clash of viewpoints already occurring at the highest level, the feared evils of “unfettered discretion” and “erratic and arbitrary application” on the ground is certain.

74. Section 4 of the ATA penalizes as a form of terrorism any act that “endangers a person’s life” or entails “extensive interference” to “critical infrastructure”.<sup>90</sup> Without standards to limit their boundaries, these phrases suffer from serious ambiguity and overbreadth that enables malicious criminal prosecution of innocent rights-holders. Unsuspecting citizens would second-guess whether their actions would result in “extensive interference” or “endanger” the life of another in some shape or form. This produces a chilling effect on constitutional freedoms, especially free speech. In *David v. Macapagal-Arroyo*,<sup>91</sup> this Honorable Court ruled that challenges against statutes for overbreadth must be permitted to prevent the “chilling, deterrent effect of the overbroad statute on third parties not courageous enough to bring suit”. An “overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties.”<sup>92</sup>

75. To illustrate, Petitioner Carpio’s advocacy of advancing PH claims in the WPS may be branded by the Government as “endangering life” by purportedly escalating tension between

<sup>86</sup> *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992.

<sup>87</sup> *Nicolas-Lewis v. COMELEC*, G.R. No. 223705, August 14, 2019.

<sup>88</sup> *Nicolas-Lewis v. COMELEC*, G.R. No. 223705, August 14, 2019.

<sup>89</sup> Bella Perez-Rubio, Declaration of communist rebels as terrorists up to court, not Duterte-Lacson, *Philippine Star*, July 9, 2020, available at <https://www.philstar.com/headlines/2020/07/09/2026811/declaration-communist-rebels-terrorists-court-not-duterte-lacson> (accessed on July 15, 2020). A copy of this article is attached as Annex “C”.

<sup>90</sup> In relation to Section 3(a) thereof.

<sup>91</sup> G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006.

<sup>92</sup> *Id.*

Philippine and Chinese groups in the area. Certainly, the purpose of such advocacy is to “provoke the government” into changing policies, albeit as a matter of principle. But the ATA leaves too much ambiguity that an overzealous enforcer can make the case that Petitioner Carpio’s acts that “provoke the government” violate the law. After all, he has been accused of warmongering by the Government. Furthermore, Petitioner Carpio’s comments could be characterized as creating a “serious risk to public safety” by endangering our political relations with PROC, a powerful neighbor with a history of militarization in disputed areas. Political speech that does not pose a clear and present danger of a substantive evil that Congress has the right to prevent has long been under the protection of the constitutional guarantee of free speech.<sup>93</sup>

76. Another example is the recent arrest of eight (8) protesters within the premises of the UP - Cebu Campus during a protest action for allegedly violating quarantine guidelines.<sup>94</sup> This act is similar to the “grand Mananita” attended and led by Petitioner Santos. Under Section 4(a) of the ATA, these can be considered as endangering another person’s life due to the risk of Covid-19 infection. Such conduct - an otherwise legitimate exercise of the freedoms of expression and peaceful assembly - can be penalized under the broad scope of Section 4(a). The fact that law enforcers may classify such innocent exercise of “civil and political rights” as a form of terrorism can effectively deter the exercise of these basic rights.

77. Section 4(b) is also vague and overbroad as it penalizes as a form of terrorism any act “intended to cause extensive damage or destruction to a government or public facility, public place, or private property.” Under this provision, a bus driver who participates in a mass strike to protest a government rule banning the entry of provincial buses into Metro Manila risks prosecution as the mass action can be characterized as causing “extensive damage to ... private property” due to the loss of revenue for transport companies. The same mass action may also be misinterpreted as an act of “pressuring” or “provoking” the government into action. Both characterizations could potentially expose the bus driver to prosecution for terrorism. Unfortunately for him, the exception in Section 4 would not apply, as said strike could be interpreted as constituting a “serious risk to public safety” due to any disorder arising from the transport strike.

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<sup>93</sup> Chavez v. Gonzales, G.R. No. 168338, February 15, 2008.

<sup>94</sup> Alven Marie Timtim, Ferro: UP Cebu protest was about the violation of GCQ guidelines, Cebu Daily News, June 8, 2020, available at <https://cebudailynews.inquirer.net/316528/ferro-up-cebu-protest-was-about-the-violation-of-gcq-guidelines> (accessed on July 15, 2020).

78. Section 4(c) in relation to Section 3(a) of the ATA penalizes acts which “cause extensive interference with...critical infrastructure”. The phrase “extensive interference” is not defined, leaving individuals to speculate on its exact meaning. “Interfere” can be understood as an act of entering or taking a part in the concerns of others or acting reciprocally so as to augment, diminish, or otherwise affect one another<sup>95</sup> or “an obstruction or hindrance” or “the act of meddling in another’s affairs”.<sup>96</sup> Relatedly, Section 3(a) defines “critical infrastructure” as an all-encompassing range of assets or systems such that any form of “interference” deemed “extensive” by authorities may be proceeded against as a form of terrorism under Section 4(c).

79. At bottom, the phrases “serious bodily injury,” “extensive damage or destruction,” “extensive interference,” “seriously undermine public safety,” and “seriously destabilize or destroy the fundamental political, economic, or social structure” in Section 4 are so amorphous and sweeping that they invade a vast area of constitutionally-protected activities, including free speech.

80. Thus, in a case of a citizen who posts in an online forum maintained by the Department of Health (“DOH”) a report from a civil society group criticizing the DOH’s pandemic response and predicting thousands of potential deaths and grave consequences resulting from a failure to systematically flatten the infection curve, such person can be charged with a form of terrorism under Sections 4(a) and 4(b) of the law as his actions can be alleged as having been committed with the purpose of “intimidat[ing] the general public or a segment thereof”, “spread[ing] a message of fear” or “provok[ing]...the government”. As the report was posted in an online forum of the DOH, which is accessible by persons nationwide, he may also be accused of violating Section 4(c) by “extensive interference” (posting the civil society report) to a “critical infrastructure” (the DOH online forum). Authorities may even claim that the fear or panic caused by the report he posted may “endanger” the lives of persons and charge him with violating Section 4(a) of the ATA.

81. The word “interfere” can be understood in several ways, including “the act of entering or taking a part in the concerns of others or acting reciprocally so as to augment, diminish, or otherwise affect one another.”<sup>97</sup> The same can be said of the words “intimidating”, “spreading” and, “provoking”. Petitioners Carpio, Carpio Morales,

<sup>95</sup> Merriam-Webster Dictionary: “interfere”, available at <https://www.merriam-webster.com/dictionary/interfere> (accessed on July 15, 2020).

<sup>96</sup> BLACK’S LAW DICTIONARY, p. 888 (9<sup>th</sup> Ed., 2009).

<sup>97</sup> Merriam-Webster Dictionary: “interfere”, available at <https://www.merriam-webster.com/dictionary/interfere> (accessed on July 15, 2020).

and Batongbacal are vocal advocates for Philippine sovereignty in the WPS. Their advocacies on the WPS and their criticisms regarding the government's perceived lack of action on that issue may be branded as attempts to extensively interfere with the government's diplomatic machinery, jeopardizing relations with the PROC. Such fears are not speculative; in fact, they have been called out by high-ranking government officials such as Presidential Spokesperson Panelo, Presidential Spokesperson Roque, and President Duterte himself. Under Section 4(c), Petitioners Carpio, Carpio Morales and Batongbacal could be charged with terrorism due to extensive interference (*i.e.*, advocating for Philippine sovereignty in the WPS) with critical infrastructure (*i.e.*, straining diplomatic relations with PROC), as so broadly defined in the law.

82. *Imbong v. Ochoa*<sup>98</sup> explains that a law is void for vagueness if it "leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle." Section 4's ambiguous language opens the door to the indiscriminate curtailment of activities, without so much guidance as to what constitutes the unlawful act of "terrorism".

83. While Section 4 contains an exception that terrorism "shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action and other similar exercises of civil and political rights," this exception is diluted by the final qualifying phrase - "which are not intended to cause death or serious physical harm to a person, to endanger a person's life or to create a serious risk to public safety."

84. This final qualifying phrase renders the exception pointless. In qualifying the exception using the same obscure standard, or the lack of a standard, citizens cannot take refuge by acting outside the ambit of the ATA, precisely because there are no clear parameters as to what is and is not penalized. Even if it were not so, the entire operation of Section 4 now depends on the final qualifying phrase, not on the exception and certainly not on the general rule. Rather than a clear mandate that leaves no room for abuse, the interpretation of the Section 4 is surrendered to the discretion of law enforcers. Section 4 is just as likely to penalize legitimate advocacy as it is to permit unlawful militant views.

85. In other words, Section 4 is unconstitutional for overbreadth as it condemns even legitimate "exercises of civil or political rights" as acts of terrorism by the simple accusation of mere

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<sup>98</sup> *Supra*.

**intent** (a) “to cause death, serious physical harm to a person”; (b) “to endanger a person’s life”; or (c) “to create a serious risk to public safety”.

86. Even well-meaning individuals like herein Petitioners, while truly against the idea of terrorism, can come under the ATA’s crosshairs due to its defective wording. In fact, as will be shown in Paragraph 99 below, one of the ATA’s legislative sponsors has even committed acts that render him liable under the ATA.

**B. The qualifying clause in Section 4 increases, rather than reduces, the vagueness of the ATA.**

87. The qualifying clause at the end of Section 4<sup>99</sup> adds to the ambiguity of the provision. It is not clear whether the clause qualifies paragraphs (a), (b), (c), (d), and (e), or only paragraph (e) which refers to the “release of dangerous substances, or causing fire, floods, or explosions.” “Grammatically, the qualifying clause refers only to the last antecedent”<sup>100</sup> which, in this case, is paragraph (e). If one considers that the opening line of the qualifying clause uses the noun “act” in its singular form (*i.e.*, “when the purpose of such act”) in contrast to paragraphs (a) to (c) which use the plural form “acts”, and to paragraph (d) which enumerates several separate acts, it may be concluded that the clause qualifies only paragraph (e). This interpretation is reinforced by the fact that, among the forms of terrorism mentioned in Section 4, paragraph (e) matches best with the qualifying clause because the act of releasing “dangerous substances, or causing fire floods or explosions” in paragraph (e) naturally produces the effects mentioned in the qualifying clause, namely: intimidation and fear among the general public; destabilization or destruction of fundamental political, economic, or social structures; and creation of emergency or a serious undermining of public safety .

88. Yet, if the qualifying clause covers only paragraph (e), then Section 4(a) could apply to soldiers shooting at rebels or to civilians working in gun factories. Section 4(d), which refers to, among other things, the possession of explosives, could apply to party celebrators lighting firecrackers since this provision penalizes the mere possession or use of explosives regardless of the context of the act.

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<sup>99</sup> It reads “...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...”

<sup>100</sup> *Florentino v. Philippine National Bank*, G.R. No. L-8782, April 28, 1956.



89. As Section 4 is the heart of the ATA, it must state what terrorism is and who are guilty of it in clear and precise terms; otherwise, it is unconstitutional for vagueness and overbreadth. The foundation of criminal law and procedure is a clearly defined law. "No one may be required at peril of life, liberty, or property to speculate as to the meaning of penal statutes."<sup>101</sup> It is such a law that enables courts to assess whether the police have probable cause or reasonable suspicion for searches and seizures. It is such a law that allows judges to weigh guilt or innocence. And it is such a law that is clear as to its meaning as governed in its general rule and not by a slippery "qualifying phrase". A vague criminal statute that gives excessive discretion to define criminal conduct, at least in the absence of a limiting construction, allows law enforcement officials to make the law as they enforce it; it is akin to a delegation of lawmaking power to the police, an invitation to 'round up the usual suspects.' Such a statute represents a breakdown of the rule of law.<sup>102</sup>

### **C. Other forms of terrorism enumerated in Sections 5 to 12 are also void for vagueness and overbreadth.**

90. Section 5 of the ATA penalizes "threats" to commit terrorism, but neglects to define the forbidden act. Unsure as to what utterances constitute a "threat", individuals will abstain from speech for fear of state sanction, effectively silencing even deserving speakers. The Oxford Learner's Dictionary defines "threat" as "the possibility of trouble, danger or disaster."<sup>103</sup> This definition noticeably drops intent as an essential element. Given such vagueness, law enforcers will be left to decide, on a case-by-case basis, what expressive acts constitute threats to commit terrorism. The effect is to give them the authority to define criminal conduct on the ground.

91. In impassioned advocacies, some degree of hyperbole is employed to rouse the crowd. At the height of quarantine measures during the COVID-19 pandemic, dissatisfied citizens voiced out their dissent by sharing memes or posts with the hashtag #OustDuterte. The use of the hashtag #OustDuterte may be branded as a threat to commit terrorism because moves to oust President Duterte can fall within the purview of "extensive damage...to a government" and can be characterized as being made with the purpose of "seriously

<sup>101</sup> *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939).

<sup>102</sup> David Gans, *Strategic Facial Challenges*, BOSTON UNIVERSITY LAW REVIEW 1333, at 1371 (2005).

<sup>103</sup> Oxford Learner's Dictionary: "threat", available at <https://www.oxfordlearnersdictionaries.com/us/definition/english/threat> (last accessed June 29, 2020).

destabilizing” the “fundamental political...structures of the country” within the vague language of Section 4.

92. The amorphous scope of the term “threat” also infringes upon statements made privately in the heat of the moment. Consider a heated debate between two friends and one of them proclaims: “the President should be shot for his incompetence.” Even though that statement does not produce imminent lawless violence (since it cannot persuade people to actually shoot the President), the wording of the ATA allows law enforcers to arrest anyone who uses incendiary speech, thereby chilling even private conversations.

93. Section 6 of the ATA penalizes the act of any person to “participate in the planning, training, preparation and facilitation in the commission of terrorism”. It also penalizes the act of “collecting or making documents connected with the preparation of terrorism”. Consider Rep. Duterte’s Facebook post which listed Petitioner Carpio as an alleged member of a so-called “Oust Duterte Movement”. It mentioned restaurants as venues for meetings like Anabelle’s and Club Filipino. Section 6 is vague and overbroad because “planning, training, preparation and facilitation” can cause law enforcers to justify the arrest and prosecution of even the waitstaff who prepared documents for the table reservation of alleged “destabilizers”, or official receipts for meals taken during their alleged “planning” of the supposed “terrorism”. Apart from being hinged on a vague definition of terrorism, “training” in Section 3(k) is overbroad since “giving instruction or teaching” “to impart a specific skill” can be used to penalize genuine and valid modes of passing on knowledge, as what Petitioners Gatmaytan, Batongbacal, Te, Loazon and Yu regularly do in a classroom setting as professors of law.

94. Section 7 of the ATA punishes persons “who come to an agreement concerning the commission of terrorism” for the crime of Conspiracy to Commit Terrorism. Although the term “conspiracy” is defined, the provision suffers nevertheless from serious ambiguity due to the nebulous characterizations of terrorism in Section 4. It vests law enforcers with unfettered discretion to accuse any two persons of allegedly being part of a so-called conspiracy. For example, in Rep. Duterte’s Facebook post, ostensibly “for fun”,<sup>104</sup> any over-eager police officer who sees the post might take it seriously and arrest anyone listed

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<sup>104</sup> Philippine Star, Paolo Duterte hits critics of unverified list he posted ‘for fun’, 18 December 2018 available at <https://www.philstar.com/nation/2018/12/13/1876777/paolo-duterte-hits-critics-unverified-list-he-posted-for-fun> (accessed on July 15, 2020).

therein without judicial warrant for alleged conspiracy. That the law grants such broad discretion makes it void for vagueness.<sup>105</sup>

95. Section 8 punishes a proposal to commit terrorism. Section 8 is to be read alongside Section 3(g), which states that proposal is committed by a person who has resolved to commit an act of "terrorism" and "proposes its execution to" others. Section 8 is void for vagueness and overbreadth because it punishes all utterances that, to a law enforcer, may sound like a proposal even though it is a mere expression of an opinion. How will the law enforcer know that a person has "resolved to commit an act of terrorism" in the first place? As this involves an inquiry into the mind of the person, the law enforcer will have to exercise discretion, raising the specter of an arbitrary or discriminatory enforcement.<sup>106</sup> That Section 8 of the ATA permits a law enforcer to accost Petitioners Gatmaytan, Batongbacal, Te, Loanzon and Yu for having discussed Communism (since it is perceived as a terrorist ideology) and/or rebellions in class reveals the danger engendered by this ambiguous and sweeping law.

96. Section 9 of the ATA punishes 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". What constitutes inciting or incitement is anybody's guess as neither of these terms are defined in the ATA. As with many other provisions, law enforcement authorities are again given unbridled discretion in determining who can be considered as violators, putting in harm's way even protected speakers.

97. *Salonga v. Paño*<sup>107</sup> pronounced that the "constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Section 9 provides no such safeguard. It punishes mere incitement, without regard whether such incitement would be successful in its advocacy. Law enforcement authorities may reasonably think it proper to arrest student activists engaged in protest actions or even comedians criticizing the Government by labeling their statements as "unlawful incitements" to terrorism.

<sup>105</sup> *Disini v. Secretary of Justice, supra*: "Penal laws should provide reasonably clear guidelines for law enforcement officials and triers of facts to prevent arbitrary and discriminatory enforcement."

<sup>106</sup> *Id.*

<sup>107</sup> G.R. No. L-59524, February 18, 1985.

98. Even the qualifying phrase “tending to the same end” in Section 9 does not afford adequate safeguards against the unbridled discretion that the ATA gives to authorities. Speeches for advocacy are inherently directed towards a specific purpose. Especially in speech, the purpose is towards the government or certain critical infrastructure. Thus, all forms of advocacy will still fall within the scope of the provision as they “tend to” some end. To be an adequate safeguard, the term “tending to the same end” must necessarily be coupled with the likelihood that the thing advocated for may actually happen. Without this, law enforcement will have unrestrained discretion in arresting dissenters and impassioned activists, chilling persons from speech for fear that their advocacies will fall under the wide scope of Section 9.

99. Recently, Senator Ronald “Bato” Dela Rosa publicly stated: *“If you do not trust PNP numbers, you dissolve the PNP. If you do not trust the government, tanggalin na ‘tong gobyerno. Let the human rights [groups], silang mag-rule ng ating bansa ‘pag ganu’n, wala na tayong tiwala sa ‘ting, uh, government instrumentality. I-dissolve nating lahat. Pali gobyerno. ‘Pag ‘di tayo maniwala, doon tayo maniwala sa kanila.”*<sup>108</sup>

100. This statement is a clear case of “incitement” falling squarely within Section 9 of the ATA, which has three elements: 1) utterance of speech; 2) the speech incites others to commit terrorism under Section 4 of the ATA; and 3) the act is committed for purposes enumerated in Section 4(a) to (e).

101. The first element is present as Senator Dela Rosa expressed the statement in an ANC Interview. Should such statement prompt any individual or organization to carry out the “dissolution” of the PNP and the government, they would commit terrorism under Section 4(b) or 4(c) of the ATA, by “extensively interfering” with “critical infrastructure” or causing “extensive damage” to “government facilities”, fulfilling the second and third elements of the crime.

102. Senator Dela Rosa cannot take refuge in Section 4’s Exception Clause, since his statement advocates the overthrow of Government, thereby creating a “serious risk to public safety”.

103. As the law penalizes mere incitement, it is immaterial if Senator Dela Rosa considered if his statement was likely to incite or produce resulting terrorist acts. While not a participant in such acts,

<sup>108</sup> Karen Davila’s interview with Senator Ronald “Bato” Dela Rosa, aired on the July 8, 2020 episode of ANC’s “Headstart”, at the 25:02 time mark available at [https://www.youtube.com/watch?v=St6afQr907Q&list=PLgyY1WylJUmilIU17DKEe7Cb4j63\\_7oxIQ&index=2&t=0s](https://www.youtube.com/watch?v=St6afQr907Q&list=PLgyY1WylJUmilIU17DKEe7Cb4j63_7oxIQ&index=2&t=0s) (accessed on July 15, 2020). A transcript of their exchange is attached as Annex “D”.

mere utterance is penalized under Section 9 of the ATA. That Senator Dela Rosa, one of those who voted in favor of the ATA's passage, can be prosecuted under Section 9 for uttering such a statement is an ironic yet serious indicia of the ATA's vagueness and overbreadth.

