SUPREME COURT
REPUBLIC OF THE PHILIPPINES

RE: ANTI-TERRORISM ACT OF 2020

MELENCIO S. STA. MARIA, EIRENE JHONE E. AGUILA, GIDEON V. PEÑA, MICHAEL T. TIU, JR., FRANCIS EUSTON R. ACERO, PAUL CORNELIUS T. CASTILLO, EUGENE T. KAW
(Petitioners)

vs.

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

A Petition for Certiorari and Prohibition under Rule 65 with a Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction

TABLE OF CONTENTS

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

efile_jro@sc.judiciary.gov.ph

MELENCIO S. STA. MARIA, EIRENE JHONE E. AGUILA, GIDEON V. PEÑA, MICHAEL T. TIU, JR., FRANCIS EUSTON R. ACERO, PAUL CORNELIUS T. CASTILLO, EUGENE T. KAW,

Petitioners,

- versus -

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

Respondents.

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

G.R. No. _____
For: Certiorari and Prohibition under Rule 65 with a Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction

PETITION

Petitioners **MELENCIO S. STA. MARIA, EIRENE JHONE P. AGUILA, GIDEON V. PEÑA, MICHAEL T. TIU, JR., FRANCIS EUSTON R. ACERO, PAUL CORNELIUS T. CASTILLO** and **EUGENE T. KAW**, in the above-entitled case, for themselves and through undersigned counsels, and unto this Honorable Supreme Court, respectfully state:

PREFATORY STATEMENT

> "It is undeniable, therefore, that even though the governmental purposes be legitimate and substantial, they cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. **For precision of regulation is the touchstone in an area so closely related to our most precious freedoms."**[1]
>
> *Chief Justice Fernando, speaking for the Court as an Associate Justice in In re: Republic Act No. 4880*

When the law expressly combines the very low and clear threshold of mere **SUSPICION** with the extremely vague and overly broad definition of the various offenses for which a person can be apprehended on the basis of that threshold, government and law enforcers shall have a heyday using their own boundless imagination, instincts, and appreciation in arresting any person. Simply, whatever their minds can conjure will be their law, and arbitrariness and capriciousness will be the order of the day. **There will no longer be a rule of law**.

That, in essence, is the repugnant character of Republic Act No. 11479, otherwise known as the Anti-Terrorism Law of 2020. It is patently unconstitutional.

If this law will be allowed to take effect, it will legitimize wrongdoings, allow transgressions to constitutional liberties, and give license for wrongdoers to act with impunity. Unfounded filings of criminal charges and indiscriminate apprehensions by the Government

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[1] In the Matter of Petition for Declaratory Relief re: Constitutionality of Republic Act No. 4880. Arsenio Gonzales and Felicisimo R. Cabigao, G.R. No. L-27833 April 18, 1969.

are quite real; they occur to this very day. Threats of arrest and unfounded criminal prosecution are also not uncommon.

We do not have to go far back in time to prove this.

More or less one (1) year ago, on or around July 2019, some thirty four (34) persons, including Vice President of the Philippines Maria Leonor "Leni" Gerona Robredo, a number of bishops and priests, academicians, a sitting senator, a former senator, some former senatorial candidates, and other ordinary citizens were charged with multiple crimes on the basis of mere suspicion, namely: Sedition, Inciting to Sedition, Cyber Libel, Libel, Estafa, Harboring a Criminal, and Obstruction of Justice. As the grounds for the charge were based solely on suspicion, no probable cause was found in relation to about thirty (30) of those charged, including the Vice President and the bishops.

On July 2, 2020, the Philippine Daily Inquirer reported then-Philippine National Police (PNP) Director General Oscar Albayalde saying:

> "Professors who are encouraging their students to entertain 'rebellious' ideas could find themselves facing contempt charges…"[2]

On June 26, 2019, the Philippine News Agency (PNA) reported, "Arrested NPA Leader freed due to Mistaken Identity." The person freed, Baltazar Saldo, was a 54 year-old man from Sto. Angel Dumalag, Capiz. The PNA report quoted Brigadier General John Bulalacao, PRO 6 Regional Director saying, "the said situation is a **normal occurrence in police operations**."

Sometime in 2012, Jirin Hattimon was apprehended on allegations that he was "Black Tunghang", a top leader of Abu Sayyaf, wanted for acts of terrorism. In an Order dated June 10, 2015, he was ordered released, also because of mistaken identity.[3]

Two months before Hattimon's arrest, Abdullah Ussih was likewise arrested, but he was released in 2013 also because the victim

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2 Professors promoting rebellious ideas may face contempt, available at https://newsinfo.inquirer.net/1039167/professors-promoting-rebellious-ideas-may-face-contempt-albayalde (last accessed July 5, 2020).

3 Mistaken identity: judge frees "Abu Sayyaf" after 3 years, available at https://news.abs-cbn.com/focus/07/09/15/mistaken-identity-judge-frees-abu-sayyaf-after-3-years (last accessed July 5, 2020).

positively stated that he did not resemble the person who caused him damage.[4]

In a report detailing Hattimon's release, [5] ABS-CBN reporter Gigi Grande reported that there were fifty-one (51) wrongful arrests since 2004 in government's fight against terrorism;[6] most of the accused had bounties on their heads ranging from ₱150,000 to ₱3.3 million.

Had the charges against the Vice President and the others been leveled today for "terrorism" or under any of its various modes or forms, they would already have been taken into custody for a period of fourteen (14) days, extendible for another ten (10) days on mere "suspicion of having committed the crimes" mentioned in the Anti-Terrorism Act of 2020.

Aside from mistaken identity, there have also been numerous arrests committed by the police that do not comply with Constitutional requirements.

Just a few hours after the Anti-Terrorism Law was signed, a peaceful protest in Cabuyao, Laguna was dispersed by the local police just on July 4, 2020. Eleven (11) individuals who participated in the peaceful protest were arrested. These individuals were not informed of their Miranda rights prior to the arrest, even as they peacefully exercised their right to free speech.[7]

On May 11, 2020, NBI agents arrested Ronnel Mas was without a warrant for Inciting to Sedition because of his social media post stating that he will pay a fifty-million-peso reward to anyone who can kill the President, published six (6) days prior to the arrest. He thereafter made a media "confession" without the presence of counsel. The "confession" was thrown out when the trial court ruled that his arrest was illegal.

Many recent arrests were also made on individuals who were critical of the administration.

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4 Id.,

5 Id.,

6 51 Wrongful Arrests, available at https://news.abs-cbn.com/nation/03/25/15/51-wrongful-arrests (last accessed July 5, 2020).

7 11 nabbed in "anti-terror law" rally in Laguna, available at https://newsinfo.inquirer.net/1301869/11-nabbed-in-anti-terror-law-rally-in-laguna (last accessed July 5, 2020).

On April 19, 2020, volunteers who were on their way to conduct COVID-19 relief operations in Norzagaray, Bulacan were arrested without a warrant by the local police at a checkpoint. Confiscated from them were materials that were critical of government response to the COVID-19 pandemic which were tagged by the local police as anti-government paraphernalia and an attempt to incite people to rise up against the government.[8] They were later charged with inciting to sedition, among others.

On March 27, 2020, Juliet Espinosa, a 55-year-old public school teacher, was arrested without a warrant. The basis for the arrest were Facebook posts under the name of "*Yet Rodriguez Inosencio*" which criticized the LGU's response to the pandemic. In one post, she told residents without food to raid the gym where the relief goods are reportedly kept. For this post, she was charged with inciting to sedition and violation of Republic Act 10175 or the Cybercrime Prevention Act of 2012.

Indeed, these perils exist independent of the persons in office. When the attacks are critical of an administration, the tendency is to label these attacks as attempts at destabilization. Some of the Petitioners remember how the late Secretary of Justice indiscriminately described their beloved mentor in Constitutional Law, the eminent Father Joaquin G. Bernas, SJ, as "the guru of destabilization" for expressing his views in 2006:

> "It seems to me he (Bernas) is the guru of destabilization. Everything he says is always against the President. The problem with Bernas is that he thinks he's the only one who knows the law. . . the Constitution."

There can be no doubt that this law imperils the constitutional rights and liberties of our citizens. Its provisions are a lure to abuse and misuse, hard to resist on the part of malicious government officials. The chilling effect on the freedom of expression, speech and the press are all too real. The academic freedom of institutions of higher learning, teachers, and students is endangered. The law should not have seen the light of day.

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8 "Critical but not seditious" journalist, artists say of papers in halted Bulacan relief drive, available at https://www.philstar.com/headlines/2020/04/21/2008760/critical-not-seditious-journalist-artists-say-papers-halted-bulacan-relief-drive (last accessed July 5, 2020).

I. THE PARTIES

Petitioners **MELENCIO S. STA. MARIA, EIRENE JHONE P. AGUILA, GIDEON V. PEÑA, MICHAEL T. TIU, JR., FRANCIS EUSTON R. ACERO, PAUL CORNELIUS T. CASTILLO** and **EUGENE T. KAW** are Filipinos, of legal age, taxpayers and members of the Philippine Bar, with address at 6th Floor Far Eastern University Makati Campus, Senator Gil Puyat Avenue cor. Malugay St. (Zuellig Loop), Makati City, where they may be served with pleadings, orders and other processes of this Honorable Supreme Court.

Petitioner Sta. Maria is the Dean of the Far Eastern University Institute of Law, while Petitioners Aguila, Peña, Tiu, Acero, Castillo and Kaw are faculty members of the Far Eastern University Institute of Law and various law schools.

Respondent **SALVADOR C. MEDIALDEA** is the Executive Secretary of the Republic of the Philippines, impleaded in his capacity as such, and may be served with summons and other processes of this Honorable Court at the Office of the Executive Secretary, Malacañang Palace, Manila. As an alter ego of the President, respondent is tasked with the implementation of all laws in the Philippines, specifically, the Anti-Terrorism Act of 2020. Moreover, as Executive Secretary, respondent Medialdea is the Chairperson of the Anti-Terrorism Council ("ATC").

Respondent **MENARDO I. GUEVARRA** is the Secretary of the Department of Justice (DOJ), impleaded in his capacity as such, and may be served with summons and other processes of this Honorable Court at the Office of the Secretary, Department of Justice, Padre Faura Street, Manila. As such, respondent is tasked with the prosecution of offenses, specifically, violations of the Anti-Terrorism Act of 2020. Moreover, as DOJ Secretary, respondent is the Vice-Chairperson of the ATC.

Respondent **ANTI-TERRORISM COUNCIL** ("ATC") is the body created under Section 53 of Republic Act No. 9732, otherwise known as the "Human Security Act of 2007" and Section 45 of the Anti-Terrorism Act of 2020, and may be served with summons and other processes of this Honorable Court through its Secretariat, the National Intelligence Coordinating Agency (NICA), V. Luna Road, Quezon City. The ATC is tasked by the Human Security Act of 2007 to implement the anti-terrorism policy of the country, and now, the Anti-Terrorism Act of 2020.

The following respondents are statutory members of the ATC in the indicated addresses where they may be served with pleadings and processes of this Honorable Court:

1. **HERMOGENES C. ESPERON, JR.**
   Adviser and Director General
   NATIONAL SECURITY COUNCIL OF THE PHILIPPINES
   East Avenue Road cor. V. Luna., Quezon City
   publicaffairs@nsc.gov.ph

2. **HON. TEODORO L. LOCSIN, JR.**
   Secretary
   DEPARTMENT OF FOREIGN AFFAIRS
   11/F DFA Home Office
   2330 Roxas Boulevard, Pasay City
   osec@dfa.gov.ph
   osec.coord@dfa.gov.ph

3. **HON. DELFIN N. LORENZANA**
   Secretary
   DEPARTMENT OF NATIONAL DEFENSE
   DND Building, Segundo Ave.,
   Camp General Emilio Aguinaldo, Quezon City 1110
   publicaffairs.dnd@gmail.com

4. **HON. EDUARDO M AÑO**
   Secretary
   DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
   DILG-NAPOLCOM Center, EDSA cor. Quezon Avenue
   West Triangle, Quezon City 1104
   dilgpacc2010@gmail.com

5. **HON. CARLOS DOMINGUEZ**
   Secretary
   DEPARTMENT OF FINANCE
   DOF Bldg., BSP Complex
   Roxas Blvd., Manila 1004

6. **HON. GREGORIO B. HONASAN II**
   Secretary
   DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY
   C.P Garcia Ave., Diliman, Quezon City 1101
   gregorio.honasan@dict.gov.ph

7. **ATTY. MEL GEORGIE B. RACELA**
Executive Director
ANTI-MONEY LAUNDERING COUNCIL SECRETARIAT
5/F EDPC Building, Bangko Sentral ng Pilipinas Complex
Mabini corner Vito Cruz Streets
Malate, Manila1004
secretariat@amlc.gov.ph

Respondent **FILEMON SANTOS, JR.** is the Chief of Staff of the Armed Forces of the Philippines ("AFP"), impleaded in his capacity as such, and may be served with summons and other processes of this Honorable Court at the AFP Headquarters in Camp Aguinaldo, EDSA, Quezon City. The AFP and its military personnel are tasked to implement the Anti-Terrorism Act of 2020, specifically, under Section 29 thereof, when authorized by the ATC in writing, to arrest and detain persons suspected of committing terrorist acts.

Respondent **ARCHIE FRANCISCO F. GAMBOA** is the Chief of the Philippine National Police ("PNP"), impleaded in his capacity as such, and may be served with summons and other processes of this Honorable Court at the PNP Headquarters in Camp Crame, EDSA, Quezon City. The PNP and its law enforcement agents are tasked to implement the Anti-Terrorism Act of 2020, specifically, under Section 29 thereof, when authorized by the ATC in writing, to arrest and detain persons suspected of committing terrorist acts.

