

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

REP. EDCEL C. LAGMAN,

PETITIONER,

- versus-

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

RESPONDENTS.

X-----X

**G.R. No. 252579
(In relation to G.R. No. 252578, G.R. No.252580, G.R. No.252585, G.R. No.252613, G.R. No. 252623, G.R. No.252624, G.R. No. 252646, G.R. No. 252702, G.R. No.252726, G.R. No.252733, G.R. No. 252736, G.R. No. 252741, G.R. No. 252747, G.R. No.252755, G.R. No.252759, G.R. No.252765, G.R. No.252768, G.R. No.252767, G.R. No.252802, G.R. No. 252809, G.R. No. 252903, G.R. No. UDK1663, G.R. No. 252904, G.R. No.252905, G.R. No.252916, G.R. No. 252921)**

COMMENT

(TO THE "URGENT MOTION" DATED AUGUST 24, 2020 FILED BY THE RESPONDENTS, THROUGH SOLICITOR GENERAL JOSE CALIDA, TO CANCEL ORAL ARGUMENT IN THE SUBJECT PETITIONS)

PETITIONER Edcel C. Lagman respectfully states that:

1. The Respondents, through Solicitor General Jose Calida, sought the cancellation of the oral argument, "in-court or otherwise", in the subject petition principally due to "the logistical restrictions and health threats posed by the COVID-19 pandemic", more particularly the prohibition on mass gathering in areas like Metro Manila, which are under General Community Quarantine (GCQ).

2. The health protocol banning mass gatherings to prevent the spread of COVID-19 is a temporary measure, and as soon as it is lifted, oral argument in open court can be scheduled with reasonable limitation on the number of attendees.

3. The Solicitor General further proffered that some of the petitions raised “factual allegations beyond the ambit of this Honorable Court”, and all of the petitions failed to present an actual controversy to enable the Honorable Supreme Court to exercise its jurisdiction of judicial review.

4. The foregoing additional bases are without merit because:

(a) Any factual assertion in some of the petitions is inextricably linked with the legal issues over which the Honorable Supreme Court has jurisdiction;

(b) The existence of an actual controversy is not necessary when a factual challenge can be mounted against a law which is controverted as unconstitutional because of its chilling effects deterring the exercise of free speech and dissent (*Estrada vs. Sandiganbayan*, G.R. No. 1480560, November 19, 2001 with the concurring opinion of Mr. Justice Vicente Mendoza, and *Disini vs. Secretary of Justice*, G.R. No. 20335, February 11, 2014);

(c) The unconstitutionality of the Anti-Terrorism Act (ATA) of 2020 is raised by the various petitions because it criminalizes under vague provisions the “threat”, “proposal”, and “inciting” to commit terrorism which is a prior restraint on the freedom of expression as it forecloses the articulation of differing views because of fear of prosecution and subsequent punishment;

(d) In *Social Weather Stations vs. COMELEC* (G.R. No. 147571, May 5, 2001), the Honorable Supreme Court ruled that a law which is challenged for imposing a prior restraint on the freedom of expression is **presumed unconstitutional and the government has the burden to prove otherwise**; and

(e) The tendency is to extend the justiciability of facial challenge to other fundamental constitutional freedoms which are likewise protected by the freedom of speech under the bill of rights (*Southern Hemisphere Engagement Network vs. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010).

5. No less than the Solicitor General has cited Sec.3, Rule 10 of the Internal Rules of the Supreme Court on oral argument as follows:

Section 3. Oral arguments. - The Court may hear any case on oral arguments upon defined issues. The petitioner shall argue first, followed by the respondent and the amicus curiae, if any. Rebuttal arguments may be allowed by the Chief Justice or the Chairperson. If necessary, the Court may invite *amicus curiae*.

6. Under the foregoing rule, the Supreme Court has the sole discretion whether or not to conduct oral argument in a particular case.

7. In the petitions at bar, the Honorable Supreme Court, through its Public Information Office, released on August 11, 2020 a statement that it "will conduct oral argument on the subject petitions on the third week of September at the earliest and will issue proper notices once the date is finalized."

8. Verily, the Supreme Court has exercised its discretion to conduct oral argument in the subject petitions, and prudence dictates that the parties should not interfere in the exercise of such discretion.