104. The unconstitutionality is not solved by the claim that Senator Dela Rosa can just explain he was being sarcastic. The text of his speech triggers the ATA because of the latter's vagueness and overbreadth. Prosecution cannot depend on whether law enforcers think that the speech is just "sarcasm". If that were so, then as the Honorable Court stated, it "would give law enforcers such latitude that **they could arbitrarily or selectively enforce the law**".<sup>109</sup>

105. Section 10 punishes with life imprisonment the act of "recruiting another to participate in, join, commit, or support" terrorism (as defined in Section 4) or a terrorist individual or group (as defined in Section 3). As defined in Section 3(h), recruiting means "encouraging other people." "Encouraging" is not defined in the law but, under common usage, is understood as "inspir[ing] with courage, spirit, or hope" or "attempt[ing] to persuade".<sup>110</sup> Similarly, "support" under Section 10 is not defined. In common usage, support means "to promote the interests or cause of" or "to uphold or defend as valid or right," or "to argue or vote for."<sup>111</sup> With no standards to limit it, the definition of "recruiting" is tainted by textual vagueness and excessive broadness, justifying its invalidation. It can arbitrarily be used to oppress protected conduct.

106. Where the government designates a Communist organization as a terrorist and began summarily arresting and abusing its members, which may include Petitioner Santos solely on account of affiliation with the designated organization, Section 10 chills Petitioners-law professors Batongbacal, Gatmaytan, Te, Loanzon, and Yu to silence by preventing them from assailing such action as unconstitutional. It even prevents them from critiquing the action in the context of discussing Supreme Court doctrines. Any statement they make runs the risk of being misconstrued as encouraging others to support alleged Communists, thus trampling upon academic freedom and protected speech.

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<sup>109</sup> *Disini, Jr. v. Secretary of Justice*, *supra*.

<sup>110</sup> Merriam-Webster.com Dictionary: "encourage", available at <https://www.merriam-webster.com/dictionary/encourage> (last accessed June 29, 2020).

<sup>111</sup> Merriam-Webster.com Dictionary: "support", available at <https://www.merriam-webster.com/dictionary/support> (last accessed June 29, 2020).

107. Even worse, Petitioners Batongbacal, Gatmaytan, Te, Loanzon, and Yu would be unable to lecture their students, as law professors, on the need to protect the rights of the accused in that case, as such lectures could be construed as “encouraging others” to “support” the organization. This is analogous to *DeJonge v. Oregon*,<sup>112</sup> where the US Supreme Court ruled that “[c]riminal punishment...for participation in...a public meeting, otherwise lawful, merely because the meeting was held under the auspices of an organization which teaches or advocates the use of violence, or other unlawful acts...though no such teaching or advocacy attended the meeting in question, violates the constitutional principles of free speech and assembly.”

108. Likewise, Petitioner Yu heads private organizations that bring together individuals who share advocacies about environmental protection, poverty, and good governance. Should such advocacies take a hardline stance against government policies, their legitimate activities risk being tagged as “extensive interference” under Section 4(c) of the ATA. Also, legitimate activities such as capacity building can be punished as “training” under Section 3(k) and calls for volunteers can be construed as “recruitment” under Sections 3(h) and 10.

109. Section 10 also criminalizes the organization or facilitation of international travel of individuals for the purpose of recruitment, defined as serving in an armed force in a foreign state. Such organization or facilitation can be consummated by merely publishing advertisements for the purpose of recruitment or advertisements that provide information on serving in an armed force in a foreign state. This Section is unclear as to whether recruitment to foreign armed forces must be read in conjunction with the general definition of recruitment in Section 3(h). If not, such Section could expand to cover many innocent acts that provide information on foreign armed service.

110. Even if Section 10 must be read in relation to Section 3(h), said provision is still vague as to cover innocent acts. For example, consider a citizen who is a member of an association of Muslim students who regularly participates in workshops on Islamic issues. If he were to invite a member of an organization that happens to be designated as a “terrorist” to have peaceful dialogue with other Muslims, such action could be covered by Section 10. This hypothetical

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<sup>112</sup> 299 U.S. 353 (1937).

situation is analogous to *DeJonge v. Oregon*<sup>113</sup> and therefore this Section likewise tramples upon the freedom of assembly.

111. Section 11 punishes a person for (a) traveling or attempting to travel to a state other than his or her state of residence for the purposes of Section 6; (b) organizing or facilitating the travel of individuals committing the acts in Section 6; or (c) anyone residing abroad who comes to the Philippines to commit the acts in Section 6. The mere act of traveling, attempting to travel, or facilitating the travel of others is punishable by life imprisonment upon a mere showing of a “purpose” that the government disapproves of. Worse, law enforcers may ascribe an illegal “purpose” based only on suspicion. This is not the least restrictive means available to the government as it can require the presentation of a modicum of evidence, and not simply a “purpose” before abridging the right to travel. As “the right to travel is a fundamental right...guaranteed no less by our Constitution,” the “Strict Scrutiny is the applicable test” and the lack of narrow tailoring of Section 11 renders it void.<sup>114</sup>

112. Take the case of Petitioner Batongbacal, a maritime law expert. Should he take up the cause of a fisherman’s group in the WPS aggrieved by Chinese incursions, and aid them in planning a peaceful demonstration against unauthorized Chinese vessels, he could be covered by Section 6’s prohibition against aiding the planning of an act that could cause a threat to national security by escalating Chinese aggressions in the WPS. Furthermore, should Petitioner Batongbacal invite an UNCLOS expert to the country to aid the fisherman’s group, both he and the expert could be punished under Section 11. Such restrictions of clearly protected political speech drive home the point that the means laid out by Section 11 are not the least restrictive means available, exposing Section 11’s inability to survive strict scrutiny.

113. More importantly, the ATA targets **speeches, statements, and utterances as predicate acts for criminal prosecution for terrorism**. It exposes any person who exercises freedom of expression to criminal liability under any of the forms of terrorism mentioned from Sections 4 to 12 of the ATA.

114. In the hands of the wrong law enforcers, such vague language can verily be stretched into limitless absurdities. This would allow for the evils of a “roving commission” for which the constitutional due process clause was precisely codified. The Honorable Court has

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<sup>113</sup> 299 U.S. 353 (1937).

<sup>114</sup> *Samahan Ng Mga Progresibong Kabataan v. Quezon City*, G.R. No. 225442, August 8, 2017.

held that “vagueness raises apprehension on the part of internet users because of its obvious chilling effect on the freedom of expression[.]”<sup>115</sup>

115. It is precisely because of the foregoing imminent evils that Petitioners raise this constitutional challenge. A generally worded statute, when construed to punish conduct which cannot be constitutionally punished, is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute.<sup>116</sup>

116. Where in the case of the ATA, “the statutory language [is] so obscure that it fail[s] to give adequate warning to those subject to its prohibitions as well as to provide proper standards for adjudication[.]”<sup>117</sup> such provisions are void for vagueness, meriting their nullification as unconstitutional.

117. Section 12 punishes providing “material support” to terrorists or terrorist groups who commit any of the acts in Section 4, knowing that they were committing or planning to commit such acts. Read in relation to Section 3(e)’s definition of “material support” (which covers tangibles and intangibles), the law, as worded, enlarges discretion (which, in Section 4, is already overbroad to begin with) to cover completely innocent actions, thereby sweeping unnecessarily broadly to prohibit protected speech and conduct.

118. In the case of Petitioner Carpio’s advocacy for the WPS, anyone who proofreads or fact-checks his speeches would be covered by Section 12 and subject to life imprisonment, as it is “service” for someone committing an act covered by Section 4. Even a person who drives for Petitioner Carpio on the way to a forum on the WPS arbitration case can be penalized.

119. Section 12 is also overbroad as it punishes regardless whether the actor agrees with the recipients of so-called “material support”. For instance, should Petitioner Acedillo, a national security expert, give expert training or advice on peaceful negotiation methods to a proscribed organization such as a left-leaning organization like STAND UP, he would be covered by Section 12. Even a lawyer like Petitioner Batongbacal, who provides legal assistance to a proscribed

<sup>115</sup> Emphasis and underscoring supplied.

<sup>116</sup> *People v. Dela Piedra*, G.R. No. 121777, January 24, 2001 citing *American Communications Assn. v. Douds*, 339 US 382 (1950).

<sup>117</sup> *Samahan Ng Mga Progresibong Kabataan v. Quezon City*, G.R. No. 225442, August 8, 2017.



organization, would be covered by Section 12. Such associations are not automatic manifestations of unlawful conduct or even intent, yet, Section 12 punishes them regardless.

120. Similarly, Sections 5 to 12 of the ATA, which all depend on Section 4 of the ATA, must be struck down for being overbroad. They penalize various forms of speech and expression in violation of the Constitution. Without any parameters to narrow the meaning of “threats”, “planning, training, preparation and facilitation”, conspiring, proposing, inciting, encouraging association or membership, and travelling or providing material support, the ATA is a loose cannon that threatens a wide spectrum of protected liberties. Citizens of common intelligence would be unable to discern when genuine calls for government reform would qualify as legitimate petitions to the government for redress of grievance, instead of outlawed “speeches, proclamations, writings, emblems, banners or other representations” as defined in Section 9 of the ATA. Indeed, an abundance of authentic political commentary is clothed in the medium of satire, artistic humor, and exaggerated language. These modes of expression risk being placed at the crosshairs of the ATA as “incitement” to commit terrorism.

121. To cite another problematic aspect, the ATA uses general words such as those of “planning, training, preparation and facilitation” or “recruiting” or “encouraging membership or association” with an organization or group of individuals and allows enforcers to tie them to forms of “extensive interference” with “critical infrastructure”. Thus, the danger of easily labeling terrorist activities as provided by Section 4 of the ATA can be unduly expanded to penalize what otherwise would be lawful demonstrations, rallies or gatherings for political debate and discussion.

122. The broad and all-encompassing language of Section 4 of the ATA casts too wide a net that it puts a substantial amount of constitutionally protected activities at risk of being classified as acts of “terrorism”. Further, Sections 5 to 12 of the ATA, which rely on the shifty definition of terrorism in Section 4, suffer from the same vice of overbreadth. While such ambiguous and overreaching language could conveniently stamp out terrorist activities, constitutionally protected rights should not be waylaid and sacrificed at the altar of convenience: “where the rights of the individual are concerned, the end does not justify the means...it is also necessary that the means employed to pursue it be in keeping with the Constitution.”<sup>118</sup>

<sup>118</sup> Republic v. Lim, G.R. No. 161656, June 29, 2005.

123. In *United States v. Robel*,<sup>119</sup> the US Supreme Court struck down a statute that “casts its net across a broad range of associational activities, indiscriminately trapping membership which can be constitutionally punished and membership which cannot be so proscribed.” In said statute, “[i]t is made irrelevant to the statute’s operation that an individual may be a passive or inactive member of a designated organization, that he may be unaware of the organization’s unlawful aims, or that he may disagree with those unlawful aims.” The sweeping definition of “material support” in relation to Sections 4 and 12 poses a similar threat: the indiscriminate application to both unprotected and protected speech and conduct.

124. As the Honorable Court observed in *Disini, Jr. v. Secretary of Justice*<sup>120</sup>, 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.”

125. The deadly combination of vagueness and overbreadth provides the perfect means to silence even protected speakers. These twin evils permeate the text of the ATA, justifying a facial invalidation of the law. On the basis of the foregoing, Petitioners respectfully submit that Sections 4 to 12 of the ATA are unconstitutional.

#### **D. Prior restraint on protected speech pervades the ATA.**

126. Article III, Section 4 of the 1987 Constitution unequivocally commands that: “**[n]o law shall be passed abridging the freedom** of speech, of expression or of the press or the right of the people peaceably to assemble and petition the government for redress of grievances.” The Free Speech Guarantee of the Constitution prohibits the imposition of any prior restraint by the government. Accordingly, any state restriction on any form of expression **in advance of actual publication or dissemination bears a heavy burden of unconstitutionality.**<sup>121</sup> In *Chavez v. Gonzales*,<sup>122</sup> the Honorable Court declared that freedom from prior restraint includes freedom from unwarranted criminal prosecution resulting from the exercise of

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<sup>119</sup> 389 U.S. 258 (1967).

<sup>120</sup> G.R. Nos. 203335, 203299, 203306, 203359, 203378, 203391, 203407, 203440, 203453, 203454, 203469, 203501, 203509, 203515 & 20351, February 11, 2014.

<sup>121</sup> *Social Weather Stations, Inc. v. COMELEC*, 409 Phil. 571 (2001).

<sup>122</sup> G.R. No. 168338, February 15, 2008.

free speech “**as the unrestrained threat of subsequent punishment, by itself, would be an effective prior restraint.**” Indeed, the fear of punishment arising from penal laws that leave rights-holders unsure as to what is permitted and what is outlawed forces an average person to abstain from speech and self-censor.

127. As previously shown, the ATA penalizes a broad range of forms of expression through provisions couched in vague and overbroad terms, chilling free speech in the process. The acts of terrorism in Section 4, the “threat to commit terrorism” in Section 5, the “planning, training, preparation and facilitation in the commission of terrorism in Section 6, the conspiracy to commit terrorism in Section 7, the act of proposing to commit terrorism in Section 8, the crime of inciting others to commit terrorism in Section 9, and the act of recruiting in Section 10, all involve the exercise of speech in varying degrees. “[T]he threat of sanctions may deter . . . almost as potently as the actual application of sanction.”<sup>123</sup> Publications such as the Philippine Collegian, a campus-wide student publication in UP, can very well be deterred from publishing articles that show support to rallyists that oppose the ATA.

128. The value of a Damocles Sword is that it hangs – not that it drops.”<sup>124</sup> Accordingly, Petitioners respectfully submit that Sections 4 to 10 of the ATA are void for constituting a prior restraint.

#### **E. Subsequent punishment of individuals exercising protected speech is unconstitutional.**

129. Freedom of speech prohibits the subsequent punishment of persons exercising this constitutional guarantee. Subsequent punishment is a form of retaliatory action by the government against individuals whose expressed ideas may conflict with those of the state. Rights-holders should be free to engage in protected speech without fear of criminal prosecution or reprisal. Thus, *Chavez v. Gonzales*<sup>125</sup> declares that “**opinions on public issues cannot be punished when published**, merely because the opinions are novel or controversial, or because they clash with current doctrines.”

130. As discussed above, rallyists opposing the ATA may be considered as “terrorists” since their acts may be interpreted as “extensive interference” or “endangering of another person’s life”. In

<sup>123</sup> *Keyishian v. Board of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 604 (1967), quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963).

<sup>124</sup> J. Marshall’s dissent in *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974).

<sup>125</sup> G.R. No. 168338, February 15, 2008.

fact, no less than Respondent Hermogenes Esperon, a member of the ATC, had publicly declared that critics of the ATA are supporters of terrorists: “So *anong sinasabi nila na mawawalan ng human rights? Palagay ko yung mga nagsasabi niyan, yung mga supporter ng mga terorista[.]*”<sup>126</sup>

131. Respondent Esperon’s statement confirms that, under the ATA, any showing of support for such genuinely legitimate activities could be considered as incitement to terrorism. Thus, the ATA would have fulfilled the purpose announced by its principal author: that “inchoate” actions be stifled even before they materialize. But the law is unconstitutional if such “inchoate actions” which were prevented were actually constitutionally-protected acts.

132. Indeed, any form of subsequent punishment against protected speech is presumed unconstitutional.<sup>127</sup> Political speech especially those that voice criticism, dissent or discontent are protected by the Constitution. Even if such speech contains undertones of violence, armed struggle and even revolution, these are still speech protected by the Constitution.<sup>128</sup> The serious penalties which range from a minimum of twelve (12) years to life imprisonment for the criminal offenses in Sections 4 to 10 of the ATA underscore the massive threat that these provisions pose to otherwise, constitutionally-protected speech. Political discussion is essential to the ascertainment of political truth. It cannot be the basis of criminal indictments.<sup>129</sup>

**F. The ATA’s provisions penalizing a wide range of Constitutionally-protected speech and expression stand to undermine a free, unhampered, and genuine public political debate that is the hallmark of the electoral process.**

133. Freedom of speech, expression, and the press are fundamentally intertwined with the electoral process.<sup>130</sup> Sections 4 to 12 of the ATA undermine these rights which are of the essence in the looming 2022 National Elections. Under Section 29 thereof, the ATC

<sup>126</sup> Erwin Colcol, *Oppositions solons slam Esperon for saying anti-terror law critics ‘support’ terrorists*, GMA News, July 6, 2020, available at <https://www.msn.com/en-ph/news/national/oppositions-solons-slam-esperon-for-saying-anti-terror-law-critics-support-terrorists/ar-BB16nMt5> (accessed on July 15, 2020). A copy of this article is attached as Annex “E”.

<sup>127</sup> *Phil. Blooming Mills Employment Organization v. Philippine Blooming Mills, Co.*, G.R. No. L-31195 June 5, 1973: “threat of sanctions may deter their exercise almost as potently as the actual application of sanctions”.

<sup>128</sup> *Salonga v. Paño*, G.R. No. L-59524, February 18, 1985.

<sup>129</sup> *Id.*

<sup>130</sup> *Rappler v. Bautista*, G.R. No. G.R. No. 222702, April 5, 2016; *GMA Network, Inc. v. Commission on Elections*, G.R. No. 205337, September 2, 2014.

may order the arrest of any person “suspected” of committing terrorism without a judicial warrant. The arrestee may then be detained for a total of twenty-four (24) days without being judicially charged. While the detainee must be released upon the expiry of this period, such individual may be re-arrested, leading to an unending loop of arrests until the individual desists from performing acts or uttering speech that law enforcers might “suspect” as terrorism.

134. The ATA will cause “redistributions” of speaking power as it can be wielded to stifle messages that might be categorized as inciting to terrorism but are really Constitutionally-protected speech. Further, the ATA’s capacity for prior restraint, subsequent punishment, and chilling of speech will cause certain speakers to self-censor, thus denying the marketplace of ideas a meaningful exchange of political debate. The net effect is that those who wield the implementation of the ATA will have the capacity to influence and dominate the public debate come the 2022 National Elections. Hence, the ATA’s provisions penalizing the legitimate exercise of freedom of speech, expression, and the press must be struck down as this defeats “the robust, uninhibited, and wide open debate, the generating of interest essential if our elections will truly be free, clean and honest.”<sup>131</sup>

135. Various government officials, including the proponent of the ATA and the Secretary of National Defense, have justified the statute on the premise that mere possibility of abuse is not a ground to declare a law unconstitutional. With respect, the Honorable Court’s rulings on vagueness and overbreadth do not turn on “feared possibilities”. They deal with ambiguities that open the door to arbitrariness. Political assurances cannot substitute for what the Constitution requires and, what the Honorable Court has held true for generations. Petitioners seek no political guarantee but a Constitutional formulation to ensure that the law will be applied uniformly and not arbitrarily, since the interpretation of this law falls upon individual law enforcement officers on the ground. Thus, in *Imbong v. Ochoa*,<sup>132</sup> a law may be invalidated for vagueness if it “it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.” As aptly expressed in *Kolender v. Lawson*,<sup>133</sup> “the more important aspect of the vagueness doctrine ‘is not actual notice, but...the requirement that a legislature establish minimal guidelines to govern law enforcement.’” Otherwise, this may permit “a standardless sweep [that] allows

<sup>131</sup> *Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992

<sup>132</sup> G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172 & 207563, April 8, 2014, 732 Phil. 1.

<sup>133</sup> 461 U.S. 352 (1983).

policemen, prosecutors, and juries to pursue their personal predilections." The country's current experience with arbitrary and inconsistent enforcement plaguing the months long quarantine is a stark example of this. That the ATA gives too much discretion to the police and the military in enforcing its provisions makes it vague. That it can be "reasonably interpreted" as basis to prosecute acts which would be constitutionally protected freedoms if this law did not exist makes it overbroad. On both counts, it is unconstitutional.

II. The Creation of the ATC – with its integral power to order the warrantless arrest of "suspected" terrorists – is invalid as it (1) infringes the basic principle of separation of powers and, while emulating the President's Commander-in-Chief powers, (2) vests the ATC with powers that far exceed those Constitutionally-granted to the President.

A. Sections 24, 25, and 29 of the ATA are unconstitutional for violating the separation of powers as these provisions (1) allow an executive body to encroach on a judge's exclusive prerogative to issue arrest warrants, (2) substitute the ATC's determination of "suspicion" in place of the constitutional requirement of probable cause for issuing an arrest warrant, and (3) usurp the Supreme Court's rule-making power by illegitimately carving out an additional exception to warrantless arrests.

136. The ATC, an Executive office,<sup>134</sup> is empowered by Section 29 of the ATA to issue the written authorization which serves as basis for "taking into custody" a person "suspected of committing" any "terrorist activities." Further, the detained person is required to be delivered to the proper judicial authority within a period of fourteen (14) calendar days extendable to another ten (10) calendar days for a maximum of twenty (24) days. Moreover, the power to designate individual, groups, organizations or associations as "terrorist" under Section 25 is mostly reserved to the ATC.