II. JURISDICTION

A. NATURE OF THE PETITION

The instant petition is for certiorari and prohibition under Rule 65 of the Rules of Court and the jurisdiction of this Honorable Court is being invoked by herein petitioners on the ground that: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Anti-Terrorism Act of 2020 are, ***on their face***, in gross violation of the 1987 Constitution and prevailing jurisprudence. Their implementation shall have a serious and dangerous chilling effect on the citizens and other persons' freedom of expression, speech and the press, as well as other important fundamental rights under the 1987 Constitution, such as but not limited to substantial and procedural due process, the right to privacy, freedom of association, and academic freedom.

Accordingly, this Honorable Court is empowered — nay, mandated — by no less than the Constitution to strike down the

aforementioned provisions of the Anti-Terrorism Act of 2020, pursuant to its power of judicial review under Article VIII, Section 1, paragraph 2, of the 1987 Constitution, which provides that –

> "Section. 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

Article VIII, Section 5(2)(a) of the Constitution, further provides:

> "Section. 5. The Supreme Court shall have the following powers:
>
> x x x.
>
> (2) Review, revise, reverse, modify, or affirm on appeal or certiorari as the law of the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question."

Clearly, therefore, as: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Ant-Terrorism Act of 2020 are patently offensive and oppressive not only to herein petitioners but to any person and organization subject to its provisions, are at odds with the Constitution and jurisprudence, and have been enacted in obvious excess of jurisdiction and in grave abuse of its discretion amounting to lack or excess of jurisdiction, where appeal or any other plain, speedy and adequate remedy do not lie, resort in the

first instance to the instant petition for certiorari and prohibition was rendered necessary to arrest this jurisdictional travesty. The Honorable Court stressed in *Lazatin v. Kapunan,* 27 SCRA 613, 622 (1969) as follows:

> "It has been said that a wide breadth of discretion is granted a court of justice in certiorari proceedings. The cases in which certiorari will issue cannot be defined. Because, to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that certiorari is 'more discretionary than either prohibition or mandamus.' In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case 'as the ends of justice may require.' So it is, that the writ will be granted where necessary to prevent a substantial wrong or to do a substantial justice.
>
> x x x.
>
> It is better, on balance, that we look beyond procedural requirements and overcome the ordinary reluctance to exercise our supervisory powers. And this, to the end that the orders issued below may be controlled 'to make them conformable to law and justice.'"

Stated differently, where the questioned provisions of law are in blatant disregard of the Constitution and jurisprudence, immediate correction by this Honorable Court is rendered imperative through the instant special civil action for certiorari and prohibition.

This position is consistent with this Honorable Court's ruling in *Demetria v. Alba*, 148 SCRA 208, 217 (1987):

> "x x x where the legislature or the executive acts beyond the scope of its constitutional powers, it becomes the duty of the judiciary to declare what the other branches of the government had assumed to do as void. This is the essence of judicial power conferred by the

> Constitution 'in one Supreme Court and in such lower courts as may be established by law' [Art. VIII, Section 1 of the 1935 Constitution; Art. X, Section 1 of the 1973 Constitution and which was adopted as part of the Freedom Constitution, and Art. VIII, Section 1 of the 1987 Constitutional and which power this Court has exercised in many instances.**
>
> Public respondents are being enjoined from acting under a provision of law which We have earlier mentioned to be constitutionally infirm. The general principle relied upon cannot therefore accord them the protection sought as they are not acting within their 'sphere of responsibility' but without it."

B. LEGAL STANDING OF THE PETITIONERS

The petitioners are concerned citizens, taxpayers and members of the Philippine Bar. They are also filing the instant petition by way of a ***"facial" challenge*** to the patently unconstitutional provisions of the Anti-Terrorism Act, which create a *"chilling effect"* and result in the prior restraint of freedom of speech, of expression, of the press, of association, and of assembly. Such invalid provisions will also affect the academic freedom of institutions of higher learning. Thus, Petitioners are proper parties who have personal and substantial interests in the present case and stand to be directly and/or indirectly injured with the Government's implementation of the Anti-Terrorism Law.

It is well-settled that for *locus standi* to lie, petitioners must exhibit that they have been denied, or are about to be denied, of a personal right or privilege to which they are entitled.[9] This Honorable Court has likewise ruled that citizens, taxpayers, voters, and legislators may be accorded standing to sue, provided that the following requirements are met: (1) cases involve constitutional issues; (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; (3) for voters, there must be a showing of obvious interest in the validity of the election law in question; (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and (5) for

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9 Chavez v. Judicial and Bar Council, G.R. No. 202242, July 17, 2012.

legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.[10]

When suing as a *citizen*, the person complaining must allege that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[11] When the issue concerns a public right, it is sufficient that the petitioner is a citizen and has an interest in the execution of the laws.[12]

Petitioners have legal standing to file this petition as individual persons who are faculty members and law professors, lawyers, media personalities, and persons with substantial social media presence. Upon the effectivity of the Anti-Terrorism Act of 2020, petitioners, either individually or collectively will be subjected to being tracked down, followed, or investigated, or having their messages, conversations, discussions, spoken or written words tapped, listened, intercepted and recorded through various means, including computer and network surveillance, all of which are violative of their constitutional rights to privacy, free speech, free expression and their right against unreasonable searches and seizures.

Petitioners are denied their aforementioned constitutional rights to which they are lawfully entitled, and they will be subjected to unjust penalties by reason of the effectivity of the Anti-Terrorism Act of 2020, considering the wide latitude of the description of the purpose in Sec. 4 of the Anti-Terrorism Act of 2020, namely 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."

The clauses that purportedly exclude the free exercise of civil and political rights, namely, the last clause of Section 4 excluding from coverage those acts "which are not intended to cause death or serious harm to a person, to endanger a person's life, or to **create a serious risk to public safety**," do not adequately protect against this

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10 David v. Gloria Macapagal-Arroyo, 522 Phil. 705 (2006).

11 The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain, G.R. No. 183591, October 14, 2008.

12 Id.

unconstitutional incursion into the most sacrosanct of our rights, as discussed, *infra*.

Furthermore, under Sec. 46 of the Anti-Terrorism Act of 2020, there is created an Anti-Terrorism Council which "shall assume responsibility for the proper and effective implementation of the policies of the country against terrorism." In the pursuit of this mandate, the ATC has been given a plethora of powers and functions, including but not limited to the power to, among others, "grant monetary rewards and other incentives to informers who give vital information leading to the apprehension, arrest, detention, prosecution, and conviction of any persons found guilty of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Act." That the acts of surveillance and investigation in the furtherance of the Anti-Terrorism Act of 2020 and the performance of the powers and functions of the ATC, as aforesaid, require substantial funding therefore cannot be gainsaid. Moreover, it appears that Congress has handed over to the Executive a blank check in the furtherance of this law. Thus, as taxpayers, petitioners question the appropriation of funds within a law that stifles the constitutional rights of the petitioners.

In view thereof, petitioners clearly and indubitably have the legal standing to question the constitutionality of: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Anti-Terrorism Act of 2020, even if they have not *yet* sustained any actual injury.

As Justice Carpio stated in his dissenting opinion in *Romualdez v. Commission on Elections*, 553 SCRA 370, 436-438 (2008):

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

> ‘x x x the Court has altered its traditional rules of standing to permit - **in the First Amendment area** - 'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.' x x x Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression.’ (*Emphasis supplied*)

The rationale for this exception allowing a “facial” challenge is to counter the “chilling effect” on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply refuse to speak to avoid being charged of a crime. The overbroad or vague law chills him into silence.

Prof. Erwin Chemerinsky, a distinguished American textbook writer on Constitutional Law, explains clearly the exception of overbreadth to the rule prohibiting third-party standing in this manner:

> ‘The third exception to the prohibition against third-party standing is termed the “overbreadth doctrine.” A person generally can argue that a statute is unconstitutional as it is applied to him or her; the individual cannot argue that a statute is

> unconstitutional as it is applied to third parties not before the court. For example, a defendant in a criminal trial can challenge the constitutionality of the law that is the basis for the prosecution solely on the claim that the statute unconstitutionally abridges his or her constitutional rights. The overbreadth doctrine is an exception to the prohibition against third-party standing. It permits a person to challenge a statute on the ground that it violates the First Amendment (free speech) rights of third parties not before the court, even though the law is constitutional as applied to that defendant. In other words, the overbreadth doctrine provides that: "Given a case or controversy, a litigant whose own activities are unprotected may nevertheless challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court.'
>
> The overbreadth doctrine is closely related to the vagueness doctrine. Both doctrines are often simultaneously invoked to mount "facial" challenges to statutes violating free speech."

Justice Carpio's Dissenting Opinion became the controlling doctrine when the Supreme Court *en banc*, through Justice Abad, adopted this view in *Disini, et al, v. Secretary of Justice. et al.,* G.R. No. 203335 to 203158, February 11, 2014. In *Disini*, the Supreme Court allowed a facial challenge to a penal law anchored on vagueness when the penal statute encroaches upon the freedom of speech.

The pronouncement of this Honorable Court could not be clearer:

"When a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable. The inapplicability of the doctrine must be carefully delineated. As Justice Antonio T. Carpio explained in his dissent in Romualdez v. Commission on Elections, 'we must view these statements of the Court on the inapplicability of the overbreadth and vagueness doctrines to penal statutes as appropriate only insofar as these doctrines are used to mount 'facial' challenges to penal statutes not involving free speech.'

In an 'as applied' challenge, the petitioner who claims a violation of his constitutional right can raise any constitutional ground – absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness. Here, one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. It prohibits one from assailing the constitutionality of the statute based solely on the violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.

But this rule admits of exceptions. A petitioner may for instance mount a 'facial' challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute.

The rationale for this exception is to counter the 'chilling effect' on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence."

On its face, the Anti-Terrorism Act clearly includes provisions that have serious ramifications on the free exercise by well-meaning citizens of their fundamental right to speak on issues of national importance.

A cursory examination of the offenses punished as acts of terrorism, proposal to commit terrorism, membership in a terrorist organization, inciting to terrorism, and providing material support to terrorists will yield to no other conclusion but that this penal statute punishes acts that include speech elements, whether they are oral, written, or manifested through symbolic speech.

This Honorable Court in *Disini* made it clear that a facial challenge may be posed to a penal law of this kind. Thus, this facial challenge to the Anti-Terrorism Act of 2020 stands on good law and is allowed by the rules of constitutional adjudication.

Specifically, the instant case involves issues of paramount importance as the constitutionality of: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Anti-Terrorism Act of 2020 are in question; the very future of our nation is at stake. The chilling effect that these provisions of law have on the exercise of the constitutional rights to freedom of speech, of expression, of the press, and of assembly should cause this Honorable Court to rule that these provisions are, as they are, unconstitutional.

Hence, the transcendental importance to the public and the nation of the issues raised demands that this petition for certiorari and prohibition be settled promptly and definitely, brushing aside technicalities of procedure and calling for the admission of a citizen's taxpayer's suit, as this Honorable Court held in *Santiago v. Commission on Elections*, 270 SCRA 106, 135 (1997) thus –

> "In any event, as correctly pointed out by intervenor Roco in his Memorandum, this Court may brush aside technicalities of procedure in cases of transcendental importance. As we stated in *Kilosbayan, Inc. v. Guingona, Jr.*:
>
> A party's standing before this Court is a procedural technicality which it may, in the exercise of its discretion, set aside in view of the importance of issues raised. In the landmark Emergency Powers Cases, this Court brushed aside this technicality because the

> transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure." (*Supra* at p. 135)

Indeed, this Honorable Court in *David v. Macapagal-Arroyo,* 489 SCRA 160, 224 (2006), teaches us that –

> "It must always be borne in mind that the question of *locus standi* is but corollary to the bigger question of proper exercise of judicial power. This is the underlying legal tenet of the 'liberality doctrine' on legal standing. It cannot be doubted that the validity of PP No. 1017 and G.O. No. 5 is a judicial question which is of paramount importance to the Filipino people. To paraphrase Justice Laurel, the whole of Philippine society now waits with bated breath the ruling of this Court on this very critical matter. The petitions thus call for the application of the 'transcendental importance' doctrine, a relaxation of the standing requirements for the petitioners in the 'PP 1017 cases.'"

C. RIPENESS OF THE PETITION

A REAL AND CREDIBLE THREAT OF PROSECUTION INVOLVING THE EXERCISE OF A CONSTITUTIONALLY PROTECTED CONDUCT OR ACTIVITY CALLS FOR THIS HONORABLE COURT'S PRE-ENFORCEMENT JUDICIAL REVIEW OF THE ANTI-TERRORISM ACT. As distinguished from the general notion of judicial power, the power of judicial review especially refers to both the authority and the duty of this Court to determine whether a branch or an instrumentality of government has acted beyond the scope of the latter's constitutional powers.[13] Resolving whether a treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is constitutional or valid falls within this power.[14] Since the turn of the last century, this power has been exercised by the Court many times. In

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13 *See* Chavez v. Judicial and Bar Council, G.R. No. 202242, 17 July 2012, 676 SCRA 579; Tagolino v. House of Representatives Electoral Tribunal, G.R. No. 202202, 19 March 2013; Gutierrez v. House of Representatives Committee on Justice, G.R. No. 193459, 15 February 2011, 643 SCRA 198; Francisco v. House of Representatives, 460 Phil. 830 (2003); Demetria v. Alba, 232 Phil. 222 (1987).

14 CONSTITUTION, Art. VIII, Sec. 2(a).

Angara v. Electoral Commission, 63 Phil 169 (1936), Mr. Justice Laurel spoke:

> "The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution."

While the moderating power of the Court is exercised prudently, carefully, and only if it cannot be feasibly avoided there is no denying that the petitioners are left with no other recourse than to come before this Court.

As discussed in the case of *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 632 SCRA 146 (2010),[15] the pre-enforcement judicial review of a penal statute may be had so long as there is a real and credible threat of prosecution involving the exercise of a constitutionally protected conduct or activity. The Court noted that "petitioners need not be required to expose themselves to criminal prosecution before they could assail the constitutionality of a statute, especially in the face of an imminent and credible threat of prosecution."