9. Judicial authorities and advocates consider oral argument as necessary and important in close cases because:

(a) Oral argument provides the enabling venue where the Justices and opposing counsel can instantly interact on major issues, which dialogue cannot happen by merely reading briefs or memoranda;

(b) Oral argument allows the counsel to underscore major issues which could have been overlooked by the magistrates by just perusing the pleadings;

(c) Chief Justice William H. Rehnquist of the United States Federal Supreme Court once admitted that "[i]n a significant minority of the cases in which I have heard oral argument, I have left the bench feeling different about a case than I did when I came on the bench.";

(d) Justice Antonin G. Scalia, also of the United States Federal Supreme Court, likewise recognized the importance of oral argument, stating that if a lawyer satisfies one or two critical questions during oral argument, that attorney will have his vote. At least one study of oral argument in the US Supreme Court concluded that oral argument is "at times determinative of the outcome.";

(e) According to US Federal Supreme Court Justice Ruth Bader Ginsberg, justices use oral argument to persuade one another;

(f) Oral argument can also be important as an institutional matter because “allowing the parties their day in court before a judicial panel furthers their conviction that they have received the opportunity to be heard that is guaranteed by due process.”;

(g) Lawyers can be aided by questions from the bench as a Justice can identify an angle that the lawyers have overlooked or have not fully advocated;

(h) Justices can gain a sense of the counsel’s credibility based on the candid answers and presentation in the oral argument;

(i) Another significant impact of oral argument in close cases is that it encourages judicial conferencing in a face-to-face setting immediately after the oral argument is heard; and

(j) The ultimate impact of oral argument is that it focuses the Court’s attention on the “real” issues whose resolution will determine the outcome.

10. Meanwhile, due to justified delay in the final adjudication of the record number of petitions, coupled with a possible deferment of the oral argument, the High Court can issue a Temporary Restraining Order (TRO) stopping the enforcement of the ATA since there are extant laws to adequately deter terrorism and prosecute terrorists like:

(a) R.A. No. 10166 (Terrorism Financing, Prevention and Suppression Act of 2012);

(b) R.A. No. 10697 (Strategic Trade Management Act);

(c) R.A. No. 10175 (Cybercrime Prevention Act of 2012);

(d) R.A. No. 10592 (An Act Amending Articles 29, 94, 97, 98 and 99 of Act. No. 385, as amended, otherwise known as the Revised Penal Code);

(e) R.A. No. 9160 (Anti-Money Laundering Act, as amended); and

(f) R.A. No. 6981 (Witness Protection, Security and Benefit Act).

11. The alternatives suggested by the Solicitor General like (a) submission of memoranda (which is usually required), (b) written clarificatory questions from the Justices, and (c) submission of written opening statements, cannot substitute for the necessity and import of oral argument in close cases as well as in cases of transcendental importance like

abridgement of freedom of speech and dissent and other constitutional rights and fundamental freedoms.

PRAYER

ACCORDINGLY, it is respectfully prayed that when the coverage of General Community Quarantine over Metro Manila is lifted and/or mass gatherings are allowed, and subject to the discretion of the Honorable Supreme Court, oral argument in the subject petitions can be conducted with limitation on the number of attendees.

Meanwhile, it is respectfully prayed that considering the justified delay in the final adjudication of the record number of petitions, as well as the contingency of a deferment of the oral argument due to the implementation of temporary health protocols consequent to the Covid-19 pandemic, the Honorable Supreme Court may seriously consider the issuance of a Temporary Restraining Order (TRO) to stop the implementation of the Anti-Terrorism Act of 2020 since there are sufficient extant laws which can deter terrorism and under which terrorists can be prosecuted.

Quezon City, for Manila
September 1, 2020

EDCEL C. LAGMAN
Petitioner

EXPLANATION

Due to distance and personnel constraints, a copy of this "Comment" is served by registered mail to the Office of the Solicitor General. As soon as Petitioner is able to get the postal or email addresses of the other petitioners, copies of this "Comment" will be served on them.

EDCEL C. LAGMAN

Copy furnished:

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Registry Receipt No. _____
September 1, 2020
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