137. There are three (3) instances in which a person or group may be subject to such designation. *First* is through the ATC's automatic adoption of the UNSC Consolidated List of designated persons, groups or financiers. *Second* is through the adoption after

<sup>134</sup> Under Section 45 of the ATA, the ATC consists of executive officers who are the Respondents herein.

requests for designations by other jurisdictions or supranational jurisdictions, subject to the criteria of UNSC Res. No. 1373. *Third* is the ATC's designation upon a finding of probable cause that the individual, group, organization or association "commit, or attempt to commit, or conspire in the commission of the acts defined and penalized" under Sections 4 to 12 of the ATA.

138. On the other hand, court proscription merely becomes a simultaneously available relief under Section 26 of the ATA, which makes no effort to clarify the difference between designation and proscription. The court is relegated to duplicating a function of the ATC, instead of having exclusive power, when it comes to the AMLC's authorization to investigate, inquire into and examine bank deposits, and freeze said assets under Sections 35 and 36.

139. These provisions, taken together, violate the fundamental principle of separation of powers.

140. *First*, only judges may issue warrants of arrest. Article III, Section 2 of the Constitution states that "no...warrant of arrest shall issue except upon probable cause to be **determined personally by the judge**[" Under the 1935 Constitution only judges were authorized to issue warrants of arrest.<sup>135</sup> The 1973 Constitution changed this and authorized executive officials to issue warrants arrest. The result was the notorious Arrest, Search and Seizure Orders ("ASSOs") issued by the Secretary of National Defense during Martial Law.

141. The Framers of the 1987 Constitution vowed never again to allow such ASSOs, and reinstated the provision in the 1935 Constitution that only judges can issue warrants of arrests. During the deliberations of the 1986 Constitutional Commission on the Bill of Rights, Commissioners Romulo and Natividad introduced resolutions "to limit the power to issue search and arrest warrants to judges."<sup>136</sup> An exchange between Commissioners Nollado and Bernas confirms this intention of the Framers of the Constitution when they inserted the phrase that no warrant of arrest shall issue "except upon probable cause to be determined personally by the judge".<sup>137</sup>

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<sup>135</sup> Const. (1935) art. III, sec. 1(3) provides: "... 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."

<sup>136</sup> Record of the Constitutional Commission No. 32 (July 17, 1986), available at: <https://www.officialgazette.gov.ph/1986/07/17/r-c-c-no-32-thursday-july-17-1986/>.

<sup>137</sup> Record of the Constitutional Commission No. 32 (July 17, 1986):

"MR. NOLLEDO: Thank you.

142. The ATA has demolished this Constitutional guarantee and reinstated the ASSOs of the Martial Law era. Section 29 of the ATA has the tell-tale heading "Detention Without Judicial Warrant of Arrest," and then provides: "**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 to 12**" of the ATA shall not be liable if he or she detains a person for a total of twenty-four (24) days without filing a judicial charge.

143. Thus throughout its existence under the 1987 Constitution, this Honorable Court has consistently upheld that **any law** that purportedly gives any officer, who is not a judge, authority to order an arrest is unconstitutional under Article III, Section 2 of the Constitution. In *Salazar v. Achacoso*,<sup>138</sup> this Honorable Court ruled that "[u]nder the new Constitution...it is **only a judge** who may issue warrants of search and arrest. x x x We reiterate that the Secretary of Labor, **not being a judge**, may no longer issue search or arrest warrants." In *Ponsica v. Ignalaga*,<sup>139</sup> mayors were also denied this power even as Section 143 of the old Local Government Code ostensibly gave them authority to do so, as this Honorable Court rightfully observed that powers "has been abrogated, rendered *functus officio* by the 1987 Constitution which took effect on February 2, 1987." Even public prosecutors were not allowed to wield this authority in *Presidential Anti-Dollar Salting Task Force v. Court of Appeals*.<sup>140</sup>

144. The arrests contemplated under Section 29 of the ATA, for which the ATC will simply issue an authorization, do not at all pertain to the warrantless arrests under Rule 113, Section 5 of the Rules of Court. Notably, any law enforcer, or even any citizen for that matter, can effect a warrantless arrest under Rule 113, Section 5 of the Rules of Court without written authority from anyone, much more a judge.

145. If a law enforcer needs written authority from the ATC to effect a warrantless arrest under Rule 113, Section 5 of the Rules of

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With respect to Section 3, lines 13 up to 20, am I right if I say that there are actually two parts of the section: the first part refers to the right of the people against unreasonable searches and seizures; and then the second part refers to the authority who will issue the search warrant or warrant of arrest?

FR. BERNAS: That is one way of putting it. Another way, the way I would put it is, the first part states what the right is and the second part states how the right is protected."

<sup>138</sup> G.R. No. 81510, March 14, 1990.

<sup>139</sup> G.R. No. 72301, July 31, 1987.

<sup>140</sup> G.R. No. 83578, March 16, 1989.



Court, then that will defeat the purpose of a Warrantless Arrest which applies where the offender is caught in *flagrante delicto* or after a hot pursuit **and time is of the essence**. Under Rule 113, Section 5 of the Rules of Court, the crime is already being committed or had just been committed in the presence of the law enforcer and if he still has to secure a written authority from the ATC to arrest the offender, then that would be senseless. Clearly, the written authority referred to in Section 29 is not for the purpose of effecting a warrantless arrest under Rule 113, Section 5 of the Rules of Court. As envisioned by the ATA, the written authority is necessary to arrest a person suspected of terrorism outside of the situations where warrantless arrests are already allowed under Rule 113, Section 5 of the Rules of Court.

146. Section 29, together with its purported legislative intent, is unconstitutional, if not pointless, since warrantless arrests pursuant to Rule 113, Section 5 of the Rules of Court are permitted because there are clear facts which establish probable cause to **immediately arrest and charge in court** a perpetrator who is arrested in *flagrante delicto* or as a result of a hot pursuit committing a criminal offense or has just committed a criminal offense.

147. In this regard, Section 3.3, Vol. I of the 2017 DOJ Manual for Prosecutors ("DOJ Manual") states "that where the detained person does not opt for a preliminary investigation or otherwise refuses to execute the required waiver, the inquest prosecutor shall proceed with the conduct of the inquest proceeding by examining the sworn statements/ affidavits of the complainant and the witnesses and other supporting evidence submitted." The same provision further provides that if necessary, "the inquest prosecutor shall require the presence of the complaining witnesses and subject this witness to an informal and summary investigation or examination for the purposes of determining the existence of probable cause."

148. The foregoing provision reveals that an information may already be filed by the inquest prosecutor based merely on "sworn statements/affidavits" of the arresting officer, complainant and the witnesses and other supporting evidence submitted to the inquest prosecutor. It is only when the arrested person invokes his right to a preliminary investigation and waives the periods for delivery to judicial authorities under Article 125 of the Revised Penal Code that further investigation is required. At any rate, it is only "if necessary" that further investigation may be conducted, which, in any case must be "informal and summary." Inquest proceedings do not require

exhaustive investigation as the very definition of warrantless arrests already furnishes valuable evidence for the filing of an information.

149. Where the arresting officers already have personal knowledge that a crime has been committed and the arrested person probably committed it (the requisite standard for warrantless arrests under Rule 113, Section 5 of the Rules of Court), there is no reason whatsoever to require a longer period to further conduct investigation or research to charge the arrested individual in court **because the personal knowledge of the arresting officer/s which permit them to effect an *in flagrante delicto* or hot pursuit arrest suffices as probable cause to support the filing of an information in court for violation of the ATA.**<sup>141</sup> That the law enforcer already has the requisite personal knowledge for probable cause to sustain a warrantless arrest renders it pointless to detain a person for 14 or 24 days without a charge in court.

150. Apart from a validly executed confession by the culprit, there can be no stronger evidence of guilt for bail purposes than personal knowledge by an arresting officer that a criminal offense has been committed and that the person has arrested has probably committed the crime as required to sustain a valid warrantless arrest under Rule 113, Section 5 of the Rules of Court.

151. In short, in valid warrantless arrests under Rule 113, Section 5 of the Rules of Court, there is no need for additional time to gather more evidence to strengthen the case against the arrested person for purposes of denying bail. The investigating prosecutor merely conducts an inquest and files the judicial charge within thirty-six (36) hours, and the judge will deny bail because the evidence of guilt is strong. Considering that when law enforcement officers ought to have probable cause when they made a warrantless arrest, giving law enforcement officers 14 or 24 days to detain a person without a judicial charge for purposes of allegedly “gathering evidence” to support a criminal charge is patently unconstitutional.

152. Even if the arrestee exercises his right to preliminary investigation, Rule 112, Section 7 of the Revised Rules of Criminal

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<sup>141</sup> *People v. Cogaid*, G.R. No. 200334, July 30, 2014: “[F]or a warrantless arrest of in flagrante delicto to be affected, two elements must concur: (1) the person to be arrested must execute an overt act indicating that he [or she] has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.”

For hot pursuit arrests, *Pestilos v. Generoso*, G.R. No. 182601, November 10, 2014, requires that: “the 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”

Procedure provides that the “investigation must be terminated within fifteen (15) days from its inception.” This provision of the Rules of Court requires a person arrested without warrant to be charged in court within fifteen (15) days from his/her invocation of right to a preliminary investigation. That Section 29 of the ATA permits an arrestee to be detained for up to twenty-four (24) days without a judicial charge violates this provision of the Rules of Court.

153. What highlights the unconstitutionality of Section 29 is its stark contrast with Article VII, Section 18 of the Constitution, which sets a **3-day maximum limit for detentions without judicial charge for all kinds of crimes and under the circumstances that could prompt the Commander-in-Chief to suspend the privilege of the writ of *habeas corpus***. It is worth noting that in enacting Section 19 of the Human Security Act or Republic Act No. 9372, Congress kept the detention without judicial charge to a maximum of three (3) days, which adheres to the maximum period for a warrantless arrest as permitted under the extreme circumstances provided by Article VII, Section 18 of the 1987 Constitution.

154. If, even in such exceptional circumstances, a 3-day limit is set by the Constitution, with more reason should the limit be maintained in cases of terrorism or any other crime under ordinary circumstances. The Constitution could not have intended to grant to a mere statutory creation a power it has explicitly withheld from one of the great Branches of Government.

155. With the ATA, even assuming that the detained individual seeks the writ of *habeas corpus* from the courts, law enforcement need only to present the written authorization given by the ATC to the judge who will then be compelled to dismiss the petition. Thus, Section 29 of the ATA impermissibly denies the remedy of *habeas corpus* to arrested individuals which would have been available to them in times of invasion or rebellion when the public safety requires it: the only instances when the Chief Executive is authorized to suspend the privilege of the writ of *habeas corpus*.

156. Accordingly, the effect of Section 29 of the ATA is akin to the suspension of the privilege of the writ of *habeas corpus* and even martial law, but without the need to comply with the strict requirements imposed by the Constitution. As admitted by Senate President Vicente Sotto III:<sup>142</sup>

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<sup>142</sup> Transcript of Interview of Senate President Vicente C. Sotto III with Mike Enriquez of DZBB, Senate of the Philippines, June 8, 2020, available at [https://www.senate.gov.ph/press\\_release/2020/0608\\_prib1.asp](https://www.senate.gov.ph/press_release/2020/0608_prib1.asp) (accessed on July 15, 2020).

*“Ang sabi sa amin sa mga hearings, ang sabi ng Department of National Defense, pagkameron ng [sic] anti-terror law na pwede nilang habulin yung mga terorista [sic], at magkaroon sila ng ngipin at hindi na takot yung mga enforcer natin na labanan itong mga terorista [sic] na ito, hindi na nila hihilingin ang martial law. **Hindi na kailangan ang martial law.**”* [Emphasis supplied]

157. *Second*, Section 29 of the ATA violates the separation of powers as it authorizes the ATC to issue arrest orders upon mere “suspicion”, effectively substituting a lower legislatively-prescribed standard for the stricter standard of “probable cause”, the determination of which is the exclusive prerogative of a judge.

158. Section 29 of the ATA authorizes the ATC to order the arrest of a person “suspected of committing” any act of terrorism. The phrase “suspected of committing” in Section 29 exposes its standard to justify a warrantless arrest as mere “suspicion”. The plain meaning of the term “suspicion” means any circumstance where one is suspected of committing “something wrong without proof or on slight evidence.”<sup>143</sup>

159. The reasons given by both the principal author and one of the chief implementers of the ATA leave no doubt as to what these provisions are meant to circumvent. Senator Panfilo Lacson, bluntly admitted that the 24-day detention period was to maximize the time within which law enforcers **can gather evidence** to judicially charge the detainee: “[W]e asked the law enforcement agents and according to them, the three-day reglementary period is too short to gather enough evidence and to prevent the occurrence of another terrorist act... Then a few weeks after that, he recognized that same terrorist that he arrested beheading a person in Iraq. When we asked them, they told us that they need at least 14 days to develop a case and to file a strong case for violation of this proposed measure to strengthen the case.”<sup>144</sup>

160. Respondent Secretary of Defense Lorenzana called the present Constitutional limits as a “joke” simply because “[t]o detain people for 36 hours, you do not have enough time to substantiate your charges.

<sup>143</sup> Merriam-Webster Dictionary: “suspicion”, available at [https:// www.merriam-webster.com/dictionary/suspicion](https://www.merriam-webster.com/dictionary/suspicion) (accessed on July 15, 2020).

<sup>144</sup> TSN dated January 29, 2020, Senate Deliberations on Senate Bill No. 1083, p. 31, a copy of the excerpt of the Senate Deliberations is attached as Annex “F”.

*You cannot research. You cannot make any allegations so 36 hours is too short, even 72 hours of release is too short.*"<sup>145</sup>

161. With respect, "probable cause", not "suspicion", is the standard required by the 1987 Constitution to justify an arrest. This is provided by Article III, Section 2 of the 1987 Constitution which provides that "no search warrant or warrant of arrest shall issue **except upon probable cause** to be determined personally by the judge[.]" "Probable cause" means the judge has reasonable grounds to believe, based on the affidavits of the complainant and his witnesses, that a crime has been committed and the person to be arrested probably committed the crime.<sup>146</sup> In short, if the judge believes that no crime has been committed, he/she cannot and should not issue a warrant of arrest.<sup>147</sup>

162. The proponent of the ATA, Senator Panfilo Lacson, attempts to justify this provision for warrantless arrest simply because "we [the Government] want to be proactive."<sup>148</sup> During the deliberations in the Senate, as the Sponsor for the Bill that became the ATA, Senator Panfilo Lacson, justified Section 29 of the ATA by distinguishing between ordinary crimes which fall under the general rules and what he treats as an "inchoate offense" to justify a deviation:

"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.**"<sup>149</sup>  
[Emphasis supplied]

163. The foregoing legislative pronouncement makes arrests under Section 29 of the ATA highly problematic as this would violate the Constitutional requirement of probable cause that a crime **has been committed** or **is about to be committed** and that the person to be **arrested has probably committed the crime.**

<sup>145</sup> Pinky Webb's Interview with Secretary of National Defense Delfin Lorenzana, aired in the June 3, 2020 episode of CNN Philippines talk show "The Source," at the 21:53 minute mark available at <https://www.youtube.com/watch?v=9Cwo1OJzuxk&t=21m53s> (accessed on July 15, 2020). A copy of the transcript of this interview is attached as Annex "F-I".

<sup>146</sup> *Allado v. Diokno*, G.R. No. 113630, May 5, 1994.

<sup>147</sup> *See Ho v. People*, G.R. No. 106632, October 9, 1997.

<sup>148</sup> TSN dated January 22, 2020, Senate Deliberations on Senate Bill No. 1083, p. 56, a copy of the excerpt is attached as Annex "G".

<sup>149</sup> *Id.*

164. Jurisprudence is settled that a person may be arrested without a judicial warrant **only** if there is an *overt act* that constitutes a crime which forms basis for probable cause for his/her immediate arrest.<sup>150</sup> To detain citizens based on “inchoate” acts is dangerous. Our legal system fundamental principles state that where no crime has been committed or is about to be committed, there can be no justification for an arrest.

165. Being “proactive” is not a substitute to the requirement of “probable cause” as required by the text of Article III, Section 2 of the Constitution for warrantless arrests. More importantly, both the Constitution and jurisprudence hold that mere “suspicion” does not meet the requirements of showing probable cause to arrest without warrant.<sup>151</sup> Thus, mere “[r]eliable information” or even a “hearsay tip” is insufficient to support a warrantless arrest absent any overt act from the person to be arrested indicating that a crime has just been committed, was being committed, or is about to be committed”.<sup>152</sup>

166. *Home Development Mutual Fund Pag-Ibig Fund v. Sagun*<sup>153</sup> is clear: **“if done to issue an arrest warrant, the determination of probable cause is a judicial function.”** As stated, Section 29 of the ATA not only allows an Executive body to issue arrest warrants, it authorizes them to do so on the basis of mere “suspicion”. This is worsened by the fact that, following a designation order under Section 25 against an individual or organization, Section 29 of the ATA then authorizes the ATC to immediately order arrests since the designated individual/s or members of the organization are now designated as “terrorists”. In this scenario, the ATC, and not a judge, exercised an exclusively judicial power in violation of the Constitutional principle of separation of powers.

167. The ATA is therefore a direct attack on the independence of this Honorable Court. By authorizing warrantless arrests even before the act of terrorism has been committed, and even without probable cause, Section 29 has negated Rule 113, Section 5 of the Rules of Court in so far as the crime of terrorism is concerned.

168. *Third*, Section 29 constitutes an encroachment into the Supreme Court’s rule-making powers.

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<sup>150</sup> *People v. Cogaed*, G.R. No. 200334, 30 July 2014: Where the person to be arrested “has not committed, was not committing, or was about to commit a crime” at the time of apprehension, the arrest is unconstitutional.

<sup>151</sup> *Pestilos v. Generoso*, G.R. No. 182601, November 10, 2014.

<sup>152</sup> *Veridiano v. People*, G.R. No. 200370, June 7, 2017.

<sup>153</sup> G.R. No. 205698, July 31, 2018.

169. The bedrock Constitutional principle is that every citizen is protected against unreasonable searches and seizures. To this, the only Constitutionally-written exception is a warrant issued by a judge after determining probable cause.

170. Warrantless arrests only exist as a product of the Honorable Court's **exclusive** constitutionally-granted power to: "[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts[.]"<sup>154</sup> This power has been described as "one of the safeguards of this Court's institutional independence"[.]"<sup>155</sup>

171. Although Rule 113, Section 5 of the Rules of Court lists three (3) exceptions to the Constitutional rule, the Honorable Court provides this warning: "[i]t must be remembered that warrantless arrests are mere exceptions to the constitutional right of a person against unreasonable searches and seizures, thus, they must be strictly construed against the government and its agents."<sup>156</sup>

172. What Section 29 of the ATA does is to carve out **additional exceptions other than those found** in Rule 113, Section 5 of the Rules of Court. According to its principal author, Rule 113 applies to "ordinary crimes", while the ATA warrantless arrests apply to "inchoate offenses" under terrorism.

173. In other words, by enacting Section 29, legislators have effectively expanded the scope of Rule 113, Section 5 of the Rules of Court, thereby encroaching on this Honorable Court's exclusive prerogative. Considering that "Congress has no authority to repeal, alter, or supplement rules concerning pleading, practice, and procedure"<sup>157</sup> Section 29 of the ATA is unconstitutional. Being an attempt to indirectly amend Rule 113, Section 5 of the Rules of Court which only this Honorable Court can do, the same must be struck down. Basic is the rule that "[w]hat cannot be legally done directly cannot be done indirectly."<sup>158</sup>

174. It matters little that in a Letter addressed to the Integrated Bar of the Philippines, Senator Panfilo Lacson clarified that the validity of the warrantless arrests contemplated in Section 29 of the ATA will

<sup>154</sup> Const. art. VIII, sec. 5(5).

<sup>155</sup> *Baguio Market Vendors v. Judge Cabato-Cortes*, G.R. No. 165922, February 26, 2010.

<sup>156</sup> *People v. Comprado*, G.R. No. 213225, April 4, 2018.

<sup>157</sup> *Carpio-Morales v. Court of Appeals (Sixth Division)*, G.R. Nos. 217126, November 10, 2015.

<sup>158</sup> *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, G.R. No. 166471, March 22, 2011.

be based on the same standards as the warrantless arrests in Rule 113.”<sup>159</sup> What matters is that these additional exceptions were created by Congress, not the Honorable Court.