Petitioners come before this Court not on the basis of obscure and speculative claims or unfounded doomsday fears of being subjected to sporadic "surveillance" and designated as "terrorists" or

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15 Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, G.R. No. 178552, 5 October 2010, 632 SCRA 146.

"terrorist sympathizers" or "terrorist enablers". The credible threat of prosecution is real. Judicial notice can be had of the numerous times when official spokespersons for the government and the President himself have labelled critics as enemies of the state and in a matrix or in televised speeches called them out as terrorists or destabilizers.

That there is a genuine threat of imminent prosecution or at the very least detention for fourteen (14) to twenty-four (24) days simply after being designated by the Anti-Terrorism Council, petitioners submit that this Petition is suitable for judicial review.

IN SUMMARY:

(a) While the challenged law seems not to forbid constitutionally protected conduct or activities that petitioners seek to do – the clearly lowered threshold provided therein which empowers government to enjoin them and the Anti-Terrorism Council *superbody* with powers to designate mere suspects, order their detention for extended periods of time, order surveillance, and ask that assets be frozen sends not just a powerful message to anyone who may be accused as challenging the authorities or criticizing them but more importantly sends a chilling effect like no other;

(b) There is not just speculative fear but a realistic, imminent, and credible threat or danger of sustaining a direct injury or facing detention and prosecution should the purported prohibited conduct or activity be considered by the Anti-Terrorism Council as having been carried out; and (c) the factual circumstances surrounding the prohibited conduct or activity sought to be carried out are real, not hypothetical and speculative.

With the passage of the Anti-Terrorism Act of 2020, the imminent and real danger of silencing the public and sending a chilling effect to detractors of the government has become real.

The instant petition is ripe for adjudication inasmuch as the Anti-Terrorism Act of 2020 has been signed into law notwithstanding the patent unconstitutionality of: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 thereof. The inevitable enforcement of the law, if not struck down, would have a chilling effect and prior restraint on the exercise of the constitutional rights to freedom of speech, of expression, of the press, of association, and of

assembly. The law also infringes the academic freedom of institutions of higher learning, teachers, and students.

Hence, a facial challenge, even without actual injury, may be raised, and would render the instant petition ripe for judicial determination. The majority of this Honorable Court, have agreed and adopted the observations of Justice Mendoza in *Estrada v. Sandiganbayan*, 369 SCRA 394, 441 (2001) and again in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* G.R. No. 178552, 5 October 2010 as follows:

> "A facial challenge is allowed to be made to a vague statute and one which is overbroad because of possible 'chilling effect' upon protected speech. The theory is that '[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad status with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity.' The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.
>
> x x x
>
> By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.

To borrow the words of Justice Leonen in his Dissenting and Concurring Opinion in *Disini*:

> "The only instance when a facial review is permissible is when there is a clear showing that the provisions are too broad under any reasonable reading that it imminently threatens expression. In these cases, there must be more of a showing than simply the *in terrorem* effect of a criminal statute. It must clearly and convincingly show that there can be no determinable standards that can guide interpretation. Freedom of expression enjoys a primordial status in the scheme of our basic rights. It is fundamental to the concept of the people as sovereign. Any law — regardless of stage of implementation — that allows vague and unlimited latitude for law enforcers to do prior restraints on speech must be struck down on its face."

Moreover, there is an extreme urgency and necessity to resolve the present petition in view of the impending implementation and enforcement of the questioned provisions of the Anti-Terrorism Act which are not only patently unconstitutional, but will also result in grave and irreparable injury to the nation, its citizens and taxpayers (including herein petitioners).

Under the circumstances obtaining and where time is of the essence, no appeal or any plain, speedy and adequate remedy is available to the herein petitioners in the ordinary course of law and to whose interests further delay would be prejudicial.

D. TIMELINESS OF THE PETITION

Republic Act No.11479 , otherwise known as the Anti-Terrorism Act of 2020, was signed into law by the President on July 3, 2020, and will take effect after the lapse of fifteen (15) days from publication. Significantly, the signed law was posted in the Official Gazette website on the same date. If this posting shall be considered as the publication, then the law shall take effect on July 19, 2020.

Hence, the instant petition is being filed within thirty (30) days within the period under Section 4, Rule 65 of the Rules of Court.

III. STATEMENT OF THE FACTS AND OF THE CASE

On July 3, 2020, the President, Rodrigo Roa Duterte, signed into law the Anti-Terrorism Act of 2020. It will be effective after the lapse of fifteen (15) days from publication.

On its face, the said law is unconstitutional, specifically the following Sections thereof:

(a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12, insofar as they define the crime of terrorism and related acts and penalize the same;

(b) Sections 25, 26, and 27, insofar as they provide for the designation of terrorist individuals, groups of persons, organizations, and associations, and the declaration and proscription of them as such; and

(c) Section 29, insofar as it provides for the arrest without a judicial warrant of persons suspected of committing terrorism or any of the acts punishable under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 thereof.

If the Anti-Terrorism Act of 2020 and its unconstitutional provisions will be allowed to take effect, irreparable injury will be sustained by the Filipino people. The implementation of the law, because of its patent nullity, will be a waste of vital financial resources specially during these trying times when the country is facing the COVID-19 pandemic. Valid criticisms are neither terroristic activities nor viruses that destroy the fabric of democracy; intolerance of legitimate speech will.

The law will also hover as a “sword of Damocles”, an effective prior restraint on the people’s freedom of speech, of expression, of the press, and of assembly. Furthermore, it will infringe on the academic freedom of institutions of higher learning, teachers and students.

Hence, this Petition.

IV. REASONS RELIED UPON FOR THE ALLOWANCE OF THIS PETITION

The petitioners respectfully submit that they are entitled to the allowance of this petition, upon the following grounds:

(A)

SECTIONS 4, 5, 6, 7, 8, 9, 10, 11, AND 12 OF THE ANTI-TERRORISM ACT OF 2020, IN DEFINING AND PENALIZING THE CRIME OF TERRORISM AND OTHER RELATED ACTS, VIOLATE THE CONSTITUTION AS THEY ARE VOID FOR VAGUENESS AND OVERBREADTH.

(B)

SECTIONS 25, 26, AND 27 OF THE ANTI-TERRORISM ACT OF 2020, IN PROVIDING FOR THE DESIGNATION OF TERRORIST INDIVIDUALS, GROUPS OF PERSONS, ORGANIZATIONS, AND ASSOCIATIONS, AND DECLARING AND PROSCRIBING THEM AS SUCH, VIOLATE THE CONSTITUTION.

(C)

SECTIONS 25 AND 29 OF THE ANTI-TERRORISM ACT OF 2020, IN PROVIDING FOR THE ARREST WITHOUT A JUDICIAL WARRANT AND DETENTION OF PERSONS SUSPECTED OF COMMITTING TERRORISM OR ANY OF THE ACTS PUNISHABLE UNDER SECTIONS 4, 5, 6, 7, 8, 9, 10, 11, AND 12 THEREOF, VIOLATE THE CONSTITUTION.

(D)

THE ANTI-TERRORISM ACT VIOLATES AND WILL HAVE A DESTRUCTIVE CHILLING EFFECT ON THE ACADEMIC FREEDOM OF INSTITUTIONS OF HIGHER LEARNING, TEACHERS, AND STUDENTS.

V. DISCUSSION

(A)

SECTIONS 4, 5, 6, 7, 8, 9, 10, 11, AND 12 OF THE ANTI-TERRORISM ACT OF 2020, IN DEFINING AND PENALIZING THE CRIME OF TERRORISM AND OTHER RELATED ACTS, VIOLATE THE CONSTITUTION AS THEY ARE VOID FOR VAGUENESS AND OVERBREADTH.

The definition of "terrorism" and the acts which are punished under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Anti-Terrorism Act of 2020 are void for being vague and overbroad. Hence, the said provisions violate not only the right to due process enshrined in Article III, Section 1 of the 1987 Constitution, but the freedom of speech, of expression, of the press, and of assembly under Article III, Section 4 thereof.

This is easily demonstrable.

First. While ostensibly defining and punishing terroristic acts, the definition of "terrorism" under Section 4 is vague and overly broad, thus –

> "Sec. 4. *Terrorism.* – Subject to Section 49 of this Act, **terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution**:
>
> (a) **Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;**
>
> (b) **Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property**;
>
> (c) **Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;**

> (d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and
>
> (e) Release of dangerous substances, or **causing fire**, floods or explosions
>
> **when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof**, create an atmosphere or spread a message of fear, **to provoke or influence by intimidation the government or any international organization,** or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as 'An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code'; Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety." (Emphasis and underscoring supplied)

It is evident from the language of Section 4 itself that it contemplates, encompasses, and regulates speech and expression by providing for a more apparent-than-real carve out definition of "**terrorism**":

> "Provided, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not

> intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety."

These seeming exceptions, however, do not save Section 4 from constitutional infirmity because it provides vague and broad qualifications (exceptions to the exceptions) that effectively render useless any protection accorded to the legitimate exercise of the constitutionally guaranteed freedoms of speech, expression, assembly, and the right to petition the government for the redress of grievances.

The definition of terrorism in Section 4 is so vague and broad such that it can be read to include legitimate and lawful gatherings and demonstrations where people assemble to exercise their freedom of speech, of expression, and of the press. For example, mass protests by environmentalists meant to disrupt operations of toxic or pollutant public utilities, or a nationwide transportation strike intended to stop public transport services, would result in "extensive interference with critical infrastructure." It will not be difficult or far-fetched for the purpose of such protests, "by its nature and context", to be painted as having been made "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" so as to easily fall within the definition of terrorism.

The vagueness and overbreadth of the definition allows it to cover traditionally recognized and protected forms of expression against government oppression. For instance, the burning of effigies, or even extreme cases like the Thai Buddhist monk performing an act of self-immolation, may be deemed terrorist acts, as they are "causing fires" or "endangering a person's life." It may even include acts or behavior that, while unlawful, would not warrant a classification of terrorism with the corresponding excessive penalties imposed under the Anti-Terrorism Act of 2020. To illustrate, protests that in their inception were lawful expressions of solidarity for a noble cause, once triggered by excessive police reaction, can easily escalate or turn into rallies to "take back the streets" which result in rioting or looting. While these resulting acts may have caused "deaths or serious bodily injury" to persons or "endanger[s their] lives", and/or bring about "extensive damage or destruction to a government or public facility, public place or private property" within the ambit of Section 4, these are indisputably not acts of terrorism.

It is therefore not farfetched to see that similar mass actions and protests in our country—whether it be legitimate acts of collective

dissent against the closure of ABS-CBN, the conviction of Maria Ressa for cyber-libel, or any other matter of public interest where emotions run high, and especially now where people are generally agitated and stressed because of the COVID-19 pandemic — with their accompanying speeches and other forms of lawful expression, can be classified as terroristic acts, on the mere pretext that the purpose of such acts is, by its nature and context**,** "**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**."

Clearly, the definition of terrorism is so vague that **it would leave the common citizen wondering** whether an act is: (i) protected under the Constitution; (ii) penalized under the normal Revised Penal Code and other special laws; or (iii) punished under the Anti-Terrorism Act of 2020. In: (i) failing to define the elements of each of the predicate acts in Section 4 (a), (b), (c), (d), and (e); and (2) providing for such impermissively expansive and nebulous purposes as recognized terrorism-related purposes, **it indubitably gives law enforcement agents and military personnel unbridled discretion to arbitrarily flex their muscle in carrying out its provisions merely on the basis of their "suspicion", intuition, or understanding.**

It is therefore violative of the due process clause under Article III, Section 1 of the 1987 Constitution, thus –

> "Sec. 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

Thus, Section 4 of the Anti-Terrorism Act must be struck down and declared unconstitutional for vagueness, as held in *People v. Nazario*, 165 SCRA 186, 195-196 (1988):

> "As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men 'of common intelligence must generally guess at its meaning and differ as to its application.' It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons,

> especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of Government muscle."

Section 4 is utterly vague on its face because it does not specify even a defectively phrased standard for definitively ascertaining the penalized acts, such that "it cannot be clarified by either a saving clause or by construction."[16]

Moreover, it can be plainly seen that the over-broad definition of terrorism under Section 4 of the Anti-Terrorism Act of 2020 may be applied to a substantial number of instances which are clearly protected by the constitutional guarantee of freedom of speech, of expression, of the press, and of assembly, under Article III, Section 4 of the 1987 Constitution, to wit –

> "Sec. 4. No law shall be passed abridging the freedom of speech, of expression, of the press, or the right of the people to peaceably assemble and petition the government for redress of grievances."

As the Honorable Court stated in *Blo Umpar Adiong v. COMELEC,* G.R. No. 103956, March 31, 1992,[17] a statute is considered void for overbreadth when "it offends 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 area of protected freedoms."

Clearly, therefore, Section 4 of the Anti-Terrorism Act of 2020 which defines and penalizes terrorism must be struck down for being overbroad since a substantial number of its applications are unconstitutional.

As has been held by the U.S. Supreme Court in *United States v. Stevens*, 559 U.S. 460 (2010):

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16 People v. Nazario, 165 SCRA 186, 195-196 (1988).
17 G.R. No. 103956 (March 31, 1992)

> "In the First Amendment context, however, this Court recognizes "a second type of facial challenge,' whereby a law may be invalidated as overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.' Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449, n. 6 (2008) (internal quotation marks omitted)."