**B. Section 30, being dependent on Section 29, is necessarily unconstitutional.**

175. Section 30 likewise cannot stand constitutional muster since it is anchored primarily on Section 29 which, in itself, is patently unconstitutional. To note, Section 30 is only included herein to provide for the rights of the person in detention if he or she is arrested pursuant to Section 29. A perusal of its provisions shows that it is deeply intertwined with Section 29. However, since Section 29 is void, Section 30 has no leg to stand on. Although embodied in the same law, Section 30 clearly derives its strength from the presumed validity of Section 29 and in effect seeks only to provide the guiding regulations therefor. Since the spring cannot rise higher than its source,<sup>160</sup> Section 29’s unconstitutionality nullifies Section 30.

176. Sections 29 and 30 of the ATA provide no compelling reason to depart from the already established rules on warrantless arrests and maximum detention periods. Even conceding the validity of such purpose, the means are too broad: a maximum detention period of 14 or 24 days constitutes a prolonged and arbitrary deprivation of liberty, considering that an information can already be filed within thirty-six (36) hours laid down in Republic Act No. 9372 or three (3) days under Article VII, Section 18 of the Constitution.

**C. The ATA vests the ATC with powers akin to but greater than the President’s powers under the Commander-in-Chief Clause, in the process evading constitutional limitations.**

177. The ATA emulates the Commander-in-Chief powers embodied in Article VII, Section 18 of the Constitution. As discussed in *Padilla v. Senate*,<sup>161</sup> the Commander-in-Chief Clause “vests on the President, as Commander-in-Chief, ... has the general responsibility to promote public peace, and as Commander-in-Chief, the more specific

<sup>159</sup> Copy is attached as Annex “H” hereto: “[t]he legislative intent behind this was to allow warrantless arrests pursuant to Rule 113, Section 5 of the Revised Rules of Court. The Senate deliberations of the bill show that there was no mention of any intention to add another exception to the requirement of securing a warrant of arrest. ...

<sup>160</sup> *Southern Cross Cement Corp. v. The Phil. Cement Manufacturers Corp.*, G.R. No. 158540, July 08, 2004.

<sup>161</sup> G.R. No. 231671, July 25, 2017.



duty to prevent and suppress rebellion and lawless violence." Further, *Sanlakas v. Reyes*<sup>162</sup> instructs: "the plenitude of the powers of the presidency equips the occupant with the means to address exigencies or threats which undermine the very existence of government or the integrity of the State."

178. Under Section 2 of the ATA, its declared policy 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**[" It recognizes the need to use military means to comprehensively combat terrorism.

179. However, several provisions of the ATA run afoul of Article VII, Section 18 of the Constitution as it lodges with the ATC powers far greater than those granted to the Commander-in-Chief.

180. *First*, under Section 29 of the ATA, persons suspected of committing any of the punishable acts may be "apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel." The law enforcers will then have fourteen to twenty-four (14 to 24) days to detain the arrestee. In contrast, the last paragraph of Article VII, Section 18 of the Constitution provides: "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."

181. This contradistinction creates a legal absurdity whereby the ATA allows for a greater burden on an individual's liberty than what the Constitution allows, when in terms of design, the ATA should really be subsumed under the Commander-in-Chief Clause. In other words, the ATA effectively amends the Constitution by allowing a longer period of detention without any judicial charge. "Under the doctrine of constitutional supremacy, if a law or contract violates any norm of the constitution that law or contract [...] is null and void and without any force and effect."<sup>163</sup>

182. On another note, the ATA severely impairs the Constitutional right to bail. Article III, Section 13 of the Constitution provides: "The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended." Hence, when the Commander-in-Chief either suspends the privilege of the writ of *habeas corpus* or declares Martial Law, a person who has subsequently

<sup>162</sup> G.R. No. 159085, February 3, 2004.

<sup>163</sup> *Manila Prince Hotel v. GSIS*, G.R. No. 122156, February 3, 1997.

been charged judicially can petition for bail and be granted the same provided the offense charged is not punishable by reclusion perpetua, or even if so punishable, the evidence of guilt is not strong.

183. However, under Section 29 of the ATA, a person can be arrested for terrorism and detained for a total of twenty-four (24) days before he must be judicially charged for an offense punishable by life imprisonment or less regardless of how weak the evidence of guilt. While the detainee may file a petition in court for a writ of *habeas corpus*, the custodian will simply present the written authority for arrest or detention issued by the ATC, and pursuant to Rule 102, Section 14 of the Rules of Court, the court will have to dismiss the petition.

184. The power to suspend the writ of *habeas corpus* is specifically lodged with the President.<sup>164</sup> This makes the inclusion of Section 29 of the ATA an undue delegation of the powers of the President unto the ATC. This is unconstitutional because the powers set forth in Article VII, Section 18 of the Constitution are exercisable only by the Chief Executive as Commander-in-Chief.

185. The writ of *habeas corpus* serves as a judicial remedy for the courts "to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal."<sup>165</sup> The limitations to its invocation are clearly set out in Article III, Section 15 of the Constitution, which states: "[t]he privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion or rebellion, when public safety requires it."

186. Article VII, Section 18 of the Constitution further clarifies that it is the President that has the power to suspend the privilege of the writ of *habeas corpus* for a period not exceeding sixty (60) days, provided that there is an invasion or rebellion and that the public safety requires it.

187. The Constitution also requires that the suspension of the privilege of the writ shall only apply to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion. Furthermore, during the suspension of the privilege of the writ, any person arrested or detained shall be judicially charged within

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<sup>164</sup> Const. art. VII, sec. 18.

<sup>165</sup> *Villavicencio v. Lukban*, G.R. No. L-14639, March 25, 1919.

three (3) days; otherwise, he shall be released. This was intended by the Framers of the Constitution.<sup>166</sup>

188. On the other hand, Section 29 of the ATA authorizes the ATC to order the warrantless arrests and detentions of suspected terrorists for 14 days, extendible to 24 days if it is established that (i) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (ii) further detention of the person/s is necessary to prevent the commission of another terrorism; and (iii) the investigation is being conducted properly and without delay.

189. Section 29 of the ATA circumvents the constitutional safeguards on the suspension of the privilege of the writ of *habeas corpus*. It drastically broadens the scope of warrantless arrest from rebellion and offenses involving invasion, to the whole gamut of terrorist acts--which are already overly broad and vague. Should this provision be upheld, it would render the rebellion and invasion requirements for warrantless arrest obsolete, since the ATC can detain any suspected terrorist without an arrest warrant issued by a judge, a judicial charge, or even probable cause, for a period longer than what the limits of the Constitution's Commander-in-Chief Clause permits.

190. Moreover, the President's extraordinary powers under Article VII, Section 18 of the Constitution automatically expire after sixty (60) days, unless sooner revoked by Congress or voided by this Honorable Court. In contrast, the power of the ATC to order the warrantless arrest of suspected terrorists continues for as long as the ATA is in effect. Thus, the privilege of the writ of *habeas corpus* is deemed suspended indefinitely under the regime of the ATA. Again, Congress has transgressed a clear limit provided for by the Constitution.

191. *Montenegro v. Castañeda*<sup>167</sup> declares that "the authority to decide whenever the exigency has arisen requiring the suspension [of the privilege of the writ] belongs to the President[.]" The Commander-

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<sup>166</sup> Commissioner Ambrosio Padilla, who was one of the framers of the Constitution, elucidates that the purpose for requiring a judicial charge "is to prevent a situation similar to the past regime when innocent persons were arrested, detained, and confined in prison sometimes for one month, one year, or even more, without any criminal charge filed against them who oftentimes did not even understand why they had been arrested or detained."

Former Chief Justice Roberto Concepcion, who was also part of the 1986 Constitutional Commission, explained that the purpose for the said provision is "to require all those detained to be immediately turned over to the judicial authorities. Therefore, the suspension of the privilege will not apply to them until they are placed in the custody of a judicial officer." II Record of the Constitutional Commission No. 44 at 512.

<sup>167</sup> G.R. No. L-4221, August 30, 1952.

in-Chief powers are exclusively vested by the Constitution to the President.<sup>168</sup> It therefore offends the principle of non-delegability when a mere statutory creation such as the ATC is given the authority (*i.e.*, to order the warrantless arrest of individuals on mere suspicion that they are terrorists and to detain them for a maximum period of 24 days), which is available only in extreme cases of rebellion or invasion when the privilege of the writ of *habeas corpus* has been suspended upon order of the President. What is more egregious is that such authority of the ATC surpasses that of the President in terms of the duration of the detention and applicable restrictions.

192. Since its creation violates the Constitution in more ways than one, the ATC cannot be saved. With its demise goes the entire ATA itself, the ATC being its lynchpin.

**III. The ATA's provisions allowing for the "Designation" Of Terrorists, particularly Sections 3(b), 3(h), 3(k), 3(m), 10, 11, 12, 25, 26, 27, 29, and 49 are unconstitutional as they unduly infringe upon the constitutional rights to (1) criminal due process, (2) bail, (3) presumption of innocence, (4) prohibitions against bill of attainder and *ex post facto* laws, and (5) against incommunicado detention.**

193. Section 3(b), in relation to Section 25(3) of the ATA, authorizes the ATC to designate terrorists upon a finding of probable cause that such persons have committed or will commit terrorism.

194. Furthermore, Sections 3(h), 3(m), 10, 11, 12, and 25 automatically adopt the list of designated terrorist groups of the UNSC without judicial decree, in disregard of the constitutional rights to due process and presumption of innocence. Said Sections impose punishment, both penal and not, on those who recruit for said groups, provide support to said groups, or join said groups.

195. Under Section 26 of the ATA, persons or groups may be "declared as terrorist and outlawed groups" "upon application of the DOJ before the authorizing division of the Court of Appeals with due notice and opportunity to be heard[.]" Section 27 permits the Court of Appeals, upon a determination of probable cause, to proscribe a terrorist organization merely on the basis of a verified application.

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<sup>168</sup> Lagman v. Medialdea, G.R. No. 231658, July 4, 2017.

196. An inquiry to determine “probable cause” does not require a hearing where the individual or organization can be heard to rebut the government witnesses. A designation proceeding can be akin to a preliminary investigation to determine whether there is probable cause for a person accused of a crime to stand trial. Just like in preliminary investigations, a finding of probable cause in a designation proceeding may be reached without “full and exhaustive display of the parties’ evidence”<sup>169</sup> and even without according the respondent the right to cross-examine the witnesses which the complainant may present.<sup>170</sup> In short, such designation may be *ex-parte* and without any procedural safeguards or legal recourse to appeal.

197. These provisions must be struck down as null and void for violating the Constitution.

198. *First*, they infringe upon the constitutional right to due process, both in the sense of the right to property, as well as criminal due process which, in turn, is hinged upon the presumption of innocence. Article III, Section 14(1) of the Constitution provides that: “[n]o person shall be held to answer for a criminal offense without due process of law.” This contemplates a criminal justice system “which hears before it condemns[.]”<sup>171</sup> Also, in criminal proceedings, “the standard of due process is premised on the presumption of innocence of the accused.”<sup>172</sup>

199. On the right-to-property aspect of due process, law enforcement agencies may apply *ex parte* with the AMLC for an order to freeze the assets of individuals designated as terrorists or members of organizations that have been designated as terrorists in accordance with Section 11 of Republic Act No. 10168 and Section 36 of the ATA. The freezing of assets is a deprivation of property that cannot be done without due process<sup>173</sup> which, as abovementioned, requires at least an opportunity to be heard. It is significant that proscription proceedings before the Court of Appeals give the suspects a chance to be heard. In contrast, designation proceedings of the ATC and the AMLC are *ex parte* and without any procedural safeguards or substantial standards in total disregard for due process.

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<sup>169</sup> Estrada v. Office of the Ombudsman, G.R. Nos. 212140, January 21, 2015.

<sup>170</sup> Paderanga v. Drilon, G.R. No. 96080, April 19, 1991.

<sup>171</sup> Albert v. University Publishing Co., Inc., G.R. No. 1-19118, January 30, 1965.

<sup>172</sup> Government of Hong Kong Special Administrative Region v. Olalia, G.R. No. 153675, April 19, 2007.

<sup>173</sup> See Bataan Shipyard and Engineering Co. Inc. v. Philippine Commission on Good Government, G.R. No. 75885, May 27, 1987.

200. Likewise, the issuance of an order designating an individual or organization as terrorists authorizes the AMLC, under Section 35 of the ATA, to immediately “inquire into or examine deposits and investments with any banking institution or non-bank financial institution and their subsidiaries and affiliates **without a court order.**” Thus, Section 35 of the ATA strips bank accounts belonging to individuals or members of organizations designated as terrorists from the right of confidentiality under Republic Act No. 1405 (Secrecy of Bank Deposits Law) and Republic Act No. 6426 (Foreign Currency Deposit Act).

201. Hence, the Honorable Court has previously ruled that the seal of confidentiality conferred by statutes over bank deposits makes such deposits zones of privacy protected by the constitutional right to privacy.<sup>174</sup> These protections cannot be undermined without running afoul of the constitutional guarantee of due process.

202. On the criminal due process aspect, a plain reading of these provisions of the ATA will yield the conclusion that, once a person, organization, association or group of persons has been tagged as a terrorist or a member of a terrorist group, the individual or the individual members tagged as such will suffer the consequence of imprisonment. Read with Section 10 of the ATA (which punishes recruitment), the above provisions impose the penalty of life imprisonment without the benefit of parole. Section 10 of the ATA also imposes the penalty of imprisonment of twelve (12) years to any person who shall voluntarily and knowingly join any organization, association or group of persons knowing that such is proscribed under Section 26, or designated by the UNSC or ATC as a terrorist organization under Section 25.

203. Thus, while a hearing is necessary to impose criminal liability upon a person,<sup>175</sup> Sections 25 and 26 of the ATA do away with this by making an individual a terrorist by mere association. What aggravates matters is the fact that the ATA does not define the nature of the proceedings under Sections 25 or 26. Designated individuals will therefore be left guessing at the proper procedure and quantum of proof necessary to protect their right to liberty.

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<sup>174</sup> Republic v. Eugenio, G.R. No. 174629, February 14, 2008; BSB Group, Inc. v. Go, G.R. No. 168644, February 16, 2010.

<sup>175</sup> Const. art. III, sec. 14: “In all criminal prosecutions, the accused shall...enjoy the right to be heard by himself and counsel[.]”

204. Even supposing a full-blown hearing where the elements of criminal due process are in place, Section 26 of the ATA nevertheless institutionalizes procedural shortcuts. For instance, consider an organization with ten (10) members. Because of the Court of Appeals' tagging/declaration that the organization is a terrorist group, the members are automatically charged with a violation of the ATA. All that the prosecution needs to prove is that there is a proscription or designation order that the organization is a terrorist group and that the person is a member of that group. Therefore, all the members are deemed terrorists by mere affiliation to an organization declared to be engaged in terrorism even if the individual members are not actually engaged in any act of terrorism.

205. On another note, Section 27 permits the Court of Appeals to determine probable cause to proscribe a terrorist organization merely on the basis of a verified application. It does not afford the respondent any chance to refute and disprove the allegations in the application. The minimum standard of due process is an opportunity to be heard, yet, Section 27 denies the respondent this basic right.

206. This patent violation is compounded by the fact that, while Section 27 imposes the burden of proof on the part of the applicant to prove that the person or organization to be proscribed is committing or will commit acts of terrorism, it is disturbingly silent as to how can the respondent to the verified application repel or refute the charges being thrown against it. Thus, the Court of Appeals will be condemning before it hears.

207. Further, when a preliminary order of proscription is issued, all the members of the preliminarily proscribed organization will be subjected to arrest and criminal prosecution, even if such order is merely preliminary. The members will be prejudged as terrorists even though in fact, and contrary to the preliminary findings of the Court of Appeals, their organization is not engaged in terrorism. Thus, even if there is no crime of terrorism committed, there will be an instance wherein, because of the preliminary order of proscription, the members will have to serve jail time.

208. After President Duterte publicly tagged communist rebels as terrorists, Senator Panfilo Lacson assured the public that the President's statements did not automatically amount to "proscription" since, under Section 26 of the ATA, proceedings before the Court of Appeals were still necessary.<sup>176</sup> What Senator Panfilo Lacson gravely

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<sup>176</sup> cf. Annex "C".

overlooked was, while proscription of organizations does entail court proceedings, nothing prevents the ATC from designating, without court proceedings, individuals or organizations as terrorists under Section 25. Since Section 29 permits “taking custody of a person suspected of committing terrorism”, this could very well refer to an individual designated as a terrorist or a member of an organization designated as a terrorist, thereby subjecting such individual to warrantless arrest. Hence, President Duterte’s public declaration can very well lead to warrantless arrests of “designated” terrorists since the ATC is composed of Cabinet members.

209. That the ATA’s principal author fails to observe the foregoing nuances, and that the President can arrogate the power to order warrantless arrests, shows that the ATA’s design fails to meet the standards of criminal due process. Hence, the ATA could be a “vehicle for vindictiveness and selective retribution.”<sup>177</sup>

210. *Second*, on the aspect of the constitutional right to bail, while membership with a UNSC or ATC-designated terrorist organization under Section 10 of the ATA is aailable offense, Sections 25, 29 and 34 of the ATA combined permit the house arrest of a designated terrorist which shall last until the criminal case is dismissed.<sup>178</sup> Thus, the ATA authorizes a person to be indefinitely deprived of liberty by means of “house arrest” even if the person ought to enjoy the presumption of innocence.

211. Worse, Section 34 of the ATA provides that during the duration of such indefinite “house arrest”, the individual under “house arrest” may “not use telephones, cellphones, e-mails, computers, the internet, or other means of communications with people outside the residence until otherwise ordered by the court.” This offends the constitutional guarantees to be presumed innocent until proven guilty and to be granted provisional liberty through bail.

212. It is a fundamental postulate in our criminal justice system that any person is presumed innocent and is entitled to provisional liberty unless he/she is charged with a serious crime (*i.e.*, punishable by death, reclusion perpetua or life imprisonment) and evidence of guilt is strong. Article III, Section 14 of the Constitution guarantees the right of any person to be presumed innocent until proven guilty. No matter how grave the criminal charge against an accused, he/she still

<sup>177</sup> Biraogo v. Philippine Truth Commission, G.R. No. 192935, December 7, 2010.

<sup>178</sup> Section 34 of the ATA provides that “restrictions above-mentioned [house arrest] shall be terminated upon the acquittal of the accused or of the dismissal of the case filed against him/her or earlier upon the discretion of the court on motion of the prosecutor or of the accused.”



enjoys the right to be presumed innocent which carries with it the right not to be burdened by any deprivation of liberty unless and until he/she is convicted by proof beyond reasonable doubt by a court of competent jurisdiction. That the ATA places a deprivation of liberty (i.e., house arrest) pending criminal trial renders illusory the right to be presumed innocent.

213. Emanating from the accused's right to be presumed innocent until proven guilty, the Constitutional right to bail under Article III, Section 13 of the Constitution precisely guarantees provisional liberty for all persons facing criminal prosecution except for those charged with serious crimes (offenses punishable by death, reclusion perpetua, or life imprisonment) and the evidence of guilt is strong. The condition of house arrest and the ensuing restriction of liberty akin to detention far exceeds the purpose for which bail is granted in cases where evidence is not strong. This is contrary to Article III, Section 13 of the Constitution, which forbids the impairment of the right to bail even when the privilege of the writ of *habeas corpus* is suspended and prohibits any form of excessive bail.

214. Further, Section 34 of the ATA further provides that a person placed under "house arrest" may not use any device or means of communications with people outside his/her residence. This deprivation of liberty constitutes a form of prior restraint imposed on a person despite his/her presumption of innocence. The combination of restraint of movement and restraint of communication stifles a person's means of communication with the outside world destroying one's right to free speech anathema to Article III, Section 4 of the Constitution. That a person under house arrest may not use any form of communications throughout the duration of house arrest is also a form *incommunicado* detention, prohibited by Article III, Section 12(2) of the Constitution.

215. However, for those who recruit members to such an organization, Section 10 of the ATA imposes the penalty of life imprisonment. In addition to the same deprivations of liberty that can be imposed on a designated terrorist or a member an alleged "terrorist" organization, a recruiter for a designated "terrorist" organization stands charged of a non-bailable offense for which he can be denied bail because the ATC designation can be considered as strong evidence of guilt. In this regard, one must recall that Section 3(h) of the ATA defines the term "recruit" to mean "any act to encourage other people to join a terrorist individual or organization".

216. Life imprisonment means exactly that: one remains in prison throughout one's physical life.<sup>179</sup> This life imprisonment is different from the *reclusión perpetua* in the Revised Penal Code, the duration of which is 20 years and one day to 40 years, after which one is released from prison. By express term of Section 10 of the ATA, a penalty of life imprisonment does not carry the possibility of parole nor allowances for reduction of sentence on account of good conduct.

217. The pernicious effects of Sections 10, 25 and 29 of the ATA arise when one combines them. A citizen designated by the ATC as a terrorist under Section 25 faces life imprisonment. The ATC can order the designation as a terrorist because it is only required to establish probable cause or "a reasonable ground for belief of guilt". Following the issuance of said order, the ATC can order his arrest and he is taken into custody by military personnel.

218. Even a petition for *habeas corpus* before the RTC will only result in the custodian going before the RTC and produce the written orders from the ATC designating the citizen a terrorist and ordering his arrest. Unless Sections 25 or 29 of the ATA are declared unconstitutional, the judge will have no recourse but to dismiss the petition for *habeas corpus* because the citizen is being detained for a valid cause, that is, on the authority of the ATC designating him as a terrorist and on the basis of Section 29 of the ATA, the Government still has six (6) more days (out of fourteen (14) days) to detain him before filing a criminal case in court, or even sixteen (16) more days if the Government secures a ten (10) day extension to detain him as provided for by Section 29.

219. Assuming though that after obtaining a ten (10) day extension and on the 24th day of his detention, the ATC, through the prosecutor's office, files a criminal case for terrorism. The judge has no choice but to issue a commitment order because he is charged with a non-bailable offense under Section 4(b) of the ATA and that there is probable cause to detain him on the basis of the ATC's designation that he is a terrorist pursuant to Section 25 of the ATA. He will remain in incarceration so long as the warrant of arrest is not lifted and bail is denied to him on account of the non-bailable charge. That will be the effect of Sections 10, 25 and 29 of the ATA unless these are invalidated by the Honorable Court.

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<sup>179</sup> Supreme Court Administrative Circular No. 6-A-92.

220. Worse, since the designation or proscription order remains effective until reversed or nullified, a person or organization that is designated/proscribed as a "terrorist" may be arrested and detained for up to 24 days on the basis thereof. On the 25<sup>th</sup> day, the ATC may order the re-arrest of the designated individual or member of an organization that remains designated/proscribed as a "terrorist" since the designation or proscription order is still valid. Thus, Sections 25 and 26 permit 24-day cycles of arrest and re-arrest on the basis of a standing administrative designation order by the ATC or proscription order by the Court of Appeals.

221. If the Government can detain a lawyer, or a former cabinet secretary or even an incumbent senator of the Republic on alleged terrorism charges, what more can the ordinary person expect if he/she is designated as a terrorist and charged with a non-bailable terrorism charge by the ATC?

222. *Third*, the "terrorist designation"-related provisions of the ATA partake of the nature of bills of attainder and *ex post facto* laws. A law is *ex post facto* if "it assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful".<sup>180</sup>

223. An Imam may be devoted to the promotion of study of the historical, cultural and religious significance of Islam in Mindanao. His work can consist of publishing scholarly articles and delivering lectures on the impact of Islam to the historical and cultural heritage of the People of Mindanao.

224. If the Imam's organization is designated as a "terrorist" organization by the UNSC or the ATC, the designation of this organization as a "terrorist" organization is immediately effective since the ATA does not provide any mode of appeal or judicial recourse from the designation order. Worse, if the designation is made by the UNSC, even judicial review under Article VIII, Section 1 of the Constitution will not lie since the actions of the UNSC, which is not a instrumentality of the Philippine Government, are not covered by the words of Article VIII, Section 1 of the Constitution granting the Honorable Court with expanded *certiorari* jurisdiction.

225. The immediate consequence of such designation is that the Imam can be arrested without judicial warrant under Section 29 of the ATA since his membership as a member of a UNSC or ATC-

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<sup>180</sup> In re: Kay Villegas Kami, G.R. No. L-32485, October 22, 1970.

designated terrorist organization is a crime under Section 10 of the ATA. The mere fact of membership enables a warrantless arrest under Rule 113, Section 5 of the Rules of Court and therefore, an order of arrest from the ATC is no longer necessary.

226. Moreover, **Sections 10 and 12 of the ATA do not distinguish as to the temporal aspect of a person's act.** Section 10, as worded, punishes anyone for mere membership in a UNSC or ATC-designated terrorist organization **regardless of when one became a member thereof.** Section 12, as worded, provides that one becomes liable as a "principal to any and all terrorist activities committed by said individuals or organizations" for merely providing any form of "material support" to a UNSC or ATC-designated terrorist organization **regardless of when** one gave "material support" to said organization. In fact, this lack of distinction as to time by the ATA, as worded, permits the government to charge anyone for past or future acts committed by a so-called terrorist organization so long as "material support" is given.

227. Furthermore, Sections 3(b), 3(h), 3(k), 3(m), 10, 11, 12 and 25 of the ATA also amount to bills of attainder. A bill of attainder is "a legislative act which inflicts punishment without judicial trial."<sup>181</sup> Under this type of statute, the legislature usurps the otherwise judicial function of determining a person's guilt. Bills of attainder have been used to declare certain persons attainted and their blood corrupted. These effectively imposed penal judgements upon such groups and persons without notice, opportunity to defend themselves, and any of the safeguards otherwise present via the judicial process.<sup>182</sup>

228. The linchpin for liability under Sections 10 (Recruitment to and Membership in a Terrorist Organization), 11 (Foreign Terrorist) and 12 (Providing Material Support to Terrorists) is the act of designation by the UNSC or ATC of an organization as a "terrorist" organization under Section 25. They do not distinguish between past or future acts of a member of these designated organizations. Thus, the order of the UNSC (which is not a judicial body, whether in Philippine or international law) which designates an organization as a terrorist serves as the basis of punishing a person for a violation of the ATA. This is unconstitutional precisely because the constitutional prohibition against bills of attainder protects a person from incurring criminal liability on the basis of a legislative enactment without the benefit of a judicial trial.

<sup>181</sup> Montenegro v. Castañeda, G.R. No. L-4221, August 30, 1952.

<sup>182</sup> Tuason v. Register of Deeds, Caloocan City (Feliciano, J., concurring), G.R. No. 70484 January 29, 1988.

229. Petitioners submit that the fact that a person will still undergo a form of criminal trial for a possible violation of Sections 10 (Recruitment to and Membership in a Terrorist Organization), 11 (Foreign Terrorist), and 12 (Providing Material Support to Terrorists) does not detract from the bill of attainder character of Sections 3(b), 3(h), 3(k), 3(m), 10, 11, 12, and 25 of the ATA. As pointed out above, the crucial fact necessary for criminal liability to attach under these provisions of law is the act of designation by the UNSC or ATC of an organization as a terrorist organization. Thus, such act of designation of an organization taints with criminality the mere act of recruiting or maintaining membership (Section 10); travelling while being a member of said organization (Section 11) or providing material support to such organization (Section 12) such that a person charged with a violation of these provisions **has no other plausible defense and conviction would immediately follow.**

230. This is further exacerbated by Section 49 of the ATA. In *Lacson v. Executive Secretary*,<sup>183</sup> it was ruled that an *ex post facto* law is one "which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful[.]" Section 49 is *ex post facto* for allowing extraterritorial application of the ATA's provisions. In particular, it criminalizes the commission by Filipino citizens of proscribed acts outside Philippine territory, and it criminalizes the commission of proscribed acts by any individual if the crime is committed within Philippine territory, though the individual is outside Philippine territory.

231. If the UNSC designates an organization to whom a citizen belongs as a terrorist organization, mere membership to this organization may be considered a violation of Section 10 of the ATA which punishes the act of "voluntarily and knowingly" joining an organization that is "designated by the UNSC as a terrorist organization". If said citizen is based abroad and travels to the Philippines, his status as a member of renders him liable under Section 11 of the ATA. Likewise, if he delivered lectures, ministered sermons to his congregation or published literature, he may be punished under Section 12 of the ATA as providing support to a terrorist organization.

232. That he was based abroad throughout this time is immaterial and he remains vulnerable to criminal prosecution in the Philippines by the mere fact that he is a Philippine National. Section 49 makes no distinction and expands the reach of the ATA to "any

<sup>183</sup> G.R. No. 128096, January 20, 1999.

Filipino citizen or national who commits any of the acts penalized [under the ATA] outside of the territorial jurisdiction of the Philippines”.

233. *Finally*, these provisions punish mere association with a certain group, absent any overt criminal act and regardless of when the act of affiliation was committed. In this case, mere affiliation—as manifested in showing support, for example—already constitutes sufficient grounds to be liable due to the broad scope of the provision. The designation by the ATC leads to the criminalization of mere membership through imposition of life imprisonment and greenlighting the freezing of the financial assets of persons and groups. With the threat of deprivation of liberty and property present, due process becomes essential. In short, before making its final order of designation, the Due Process Clause requires the ATC to give the said persons and groups the opportunity to be heard and to adduce their own evidence to the contrary. That the ATA denies this opportunity renders it unconstitutional.

234. The ATA constricts the right to association of persons like Petitioner Yu, along with his organizations which cater to marginalized sectors. Thus, holding symposia can be construed as “extensive interference” under Section 4(c), and donations to such cause-oriented events can be construed as “providing material support” under Section 12 of the ATA. Law enforcers can arbitrarily tag these groups as “terrorists” under Section 29 of the ATA. With the vague and overbroad provisions on “recruitment” under Section 3(h) and training under Section 3(k), volunteers would be deterred from joining and supporting these organizations.

235. *Gonzales v. COMELEC*<sup>184</sup> instructs that “unless an association or society could be shown to create an imminent danger to public safety, there is no justification for abridging the right to form associations or societies.” However, under Section 25, an *ex-parte* order by the ATC is enough to subject otherwise innocent persons to restrictions on their freedom of association, even without any overt act.

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<sup>184</sup> *Gonzales v. Commission on Elections*, G.R. No. L-27833, April 18, 1969.

III. Other major violations of the Bill of Rights found in Sections 3(h), 3(i) in relation to 16, 25, 35, 36, 45, and 46(e) render the ATA unconstitutional.

A. Section 3(i), in relation to Section 16, grants law enforcers overbroad discretionary powers to wiretap private communication, without distinction and based on mere suspicion, creating a chilling effect that deters protected speech. It also disregards an individual's right against unreasonable searches and seizures, right to privacy of communication and correspondence, and right to be presumed innocent.

236. Section 3(i), in relation to Section 16 of the ATA, outrightly infringes upon the right to privacy of an individual, which is guaranteed under Article III, Section 3, as well as the right not to be subject to unreasonable searches and seizures under Article III, Section 2 of the Constitution.

237. The Section 16, paragraph 2 of the ATA allows the search and seizure of "all customer information and identification records as well as call and text data records, content and other cellular or internet metadata" of any suspected terrorist.

238. On its face, this blanket authorization to seize all types of information and records on a specific individual likewise covers those that are unrelated to the terrorist acts sought to be quelled. It allows state authorities unbridled access to even the innocent and trivial parts of one's personal life, in gross violation of one's right to privacy. This provision also violates the particularity requirement for a search warrant under Article III, Section 2 of the Constitution, which requires that the warrant must particularly describe the "place to be searched and the persons or things to be seized." The provision authorizes the blanket seizure of all data and information on a person, effectively bypassing the specificity requirement.

239. The wide net cast by the state's surveillance activities under Section 16 produces a chilling effect<sup>185</sup> on otherwise protected speech.<sup>186</sup> Since the provision authorizes the seizure of all data and information from telecommunications service providers and internet service providers, even those that are unrelated to the crime suspected of, persons will be decidedly more cautious on how they may conduct

<sup>185</sup> *Disini v. Secretary of Justice*, G.R. No. 203335, February 18, 2014.

<sup>186</sup> Const. art. III, sec. 4.

their business through the phone or through the internet for fear of leaving digital footprints (*i.e.*, video, audio, and text) that can be used, via state-sanctioned fishing expeditions, as evidence against them. This is all the more troubling in light of our collective dependence on technology to function about our daily lives, especially with our reliance on smartphones.

240. If the provision is allowed to remain, people who are merely suspected of being terrorists will have to live in constant fear of being heard and followed, even in matters that have nothing to do with the subject of terrorism. It will invade their sphere of privacy guaranteed to them by the Constitution.

241. Members of a designated or judicially declared terrorist organization or group are vulnerable to the same fear. Their mere affiliation with the organization or group already subjects them to the same broad surveillance over their phone and internet data as with the actual perpetrators of terrorist acts.

242. Lastly, Section 16 violates the accused's right to be presumed innocent under Article III, Section 14(2) of the Constitution as the surveillance amounts to an intrusive fishing expedition where the accused is forced to prove his/her innocence, instead of the state establishing his/her guilt beyond reasonable doubt. On the basis of the foregoing, Section 16 is unconstitutional.

**B. Section 3(h) and 25, in relation to Section 35 of the ATA, enables the AMLC to (i) usurp the Constitutional power of the courts to issue search warrants upon probable cause, (ii) disregard the requirements for a warrantless search, (iii) breach a person's right to privacy of communication and correspondence, and (iv) deprive such person of his property without due process of law.**

243. Under Sections 3(h) and 25, in relation to Section 35 of the ATA, the designation by the ATC of a person as a "terrorist" or a member of a "terrorist" organization authorizes the ATC to request the AMLC to immediately proceed and look into the bank accounts of said person without a judicial search warrant. This is a **violation of Article III, Sections 2 and 3 of the Constitution.**



244. As held in *Republic v. Eugenio*,<sup>187</sup> bank accounts are zones of privacy. Thus, bank accounts can only be examined by way of a judicial order after a determination of probable cause as required by the Constitution. Congress deferred to this constitutional protection. When it enacted R.A. No. 10365 amending the Anti-Money Laundering Act (“AMLA”) in 2013, Congress added a new Section 21, which requires that **“authority to inquire into or examine the main account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution.”**<sup>188</sup> This requirement is echoed in Section 2.2, Rule 11 of the 2018 Implementing Rules and Regulations of the AMLA.

245. Under Section 7 of RA 9160, as amended by RA 10365, the AMLC is an executive agency composed of the “Governor of the Bangko Sentral ng Pilipinas as Chairman, the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission, as members.” Clearly, it is not a court empowered to issue a search warrant under Article III, Sections 2 and 3 of the Constitution.

246. To the extent that Sections 3(h) and 25 in relation to Section 35 of the ATA grants to the AMLC a power lodged exclusively in the courts, in the process breaching a person’s rights to be secure in his person and property and to due process of law, said provisions are unconstitutional.

**C. Section 36, which permits the AMLC and the ATC to issue an “Ex Parte Order To Freeze,” amounts to an unlawful search and seizure, and a deprivation of property without due process of law.**

247. In *People v. Valdez*,<sup>189</sup> the Honorable Court ruled that a search and seizure without a judicial warrant is generally “unreasonable.” *Stonehill v. Diokno*<sup>190</sup> expounds further on the requirements set by the constitutional mandate: (1) that no warrant shall issue but upon probable cause, to be determined by the judge in the manner set forth in said provision; and (2) that the warrant shall particularly describe the things to be seized.

<sup>187</sup> G.R. No. 174629, February 14, 2008

<sup>188</sup> Article III, Section 2 of the Constitution provides that “no search warrant . . . 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 . . .” while Section 3 of the same Article mandates that “[t]he privacy of communication and correspondence shall be inviolable except upon lawful order of the court . . .”

<sup>189</sup> G.R. No. 129296, September 25, 2000.

<sup>190</sup> G.R. No. L-19550, June 19, 1967.

248. Sections 35 and 36 of the ATA violate these fundamental rights against unreasonable searches and seizures, and against deprivation of property without due process, by allowing the AMLC to investigate and freeze a person's property either upon the issuance of a preliminary order of proscription or by designation by the ATC.

249. Under Sections 26 and 27 of the ATA, for a preliminary order of proscription to issue, the only requirement is a determination of probable cause by the Court of Appeals, **on the basis of a verified application by the DOJ**, without need of presenting the applicant for personal examination of a judicial authority. This determination of probable cause falls short of the standard set forth in the Constitution, which requires personal examination by a judge under oath or affirmation of the complainant and his witnesses, who must testify based on their personal knowledge of the facts. Such non-compliance with constitutional requirements renders any preliminary order of proscription invalid and without effect.

250. As pointed out above, Section 25 of the ATA empowers the ATC to designate an individual, group of persons, organization or association as a terrorist upon the ATC's determination of probable cause. One consequence of such designation is to authorize the AMLC to freeze *ex parte* the funds of said individual, organization or association as though a valid search and seizure order had been issued.

251. As argued above, however, both the designation by the ATC and the authority for the AMLC to freeze funds are unconstitutional. The designation is void because it violates one's right to due process, having been issued without giving the designated party an opportunity to be heard. Moreover, the ATC's executive finding of probable cause is unilateral, without a requirement of an oath or affirmation of witnesses. On the other hand, any attempt by the AMLC to freeze the funds of the designated party will be a nullity as it is not authorized by a validly issued judicial warrant. The ATC has no power to issue a search and seizure order, a prerogative reserved by the Constitution for judges. Since it is not a judge, the ATC cannot make a finding of probable cause for purposes of conducting a search or seizure without violating separation of powers.

**D. Section 45 grants to the ATC unbridled discretion to impose security classifications on all its records, effectively undermining the right of citizens to access such records pursuant to their right to public information.**

252. Article III, Section 7 of the Constitution provides that “[t]he right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.”

253. Section 45 places no standard for limiting the access to ATC records. Instead, it grants the ATC absolute discretion to impose whatever “security classifications” it deems fit. While *Chavez v. PCGG*<sup>191</sup> provided that national security is a valid reason to limit access to information on matters of public concern, such limits in the furtherance of genuine government interests must also be balanced with the right to information guaranteed by the Constitution.<sup>192</sup>

254. For example, certain records of the ATC would be in the interest of national security to remain confidential, such as those involving undercover operations. But Section 45 gives the ATC blanket authority to determine which information or records are off-limits to public access and scrutiny. These may include documents or records of proceedings and discussions that are vital to a person’s defense against a charge of terrorism, or to the prosecution of law enforcers for abuses allegedly committed by them.

255. As previously mentioned, the processes and decisions of the ATC in designating people or groups of people and ordering their arrest is of questionable constitutionality. As the ATC is given unbridled discretion to limit access to their records and proceedings, the public (including the victims) are deprived of its ability to hold the ATC accountable in instances where it has abused its discretion or committed wrongdoing. With Section 45 as its shield, members of the ATC (and law enforcers to a certain extent) may become almost untouchable and impervious to liability.

<sup>191</sup> G.R. No. 130716, December 9, 1998.

<sup>192</sup> Joaquin Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2009 Ed.), p. 385.

256. Further, Section 46(e) of the ATA allows the ATC to establish and maintain a database on terrorism, terrorist activities, and counter-terrorism activities. When read together with the ATC's power to *ex parte* designate a person or organization as a "terrorist" under Section 25 of the ATA, the ATC is thereby given *carte blanche* authority to designate an individual or members of the organization as terrorists and to conduct surveillance to maintain a comprehensive information database on the individuals and their activities, all without notice and giving them a chance to defend themselves in violation of their right to due process and privacy.

257. The *ex parte* nature and secrecy of the operations leave the public blind as to whether information about them is being gathered, instilling fear and chilling speech. This is akin to the power of law enforcers to conduct roving searches and keep records of internet traffic data under the Cybercrime Law, which this Honorable Court struck down as unconstitutional in *Disini v. Secretary of Justice*.<sup>193</sup> Section 46(e), read in relation to the broad definition of terrorism, suffers from similar defects, as such information gathering by the ATC allows the state to conduct fishing expeditions.

258. General warrants that cover objects so broad and all-encompassing as to "lodge in the executing officer virtually unlimited discretion as to what property shall be seized, is repugnant to the Constitution".<sup>194</sup> In *Stonehill v. Diokno*,<sup>195</sup> such warrants are unconstitutional because they "place the sanctity of the domicile and the privacy of communication and correspondence at the mercy of the whims, caprice, or passion of peace officers". If the Constitution provides that government incursions into private domains sanctioned by judicial warrants cannot be of such a general nature as to give an officer roving authority to do as he pleases, with all the more reason that a mere executive agency cannot transgress this safeguard.

259. That Sections 45 and 46 purport to grant such broad and unlimited powers to the ATC exposes them as unconstitutional.