Even assuming for the sake of argument that the governmental purpose for enacting the Anti-Terrorism Act is legitimate and substantial, "that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose."[18]

Second. Necessarily, therefore, the acts defined and punished under Sections 5, 6, 7, 8, 9, 10, 11, and 12, would suffer from the same fatal flaw of vagueness and overbreadth, as they are acts committed solely in reference to the all-encompassing definition of terrorism under Section 4, thus –

> "Sec. 5. *Threat to Commit Terrorism.* – Any person who shall **threaten to commit any of the acts mentioned in Section 4** hereof shall suffer the penalty of imprisonment of twelve (12) years.
>
> Sec. 6. *Planning, Training, Preparing, and Facilitating the Commission of Terrorism.* – It shall be unlawful for any person to **participate in the planning, training, preparation and facilitation of the commission of terrorism, possessing objects connected with the preparation for the commission of terrorism, or collecting or making documents connected with the preparation of terrorism.** Any person found guilty of the provisions of this Act shall suffer the penalty of

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18 Blo Umpar Adiong v. COMELEC, G.R. No. 103956, March 31, 1992.

life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

Sec. 7. *Conspiracy to Commit Terrorism.* – Any **conspiracy to commit terrorism as defined and penalized under Section 4 of this Act** shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

There is conspiracy when two (2) or more person come to an agreement concerning the commission of terrorism as defined in Section 4 hereof and decide to commit the same.

Sec. 8. *Proposal to Commit Terrorism.* – Any person who **proposes to commit terrorism as defined in Section 4 hereof** shall suffer the penalty of imprisonment of twelve (12) years.

Sec. 9. *Inciting to Commit Terrorism.* – Any person who, **without taking any direct part in the commission of terrorism, shall incite others to the execution of any of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end**, shall suffer the penalty of imprisonment of twelve (12) years.

Sec. 10. *Recruitment to and Membership in a Terrorist Organization.* – Any person who shall **recruit another to participate in, join, commit or support terrorism or a terrorist individual or any terrorist organization, association or group of persons proscribed under Section 26 of this Act**, or designated by the United Nations Security Council as a terrorist organization, **or organized for the purpose of engaging in terrorism**, shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

The same penalty shall be imposed on any person who **organizes or facilitates the travel of individuals to a state other than their state of residence or nationality for the purpose of recruitment** which may be committed through any of the following means:

(a) Recruiting another person to serve in any capacity in or with an armed force in a foreign state, whether the armed force forms part of the armed forces of the government of that foreign state or otherwise;

(b) Publishing an advertisement or propaganda for the purpose of recruiting persons to serve in any capacity in or with such an armed force;

(c) Publishing an advertisement or propaganda containing any information relating to the place at which or the manner in which persons may make applications to serve or obtain information relating to service in any capacity in or with such armed force or relating to the manner in which persons may travel to a foregoing state for the purpose of serving in any capacity in or with such armed force; or

(d) Performing any other act with the intention of facilitating or promoting the recruitment of persons to serve in any capacity in or with such armed force.

Any person who shall voluntarily and knowingly join any organization, association or group of persons knowing that such organization, association or group of persons is proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, **or organized for the purpose of engaging in**

terrorism, shall suffer the penalty of imprisonment of twelve (12) years.

Sec. 11. *Foreign Terrorist.* – The following acts are unlawful and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592:

(a) **For any person to travel or attempt to travel or attempt to travel to a state other than his/her state of residence or nationality, for the purpose of perpetrating, planning, or preparing for, or participating in terrorism, or providing or receiving terrorist training**;

(b) For any person to **organize or facilitate the travel of individuals who travel to a state other than their states of residence or nationality knowing that such travel is for the purpose of perpetrating, planning, or preparing for, or participating in terrorism, or providing or receiving terrorist training**; or

(c) For any person **residing abroad who comes to the Philippines to participate in perpetrating, planning, or preparing for, or participating in terrorism, or providing support for or facilitate or receive terrorist training here or abroad**.

Sec. 12. *Providing Material Support to Terrorists.* – Any person who **provides material support to any terrorist individual or terrorist organization, association or group of persons committing any of the acts punishable under Section 4 hereof, knowing that such individual or organization, association, or group of persons is committing or planning to commit such acts**, shall be liable as principal to any and all

> terrorist activities committed by said individuals or organizations, in addition to other criminal liabilities he/she or they may have incurred in relation thereto." (Emphasis and underscoring supplied)

The following invalid sections of the Anti-Terrorism Act of 2020 penalize modes of speech, expression, and association, thereby equally subject to facial attack for being unwarranted, excessive, and overbroad encroachments on the freedom of expression:

1. Section 6 - *Planning, Training, Preparing, and Facilitating the Commission of Terrorism*, which includes the collection or making of documents connected with the preparation of terrorism;

2. Section 9 - *Inciting to Commit Terrorism*, which is defined as inciting others to the execution of any of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end;

3. Section 10 - *Recruitment to and Membership in a Terrorist Organization* which penalizes, among others:

   (a) Publication of an advertisement or propaganda for the purpose of recruiting persons to serve in any capacity in or with such an armed force;

   (b) Publication of an advertisement or propaganda containing any information relating to the place at which or the manner in which persons may make applications to serve or obtain information relating to service in any capacity in or with such armed force or relating to the manner in which persons may travel to a foregoing state for the purpose of serving in any capacity in or with such armed force; and

   (c) Mere membership in any organization, association or group of persons knowing that such organization, association or group of persons is proscribed under Section 26 or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism.

4. Section 12 - *Providing Material Support to Terrorists* which criminalizes the provision of material support to any terrorist individual or terrorist organization, association or group of persons committing any of the acts punishable under Section 4 hereof, knowing that such individual or organization, association, or group of persons is committing or planning to commit such acts.

To emphasize the near limitless scope of what acts may be considered as terrorism thereby subject to criminal prosecution if the Anti-Terrorism Act of 2020 were to be upheld, consider the following scenario:

Last December 11, 2019, U2, an Irish rock band known for being very vocal in their support of human rights, had a concert in Philippine Arena in Bulacan. In their press conference held the day before, which was incidentally the Human Rights Day, U2's lead singer, Bono, when asked about his thoughts on the human rights situation in the Philippines under the Duterte Administration, said, "*The safety of journalists is very important and I think a democracy requires a free press."* He then directly sternly warned the President, *"You can't compromise on human rights. That is my soft message to President Duterte."*

On the night of the concert, Bono opened the show with his fist raised in the air, imploring the crowd in the sold-out arena to sing and shout, *"No more! No more! No more! Wipe your tears away! Sunday Bloody Sunday!"* Throughout the band's performance, Bono extolled the virtues of freedom of speech, of expression, and of the press, praised journalists, particularly Maria Ressa, whose image was thereafter prominently featured in a montage of women game-changers from all over the world spanning recent history, which included Filipina trailblazers from Melchora Aquino to Corazon Aquino.

Bono then proclaimed, *"Women who light up history, your own Maria Ressa, is an incredible woman. But the extraordinary thing is, even Maria will say it's not about individuals. It's about collective action. It's about social movements. And so, then all of you can grow up to be the President or Maria Ressa."*

In the same breath, Bono condemned the present administration's seeming utter disregard for human rights in the war against drugs, and its penchant to silence any voice of dissent in the press.

Under the Anti-Terrorism Act of 2020, Bono may be charged with committing terrorism, which is punishable in whatever stage of commission (under Section 4), insofar as he intends to cause interference with the very infrastructure of government with the purpose "to provoke or influence by intimidation the government."

Alternatively, he may be charged with threatening to commit terrorism (under Section 5) in issuing a warning against President Duterte during his press conference as a prelude to the concert. He may also be charged with planning to commit terrorism (under Section 6) and conspiracy to commit terrorism (under Section 7) with Maria Ressa, or at least proposing the same (under Section 8).

At the very least, he would definitely be charged with inciting to terrorism (under Section 9) by making a call to action against human rights violations of the government during the concert itself, maybe even accused recruiting others to participate in terrorism (under Section 10) through such call to action.

He could definitely be charged with inciting to terrorism (under Section 9) by making a call to action against human rights violations of the government during the concert itself, perhaps even subject to prosecution for recruiting others to participate in terrorism (under Section 10) through such call to action.

Clearly, the vagueness and overbreadth of Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Anti-Terrorism Act of 2020 render such provisions unconstitutional inasmuch as they encroach upon the people's constitutional rights to freedom of speech, of expression, of the press, and of assembly. The utter vagueness of Section 12, in providing that "[a]ny person x x x shall be liable as principal to any and all terrorist activities committed by said individuals or organizations, in addition to other criminal liabilities he/she or they may have incurred in relation thereto," is particularly glaring. Section 12 can expose a person to prosecution and punishment for multiple offenses without defining what those other offenses are. There are no clues in Section 12 or anywhere else in the Anti-Terrorism Act that provide any semblance of guidance as to the "other criminal liabilities he/she or they may have incurred in relation thereto."

Indeed, the said provisions create a "chilling effect" that would constitute prior restraint to, and stifle the free exercise of, such fundamental freedoms.

Hence, they should be declared unconstitutional, as this Honorable Court has instructed in *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001:

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

***Third*.** The general manner by which the prohibited acts are defined under Section 4, paragraphs (a) and (b), puts innocent utterances and most especially, symbolic speeches, under the category of acts traditionally considered criminal, unless a negative intent (i.e. not to cause death, serious bodily injury, or damage to government facilities) is shown by the speaker.

The wordings of Section 4 (a) and (b) in relation to the proviso, "*Provided, That, terrorism as defined in this Section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety*," imply that all speeches maybe treated as within the punishable acts defined under the law unless it is shown that no intent to cause death or serious physical harm or the like, animated the speakers. In effect, the general manner by which the provision is couched put constitutionally protected speeches and expressions under a criminal class, or at least, to a suspect class, to the detriment of these freedoms.

The Anti-Terrorism Act of 2020 makes it especially dangerous for symbolic speeches such as the wearing of arm bands or colored shirts, or the burning of images and pictures, or the commission of other conducts which contain speech element, during protest actions or concerted activities such as workers' strikes. Undoubtedly, these symbolic speeches enjoy as much protection as those extended to other forms of expression. "[C]onduct is treated as a form of speech sometimes referred to as 'symbolic speech[,]'" such that "'when 'speech' and 'nonspeech' elements are combined in the same course of conduct,' the 'communicative element' of the conduct may be 'sufficient to bring into play the [right to freedom of expression].'"[19]

According to Chief Justice Puno in the case of *Chavez v. Gonzales,* G.R. No. 168338, Feb. 15, 2008:

> "The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority."

Symbolic speeches are types of expression which would ordinarily give rise to different permutations. Given their nature, they can easily be interpreted to mean intent to cause serious bodily injuries or damage to public or private facilities.

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19 Diocese of Bacolod v. Comelec, G.R. No. 205728, January 21, 2015.

Section 4 (a) and (b) of the Anti-Terrorism Act of 2020 give law enforcers a very wide latitude to pick those permutations which are favorable to their purpose. In effect, the law allows them to apply an undefined content-based regulation even to constitutionally protected expressions and requires persons who exercised them to show why they should not be punished for the interpretation that law enforcers gave to their acts. For instance, members of a labor union during a strike who wear black arm bands maybe interpreted, under the law, as "engaging in acts intended to cause death or serious bodily injury" to their employer because the color black is usually associated with death or intent to cause harm, and thus, the law gives police operatives leeway to arrest them for terrorism.

Fourth. The Anti-Terrorism Act is more than just a penal stature; it is a restraint on political rights. By putting the protected speeches as exceptions to punishable acts under Section 4, the Anti-Terrorism Act of 2020 not only criminalizes certain criminal conduct but also provides implicit restrictions to the exercise of the whole range of protected fundamental rights under the Constitution. This makes the law more than a penal statute.

Petitioners submit that the Anti-Terrorism Act of 2020 is an attempt to put restraints on the exercise of political rights, more especially the freedom of speech, expression, and of the press under Section 4 of the Constitution. It makes these constitutional rights as exceptions rather than the general rule in the government campaigns against criminality and terrorism.

Moreover, the law violates the principle of legality of criminal law, which requires not only that a crime and its penalty should be provided by law before anybody may be prosecuted and held liable therewith (*nullum crimen nulla poena sine lege*), but also that penal provisions must be specific, certain, and not unduly vague to the end that it may not be extensively interpreted to the prejudice of those who may come across it.

In the language of Prof. Jerome Hall:

> "*Nulla poena sine lege* has several meanings. In a narrower connotation of that specific formula, it concerns the treatment-consequence element of penal laws: no person shall be punished except in pursuance of a statute which fixes a penalty for criminal behavior. Employed as *nullum crimen sine*

> *lege*, the prohibition is that no conduct shall be held criminal unless it is specifically described in the behavior circumstance element of a penal statute."[20]

The principle of legality would require that the penal provisions of the Anti-Terrorism Act of 2020 be tested not only by the express Constitutional limitations on penal legislations but also by the standards of protection for fundamental rights. Specifically, the provision of Section 4, paragraphs (a) and (b) of the Anti-Terrorism Act of 2020 should be tested whether it is not unduly broad and thus, within the specificity requirement of the principle of legality of Criminal Law.

In any case, petitioners submit that the Constitution does not allow any statute, penal or otherwise, which applies broadly to the detriment of the legitimate rights of the people. Petitioners further submit that despite the exigencies of the times, this Honorable Court will always be the guardian of the fundamental rights of the people.

(B)

SECTIONS 25, 26, AND 27 OF THE ANTI-TERRORISM ACT OF 2020, IN PROVIDING FOR THE DESIGNATION OF TERRORIST INDIVIDUALS, GROUPS OF PERSONS, ORGANIZATIONS, AND ASSOCIATIONS, AND DECLARING AND PROSCRIBING THEM AS SUCH, VIOLATE THE CONSTITUTION.

The provisions on designation of terrorist individuals, group of persons, organizations or associations, and their proscription under Sections 25, 26, and 27 of the Anti-Terrorism Act of 2020 are likewise void for vagueness and for being overbroad; in addition to the provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Anti-Terrorism Act of 2020 which are void for being vague and overbroad, as previously discussed at length.

Since the aforementioned provisions serve as the basis for the ATC to designate individuals, groups of individuals, organizations, or

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20 Jerome Hall, *Nulla Poena Sine Lege*, 47 YALE LAW JOURNAL. 2 (1937).

associations as terrorists under Section 25, and for them to be declared and proscribed as such under Sections 26 and 27, then the said provisions must likewise necessarily be declared unconstitutional for vagueness and overbreadth:

> "Sec. 25. *Designation of Terrorist Individual, Groups of Persons, Organization or Associations.* – Pursuant to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, group of persons, organizations, or associations designated and/or identified as terrorist, one who finances terrorism, or a terrorist organization or group.
>
> Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373.
>
> **The ATC may designate an individual, groups of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, groups of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act.**
>
> **The assets of the designated individual, groups of persons, organization or association abovementioned shall be subject to the authority of the Anti-Money Laundering Council (AMLC) to freeze pursuant to Section 11 of Republic Act No. 10168.**
>
> **The designation shall be without prejudice to the proscription of terrorist**

organizations, associations or groups of persons under Section 26 of this Act.

Sec. 26. *Proscription of Terrorist Organizations, Association, or Group of Persons.* – **Any group of persons, organization, or association, which commits any of the acts penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, or organized for the purpose of engaging in terrorism** shall, upon application of the DOJ before the authorizing division of the Court of Appeals with due notice and opportunity to be heard given to the group of persons, organization or association, **be declared a terrorist and outlawed group of persons, organization or association,** by the said Court.

The application shall be filed with an urgent prayer for the issuance of a preliminary order of proscription. No application for proscription shall be filed without the authority of the ATC upon recommendation of the National Intelligence Coordinating Agency (NICA).

Sec. 27. *Preliminary Order of Proscription.* – Where the Court has determined that probable cause exists on the basis of the verified application which is sufficient in form and substance, that the issuance of an order of proscription is necessary to prevent the commission of terrorism, he/she shall, within seventy-two (72) hours from the filing of the application, issue a preliminary order of proscription declaring that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26 of this Act.

The Court shall immediately commence and conduct continuous hearings, which should be completed within six (6) months from the time the application has been filed, to determine whether:

(a) The preliminary order of proscription should be made permanent;

(b) A permanent order of proscription should be issued in case no preliminary order was issued; or

(c) A preliminary order of proscription should be lifted.

It shall be the burden of the applicant to prove that the respondent is a terrorist and an outlawed organization or association within the meaning of Section 26 of this Act before the court issues an order of proscription whether preliminary or permanent.

The permanent order of proscription herein granted shall be published in a newspaper of general circulation. It shall be valid for a period of three (3) years after which, a review of such order shall be made and if circumstances warrant, the same shall be lifted." (Emphasis and underscoring supplied)

The sole requirement the ATC must meet in order to cast the dreaded designation of terrorist upon an individual, group of persons, organization, or association, whether domestic or foreign, is a finding of mere probable cause. It is unclear from Section 25 what quantum of evidence must be present to meet the standard of probable cause. Is it the probable cause required for the judicial issuance of warrants of arrest or search warrants or is it the probable cause that a prosecutor must establish for the filing of a criminal information before the courts?

Section 25 does not afford the adversely affected person or group any opportunity whatsoever to be represented, heard, or to introduce contravening evidence in his/her/their defense as the ATC makes its finding of probable cause as basis for the terrorist designation.

Furthermore, Section 25 permits a designation of being a terrorist to be made by the ATC upon a finding of probable cause "**of the commission, or attempt to commit, or conspiracy in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12**." If the provision is applied exactly as it is

worded, it will result in the absurd and presumably unintended interpretation that there must be a prior finding of probable cause for each and all of **Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12** before the ATC can designate a terrorist individual or group. On the other hand, if the provision is read to only require probable cause for any one of Sections **4, 5, 6, 7, 8, 9, 10, 11, or 12,** this will likewise result in the absurd situation where there can be a finding of probable cause that one or more of the ancillary acts defined and penalized under Sections 5, 6, 7, 8, 9, 10, 11, or 12 has been or is being committed**, independently from and even without a designation in relation to the principal crime of terrorism under Section 4.**

As previously discussed at length, various acts which may be lawfully done in the exercise of freedom of speech, of expression, of the press, and of assembly, and of association may fall within the ambit of terrorist acts in light of the vague and overbroad definition and coverage of terrorism.

Hence, the ATC's designation as terrorists of persons, group of persons, organizations or associations, upon a mere finding of probable cause under Section 25, and its effect of authorizing a freezing of their assets by the Anti-Money Laundering Council, will not only violate the constitutional guarantees of due process in criminal proceedings and presumption of innocence under Article III, Sections 1 and 14 of the 1987 Constitution, but will have a chilling effect and pose a lethal prior restraint on their exercise of freedom of speech, of expression, of the press, and of assembly under Article III, Section 4 as well as their freedom of association under Article III, Section 8.

Similarly, the declaration and proscription of the said groups of persons, organizations, or associations under Section 26 and 27, which even includes publication of the order of proscription in a newspaper of general circulation, would not only violate the right to privacy under Article III, Section 3, and the freedom of association under Article III, Section 8, but would further compound the chilling effect or prior restraint on their exercise of freedom of speech, of expression, of the press, and of assembly under Article III, Section 4 of the 1987 Constitution.

Certainly, the threat of being designated, declared, and proscribed as a terrorist, terrorist group, organization, or association — coupled with the very real effects of freezing of assets and widespread publication — would cow even the staunchest critics of any administration.

To aggravate matters, the Anti-Terrorism Act is entirely devoid of any remedy or relief available to the person or group wrongfully designated by the ATC as a terrorist under Section 25.

Clearly, therefore, Sections 25, 26, and 27 of the Anti-Terrorism Act should be declared unconstitutional for their chilling effect on the freedom of expression and other allied rights. They are void for being vague and overly broad, as explained by Justice Mendoza in his concurring opinion in *Estrada v. Sandiganbayan*:

> "The void-for-vagueness doctrine states that 'a statute which either forbids or requires the doing of an action terms so vague that men of common intelligence must necessarily guess as its meaning and differ as to its application, violates the first essential of due process of law.' The overbreadth doctrine, on the other hand, decrees that 'a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.'"

(C)

SECTION 29 OF THE ANTI-TERRORISM ACT OF 2020, IN PROVIDING FOR THE ARREST WITHOUT A JUDICIAL WARRANT AND DETENTION OF PERSONS SUSPECTED OF COMMITTING TERRORISM OR ANY OF THE ACTS PUNISHABLE UNDER SECTIONS 4, 5, 6, 7, 8, 9, 10, 11, AND 12 THEREOF, VIOLATE THE CONSTITUTION.

SECTION 29 OF THE ANTI-TERRORISM ACT OF 2020, WHICH PROVIDES VARIOUS POWERS, SPECIFICALLY THE POWER TO ARREST AND DETAIN PERSONS SUSPECTED OF COMMITTING ANY OF THE ACTS DEFINED AND PENALIZED UNDER SECTIONS 4 TO 12 OF THE SAID ACT, WITHOUT ANY JUDICIAL WARRANT OF ARREST, IS CLEARLY UNCONSTITUTIONAL. The constitutional infirmity is readily apparent even on the face of Section 29:

> "Sec. 29. Detention Without Judicial Warrant of Arrest. – The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken

custody of a person **suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act**, shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period of ten (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the omission of another terrorism; and (3) the investigation is being conducted properly and without delay.

Immediately after taking custody of a person **suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 thereof**, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.

The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities.

> The penalty of imprisonment of ten (10) years shall be imposed upon the police or law enforcement agent or military personnel who fails to notify any judge as provided in the preceding paragraph." (Emphasis and underscoring supplied)

MERE SUSPICION CANNOT BE THE BASIS OF A WARRANTLESS ARREST. Section 29 attempts to legitimize warrantless arrests on the basis of **mere suspicion** of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Anti-Terrorism Act.

The use of the term "suspected" in relation to committing terroristic acts as the determining factor for the ATC to direct the law enforcement agents of the PNP and the military personnel of the AFP to arrest and detain persons is **VERY CLEAR**. Also, the term "suspected" is used in three distinct provisions of the Anti-Terrorism Act (Sections 29, 30 and 32) which clearly shows that the legislators' use of the word is deliberate and intentional.

Moreover, Section 30 (*Rights of a Person Under Custodial Detention*) refers to a person "charged with or suspected," clearly indicating that there are two situations that are involved in the law. (i) One involves being "charged," which may involve being charged via a criminal information that is based on a finding of probable cause; and (ii) the other involves being merely "suspected" where no probable cause is involved.

In the interpretation of statutes, words shall be used in their ordinary signification unless the law itself provides for another import or meaning. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As Section 29's use of "suspected" is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*.[21]

Significantly, Section 3 of the Anti-Terrorism Act on **DEFINITION** does not even mention the word "suspected" as having any other

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[21] Bolos v. Bolos, G.R. No. 186400, October 20, 2010.

meaning. It is not even mentioned in the said section. Hence it must be understood in its ordinary signification.

The Merriam-Webster Dictionary defines "suspicion" as "the act or an instance of suspecting something wrong **without proof or on slight evidence**" The word "suspected" does not even rise to the level of probable cause; "suspected" can even proceed from mere hearsay evidence.

Worse, as previously discussed at length, the predicate crimes for which a suspect may be arrested and detained, as defined and penalized, under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Anti-Terrorism Act of 2020, are vague and overly broad.

There can be no viable argument that the dismal standard of mere suspicion under Section 29 of the Anti-Terrorism Act falls far short of what the 1987 Constitution and jurisprudence require for valid arrests, whether on the basis of a judicial warrant or under circumstances that would permit a warrantless arrest.[22]

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[22] Section 5 of Rule 113 of the 2000 Rules of Criminal Procedure provides that an arrest without a judicial warrant is lawful when;

(a) When, in the arresting person's presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has **probable cause** to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

Rule 112, Section 7. *When accused lawfully arrested without warrant*. — When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace office directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule. (7a; sec. 2, R.A. No. 7438)

In *Pestillos v. Generos*, G.R. No. 18260, November 10, 2014, this Honorable Court traced the development of jurisprudence and the Rules of Court provisions on lawful warrantless arrests, which definitively moved away from recognizing the arresting officer's reasonable suspicion as a gauge for a lawful warrantless arrest to presently requiring that **the warrantless arrest should be based on probable cause to be determined by the arresting officer based on his personal knowledge of facts and circumstances that the person to be arrested has committed a criminal offense**. The Court found that leaving the warrantless arrest up to the arresting person's reasonable suspicion **left so much discretion and leeway on the part of the arresting officer.** Significantly, this Honorable Court held:

> "It is clear that the present rules have "objectified" the previously subjective determination of the arresting officer as to the (1) commission of the crime; and (2) whether the person sought to be arrested committed the crime. **According to Feria, these changes were adopted to minimize arrests based on mere suspicion or hearsay** *(emphasis supplied*)**.**
>
> As presently worded, the elements under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure are: first, an offense has just been committed; and second, the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.
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> x x x
>
> The existence of "probable cause" is now the "objectifier" or the determinant on how the arresting officer shall proceed on the facts and circumstances, within his personal knowledge, for purposes of determining whether the person to be arrested has committed the crime.
>
> **Accordingly, when you combine the very low and clear threshold of mere SUSPICION and the very vague and overly broad definition and coverage of the offenses, law**

> **enforcers will have a heyday using their own instincts and appreciation of the situation without any parameters to take into custody any person. SIMPLY, arbitrariness and capriciousness will be the order of the day**."

SECTIONS 25 AND 29, TAKEN TOGETHER, ALLOWS THE ATC TO ENCROACH ON AN EXCLUSIVELY JUDICIAL POWER AND PREROGATIVE. Notwithstanding Section 29's quibbling over semantics with the use of the term "detention without a judicial warrant of arrest," such detention is a plain and simple arrest that must meet Constitutional requisites in order to be lawful.

Section 29 of the Anti-Terrorism Act completely disregards and violates Article III, Section 2 of the fundamental law by supplanting the Constitutional requirements before an individual may be arrested and deprived of liberty, namely a judicially issued warrant of arrest and the stringent requisites for a lawful warrantless arrest. It altogether does away with the judicial warrant requirement and instead empowers the ATC, a body composed solely by members of the Executive Department, to authorize in writing warrantless arrests under the Act.

While Section 45 explicitly states that "Nothing herein shall be interpreted to empower the ATC to exercise any judicial or quasi-judicial power or authority," Section 29 of the Anti-Terrorism Act, taken with Section 25, grants the ATC the power which our Constitution reserves exclusively for the judiciary to order the arrests of persons for purported violations of the Act. The written authorization issued by the ATC replaces, for all intents and purposes, the judicial warrant required for a valid arrest under Article III, Section 2 of the 1987 Constitution.

In *Disini,* this Honorable Court struck down Section 19 (*Restricting or Blocking Access to Computer Data*) of the Cybercrime Prevention Act of 2012, which empowered the DOJ to issue an order to restrict or block access to computer data upon a *prima facie* finding that such computer data is in violation of the Cybercrime Law. This Honorable Court ruled that: (i) computer data may constitute personal property and is accordingly protected from unreasonable searches and seizures under Article III, Section 2 of the 1987 Constitution; (ii) the Government, in effect, seizes and places the computer data under its control and disposition without a judicial warrant; and (iii) the DOJ's order cannot substitute a judicial search warrant.

When coupled with Section 25 of the Anti-Terrorism Act of 2020, the due process violations are clear. We invite this Honorable Court's

attention to the grant upon the ATC of the power to unilaterally designate individuals as terrorists on mere suspicion:

> "Sec. 25. *Designation of Terrorist Individual, Groups of Persons, Organization or Associations.* – Pursuant to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, group of persons, organizations, or associations designated and/or identified as terrorist, one who finances terrorism, or a terrorist organization or group.
>
> Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373.
>
> **The ATC may designate an individual, groups of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, groups of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act.**
>
> **The assets of the designated individual, groups of persons, organization or association above-mentioned shall be subject to the authority of the Anti-Money Laundering Council (AMLC) to freeze pursuant to Section 11 of Republic Act No. 10168.**
>
> **The designation shall be without prejudice to the proscription of terrorist organizations, associations or groups of persons under Section 26 of this Act**."