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<sup>193</sup> G.R. No. 203335, February 18, 2014 where it ruled that "there is no assurance that the collected traffic data would not be used for preventive purposes as well," that the "vagueness [of the purpose of the data collection] is disconcerting, since a preventive monitoring would necessarily entail casting a wider net than an investigation of a specific instance of criminality would," and that such vagueness "would give the government the roving authority to obtain traffic data for any purpose."

<sup>194</sup> *Vallejo v. Court of Appeals*, G.R. No. 156413, April 14, 2004.

<sup>195</sup> G.R. No. L-19550, June 19, 1967

V. Since its operational provisions are unconstitutional for constituting restrictions to liberty that fail Strict Scrutiny, the ATA cannot be implemented and must be voided in its entirety.

260. Petitioners respectfully submit that the ATA's provisions, which criminalize vague internal acts and deprive persons of their fundamental rights, are governmental excesses into constitutionally protected liberties which fail Strict Scrutiny and are unconstitutional. They cannot be considered a valid exercise of police power.

261. Substantive due process asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there is a sufficient justification for the government's action.<sup>196</sup> The inquiry in this regard is not whether or not the law is being enforced in accordance with the prescribed manner, but whether or not, to begin with, it is a proper exercise of legislative power. Thus, rulings of the Honorable Court are settled that Strict Scrutiny is applied to statutes challenged for infringing upon fundamental constitutional rights.<sup>197</sup>

262. No matter how noble a State policy is, any attempt to contravene constitutional freedoms (especially free speech) is presumed **unconstitutional**. To overcome this heavy presumption, the State must prove by overwhelming evidence that the law: (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.<sup>198</sup> To be considered narrowly tailored, "**citizens should not be hampered from pursuing legitimate activities in the exercise of their constitutional right**. ... when it is possible for governmental regulations to be more narrowly drawn to avoid conflicts[.]"<sup>199</sup>

263. Lest it be misunderstood, Petitioners abhor terrorism and recognize the need to prevent terrorism at its source. However, Petitioners challenge the ATA as a brazen act of overreach by the State at the expense of fundamental rights. Its transgressions are so massive that they permeate almost all of its key provisions, running roughshod over such cherished freedoms as free speech, due process, presumption of innocence, right to assembly, right against unreasonable searches and warrantless arrests, and right to bail, among others. The ATA's

<sup>196</sup> City of Manila v. Laguio, G.R. 118127, April 12, 2005.

<sup>197</sup> City of Manila v. Laguio, G.R. 118127, April 12, 2005.

<sup>198</sup> Samahan Ng Mga Progresibong Kabataan v. Quezon City, G.R. No. 225442, August 8, 2017.

<sup>199</sup> Samahan Ng Mga Progresibong Kabataan v. Quezon City, G.R. No. 225442, August 8, 2017.

cavalier disregard of constitutional liberties in the name of "security" - promoted through fear engendered by the threat of penal sanctions - is a clear evidence that the statute falls far short of the required standard of pursuing the **least restrictive means** or carving a **narrowly tailored** law to achieve the government's goal.

264. Relatedly, Petitioners have taken exception to Sections 4 to 12 of the ATA as these constituted restrictions on the exercise of protected speech, which fail Strict Scrutiny. As held in *Chavez v. Gonzales*,<sup>200</sup> "a governmental action that restricts freedom of speech or of the press based on content is given the **strictest scrutiny** in light of its inherent and invasive impact ... with the government having the burden of overcoming the presumed unconstitutionality." As was discussed above, Sections 4 to 12 of the ATA impose restrictions on free speech that do not present any clear and present danger.

265. On the matter of freedom of association, *Gonzales v. COMELEC*<sup>201</sup> lays down a similar exacting standard with which to test governmental restrictions: "there could be an abridgment of the right to form associations or societies when their purposes are 'contrary to law'. How should the limitation 'for purposes not contrary to law' be interpreted? **It is submitted that it is another way of expressing the clear and present danger rule for, unless an association or society could be shown to create an imminent danger to public safety, there is no justification for abridging the right to form association societies.** As argued above, Sections 6 to 10 of the ATA present restrictions on permissible forms of organization and association even as these do not pose any clear or present danger, thereby rendering such provisions unconstitutional.

266. With the key provisions of the ATA failing Strict Scrutiny and weighed down by unconstitutionality, the law loses its soul and is reduced to a lifeless husk that must fall away together with its void provisions. In *Tatad v. Secretary of Energy*,<sup>202</sup> the Honorable Court struck down the entirety of Republic Act No. 8180 or the Anti-Deregulation Law after it found that the unconstitutionality of its essential provision justifies its invalidation in its entirety despite the existence of a separability clause. The Honorable Court ruled that where the legislature intended the statute to be carried out as a whole and would not have enacted it if one part is void, in which case if some parts are unconstitutional, all the other provisions thus dependent, conditional, or connected must fall with them."

<sup>200</sup> G.R. No. 168338, February 15, 2008.

<sup>201</sup> G.R. No. L-27833, April 18, 1969.

<sup>202</sup> G.R. No. 124360, December 3, 1997.

267. In conclusion, there are three reasons why the entire ATA itself should be declared unconstitutional.

268. *First*, its pervasive overbreadth and vagueness chill a substantial amount of protected speech, and only a facial invalidation can permanently prevent this from happening.

269. *Second*, the engine that is supposed to run the ATA (*i.e.*, the ATC) is a no-starter. The ATC is an invalid entity because it (i) was born out of a brazen violation of the rule on separation of powers, and (ii) is outrageously vested with powers greater than what the Constitution has given to the President in extraordinary cases of invasion and rebellion, without the yoke of restrictions to which the President is subject.

270. *Third*, the key provisions that animate the ATA – primarily the definitions of terrorism and its variants – are so hopelessly burdened by unconstitutionality. As they deserve to be expunged, the ATA will be left with nothing to sustain its existence.

### ARGUMENTS IN SUPPORT OF THE APPLICATION FOR PROVISIONAL RELIEF

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271. So far as may be relevant, Petitioners replead, by reference, the foregoing allegations and arguments in support of its *Application for a Status Quo Ante Order and/or Temporary Restraining Order/ Writ of Preliminary Injunction*.

272. Rule 58, Section 3 of the Rules of Court allows any court to issue a writ of preliminary injunction so long as the following requisites are satisfied: (1) the *prima facie* existence of the right to be protected; (2) the acts sought to be enjoined are violative of that right, and (3) the violation sought to be prevented would cause an irreparable injustice.<sup>203</sup> To be entitled to the writ, Petitioners “are only required to show that they have the ostensible right to the final relief prayed for in their complaint.”<sup>204</sup>

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<sup>203</sup> *Metropolitan Manila Development Authority vs. Trackworks Rail Transit Advertising, Vending and Promotions, Inc.*, 474 SCRA 331 (2005).

<sup>204</sup> *Id.*

273. Similarly, in *Bengzon vs. Court of Appeals*, G.R. No. 82568, 31 May 1988, the Honorable Court affirmed the issuance of a preliminary injunction to protect and preserve the right of the applicant, and to preserve the status quo, or the last actual peaceable uncontested status which preceded the pending controversy.

274. Petitioners have a clear legal right to be protected against unconstitutional acts of the government arising from a grave abuse of discretion amounting to lack or excess of jurisdiction. As citizens, Petitioners invoke their rights as citizens to ensure **“to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied.”**<sup>205</sup> A writ of preliminary injunction is issued by the court to prevent a threatened or continuous injury to parties before their claims can be thoroughly studied and adjudicated. Its sole objective is to preserve the status quo until the merits of the case can be fully heard.<sup>206</sup>

275. Finally, there is an urgent need for the Honorable Court to grant injunctive relief to prevent grave and irreparable injury. Irreparable injury is injury “where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation.”<sup>207</sup> Petitioners submit that the egregious violations of the Constitution are irreparable precisely because they are, by their nature, incapable of pecuniary estimation. To recall the admonition of the Honorable Court in *Borlongan v. Banco de Oro*,<sup>208</sup> “a continuous violation of constitutional rights is by itself a grave and irreparable injury that this or any court cannot plausibly tolerate.”

#### **ARGUMENTS IN SUPPORT OF THE MOTION FOR SPECIAL RAFFLE AND ORAL ARGUMENTS**

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276. So far as may be relevant, Petitioners replead, by reference, the foregoing allegations and arguments in support of the *Motion for Special Raffle*.

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<sup>205</sup> *David vs. Macapagal- Arroyo, supra*.

<sup>206</sup> *Manila Int'l Airport Authority vs. Rivera Village Lessee Homeowners Ass'n, Inc.*, 471 SCRA 358 (2005).

<sup>207</sup> *Philippine Air Lines vs. National Labor Relations Commission*, 287 SCRA 672 (1998).

<sup>208</sup> G.R. No. 217617, April 5, 2017.



277. Rule 7, Section 6 of the Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC dated 4 May 2010) provides that a case qualifies for special raffle if (1) the initiatory pleading contains a prayer for the issuance of a temporary restraining order or an urgent and extraordinary writ such as the writ of habeas corpus or of amparo; and (2) the case cannot be included in the regular raffle.

278. Petitioners seek injunctive relief against the implementation of the ATA's provisions, which stand to burden their clear and unmistakable Constitutional rights. Absent such relief, Petitioners face imminent deprivation of life, liberty, and property, thereby causing them grave and irreparable injury. Thus, in *Government Insurance System v. Executive Judge Cancino-Erum*<sup>209</sup> decrees that special raffle is justified for cases involving applications for injunctive relief.

279. Further, Rule 10, Section 3 of the Internal Rules of the Supreme Court provides that the Honorable Court may also proceed to "hear any case on oral arguments upon defined issues." Considering the multiple arguments against the constitutionality of the ATA raised in the *Petition*, the Petitioners respectfully submit that the Honorable Court may find it useful to conduct arguments to determine the merits of the *Petition*.

280. Thus, Petitioners respectfully move that the instant *Petition* be immediately set for special raffle; their Application for a Temporary Restraining Order, *Status Quo Ante* Order and/or Writ of Preliminary Injunction be immediately acted upon and granted by the Honorable Court; and thereafter, the Honorable Court schedule the instant *Petition* for oral arguments on the issues raised herein at such date most convenient for the Honorable Court.

(Prayer Page Follows)

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<sup>209</sup> A.M. No. RIJ-09-2182, September 5, 2012

## PRAYER

WHEREFORE, petitioners respectfully pray that this Honorable Court:

1. Immediately upon receipt of this Petition, conduct a special raffle and **ISSUE** a Temporary Restraining Order or a *Status Quo Ante* Order to restrain the effectivity and implementation of Republic Act No. 11479;
2. **GIVE DUE COURSE** to this Petition;
3. Upon receipt of comment from the Respondents, **DIRECT THE CONDUCT OF ORAL ARGUMENTS** on such date and time that the Honorable Court may find appropriate; and
4. After the conduct of oral arguments, **RENDER JUDGMENT** as follows:
  - a. **DECLARING NULL AND VOID** as **UNCONSTITUTIONAL** the entire Republic Act No. 11479, or the Anti-Terrorism Act; or
  - b. In the alternative, **DECLARE NULL AND VOID** as **UNCONSTITUTIONAL** the following provisions of Republic Act No. 11479, or the Anti-Terrorism Act:
    - i. Section 3(a), for vagueness, overbreadth, and chilling free speech;
    - ii. Section 3(b), for violating the right to due process, and taking on the character of a bill of attainder and *ex post facto* law;
    - iii. Section 3(e), for overbreadth;
    - iv. Section 3(g), for overbreadth;
    - v. Section 3(h), for violating the rights to due process, to bail, against incommunicado detention, the presumption of innocence, the separation of powers, and for taking the character of a bill of attainder and *ex post facto* law;
    - vi. Section 3(i), for chilling free speech, violating the presumption of innocence, and violating the rights to privacy, and against unlawful searches and seizures;
    - vii. Sections 3(k), for violating the rights to due process, to association, to bail, against incommunicado detention, the

- presumption of innocence, and for taking the character of a bill of attainder and *ex post facto* law;
- viii. Section 3(m), for violating the rights to due process, to association, to bail, against incommunicado detention, the presumption of innocence, and for taking the character of a bill of attainder and *ex post facto* law;
  - ix. Section 4, for vagueness and overbreadth;
  - x. Sections 5, 6, 7, 8, 9, 10, 11, and 12, for vagueness and overbreadth, in relation to Section 4;
  - xi. Section 16, for chilling free speech, violating the presumption of innocence, and overbreadth in violating the right to privacy, when read together with Section 3(i);
  - xii. Section 25, for violating the rights to due process, to association, to bail, against incommunicado detention, the presumption of innocence, and taking on the character of a bill of attainder and *ex post facto* law;
  - xiii. Section 26, for violating the rights to due process, to association, to bail, against incommunicado detention, the presumption of innocence, and taking on the character of a bill of attainder and *ex post facto* law;
  - xiv. Section 27, for violating the rights to due process, to association, to bail, against incommunicado detention, the presumption of innocence, and taking on the character of a bill of attainder and *ex post facto* law;
  - xv. Sections 29 and 30, for violating the rights to due process, to bail, to association, the presumption of innocence, infringing upon the separation of powers, and being a disguised suspension of the privilege of the writ of *habeas corpus*;
  - xvi. Section 34, for violating the right to presumption of innocence and the right to bail, placing a prior restraint on free speech, and placing a person under incommunicado detention;
  - xvii. Sections 35 and 36, for violating the separation of powers, being an unlawful search and seizure, and for constituting a deprivation of property without due process of law;
  - xviii. Section 45, for violating the separation of powers, and undermining the right of the citizens to public information;
  - xix. Section 46, for chilling free speech, and violating the rights to privacy, and against unlawful search and seizure; and
  - xx. Section 49, for violating the rights to due process, to association, to bail, against incommunicado detention, the presumption of innocence, the separation of powers, and taking on the character of a bill of attainder and *ex post facto* law.

Other reliefs, as may be deemed just and equitable by this Honorable Court, are likewise prayed for.

Quezon City for the City of Manila, July 16, 2020.



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<sup>210</sup> Valid until 14 April 2022

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*Respondent*

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**SENATE OF THE PHILIPPINES**

*Respondent*

GSIS Bldg., Financial Center  
Diokno Blvd., Pasay City

**HOUSE OF REPRESENTATIVES OF THE PHILIPPINES**

*Respondent*

Constitution Hills, Quezon City 1126

*(Verification and Certification of Non-Forum Shopping Pages Follow)*

**VERIFICATION AND CERTIFICATION  
OF NON-FORUM SHOPPING**

I, **ANTONIO T. CARPIO**, of legal age, Filipino and with address at Room 1909 Cityland Tower 2, H.V. dela Costa St., Makati City, after having been duly sworn in accordance with law, depose and state that:

1. I am one of the petitioners in the above-entitled case;
2. I have caused the preparation and filing of the instant *Petition for Certiorari and Prohibition (With Application for Status Quo Ante Order, Temporary Restraining Order And/Or Writ of Preliminary Injunction)* (the "*Petition*"). All the allegations contained therein are true and correct based on records in my possession and of my personal knowledge.
3. The instant *Petition* is not being filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
4. The factual allegations of the instant *Petition* either have evidentiary support based on authentic documents, are subject of mandatory judicial notice, or if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
5. To the best of my knowledge, I have not commenced any other action or proceeding involving the same issues and parties in the Supreme Court, Court of Appeals or different divisions thereof, the lower courts or any other tribunal agency.
6. As of date, I am aware of the following cases filed with the Honorable Court:
  - a. Calleja, et al. v. Executive Secretary, et al., G.R. No. 252578;
  - b. Lagman v. Executive Secretary, et al., G.R. No. 252579;
  - c. Sta. Maria, et al. v. Executive Secretary, et al., G.R. No. 252580;
  - d. Zarate, et al. v. Duterte, et al., G.R. No. 252585.

- e. Jurado v. The Anti-Terrorism Council, et al., G.R. No. 252613;
  - f. Center for Trade Union and Human Rights, et al. v. Duterte, et al., G.R. No. 252623;
  - g. Monsod, et al. v. Executive Secretary, et al., G.R. No. 252624; and
  - h. SANLAKAS v. Duterte, et al., G.R. No. 252646.
7. If I should thereafter learn that a similar action or proceeding is pending before the Honorable Court, the Court of Appeals or any tribunal or quasi-judicial agency, I undertake to report that fact within five (5) calendar days therefrom to the Honorable Court.

IN WITNESS WHEREOF, I have set my hands this 16<sup>th</sup> day of July 2020 at Quezon City.

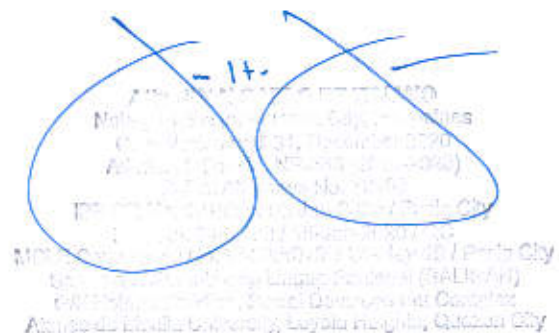


ANTONIO T. CARPIO  
*Affiant*

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of July 2020, Affiant exhibiting the following competent evidence of identity Senior Citizen Card No. 34760 issued on 26 October 2009 by the Office of Senior Citizens Affairs of the City of Makati bearing the Affiant's photograph and signature.

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Series of 2020.



Makati City, Philippines  
Notary Public  
Commission No. 12345  
Notary Public for the City of Quezon City  
Atty. [Name], [Address], Quezon City



**VERIFICATION AND CERTIFICATION  
OF NON-FORUM SHOPPING**

I, **CONCHITA CARPIO MORALES**, of legal age, Filipino with address at 9 Carpio Compound, Camella Ave., Soldiers Hills, Muntinlupa City, after having been duly sworn in accordance with law, depose and state that:

1. I am one of the petitioners in the above-entitled case;
2. I have caused the preparation and filing of the instant *Petition for Certiorari and Prohibition (With Application for Status Quo Ante Order, Temporary Restraining Order And/Or Writ of Preliminary Injunction)* (the "*Petition*"). All the allegations contained therein are true and correct based on records in my possession and of my personal knowledge.
3. The instant *Petition* is not being filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
4. The factual allegations of the instant *Petition* either have evidentiary support based on authentic documents, are subject of mandatory judicial notice, or if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
5. To the best of my knowledge, I have not commenced any other action or proceeding involving the same issues and parties in the Supreme Court, Court of Appeals or different divisions thereof, the lower courts or any other tribunal agency.
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  - a. Calleja, et al. v. Executive Secretary, et al., G.R. No. 252578;
  - b. Lagman v. Executive Secretary, et al., G.R. No. 252579;
  - c. Sta. Maria, et al. v. Executive Secretary, et al., G.R. No. 252580;
  - d. Zarate, et al. v. Duterte, et al., G.R. No. 252585.

- e. Jurado v. The Anti-Terrorism Council, et al., G.R. No. 252613;
  - f. Center for Trade Union and Human Rights, et al. v. Duterte, et al., G.R. No. 252623;
  - g. Monsod, et al. v. Executive Secretary, et al., G.R. No. 252624; and
  - h. SANLAKAS v. Duterte, et al., G.R. No. 252646.
7. If I should thereafter learn that a similar action or proceeding is pending before the Honorable Court, the Court of Appeals or any tribunal or quasi-judicial agency, I undertake to report that fact within five (5) calendar days therefrom to the Honorable Court.


IN WITNESS WHEREOF, I have set my hands this 16<sup>th</sup> day of July 2020 at Quezon City.

  
**CONCHITA CARPIO MORALES**  
*Affiant*

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of July 2020, Affiant exhibiting the following competent evidence of identity, Senior Citizen Card No. ELG-0063 issued on 28 December 2018 by Office of the Senior Citizens Affairs of the Municipality of Paoay, Ilocos Norte bearing the Affiant's photograph and signature.

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**Atty. JUAN CARLO PE TEJANO**  
Notary Public for Quezon City, Philippines  
Commission until 31, December 2020  
Admin. Matter No. NP-338 (2019-2020)  
Roll of Attorneys No. 72100  
IBP OR No. 101635 / 06-Jan-2020 / Pasig City  
PTR No. 9463492 / 15-Jan-2020 / QC  
MCLE Compliance No. VI-0826787 / 24-May-19 / Pasig City  
Sentro ng Alternatibong Lingap Panlegal (SALIGAN)  
G/F Hoffner Building, Social Development Complex  
Ateneo de Manila University, Loyola Heights, Quezon City

**VERIFICATION AND CERTIFICATION  
OF NON-FORUM SHOPPING**

I, **JAY L. BATONGBACAL**, of legal age, Filipino and with address at P-5 Area 14, UP Campus, Diliman, Quezon City, after having been duly sworn in accordance with law, depose and state that:

1. I am one of the petitioners in the above-entitled case;
2. I have caused the preparation and filing of the instant *Petition for Certiorari and Prohibition (With Application for Status Quo Ante Order, Temporary Restraining Order And/Or Writ of Preliminary Injunction)* (the "*Petition*"). All the allegations contained therein are true and correct based on records in my possession and of my personal knowledge.
3. The instant *Petition* is not being filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
4. The factual allegations of the instant *Petition* either have evidentiary support based on authentic documents, are subject of mandatory judicial notice, or if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
5. To the best of my knowledge, I have not commenced any other action or proceeding involving the same issues and parties in the Supreme Court, Court of Appeals or different divisions thereof, the lower courts or any other tribunal agency.
6. As of date, I am aware of the following cases filed with the Honorable Court:
  - a. Calleja, et al. v. Executive Secretary, et al., G.R. No. 252578;
  - b. Lagman v. Executive Secretary, et al., G.R. No. 252579;
  - c. Sta. Maria, et al. v. Executive Secretary, et al., G.R. No. 252580;
  - d. Zarate, et al. v. Duterte, et al., G.R. No. 252585.

- e. Jurado v. The Anti-Terrorism Council, et al., G.R. No. 252613;
  - f. Center for Trade Union and Human Rights, et al. v. Duterte, et al., G.R. No. 252623;
  - g. Monsod, et al. v. Executive Secretary, et al., G.R. No. 252624; and
  - h. SANLAKAS v. Duterte, et al., G.R. No. 252646.
7. If I should thereafter learn that a similar action or proceeding is pending before the Honorable Court, the Court of Appeals or any tribunal or quasi-judicial agency, I undertake to report that fact within five (5) calendar days therefrom to the Honorable Court.

IN WITNESS WHEREOF, I have set my hands this 16<sup>th</sup> day of July 2020 at Quezon City.

  
**JAY L. BATONGBACAL**  
*Affiant*

**SUBSCRIBED AND SWORN** to before me this 16<sup>th</sup> day of July 2020, Affiant exhibiting the following competent evidence of identity, Driver's License No. C07870297100 issued on 28 March 2017 and expiring on 10 February 2022 by the Land Transportation Office, Ever Gotesco Mall Quezon City Field Office bearing the Affiant's photograph and signature.

**NOTARY PUBLIC**

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 Page No. 31 ;  
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 Series of 2020.

  
 Notary Public for Quezon City, Quezon City  
 Commission No. 01, December 2020  
 Admin. Order No. NP-08 (N/10-020)  
 Roll of Notaries No. 72100  
 IBP Office, 10133708-July 2020 / Pasig City  
 First 101, 22 / 16-Jan-2020  
 MOLE Case No. 17-02817 / 24-May-10 / Pasig City  
 San Diego Armed Forces Logistics Personnel (SAL) (Cair)  
 GSF Honorary Member, Social Development Council  
 Ateneo de Manila University, Loyola Heights, Quezon City

**VERIFICATION AND CERTIFICATION  
OF NON-FORUM SHOPPING**

I, DANTE B. GATMAYTAN, of legal age, Filipino and with office address at Room 216 Malcolm Hall, University of the Philippines, Diliman, Quezon City 1101, after having been duly sworn in accordance with law, depose and state that:

1. I am one of the petitioners in the above-entitled case;
2. I have caused the preparation and filing of the instant *Petition for Certiorari and Prohibition (With Application for Status Quo Ante Order, Temporary Restraining Order And/Or Writ of Preliminary Injunction)* (the "*Petition*"). All the allegations contained therein are true and correct based on records in my possession and of my personal knowledge.
3. The instant *Petition* is not being filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
4. The factual allegations of the instant *Petition* either have evidentiary support based on authentic documents, are subject of mandatory judicial notice, or if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
5. To the best of my knowledge, I have not commenced any other action or proceeding involving the same issues and parties in the Supreme Court, Court of Appeals or different divisions thereof, the lower courts or any other tribunal agency.
6. As of date, I am aware of the following cases filed with the Honorable Court:
  - a. Calleja, et al. v. Executive Secretary, et al., G.R. No. 252578;
  - b. Lagman v. Executive Secretary, et al., G.R. No. 252579;
  - c. Sta. Maria, et al. v. Executive Secretary, et al., G.R. No. 252580;
  - d. Zarate, et al. v. Duterte, et al., G.R. No. 252585.
  - e. Jurado v. The Anti-Terrorism Council, et al., G.R. No. 252613;

- f. Center for Trade Union and Human Rights, et al. v. Duterte, et al., G.R. No. 252623;
  - g. Monsod, et al. v. Executive Secretary, et al., G.R. No. 252624; and
  - h. SANLAKAS v. Duterte, et al., G.R. No. 252646.
7. If I should thereafter learn that a similar action or proceeding is pending before the Honorable Court, the Court of Appeals or any tribunal or quasi-judicial agency, I undertake to report that fact within five (5) calendar days therefrom to the Honorable Court.


**IN WITNESS WHEREOF**, I have set my hands this 16<sup>th</sup> day of July 2020 at Quezon City.

  
**DANTE B. GATMAYTAN**  
Affiant

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of July 2020, Affiant exhibiting the following competent evidence of identity Driver's License Number N02-94-244942 issued by the Land Transportation Office, SM Annex Field Office bearing the Affiant's photograph and signature.

**NOTARY PUBLIC**

Doc No. 154 ;  
Page No. 32 ;  
Book No. 1 ;  
Series of 2020.

  
**Atty. JUAN CARLO PE TEZANO**  
Notary Public for Quezon City, Philippines  
Commission until 31, December 2020  
Admin. Matter No. NP-338 (2019-2020)  
Roll of Attorneys No. 72100  
IBP OR No. 101635 / 06-Jan-2020 / Pasig City  
PTR No. 9463492 / 15-Jan-2020 / QC  
MCLE Compliance No. VI-0026767 / 24-May-19 / Pasig City  
Sentro ng Alternatibong Lingap Panlegal (SALIGAN)  
G/F Hoffner Building, Social Development Complex  
Ateneo de Manila University, Loyola Heights, Quezon City

**VERIFICATION AND CERTIFICATION**  
**OF NON-FORUM SHOPPING**

I, **THEODORE O. TE**, of legal age, Filipino, and with office address at 2nd Floor, Eastside Building, 77 Malakas Street, Barangay Piñahan, Quezon City, after having been duly sworn in accordance with law, depose and state that:

1. I am one of the petitioners in the above-entitled case;
2. I have caused the preparation and filing of the instant *Petition for Certiorari and Prohibition (With Application for Status Quo Ante Order, Temporary Restraining Order And/Or Writ of Preliminary Injunction)* (the "*Petition*"). All the allegations contained therein are true and correct based on records in my possession and of my personal knowledge.
3. The instant *Petition* is not being filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
4. The factual allegations of the instant *Petition* either have evidentiary support based on authentic documents, are subject of mandatory judicial notice, or if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
5. To the best of my knowledge, I have not commenced any other action or proceeding involving the same issues and parties in the Supreme Court, Court of Appeals or different divisions thereof, the lower courts or any other tribunal agency.
6. As of date, I am aware of the following cases filed with the Honorable Court:
  - a. Calleja, et al. v. Executive Secretary, et al., G.R. No. 252578;
  - b. Lagman v. Executive Secretary, et al., G.R. No. 252579;
  - c. Sta. Maria, et al. v. Executive Secretary, et al., G.R. No. 252580;
  - d. Zarate, et al. v. Duterte, et al., G.R. No. 252585.

- e. Jurado v. The Anti-Terrorism Council, et al., G.R. No. 252613;
  - f. Center for Trade Union and Human Rights, et al. v. Duterte, et al., G.R. No. 252623;
  - g. Monsod, et al. v. Executive Secretary, et al., G.R. No. 252624; and
  - h. SANLAKAS v. Duterte, et al., G.R. No. 252646.
7. If I should thereafter learn that a similar action or proceeding is pending before the Honorable Court, the Court of Appeals or any tribunal or quasi-judicial agency, I undertake to report that fact within five (5) calendar days therefrom to the Honorable Court.

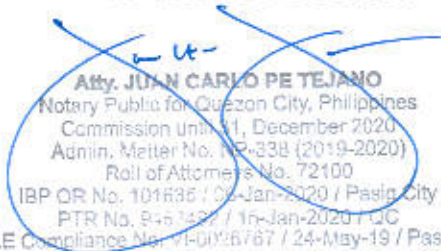
IN WITNESS WHEREOF, I have set my hands this 16th day of July 2020 at Quezon City.

  
**THEODORE O. TE**  
*Affiant*

**SUBSCRIBED AND SWORN** to before me this 16<sup>th</sup> day of July 2020, Affiant exhibiting the following competent evidence of identity Driver's License Number F01-92-078656 issued by the Land Transportation Office bearing the Affiant's photograph and signature.

Doc No. 152 ;  
Page No. 32 ;  
Book No. 1 ;  
Series of 2020.

**NOTARY PUBLIC**

  
Atty. **JUAN CARLO PE TEJANO**  
Notary Public for Quezon City, Philippines  
Commission until 31, December 2020  
Admin. Matter No. 12-338 (2019-2020)  
Roll of Attorneys No. 72100  
IBP OR No. 101636 / 06-Jan-2020 / Pasig City  
PTR No. 9453827 / 16-Jan-2020 / QC  
MCLE Compliance No. VI-0106767 / 24-May-19 / Pasig City  
Sentro ng Alternatibong Lingap Paralegal (SALIGAN)  
G/F Hoffner Building, Social Development Complex  
Ateneo de Manila University, Loyola Heights, Quezon City



**VERIFICATION AND CERTIFICATION**  
**OF NON-FORUM SHOPPING**

I, **VICTORIA V. LOANZON**, of legal age, Filipino, and with address at University of the Philippines College of Law, Malcolm Hall, University of the Philippines Diliman, Quezon City, after having been duly sworn in accordance with law, depose and state that:

1. I am one of the petitioners in the above-entitled case;
2. I have caused the preparation and filing of the instant *Petition for Certiorari and Prohibition (With Application for Status Quo Ante Order, Temporary Restraining Order And/Or Writ of Preliminary Injunction)* (the "*Petition*"). All the allegations contained therein are true and correct based on records in my possession and of my personal knowledge.
3. The instant *Petition* is not being filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
4. The factual allegations of the instant *Petition* either have evidentiary support based on authentic documents, are subject of mandatory judicial notice, or if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
5. To the best of my knowledge, I have not commenced any other action or proceeding involving the same issues and parties in the Supreme Court, Court of Appeals or different divisions thereof, the lower courts or any other tribunal agency.
6. As of date, I am aware of the following cases filed with the Honorable Court:
  - a. Calleja, et al. v. Executive Secretary, et al., G.R. No. 252578;
  - b. Lagman v. Executive Secretary, et al., G.R. No. 252579;
  - c. Sta. Maria, et al. v. Executive Secretary, et al., G.R. No. 252580;
  - d. Zarate, et al. v. Duterte, et al., G.R. No. 252585.

- e. Jurado v. The Anti-Terrorism Council, et al., G.R. No. 252613;
  - f. Center for Trade Union and Human Rights, et al. v. Duterte, et al., G.R. No. 252623;
  - g. Monsod, et al. v. Executive Secretary, et al., G.R. No. 252624; and
  - h. SANLAKAS v. Duterte, et al., G.R. No. 252646.
7. If I should thereafter learn that a similar action or proceeding is pending before the Honorable Court, the Court of Appeals or any tribunal or quasi-judicial agency, I undertake to report that fact within five (5) calendar days therefrom to the Honorable Court.

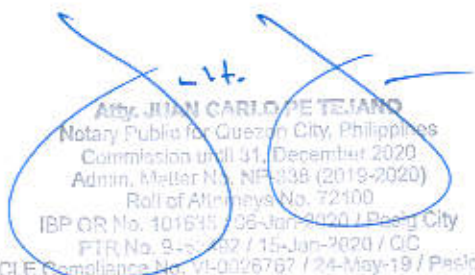
IN WITNESS WHEREOF, I have set my hands this 16<sup>th</sup> day of July 2020 at QUEZON CITY City.

  
VICTORIA V. LOANZON  
Affiant

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of July 2020, Affiant exhibiting the following competent evidence of identity, Driver's License Number N16-73-016759 issued by the Land Transportation Office Ever Gotesco Quezon City Field Office bearing the Affiant's photograph and signature.

NOTARY PUBLIC

Doc No. 151 ;  
Page No. 32 ;  
Book No. 1 ;  
Series of 2020.

  
Atty. JUAN CARLO PETEJANO  
Notary Public for Quezon City, Philippines  
Commission until 31, December 2020  
Admin. Matter No. NF-338 (2019-2020)  
Roll of Attorneys No. 72100  
IBP OR No. 101615 / 06-Jan-2020 / Pasig City  
PTR No. 9-15182 / 15-Jan-2020 / QC  
MCLE Compliance No. VI-0026767 / 24-May-19 / Pasig City  
Sentro ng Alternatibang Lingap Paralegal (SALIGAN)  
G/F Hofinar Building, Social Development Complex  
Ateneo de Manila University, Loyola Heights, Quezon City

**VERIFICATION AND CERTIFICATION  
OF NON-FORUM SHOPPING**

I, ANTHONY CHARLEMAGNE C. YU, of legal age, Filipino, and with address at 2091 Madre Ignacia Street, Malate, Manila, after having been duly sworn in accordance with law, depose and state that:

1. I am one of the petitioners in the above-entitled case;
2. I have caused the preparation and filing of the instant *Petition for Certiorari and Prohibition (With Application for Status Quo Ante Order, Temporary Restraining Order And/Or Writ of Preliminary Injunction)* (the "*Petition*"). All the allegations contained therein are true and correct based on records in my possession and of my personal knowledge.
3. The instant *Petition* is not being filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
4. The factual allegations of the instant *Petition* either have evidentiary support based on authentic documents, are subject of mandatory judicial notice, or if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
5. To the best of my knowledge, I have not commenced any other action or proceeding involving the same issues and parties in the Supreme Court, Court of Appeals or different divisions thereof, the lower courts or any other tribunal agency.
6. As of date, I am aware of the following cases filed with the Honorable Court:
  - a. Calleja, et al. v. Executive Secretary, et al., G.R. No. 252578;
  - b. Lagman v. Executive Secretary, et al., G.R. No. 252579;
  - c. Sta. Maria, et al. v. Executive Secretary, et al., G.R. No. 252580;
  - d. Zarate, et al. v. Duterte, et al., G.R. No. 252585.

- e. Jurado v. The Anti-Terrorism Council, et al., G.R. No. 252613;
  - f. Center for Trade Union and Human Rights, et al. v. Duterte, et al., G.R. No. 252623;
  - g. Monsod, et al. v. Executive Secretary, et al., G.R. No. 252624; and
  - h. SANLAKAS v. Duterte, et al., G.R. No. 252646.
7. If I should thereafter learn that a similar action or proceeding is pending before the Honorable Court, the Court of Appeals or any tribunal or quasi-judicial agency, I undertake to report that fact within five (5) calendar days therefrom to the Honorable Court.


IN WITNESS WHEREOF, I have set my hands this 16<sup>th</sup> day of July 2020 at Quezon City.

  
ANTHONY CHARLEMAGNE C. YU  
*Affiant*

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of July 2020, Affiant exhibiting the following competent evidence of identity, Driver's License N01-79-022090 issued on 11/03/2016 at Land Transportation Office Robinsons Galleria Field Office bearing the Affiant's photograph and signature.

NOTARY PUBLIC

Doc No. 146 ;  
Page No. 31 ;  
Book No. 1 ;  
Series of 2020.

  
Atty. JUAN CARLO PE TEJANO  
Notary Public for Quezon City, Philippines  
Commission until 31 December 2020  
Admin. Matter No. NP-338 (2019-2020)  
Roll of Attorneys No. 72100  
IBP OR No. 101635 / 06-Jan-2020 / Pasig City  
PTR No. 9463482 / 15-Jan-2020 / QC  
MCLE Compliance No. VI-0026767 / 24-May-19 / Pasig City  
Sentro ng Alternatibong Lingap Panlegal (SALIGAN)  
G/F Hoffner Building, Social Development Complex  
Ateneo de Manila University, Loyola Heights, Quezon City

**VERIFICATION AND CERTIFICATION  
OF NON-FORUM SHOPPING**

I, **FRANCISCO ASHLEY L. ACEDILLO**, of legal age, Filipino with address at C3 Heart Leaf Street, Lexington Garden Village, Elisco Road, San Joaquin, Pasig City, after having been duly sworn in accordance with law, depose and state that:

1. I am one of the petitioners in the above-entitled case;
2. I have caused the preparation and filing of the instant *Petition for Certiorari and Prohibition (With Application for Status Quo Ante Order, Temporary Restraining Order And/Or Writ of Preliminary Injunction)* (the "*Petition*"). All the allegations contained therein are true and correct based on records in my possession and of my personal knowledge.
3. The instant *Petition* is not being filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
4. The factual allegations of the instant *Petition* either have evidentiary support based on authentic documents, are subject of mandatory judicial notice, or if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
5. To the best of my knowledge, I have not commenced any other action or proceeding involving the same issues and parties in the Supreme Court, Court of Appeals or different divisions thereof, the lower courts or any other tribunal agency.
6. As of date, I am aware of the following cases filed with the Honorable Court:
  - a. Calleja, et al. v. Executive Secretary, et al., G.R. No. 252578;
  - b. Lagman v. Executive Secretary, et al., G.R. No. 252579;
  - c. Sta. Maria, et al. v. Executive Secretary, et al., G.R. No. 252580;
  - d. Zarate, et al. v. Duterte, et al., G.R. No. 252585.

- e. Jurado v. The Anti-Terrorism Council, et al., G.R. No. 252613;
  - f. Center for Trade Union and Human Rights, et al. v. Duterte, et al., G.R. No. 252623;
  - g. Monsod, et al. v. Executive Secretary, et al., G.R. No. 252624; and
  - h. SANLAKAS v. Duterte, et al., G.R. No. 252646.
7. If I should thereafter learn that a similar action or proceeding is pending before the Honorable Court, the Court of Appeals or any tribunal or quasi-judicial agency, I undertake to report that fact within five (5) calendar days therefrom to the Honorable Court.

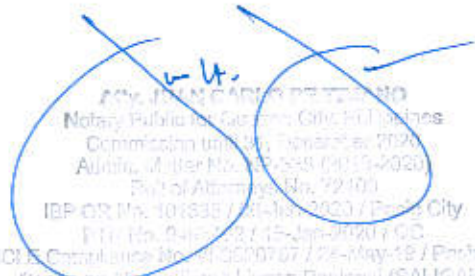
IN WITNESS WHEREOF, I have set my hands this 16<sup>th</sup> day of July 2020 at Quezon City.

  
**FRANCISCO ASHLEY L. ACEDILLO**  
*Affiant*

**SUBSCRIBED AND SWORN** to before me this 16<sup>th</sup> day of July 2020, Affiant exhibiting the following competent evidence of identity, Philippine Passport No. P5616149A issued on 15 January 2018 and expiring on 14 January 2028 by the Department of Foreign Affairs, Manila office, and bearing the Affiant's photograph and signature.

**NOTARY PUBLIC**

Doc No. 150 ;  
 Page No. 31 ;  
 Book No. 1 ;  
 Series of 2020.

  
 Atty. JOAN CAROL B. PETERSON  
 Notary Public for Southern Luzon  
 Commission Unit No. 2020  
 Manila, Member No. 00338 (01/15/2020)  
 Dept. of Attorney, No. 22100  
 IBP OR No. 101838 / 01-10-2020 / Quezon City  
 P.O. Box 241602 / 2415-Java-Quezon City  
 MCIJ Control and Monitoring System (SALICAM)  
 G/F Hofner Building, Social Development Complex  
 Ateneo de Manila University, Loyola Heights, Quezon City

**VERIFICATION AND CERTIFICATION  
OF NON-FORUM SHOPPING**

I, **TIERONE JAMES M. SANTOS**, of legal age, Filipino, and with address at 37 Lily Street, San Isidro Village, City of San Fernando, Pampanga, after having been duly sworn in accordance with law, depose and state that:

1. I am one of the petitioners in the above-entitled case;
2. I have caused the preparation and filing of the instant *Petition for Certiorari and Prohibition (With Application for Status Quo Ante Order, Temporary Restraining Order And/Or Writ of Preliminary Injunction)* (the "*Petition*"). All the allegations contained therein are true and correct based on records in my possession and of my personal knowledge.
3. The instant *Petition* is not being filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
4. The factual allegations of the instant *Petition* either have evidentiary support based on authentic documents, are subject of mandatory judicial notice, or if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
5. To the best of my knowledge, I have not commenced any other action or proceeding involving the same issues and parties in the Supreme Court, Court of Appeals or different divisions thereof, the lower courts or any other tribunal agency.
6. As of date, I am aware of the following cases filed with the Honorable Court:
  - a. Calleja, et al. v. Executive Secretary, et al., G.R. No. 252578;
  - b. Lagman v. Executive Secretary, et al., G.R. No. 252579;
  - c. Sta. Maria, et al. v. Executive Secretary, et al., G.R. No. 252580;
  - d. Zarate, et al. v. Duterte, et al., G.R. No. 252585.