Putting Sections 25 and 29 together, before the ATC can designate a person or organization as engaged in terrorism and order the arrest without a judicial warrant of that person and members of the organization, there must be strict observance of due process.

In the context of our legal firmament, before the ATC can designate a person or organization as engaged in terrorism and order the arrest without a judicial warrant of that person and members of the organization, there must be some strict observance of due process. At the bare minimum, due process demands that the ATC first conduct a hearing where the suspected individuals or organization can properly and adequately defend themselves against the allegations that they are violating the Anti-Terrorism Act; the consequences of the deprivation of liberty are too great to ignore.

These requirements cannot be met with the provisions of the Anti-Terrorism Act of 2020 as they stand; the designation as terrorists of persons, group of persons, organizations or associations under Section 25 is set on the basis of suspicion – a threshold so low that any other proceeding in our legal firmament warrants a dismissal of any charges levied against the person under investigation in any other circumstance.[23] Furthermore, the Act does not prescribe any hearing or any sort of procedure before the ATC can make the designation under Section 25 and then order the arrest and detention without judicial warrant under Section 29.

In addition, Section 25 does not require the ATC to notify the designated person or group that he/she/they have been designated as engaged in terrorist acts or to publish such designation. As such, how will other persons be apprised of the very real dangers of being similarly designated as a terrorist and of being ordered detained without a judicial warrant by simply associating with an individual or group or upon mere suspicion of a violation of Section 10?

The evils of the vagueness then become apparent in due process terms: one, on the basis of mere suspicion, may now be deprived of liberty for a substantial period of time and also be deprived of property with nary a chance to speedily contest the same. As a result, the ATC is given *carte blanche* authority to encroach on a judicial prerogative: (a) the ATC has power to craft the basis for designation and determination of suspicion; (b) the ATC has the power to make a

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[23] Salonga v. Paño, G.R. No. 59524, February 18, 1985; 1964 RULES ON EVIDENCE, rule 133, § 5; 1964 RULES ON EVIDENCE, rule 130, § 39.

determination on the basis solely of the criteria it alone sets; and (c) the ATC has the power to call out law enforcement in order to implement its wishes, untrammeled by any check upon its power.

Consequently, the arrest without a judicial warrant and detention of persons merely suspected of committing terroristic acts as so amorphously defined by the Anti-Terrorism Act not only violate the guarantees under Article III, Section 2 of the 1987 Constitution, but necessarily encroach on the rights of the "suspect" to due process under Article III, Sections 1 and 12, as well as his exercise of freedom of speech, of expression, of the press, and of assembly under Article III, Section 4 of the 1987 Constitution. For facility of reference, Article III, Section 2 reads:

> "Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

Sections 25 and 29 are therefore void for violating the Constitution's due process requirements prior to the designation of an individual or organization as engaged in terrorism and the resulting deprivation of liberty.

THE PERIOD OF DETENTION WITHOUT JUDICIAL PROCESS UNDER SECTION 29 IS UNCONSTITUTIONAL. Section 25 does away with the protection afforded to persons arrested without warrant by both the Constitution and Article 125 of the Revised Penal Code. It allows the arresting officers to, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period of ten calendar days under the enumerated circumstances.

This runs counter to Article VIII, Section 18 of the 1987 Constitution. Even when the President has resorted to the extraordinary measure of suspending the privilege of the writ of habeas corpus, in cases of actual (and not merely suspected) invasion or rebellion, Article VIII, Section 18 requires that any person arrested or detained for rebellion or offenses inherent in or directly connected with the invasion **shall be judicially charged within three days,** otherwise he shall be released (*emphasis supplied*).

Section 29 simply cannot survive judicial scrutiny because it allows the arresting officers to unlawfully detain a person arrested on the basis of mere suspicion without having to present him to a court of law for a period that is 21 days longer than what is permitted under the 1987 Constitution during a period of a declared invasion or rebellion when the privilege of the writ is suspended.

Certainly, the threat of arrest without a judicial warrant and prolonged detention would be more than chilling enough to stifle, suppress, if not totally snuff out, any fire, flame, or even flicker, of indignation or protest against government corruption, oppression, and abuse.

There is no prohibition under the Anti-Terrorism Act for the ATC to order the re-arrest of the same individual for the same offense of which he is merely suspected. So long as that person is released within the period stated in Section 29, the ATC can repeatedly order his or her arrest and detention for the same offenses.

It must also be noted that the Anti-Terrorism Act of 2020 has obliterated all the safeguards and the objective standards that served as basis for warrantless arrest under the Human Security Act of 2007:

1. Warrantless arrest based on of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of the Human Security Act.

2. The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night

The real danger of arrest and prolonged detention pursuant to Section 29 effectuates a prior restraint against expression and speech

and prevents the exercise of such freedoms while a person is in detention.

This Honorable Court's ruling in *Disini* declaring Section 19 of the Cybercrime Law as being violative of the constitutional guarantees to freedom of expression and against unreasonable searches and seizures applies equally to the unconstitutional power granted to the ATC to order the arrests of persons merely suspected of any of the offenses penalized by the Anti-Terrorism Act:

> "The content of the computer data can also constitute speech. In such a case, Section 19 operates as a restriction on the freedom of expression over cyberspace. Certainly not all forms of speech are protected. Legislature may, within constitutional bounds, declare certain kinds of expression as illegal. But for an executive officer to seize content alleged to be unprotected without any judicial warrant, it is not enough for him to be of the opinion that such content violates some law, for to do so would make him judge, jury, and executioner all rolled into one.
>
> Not only does Section 19 preclude any judicial intervention, but it also disregards jurisprudential guidelines established to determine the validity of restrictions on speech. Restraints on free speech are generally evaluated on one of or a combination of three tests: the dangerous tendency doctrine, the balancing of interest test, and the clear and present danger rule. Section 19, however, merely requires that the data to be blocked be found prima facie in violation of any provision of the cybercrime law. Taking Section 6 into consideration, this can actually be made to apply in relation to any penal provision. It does not take into consideration any of the three tests mentioned above." (Citations omitted)

Equally reprehensible is the fact that there is no criminal penalty or accountability for the ATC for wrongful and/or malicious designation under Section 25 and wrongful authorization of detention without judicial warrant under Section 29.

SUMMARY OF THE CHILLING EFFECTS OF THE ACT ON THE FREE AND LAWFUL EXERCISE OF CONSTITUTIONALLY PROTECTED RIGHTS AND FREEDOMS. It is opportune and appropriate to cite two landmark decisions of this Honorable Court in support of this petition for prohibition and certiorari to invalidate certain provisions of the Anti-Terrorism Act. This Honorable Court has previously invalidated provisions of statutes and other governmental acts which posed much less insidious prior restraints on expression, speech, and attendant rights than the unconstitutional provisions of the Anti-Terrorism Act.

In *Disini,* this Honorable Court, speaking through Justice Abad, ruled:

> "Unless the legislature crafts a cyber libel law that takes into account its unique circumstances and culture, such law will tend to create a chilling effect on the millions that use this new medium of communication in violation of their constitutionally-guaranteed right to freedom of expression.
>
> The United States Supreme Court faced the same issue in *Reno v. American Civil Liberties Union*, a case involving the constitutionality of the Communications Decency Act of 1996. The law prohibited (1) the knowing transmission, by means of a telecommunications device, of 'obscene or indecent' communications to any recipient under 18 years of age; and (2) the knowing use of an interactive computer service to send to a specific person or persons under 18 years of age or to display in a manner available to a person under 18 years of age communications that, in context, depict or describe, in terms "patently offensive" as measured by contemporary community standards, sexual or excretory activities or organs.
>
> Those who challenged the Act claim that the law violated the First Amendment's guarantee of freedom of speech for being overbroad. The U.S. Supreme Court agreed and ruled:

> ‘The vagueness of the Communications Decency Act of 1996 (CDA), 47 U.S.C.S. §223, is a matter of special concern for two reasons. First, the CDA is a content-based regulation of speech. The vagueness of such a regulation raises special U.S. Constitution First Amendment concerns because of its obvious chilling effect on free speech. Second, the CDA is a criminal statute. In addition to the opprobrium and stigma of a criminal conviction, the CDA threatens violators with penalties including up to two years in prison for each act of violation. The severity of criminal sanctions may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images. As a practical matter, this increased deterrent effect, coupled with the risk of discriminatory enforcement of vague regulations, poses greater U.S. Constitution First Amendment concerns than those implicated by certain civil regulations.’

x x x

The Communications Decency Act of 1996 (CDA), 47 U.S.C.S. § 223, presents a great threat of censoring speech that, in fact, falls outside the statute's scope. Given the vague contours of the coverage of the statute, it unquestionably silences some speakers whose messages would be entitled to constitutional protection. That danger provides further reason for insisting that the statute not be overly broad. The CDA’s burden on protected speech cannot be justified if it could be avoided by a more carefully drafted statute.

x x x

> [A] governmental purpose, which seeks to regulate the use of this cyberspace communication technology to protect a person's reputation and peace of mind, cannot adopt means that will unnecessarily and broadly sweep, invading the area of protected freedoms.
>
> If such means are adopted, self-inhibition borne of fear of what sinister predicaments await internet users will suppress otherwise robust discussion of public issues. Democracy will be threatened and with it, all liberties. Penal laws should provide reasonably clear guidelines for law enforcement officials and triers of facts to prevent arbitrary and discriminatory enforcement. The terms "aiding or abetting" constitute broad sweep that generates chilling effect on those who express themselves through cyberspace posts, comments, and other messages. Hence, Section 5 of the cybercrime law that punishes "aiding or abetting" libel on the cyberspace is a nullity.
>
> Section 5 with respect to Section 4(c)(4) is unconstitutional. Its vagueness raises apprehension on the part of internet users because of its obvious chilling effect on the freedom of expression, especially since the crime of aiding or abetting ensnares all the actors in the cyberspace front in a fuzzy way. x x x"

In *Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008, the former Solicitor General questioned the constitutionality of: (i) respondent DOJ Secretary's public warning to reporters about the illegality of the possession, broadcasting, or publication of the contents of the so-called "Hello, Garci" compact discs (CD) as a continuing offense that is subject to warrantless arrest and his order to the National Bureau of Investigation to go after media *organizations "found to have caused the spread, the playing and the printing of the contents of a tape"* of an alleged wiretapped conversation involving the President about fixing votes in the 2004 national elections; and (ii) the

National Telecommunications Commission's ("NTC") press release warning radio and television owners and operators that broadcasting the contents of such CDs and tapes which contain illegally wiretapped conversations places their respective Certificate of Authority at risk of suspension, cancellation, or revocation. This Honorable Court then ruled:

> "x x x [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. Only when the challenged act has overcome the clear and present danger rule will it pass constitutional muster, with the government having the burden of overcoming the presumed unconstitutionality.
>
> Unless the government can overthrow this presumption, the content-based restraint will be struck down.
>
> With respect to content-based restrictions, the government must also show the type of harm the speech sought to be restrained would bring about — especially the gravity and the imminence of the threatened harm — otherwise the prior restraint will be invalid. Prior restraint on speech based on its content cannot be justified by hypothetical fears, "but only by showing a substantive and imminent evil that has taken the life of a reality already on ground." As formulated, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.
>
> The regulation which restricts the speech content must also serve an important or substantial government interest, which is unrelated to the suppression of free expression.

Also, the incidental restriction on speech must be no greater than what is essential to the furtherance of that interest. A restriction that is so broad that it encompasses more than what is required to satisfy the governmental interest will be invalidated. The regulation, therefore, must be reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken.

x x x

We rule that not every violation of a law will justify straitjacketing the exercise of freedom of speech and of the press. Our laws are of different kinds and doubtless, some of them provide norms of conduct which even if violated have only an adverse effect on a person's private comfort but does not endanger national security. There are laws of great significance but their violation, by itself and without more, cannot support suppression of free speech and free press. In fine, violation of law is just a factor, a vital one to be sure, which should be weighed in adjudging whether to restrain freedom of speech and of the press. The totality of the injurious effects of the violation to private and public interest must be calibrated in light of the preferred status accorded by the Constitution and by related international covenants protecting freedom of speech and of the press. In calling for a careful and calibrated measurement of the circumference of all these factors to determine compliance with the clear and present danger test, the Court should not be misinterpreted as devaluing violations of law. By all means, violations of law should be vigorously prosecuted by the State for they breed their own evil consequence. But to repeat, the need to prevent their violation cannot per se trump the exercise of free speech and free press, a preferred right whose breach can lead to greater evils. For this failure of the respondents alone to offer proof to satisfy the clear and

present danger test, the Court has no option but to uphold the exercise of free speech and free press. There is no showing that the feared violation of the anti-wiretapping law clearly endangers the national security of the State.

x x x

There is enough evidence of the chilling effect of the complained acts on record. The warnings given to media came from no less than the NTC, a regulatory agency that can cancel the Certificate of Authority of the radio and broadcast media. They also came from the Secretary of Justice, the alter ego of the Executive, who wields the awesome power to prosecute those perceived to be violating the laws of the land. After the warnings, the KBP inexplicably joined the NTC in issuing an ambivalent Joint Press Statement. After the warnings, petitioner Chavez was left alone to fight this battle for freedom of speech and of the press. This silence on the sidelines on the part of some media practitioners is too deafening to be the subject of misinterpretation.

The constitutional imperative for us to strike down unconstitutional acts should always be exercised with care and in light of the distinct facts of each case. For there are no hard and fast rules when it comes to slippery constitutional questions, and the limits and construct of relative freedoms are never set in stone. Issues revolving on their construct must be decided on a case to case basis, always based on the peculiar shapes and shadows of each case. But in cases where the challenged acts are patent invasions of a constitutionally protected right, we should be swift in striking them down as nullities per se. A blow too soon struck for freedom is preferred than a blow too late."

Applying this settled jurisprudence to the provisions of the Anti-Terrorism Act, it is clear that the infirmities arise from:

1. The extremely vague and overbroad definitions of the offenses under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 ;

2. The ATC's power to make an *ex-parte* designation of a terrorist individual, group, or organization (Section 25) and the proscription of organizations (Sections 26 and 27);

3. The power to make an arrest without a judicial warrant on the basis of mere suspicion and prolonged and repeated detention of up to 24 days *sans* any judicial charge (Section 29), a period that is nearly as long as the maximum period of *arresto menor*, a deprivation of liberty that can only be imposed upon a judgement based on a finding of guilt without reasonable doubt, coupled with:

   (i) the threat of up to 90 days of surveillance and interception and recording of communications (Section 16);

   (ii) restrictions on the right to travel and/or house arrest without access to telephones, cellphones, emails, computer, the internet or other means of communication with people outside the residence without any provision for contact with legal counsel (Section 34);

   (iii) an *ex parte* freezing by the Anti-Money Laundering Council of property and/or funds for up to six months (Section 35), individually and collectively increasing and aggravating the insurmountable chilling and silencing effect on the freedom of expression and its cognates.

This Honorable Court should also take into account how the increase in imposable penalty for terrorism to life imprisonment with no possibility of parole and without the benefit of Republic Act No. 10592 indirectly but inexorably results in chilling the lawful exercise by the people of their right to free speech and expression. Even worse, Section 4 of the Anti-Terrorism Act criminalizes even the "attempted" stage or the so called inchoate offense and "frustrated" stage, with the increased penalty of life imprisonment imposable on any act of terrorism as cryptically defined in Section 4, **regardless of the stage**

of execution. The massive and pervasive "chilling effect" of the prospect of life imprisonment for a mere "attempt" to commit so-called terrorism, a stage of execution which will only require proof of much lesser acts than that of a consummated act of terrorism, cannot be sufficiently underscored.

WE MOST RESPECTFULLY REITERATE THAT THE ANTI-TERRORISM ACT OF 2020 HAS AN EXCESSIVELY BROAD, VAGUE, AND ABSTRACT DEFINITION OF TERRORISM AND THAT ITS ANCILLARY OR SECONDARY OFFENSES WILL GIVE THE ATC AND THE LAW ENFORCERS TOO WIDE A LATITUDE IN DETERMINING WHICH ACTS ARE PUNISHABLE UNDER ITS PROVISIONS. The challenged provisions provide no judicially ascertainable standards.

As so aptly stated by Justice Leonen in his Dissenting and Concurring Opinions in *Disini*:

> "The approach will allow subjective case-by-case ad hoc determination. There will be no real notice to the speaker or writer. **The speaker or writer will calibrate speech not on the basis of what the law provides but on who enforces it.** (*Emphasis supplied*).
>
> x x x
>
> The statute does not care to make use of labels of standards replete in our jurisprudence. It foists upon the public a standard that will only be defined by those who will execute the law. It therefore amounts to a *carte blanche* and roving authority whose limits are not statutorily limited. Affecting as it does our fundamental rights to expression, it therefore is clearly unconstitutional."

In light of all the foregoing, the assailed provisions of the Anti-Terrorism Act of 2020 should be declared unconstitutional and nullified and the respondents permanently prohibited and enjoined from taking any further action thereon.

(D)

THE FOREGOING DISCUSSION CLEARLY SHOWS THAT THE ANTI-TERORISM ACT WILL HAVE A DESTRUCTIVE CHILLING EFFECT ON ACADEMIC FREEDOM OF INSTITUTIONS OF HIGHER LEARNING, TEACHERS, AND STUDENTS.

Section 5(2), Article XIV of the 1987 Constitution clearly provides: "Academic freedom shall be enjoyed in all institutions of higher learning."

Thus, at the outset for this argument, it must be stated that ANY threat to academic freedom alone that the entire Anti-Terrorism Act poses should, in and of itself, be more than sufficient to declare the law as unconstitutional, particularly:

1) Section 4 on the definition and enumeration of the acts constituting Terrorism;
2) Section 5 on the Threat to Commit Terrorism;
3) Section 6 on the Planning, Training, Preparing, and Facilitating the Commission of Terrorism;
4) Section 6 on the Conspiracy to Commit Terrorism;
5) Section 8 on the Proposal to Commit Terrorism; and
6) Section 9 on Inciting to Commit Terrorism.

THE EXERCISE OF ACADEMIC FREEDOM MUST BE TOTALLY AND ABSOLUTELY FREE FROM ANY THREAT, PRESSURE, RISK, OR DANGER, SO MUCH SO THAT THE EXISTENCE OF ANY STATE OR GOVERNMENT ACT OR LAW THAT CAN ADVERSELY IMPACT AND NEGATIVELY AFFECT, DIMINISH, OR UNDERMINE ACADEMIC FREEDOM MUST IMMEDIATELY BE STRUCK DOWN AS BEING UNCONSTITUTIONAL. Thus, any of the foregoing sections of the Anti-Terrorism Act, either taken singly or in combination with another, imposes real, clear, and imaginable pressure, threat, restriction, and danger to the academic freedom of educational institutions and institutions of higher learning, teachers and faculty members, and students.

While the Anti-Terrorism Act can be related to the State's interest in fighting terrorism, the definition of terrorism, together with the different acts and modes by which terrorism may be committed, and the proscribed purposes for such acts, should be **clear, categorical and should not encroach** upon Constitutional rights, liberties, and freedoms, including academic freedom.

Because of the Anti-Terrorism Act, teachers and students are now in real and clear danger of being designated as terrorists, or be suspected as one, and consequently be taken into custody and prosecuted as terrorists or any of the terrorism related acts under it.

Government interference not merely through fiat but via outright warrantless apprehensions will always be a threat. The university as a "market place of ideas" will be unduly stifled. The Anti-Terrorism Act of 2020 now serves as a "sword of Damocles" over learning institutions, professors, lecturers, and students. **Free, unrestricted, robust, and even caustic discussions on anything that might antagonize the government can and will be negated by self-restraint and self-censorship for fear of being labelled as "terrorists" which may entail immediate and extended incarceration.**

THE ANTI-TERRORISM ACT UNDULY INTERFERES AND RESTRICTS ACADEMIC INSTITUTIONS AND FACULTY MEMBERS FROM FREELY DETERMINING AND STATING WHAT TO TEACH AND HOW TO TEACH. In *Pimentel v. Legal Education Board*,[24] this Honorable Court noted as follows:

> "In fact, academic freedom is not a novel concept. This can be traced to the freedom of intellectual inquiry championed by Socrates, lost and replaced by thought control during the time of Inquisition, until the movement back to intellectual liberty beginning the 16th century, most particularly flourishing in German universities."

It would be interesting to note that the "Inquisition" is historically known as the time when the Catholic Church instituted offices and courts to root out, combat, and punish heresy, which resulted to the persecution and prosecution of free thoughts and ideas that were considered as contrary to orthodox beliefs. This period of "Inquisition" was largely viewed by experts and scholars as suppression of academic freedom. One famous example was Galileo, who was formally declared a "heretic" for his heliocentric belief that the Earth revolved around the sun.

Thus, in the context now of the Anti-Terrorism Act of 2020 and its fatal defects of vagueness and overbreadth, with the ATC and its vast powers to combat terrorism, it will inevitably result to the persecution and prosecution of free thoughts and ideas, including academic teachings and learnings, on constitutional rights, freedoms,

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[24] GR No. 230642, 10 September 2019 citing Ateneo de Manila University v. Judge Capulong, 294 Phil. 654, 672 (1993).

and democracy as being indispensable components of the exercise of sovereignty, just like the peaceful EDSA People Power revolution, since they can now be arbitrarily and unreasonably interpreted and defined as "terrorism" or at least expose those espousing, declaring, and publishing such ideas to the risk of being suspected to be a terrorist, especially if it is seen and considered by the Act's enforcers as posing a "risk to public safety" or spreading a message of fear under Section 4 of the Anti-Terrorism Act. These can lead to other acts and modes of committing terrorism. By way of illustrations and examples:

1) "This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or exercise their revolutionary right to overthrow it." That quote is from Abraham Lincoln, one of the greatest United States presidents. What if a professor assigned the students to analyze that statement and the ATC and the police, on mere suspicion pursuant to Section 29, apprehend the professor because, according to them, such assignment referring to the revolution is a form of "inciting to terrorism"?

2) "A revolution, woven in the dim light of mystery, has kept me from you. Another revolution will return me to your arms, bring me back to life." This is one of the memorable quotes in "EL Filibusterismo" written by Jose Rizal. What if a theatrical play created, written, produced, and directed by students were shown revolving around that statement? Is it possible that those in the ATC and the police, again on mere suspicion, treat this as a "proposal to commit terrorism" and therefore apprehend the students, producers, directors, and writers of the show? This is distinctly possible considering that merely being "suspected of committing" a crime under the proposed Anti-Terrorism Act of 2020 can be the basis of an arrest without a judicial warrant.

3) What if moral theology or philosophy professors discuss St. Thomas Aquinas' *"bellum iustum"* dealing with the justification for war. Can the ATC authorize law enforcement agents to arrest the professors on suspicion that *"bellum iustum"* is a pretext for "proposing" terrorism or "inciting" their students to commit terrorism? Again, Section 29 making the threshold for an arrest based merely on suspicion could allow that apprehension.

4) What if law or political science professors engage their students to research, debate, defend, or debunk the propriety or the pros and cons of socialism, Marxism, or even liberation theology where inevitably the concept of "armed struggle" will be part of the discussions and then the ATC, not experts in these topics, suspects these as an indoctrination to a terroristic ideology? Will this be enough to take into custody the professors and the students for "inciting to terrorism"? Section 29 provides that, with the written authority of the ATC, any law enforcement agent or military personnel can take into custody those "suspected of committing" crimes punished under the proposed law.

5) As law professors also, for example, they are now effectively prevented from teaching students how to interpret and apply Constitutional rights and freedoms as applied against the Anti-Terrorism Act of 2020, lest they be suspected of, and incarcerated for, committing terroristic acts or be suspected of proposing, inciting, or threatening to commit terrorism.

Otherwise stated, academic institutions should be able to teach democratic and peaceful revolutions as being among the recognized exercises of sovereignty, and any law that undermines that teaching is a violation of academic freedom. Academic institutions should likewise be able to teach that dissent and activism are part of democracy in a manner that would show nationalistic fire and fervor for one's country. With the Anti-Terrorism Act of 2020, these can now be interpreted by the government as constituting terrorism.

Because of the threat of being designated as a terrorist or suspected as one, the law prevents teachers from giving valuable and valid lessons about revolutions as an exercise of democracy. The law prevents students from learning about democratic revolutions and exercises of sovereignty. The law prevents teachers from teaching with burning nationalistic fervor what has always kept the government and its administrations in check and on its toes. How can academic institutions and teachers now fulfill their mandate with the threat of being defined and/or or suspected as a terrorist hanging over all their heads? How can both the teachers and students manifest their dissenting voices now in the exercise of that academic freedom?

Moreover, in the exercise of their academic freedom on what to teach and how to teach, the academic institutions and faculty members and staff should be left with the freedom and discretion to determine

for themselves how to communicate to the students the value of democracy and how it should be protected.

At all times, it is understood that the school's exercise of such academic discretion should never be subjected to any abusive, arbitrary, whimsical, or discriminatory regulation through any law that seeks to punish or threatens to punish dissent as a form of terrorism and consequently poses a real and pervasive infringement on and danger to academic freedom on the basis of the continuing threat that each teacher and student may be defined and treated as a terrorist.

Clearly, therefore, the Anti-Terrorism Act of 2020 violates academic freedom because it suppresses not only what academic institutions should teach by implying what it should not teach, but also interferes how academic institutions should teach by implying that it should be in a manner that is not contrary to the interpretation of the ATC and the government.

THE INCLUSION OF CHED AND DEPED IN THE ANTI-TERRORISM COUNCIL CONSTITUTES A CLEAR THREAT TO ACADEMIC INSTITUTIONS. Section 45 (3) of the Anti-Terrorism Act mandates that the Anti-Terrorism Council (ATC) shall have the Commission on Higher Education (CHED) and the Department of Education (DepEd) as two of its support groups. This begs the question: Why are these two departments included? This highlights even more the real threat that the government is now dangling over academic institutions, faculty members, and students.

Can the ATC require the CHED or the Department of Education to formulate a curriculum prohibiting, tempering or limiting the study of ideologies or advocacies which it suspects as “creating a serious risk to public safety” and therefore “endangers a person’s life” pursuant to Section 4 (a) of the proposed Anti-Terrorism Law? Indeed, the grant of vast powers can easily be abused and misused — powers which serve as a lure that a despot may find hard to resist.

The inclusion of the CHED and the DepEd as support agencies to the ATC has no rational connection to the implementation of the Anti-Terrorism Act, except to facilitate the power and ability of the Government to dictate upon academic institutions on what it can and cannot teach and how faculty members should conduct their teaching.

Academic freedom has traditionally been associated as a narrow aspect of the broader area of freedom of thought, speech, expression and the press. It has been identified with the individual autonomy of

educators to "investigate, pursue, [and] discuss free from internal and external interference or pressure."[25] Thus, academic freedom of faculty members, professors, researchers, or administrators is defended based on the freedom of speech and press.

Considering that academic freedom is part and parcel of the freedom of speech, faculty members and professors should, in the absence of a real and present danger that the State has a duty to prevent, be totally and absolutely free to publicly express their thoughts and opinions without the threat of any sanction or punishment from the Anti-Terrorism Act.

THE ANTI-TERRORISM ACT IMPOSES STATE REGULATIONS THAT WILL STIFLE ACADEMIC FREEDOM BY THREATENING TO PUNISH THINKING AND CRITICAL EXCHANGES AGAINST THE GOVERNMENT THAT MAY BE CONSIDERED AS TERRORISM. The rule is that institutions of higher learning enjoy ample discretion to decide for itself who may teach; what may be taught, how it shall be taught and who to admit, being part of their academic freedom. The State, in the exercise of its reasonable supervision and regulation over education, can only impose minimum regulations.