- e. Jurado v. The Anti-Terrorism Council, et al., G.R. No. 252613;
  - f. Center for Trade Union and Human Rights, et al. v. Duterte, et al., G.R. No. 252623;
  - g. Monsod, et al. v. Executive Secretary, et al., G.R. No. 252624; and
  - h. SANLAKAS v. Duterte, et al., G.R. No. 252646.
7. If I should thereafter learn that a similar action or proceeding is pending before the Honorable Court, the Court of Appeals or any tribunal or quasi-judicial agency, I undertake to report that fact within five (5) calendar days therefrom to the Honorable Court.

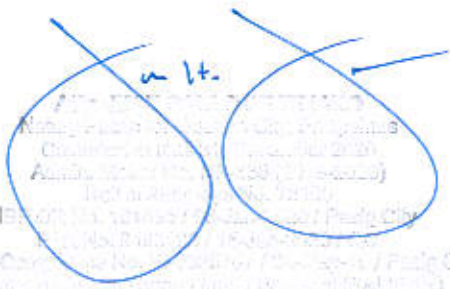
IN WITNESS WHEREOF, I have set my hands this 16th day of July 2020 at QUEZON CITY City.

  
**TIERONE JAMES M. SANTOS**  
*Affiant*

**SUBSCRIBED AND SWORN** to before me this 16<sup>th</sup> day of July 2020, Affiant exhibiting the following competent evidence of identity, University of the Philippines-Diliman Student ID Number 2015-09581 issued by the University of the Philippines Diliman and expiring in November 2023 bearing the Affiant's photograph and signature.

**NOTARY PUBLIC**

Doc No. 147 ;  
 Page No. 31 ;  
 Book No. 1 ;  
 Series of 2020.

  
 MLEC Quezon City  
 Office of the Notary Public / Quezon City  
 Office of the Notary Public / Quezon City  
 Office of the Notary Public / Quezon City  
 Office of the Notary Public / Quezon City



REPUBLIC OF THE PHILIPPINES )  
PASIG CITY, METRO MANILA ) S. S.

**AFFIDAVIT OF PERSONAL SERVICE**

I, **EMEL I. MAGSIPOC**, a Messenger of Atty. Darwin P. Angeles, of legal age and with postal address at Unit 901 One Corporate Center, Doña Julia Vargas cor. Meralco Ave., Ortigas Center, Pasig City, Manila, Philippines, after being duly sworn in accordance with law, do hereby depose and state that:

On 22 July 2020, I served a copy of the following:

**PETITION FOR CERTIORARI AND PROHIBITION  
(with Application for Status Quo Ante Order,  
Temporary Restraining Order,  
and/or Writ of Preliminary Injunction)**

in connection with a special civil action certiorari and prohibition to be filed before the Supreme Court *En Banc*, entitled "*Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.*" pursuant to the New Rules on Civil Procedure, as follows:

<p><b>OFFICE OF THE SOLICITOR GENERAL</b> 134 Amorsolo St., Legaspi Village Makati City</p>	<p>By personally delivering a copy of the above-named pleading with annexes at the counsel's address at 134 Amorsolo St., Legaspi Village, Makati City and leaving said copy at the counsel's office with a person having charge thereof or a person of sufficient age and discretion therein in accordance with Section 6, Rule 13 of the 2019 Revised Rules of Court.</p>
---	---

IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of July 2020 at Pasig City, Philippines.

  
**EMEL I. MAGSIPOC**  
*Affiant*

**SUBSCRIBED AND SWORN** to before me this 22<sup>nd</sup> day of July 2020, affiant exhibiting to me and presenting competent evidence of identity, Driver's License No. N03-15-020354 bearing his photograph and signature, issued by the Land Transportation Office.

Doc. No. 215;  
Page No. 44;  
Book No. IV;  
Series of 2020.

  
**ATTY. MARIA JERZY APRILLE D. TORRES**  
Jurisdiction/Commission Place: Pasig City  
Appointment No. 6242020-2021  
Ex. date Dec. 31, 2021  
Roll No. 64758  
Unit 901 One Corporate Center, Julia Vargas St.  
cor. Meralco Ave., Ortigas Center, Pasig City  
PTR No. 6447623  
IBP No. 104369

REPUBLIC OF THE PHILIPPINES )  
PASIG CITY, METRO MANILA ) S. S.

AFFIDAVIT OF PERSONAL SERVICE

I, **MELVIN N. ABAN**, a Messenger of Atty. Darwin P. Angeles, of legal age and with postal address at Unit 901 One Corporate Center, Doña Julia Vargas cor. Meralco Ave., Ortigas Center, Pasig City, Manila, Philippines, after being duly sworn in accordance with law, do hereby depose and state that:

On 22 July 2020, I served a copy of the following:

**PETITION FOR CERTIORARI AND PROHIBITION  
(with Application for Status Quo Ante Order,  
Temporary Restraining Order,  
and/or Writ of Preliminary Injunction)**

in connection with a special civil action certiorari and prohibition to be filed before the Supreme Court *En Banc*, entitled "*Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.*" pursuant to the New Rules on Civil Procedure, as follows:

<p><b>SENATE OF THE PHILIPPINES</b> GSIS Bldg., Financial Center Diokno Blvd., Pasay City</p>	<p>By personally delivering a copy of the above-named pleading with annexes to the party's stated office address at GSIS Bldg., Financial Center, Diokno Blvd., Pasay City and leaving said copy at the party's office with a person having charge thereof or a person of sufficient age and discretion therein in accordance with Section 6, Rule 13 of the 2019 Revised Rules of Court.</p>
---	---

IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of July 2020 at Pasig City, Philippines.

  
**MELVIN N. ABAN**  
*Affiant*

**SUBSCRIBED AND SWORN** to before me this 22<sup>nd</sup> day of July 2020, affiant exhibiting to me and presenting competent evidence of identity, Driver's License No. N03-13-019968 bearing his photograph and signature, issued by the Land Transportation Office.

Doc. No. 216;  
Page No. 45;  
Book No. 1V;  
Series of 2020.

  
**ATTY. MARIA JERZY APRILLE D. TORRES**  
Jurisdiction/Commission Place: Pasig City  
Appointment No. 47 (2020-2021)  
Ex. date Dec. 31, 2021  
Roll No. 64758  
Unit 901 One Corporate Center, Julia Vargas St.  
cor. Meralco Ave., Ortigas Center, Pasig City  
PTR No. 6447623  
IBP No. 104369

REPUBLIC OF THE PHILIPPINES )  
PASIG CITY, METRO MANILA ) S. S.

AFFIDAVIT OF PERSONAL SERVICE

I, **JOSEPH R. VIÑAS**, a Messenger of Atty. Darwin P. Angeles, of legal age and with postal address at Unit 901 One Corporate Center, Doña Julia Vargas cor. Meralco Ave., Ortigas Center, Pasig City, Manila, Philippines, after being duly sworn in accordance with law, do hereby depose and state that:

On 22 July 2020, I served a copy of the following:

**PETITION FOR CERTIORARI AND PROHIBITION  
(with Application for Status Quo Ante Order,  
Temporary Restraining Order,  
and/or Writ of Preliminary Injunction)**

in connection with a special civil action certiorari and prohibition to be filed before the Supreme Court *En Banc*, entitled "**Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.**" pursuant to the New Rules on Civil Procedure, as follows:

<p><b>HOUSE OF REPRESENTATIVES OF THE PHILIPPINES</b> Batasan Pambansa Complex, Constitution Hills, Quezon City 1126</p>	<p>By personally delivering a copy of the above-named pleading with annexes to the party's stated office address at Batasan Pambansa Complex, Constitution Hills, Quezon City 1126 and leaving said copy at the party's office with a person having charge thereof or a person of sufficient age and discretion therein in accordance with Section 6, Rule 13 of the 2019 Revised Rules of Court.</p>
--	---

IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of July 2020 at Pasig City, Philippines.

  
**JOSEPH R. VINAS**  
Affiant

**SUBSCRIBED AND SWORN** to before me this 22<sup>nd</sup> day of July 2020, affiant exhibiting to me and presenting competent evidence of identity, Driver's License No. N02-09-011003 bearing his photograph and signature, issued by the Land Transportation Office.

Doc. No. 217;  
Page No. 45;  
Book No. IV;  
Series of 2020.

  
**ATTY. MARIA JERZY APRILLE D. TORRES**  
Jurisdiction/Commission Place, Pasig City  
Appointment No. 67 (2020-2021)  
Ex. date Dec. 31, 2021  
Roll No. 64758  
Unit 901 One Corporate Center, Julia Vargas St.  
cor. Meralco Ave., Ortigas Center, Pasig City  
PTR No. 6447623  
IBP No. 104369

REPUBLIC OF THE PHILIPPINES     )  
PASIG CITY, METRO MANILA        ) S. S.

**AFFIDAVIT OF ELECTRONIC SERVICE**

I, **DARWIN P. ANGELES**, counsel for the petitioners in the pleading mentioned below, with office address at Unit 901 One Corporate Center, Doña Julia Vargas cor. Meralco Ave., Ortigas Center, Pasig City, Manila, Philippines, after being duly sworn in accordance with law, do hereby depose and state that:

On 22 July 2020, I served an electronic copy of the following:

**PETITION FOR CERTIORARI AND PROHIBITION  
(with Application for Status Quo Ante Order,  
Temporary Restraining Order,  
and/or Writ of Preliminary Injunction)**

in connection with a special civil action certiorari and prohibition to be filed before the Supreme Court *En Banc*, entitled "**Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.**" pursuant to the New Rules on Civil Procedure, by sending an electronic mail containing electronic copies of the above-named pleading and its annexes to each party and counsel's email addresses as enumerated below as evidenced by the enclosed screenshot attached as **Annex "A"** in accordance with Section 9, Rule 13 of the 2019 Revised Rules of Court:

<b>OFFICE OF THE SOLICITOR GENERAL</b> 134 Amorsolo St., Legaspi Village Makati City <a href="mailto:efile@osg.gov.ph">efile@osg.gov.ph</a> <a href="mailto:jccalida@osg.gov.ph">jccalida@osg.gov.ph</a>	<b>HON. SALVADOR C. MEDIALDEA</b> Ground Floor, Premier Guest House J.P. Laurel St. San Miguel, Manila <a href="mailto:oesop2016@gmail.com">oesop2016@gmail.com</a>
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<b>ANTI-TERRORISM COUNCIL</b> Mabini Hall, J.P. Laurel St. San Miguel, Manila c/o of its Secretariat, National Intelligence Coordinating Agency <a href="mailto:apimonteagudo@nica.gov.ph">apimonteagudo@nica.gov.ph</a>	<b>HON. DELFIN N. LORENZANA</b> DND Building, Segundo Ave. Camp General Emilio Aguinaldo Quezon City <a href="mailto:publicaffairs.dnd@gmail.com">publicaffairs.dnd@gmail.com</a>
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IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of July 2020 at Pasig City, Philippines.

  
**DARWIN P. ANGELES**  
*Affiant*

**SUBSCRIBED AND SWORN** to before me this 22<sup>nd</sup> day of July 2020, affiant exhibiting to me and presenting competent evidence of his identity, Philippine Passport No. P1807058B bearing his photograph and signature, issued by the Department of Foreign Affairs.

Doc. No. 218 ;  
Page No. 2r ;  
Book No. 1v ;  
Series of 2020.

  
**ATTY. MARIA JERZY APRILLE D. TORRES**  
Jurisdiction/Commission Place Pasig City  
Appointment No. 67 (2020-2021)  
Ex. date Dec. 31, 2021  
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cor. Meralco Ave., Ortigas Center, Pasig City  
PTR No. 6447623  
IBP No. 104369



Darwin Angeles &lt;angelesdarwin@gmail.com&gt;

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**(1 of 2) Antonio T. Carpio, et al. vs. Anti-Terrorism Council, et al. – Petition for Certiorari and Prohibition**

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Wed, Jul 22, 2020 at 10:26 AM

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Gentlemen:

I write on behalf of Petitioners Antonio T. Carpio, Conchita Carpio Morales, Dante B. Gatmaytan, Jay L. Batongbacal, Theodore O. Te, Victoria V. Loanzon, Anthony Charlemagne C. Yu, Francisco Ashley L. Acedillo and Tierone James M. Santos.

Please find enclosed a copy of the Petitioners' *Petition for Certiorari and Prohibition [with (1) Application for Status Quo Ante Order, Temporary Restraining Order, and/or Writ of Preliminary*

*Injunction and (2) Motion of Special Raffle and Oral Arguments]* dated 22 July 2020 and its annexes.

For convenience, please see below for a list of annexes to the Petition with a hyperlink to enable you to download the same:

1. [Annex A](#) - Duplicate original of the ATA as published on 6 July 2020 with Vol. 116, No. 27 (Supplement) of the Official Gazette
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Very truly yours,

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## 2 attachments



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Darwin Angeles <angelesdarwin@gmail.com>

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## (2 of 2) Antonio T. Carpio, et al. vs. Anti-Terrorism Council, et al. – Petition for Certiorari and Prohibition

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Darwin Angeles <angelesdarwin@gmail.com>

Wed, Jul 22, 2020 at 10:27 AM

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Cc: Darwin Angeles <angelesdarwin@gmail.com>, Luisito Liban <lvliban@gmail.com>, 00 John Molo <alfredo.molo@gmail.com>, Gwen De Vera <ggdevera@up.edu.ph>

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Very truly yours,

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REPUBLIC OF THE PHILIPPINES )  
PASIG CITY, METRO MANILA ) S. S.

**AFFIDAVIT OF SERVICE BY REGISTERED MAIL AND COURIER**

I, **DARWIN P. ANGELES**, counsel for the petitioners in the pleading mentioned below, with office address at Unit 901 One Corporate Center, Doña Julia Vargas cor. Meralco Ave., Ortigas Center, Pasig City, Manila, Philippines, after being duly sworn in accordance with law, do hereby depose and state that:

On 22 July 2020, I served an electronic copy of the following:

**PETITION FOR *CERTIORARI* AND PROHIBITION  
(with Application for *Status Quo Ante* Order,  
Temporary Restraining Order,  
and/or Writ of Preliminary Injunction)**

in connection with a special civil action certiorari and prohibition to be filed before the Supreme Court *En Banc*, entitled "*Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.*" pursuant to Rule 13 of the New Rules on Civil Procedure:

<b>OFFICE OF THE SOLICITOR GENERAL</b> 134 Amorsolo St., Legaspi Village Makati City	By depositing a copy in the post office at Ortigas Center Post Office, Pasig City as evidenced by Registry Receipt Nos.:
<b>SENATE OF THE PHILIPPINES</b> GSIS Bldg., Financial Center Diokno Blvd., Pasay City	RE 294 012 473 ZZ RE 294 012 460 ZZ RE 294 012 456 ZZ
<b>HOUSE OF REPRESENTATIVES OF THE PHILIPPINES</b> Batasan Pambansa Complex, Constitution Hills, Quezon City 1126	hereto attached and indicated after the name of the addressee, and with postage fully pre-paid, and with instructions to the post-master to return the mail to the sender after (10) calendar days if undelivered.
	By sending copies via private courier evidenced by the attached Waybill Nos.:
	1496 4505 9727 1496 4505 9707 1496 4505 9717

IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of July 2020 at Pasig City, Philippines.

  
**DARWIN P. ANGELES**  
*Affiant*

**SUBSCRIBED AND SWORN** to before me this 22<sup>nd</sup> day of July 2020, affiant exhibiting to me and presenting competent evidence of his identity, Philippine Passport No. P1807058B bearing his photograph and signature, issued by the Department of Foreign Affairs.

Doc. No. 219;  
Page No. 45;  
Book No. IV;  
Series of 2020.

  
**ATTY. MARIA JERZY APRILLE D. TORRES**  
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PASIG CITY ) S.S.

AFFIDAVIT OF ELECTRONIC FILING

I, **DARWIN P. ANGELES**, of legal age, with office address at Unit 901 9/F One Corporate Center, Doña Julia Vargas Ave. cor. Meralco Ave., Ortigas Center, Pasig City, after having been duly sworn in accordance with law, depose and say that, pursuant to **Section 3, Rule 13 of the Amended Rules of Court**, I filed by electronic mail (e-mail) on 22 July 2020, a "Petition For *Certiorari* And Prohibition (with Application for *Status Quo Ante* Order, Temporary Restraining Order, and/or Writ of Preliminary Injunction)" with annexes, with the Supreme Court *En Banc*, entitled "*Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.*" at its email addresses at [efile\\_jro@sc.judiciary.gov.ph](mailto:efile_jro@sc.judiciary.gov.ph) and [judicialrecordsoffice@gmail.com](mailto:judicialrecordsoffice@gmail.com). The paper copy of the above pleading is hereto attached pursuant to **Section 16, Rule 13 of the Amended Rules of Court**.

IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of July 2020 at Pasig City, Philippines.

  
**DARWIN P. ANGELES**

PTR No. 6447622/09 January 2020/Pasig City  
IBP No. 104368/08 January 2020/ Makati City  
Roll of Attorneys No. 63558  
MCLE Compliance No. VI-0026628 - April 11, 2019

**SUBSCRIBED AND SWORN** to before me this 22<sup>nd</sup> day of July 2020, affiant exhibiting to me and presenting competent evidence of his identity, Philippine Passport No. P1807058B bearing his photograph, issued by the Department of Foreign Affairs.

Doc. No. 220;  
Page No. 45;  
Book No. IV;  
Series of 2020.

  
**ATTY. MARIA JERZY APRILLE D. TORRES**  
Jurisdiction/Commission Place: Pasig City  
Appointment No. 57 (2020-2021)  
Ex. date Dec. 31, 2021  
Roll No. 64758  
Unit 901 One Corporate Center, Julia Vargas St.  
cor. Meralco Ave., Ortigas Center, Pasig City  
PTR No. 6447623  
IBP No. 104369

## VERIFIED DECLARATION

I, **DARWIN P. ANGELES**, counsel for the petitioners in the pleading mentioned below, with office address at Unit 901 One Corporate Center, Doña Julia Vargas cor. Meralco Ave., Ortigas Center, Pasig City, Manila, Philippines, after being duly sworn in accordance with law, do hereby depose and state that:

1. I caused the electronic filing of the attached "Petition For *Certiorari* And Prohibition (with Application for *Status Quo Ante* Order, Temporary Restraining Order, and/or Writ of Preliminary Injunction)" (the "Petition") with the Honorable Supreme Court *En Banc* entitled "*Antonio T. Carpio, et al. v. Anti-Terrorism Council, et al.*";
2. Pursuant to A.M. No. 10-3-7-SC (E-Filing Rule) and A.M. No. 11-9-4-SC (Efficient Use of Paper Rule), I hereby declare that the Petition and annexes hereto attached is a true and correct copy of the said Petition and annexes to be filed physically with the Honorable Court when it reopens on 23 July 2020 or such later date of reopening of the Honorable Court in the event that the closure of the Honorable Court is extended.

IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of July 2020 at Pasig City, Philippines.

  
**DARWIN P. ANGELES**  
*Affiant*

**SUBSCRIBED AND SWORN** to before me this 22<sup>nd</sup> day of July 2020, affiant exhibiting to me and presenting competent evidence of his identity, Philippine Passport No. P1807058B bearing his photograph, issued by the Department of Foreign Affairs.

Doc. No. 321;  
Page No. 46;  
Book No. IV;  
Series of 2020.

  
**ATTY. MARIA JERZY APRILLE D. TORRES**  
Jurisdiction/Commission Place: Pasig City  
Appointment No. 67 (2020-2021)  
Ex. date Dec. 31, 2021  
Roll No. 64758  
Unit 901 One Corporate Center, Julia Vargas St.  
cor. Meralco Ave., Ortigas Center, Pasig City  
PTR No. 6447623  
IBF No. 104369