This Honorable Court, in *Pimentel v. Legal Education Board*, G.R. No. 230642, 10 September 2019 has held:

> "At its most elementary, the power to supervise and regulate shall not be construed as stifling academic freedom in institutions of higher learning. This must necessarily be so since institutions of higher learning are not mere walls within which to teach; rather, it is a place where research, experiment, critical thinking, and exchanges are secured. Any form of State control, even at its most benign and disguised as regulatory, cannot therefore derogate the academic freedom guaranteed to higher educational institutions. In fact, this non-intrusive relation between the State and higher educational institutions is maintained even when the Constitution itself prescribes certain educational "thrusts" or directions."

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25 Pimentel v. Legal Education Board, GR No. 230642, 10 September 2019.

The Anti-Terrorism Act of 2020 does not only impose regulations, it also unnecessarily and effectively imposes government restrictions through the threat of penal sanctions against academic institutions, faculty members, and students.

THE ANTI-TERRORISM ACT OF 2020 ALSO INFRINGES ON THE ACADEMIC FREEDOM OF STUDENTS. The same constitutional guarantee of academic freedom is enjoyed not only by members of the faculty, but also by the students themselves. This has been affirmed by this Honorable Court in *Ateneo de Manila University v. Judge Capulong,* 222 SCRA 644 (1993):

> "After protracted debate and ringing speeches, the final version which was none too different from the way it was couched in the previous two (2) Constitutions, as found in Article XIV, Section 5(2) states: 'Academic freedom shall be enjoyed in all institutions of higher learning.'"

Notwithstanding that the students themselves enjoy the same academic freedom, they are now under external threat and pressure from expressing, voicing, and demonstrating their objections and displeasure against the government given that any of such acts can be classified as a "threat to public safety."

VI. ALLEGATIONS IN SUPPORT OF APPLICATION FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION

Due to the extreme urgency of the present petition in view of the imminent implementation of: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Anti-Terrorism Act of 2020, and for the meritorious reasons contained in the foregoing allegations, the petitioners are entitled to the reliefs demanded, the whole or part of such relief consists in the immediate issuance of a temporary restraining order to restrain the respondents, or anyone acting under their control or supervision, from commencing and/or continuing in any manner with the implementation of: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Anti-Terrorism Act of 2020, to the grave and irreparable damage and injury of anyone whose constitutionally guaranteed rights to exercise freedom of speech, of expression, of the press, and of assembly shall be restrained or impaired.

After due hearing, petitioners most respectfully pray of this Honorable Court to order the issuance of a writ of preliminary injunction enjoining the respondents, or anyone acting under their control or supervision, from continuing in any manner with the implementation of (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Anti-Terrorism Act of 2020, until this present petition shall have been finally resolved on its merits.

PRAYER

WHEREFORE, it is most respectfully prayed that this Honorable Court give due course to this petition, and:

1. Upon its filing, issue a temporary restraining order to restrain the respondents, and anyone acting under their control or supervision, from commencing and/or continuing in any manner in the implementation of: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Anti-Terrorism Act of 2020, until the application for injunction shall have been heard;

2. Thereafter, the issuance of a writ of preliminary injunction enjoining respondents, and anyone acting under their control or supervision, from continuing in any manner in the implementation of: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Anti-Terrorism Act of 2020, until this present petition shall have been finally resolved; and

3. After hearing the case on its merits, render judgment:

    a. Declaring: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Anti-Terrorism Act of 2020 of the Anti-Terrorism Act of 2020 unconstitutional and void; and

    b. Permanently enjoining and prohibiting respondents from implementing in any manner: (a) Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12; (b) Sections 25, 26, and 27; and (c) Section 29 of the Anti-Terrorism Act of 2020.

Petitioners likewise respectfully pray for such other just and equitable reliefs that this Honorable Court may deem just and equitable under the premises.

Respectfully submitted, July 5, 2020.

Makati City for the City of Manila, Philippines.

Makati City for the City of Manila, 05 July 2020.

MELENCIO S. STA. MARIA
Petitioner and Counsel
Far Eastern University – Institute of Law
6/F Far Eastern University Makati Campus
Sen. Gil Puyat Avenue cor. Malugay St., Makati City
PTR No. 9264586C January 10, 2020 Quezon City
IBP Lifetime Member No. 02689
MCLE Exemption No. VI -000451 (Valid until 14 April 2022)
Roll of Attorneys No. 32298
Email Address: mstamaria2016@gmail.com
Mobile No.: (+63918)9020353

EIRENE JHONE E. AGUILA
Petitioner and Counsel
Far Eastern University – Institute of Law
6/F Far Eastern University Makati Campus
Sen. Gil Puyat Avenue cor. Malugay St., Makati City
IBP Lifetime Member No. 07150, Batangas
PRT No. MKT78121962, 07 January 2020, Makati City
MCLE Compliance No. V-0025014 (Valid until 14 April 2019)
Roll of Attorneys No. 52064
Email Address: eirene.aguila@aguilarances.com
Mobile No.: (+63919)9994578

EUGENE T. KAW
Petitioner and Counsel
Far Eastern University – Institute of Law
6/F Far Eastern University Makati Campus
Sen. Gil Puyat Avenue cor. Malugay St., Makati City
IBP No. 101941, 07 January 2020, Camarines Sur
PRT No. 9414929, 15 January 2020, Quezon City
MCLE Compliance No. VI-0024206 (Valid until 14 April 2022)
Roll of Attorneys No. 52064
Email Address: eugenekaw@yahoo.com
Mobile No.: (+63916)6678979

MICHAEL T. TIU, JR.
Petitioner and Counsel
Far Eastern University – Institute of Law
6/F Far Eastern University Makati Campus
Sen. Gil Puyat Avenue cor. Malugay St., Makati City
IBP No. 120453, 27 February 2020, Makati City
PTR No. 8255168, 02 March 2020, Makati City
MCLE Exemption No. VI – 002838 (Valid until 14 April 2022)
Roll of Attorneys No. 63184
Email address: michaeljr.tiu@gmail.com
Mobile: (+63917)7014007

FRANCIS EUSTON R. ACERO
Petitioner and Counsel
Far Eastern University – Institute of Law
6/F Far Eastern University Makati Campus
Sen. Gil Puyat Avenue cor. Malugay St., Makati City
PTR No. 6587056; February 07, 2020; Pasig City
IBP Lifetime No. 013209; Makati
MCLE Compliance No. VI-0027218 (Valid until 14 April 2022)
Roll of Attorneys No. 55200
Email Address: lawyer@francisacero.com
Mobile No.: (+63917)8712588

PAUL CORNELIUS T. CASTILLO
Petitioner and Counsel
Far Eastern University – Institute of Law
6/F Far Eastern University Makati Campus
Sen. Gil Puyat Avenue cor. Malugay St., Makati City
PTR No. 8122606; January 6, 2020; Makati City
IBP No. 105102; January 6, 2020; Makati
MCLE Compliance No. VI-0005131 (Valid until 14 April 2022)
Roll of Attorneys No. 56838
Email Address: jdpc@jdpclaw.com
Mobile No.: (+63929)4290414

REPUBLIC OF THE PHILIPPINES }**S.S.**
PASIG CITY } **S.S.**

VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

WE, MELENCIO S. STA. MARIA, EIRENE JHONE E. AGUILA, GIDEON V. PEÑA, MICHAEL T. TIU, JR., FRANCIS EUSTON R. ACERO, PAUL CORNELIUS T. CASTILLO, and **EUGENE T. KAW** all of legal age, Filipino, with postal address at Far Eastern University – Institute of Law, 6/F Far Eastern University Makati Campus, Senator Gil Puyat Avenue corner Malugay St., Makati City, after having been duly sworn in accordance with law, do hereby depose, certify, and verify that:

1) We are the Petitioners in the above-captioned petition;
2) We have caused the preparation of the foregoing petition;
3) We know and have read the contents of this pleading, and affirm that: (a) the allegations contained here are true and correct based on our personal knowledge or based on authentic documents; (b) the pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and (c) the factual allegations herein have evidentiary support or if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;
4) We further certify that we have not heretofore commenced any action or filed any claim involving the same issues in any court, tribunal, or quasi-judicial agency, and to the best of our knowledge no such action or claim is pending therein. If we should thereafter learn that the same or similar action or claim has been filed or is pending, we undertake to promptly report the fact within five (5) days therefrom to this Court.
5) We are executing this Verification and Certification against Forum Shopping to attest to the truth of the foregoing facts and to comply with the provisions of Admin. Circular No. 04-94 of the Honorable Supreme Court.

In witness whereof, we have hereunto affixed our signatures this 5th day of July 2020 at Pasig City, Philippines.

MELENCIO S. STA.MARIA

MICHAEL T. TIU, JR.

EIRENE JHONE E. AGUILA

GIDEON V. PEÑA

PAUL CORNELIUS T. CASTILLO

FRANCIS EUSTON R. ACERO

EUGENE T. KAW

SUBSCRIBED AND SWORN TO BEFORE ME this 5th day of July 2020, at Pasig City, affiants exhibiting to me their competent evidence of identity, as follows:

NAME	PASSPORT/ DRIVER'S LICENSE NO.	VALID UNTIL
Melencio S. Sta. Maria	PP No.P7980534A	17 July 2028
Eirene Jhone E. Aguila	DL No. N02-96-314955	5 April 2022
Gideon V. Peña	PP No. 1239436A	14 Dec 2021
Eugene T. Kaw	DL No. N01-04-004277	9 Sept 2023
Michael T. Tiu, Jr.	PP No. 9851456A	6 Dec 2028
Paul Cornelius T. Castillo	DL No.N26-99-037443	30 Oct 2022
Francis Euston R. Acero	DL No.D16-95-121730	5 Feb2023

NOTARY PUBLIC
REGINALD L. FRANCISCO
Appointment No. 198 (2019-2020)
Notary Public for Pasig, Pateros, San Juan
Until 31 December 2020
1606 OMM-Citra, San Miguel Ave Pasig City 1605
Roll No. 69840
PTR No. 7335589 Makati
IBP No. 071098 RSM

Doc. No. 191;
Page No. 41;
Book No. I;
Series of 2020.

COPY FURNISHED:

HON. SALVADOR C. MEDIALDEA
Respondent
Executive Secretary
OFFICE OF THE EXECUTIVE SECRETARY
Malacañang Palace, Manila

HON. MENARDO I. GUEVARRA
Respondent
Secretary
DEPARTMENT OF JUSTICE
Padre Faura Street, Manila
osecmig@gmail.com

ANTI-TERRORISM COUNCIL
Respondent
Office of the Secretariat
NATIONAL INTELLIGENCE COORDINATING AGENCY
V. Luna Road, Quezon City

HERMOGENES C. ESPERON, JR.
Respondent
Adviser and Director General
NATIONAL SECURITY COUNCIL OF THE PHILIPPINES
NICA Compound
East Avenue Road cor. V. Luna
Quezon City
publicaffairs@nsc.gov.ph

HON. FILEMON T. SANTOS, JR.
Respondent
Chief of Staff
ARMED FORCES OF THE PHILIPPINES
AFP Headquarters, Camp Aguinaldo
EDSA, Quezon City
paoafp@gmail.com

HON. ARCHIE FRANCISCO F. GAMBOA
Respondent
Chief
PHILIPPINE NATIONAL POLICE
PNP Headquarters, Camp Crame
EDSA, Quezon City

HON. TEODORO L. LOCSIN, JR.
Respondent
Secretary
DEPARTMENT OF FOREIGN AFFAIRS
11/F DFA Home Office
2330 Roxas Boulevard
Pasay City
osec@dfa.gov.ph
osec.coord@dfa.gov.ph

HON. DELFIN N. LORENZANA
Respondent
Secretary
DEPARTMENT OF NATIONAL DEFENSE
DND Building

Segundo Ave. Camp General Emilio Aguinaldo
Quezon City 1110
publicaffairs.dnd@gmail.com

HON. EDUARDO M. AÑO
Respondent
Secretary
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
DILG-NAPOLCOM Center
EDSA corner Quezon Avenue
West Triangle, Quezon City 1104
emano@dilg.gov.ph

HON. CARLOS G. DOMINGUEZ III
Respondent
Secretary
DEPARTMENT OF FINANCE
DOF Bldg., BSP Complex
Roxas Blvd.
Manila 1004
secfin@dof.gov.ph

HON. GREGORIO B. HONASAN II
Respondent
Secretary
DEPARTMENT OF INFORMATION & COMMUNICATIONS TECHNOLOGY
C.P Garcia Ave., Diliman
Quezon City 1101
gregorio.honasan@dict.gov.ph

ATTY. MEL GEORGIE B. RACELA
Respondent
Executive Director
ANTI-MONEY LAUNDERING COUNCIL SECRETARIAT
5/F EDPC Building
Bangko Sentral ng Pilipinas Complex
Mabini corner Vito Cruz Streets
Malate, Manila1004
secretariat@amlc.gov.ph

(Explanation follows...)

EXPLANATION

(*Pursuant to the 1997 Rules of Civil Procedure as amended by AM No. 19-10-20 SC*)

As will be evidenced by the attached Affidavit of Service and proofs of service (registry return receipts and/or official receipts and printed copy of transmittal), a copy of the foregoing **PETITION** will be served upon the Respondents via registered mail/ courier and electronic mail, due to the considerable distance between the office addresses of counsel, coupled with the time constraints for filing the same, the cost it would take to effect personal service, and the mobility constraints brought about by the CoVid19 pandemic all of which contribute to the impracticability of personal filing and service.

MELENCIO S. STA. MARIA

EIRENE JHONE E. AGUILA

MICHAEL T. TIU, JR.

EUGENE T. KAW

FRANCIS EUSTON R. ACERO

PAUL CORNELIUS T. CASTILLO

(Affidavit of service follows...)

REPUBLIC OF THE PHILIPPINES }S.S.
PASIG CITY } S.S.

AFFIDAVIT OF SERVICE

I, **FRANCIS EUSTON R. ACERO**, Filipino, of legal age, and with office address at Far Eastern University – Institute of Law, 6/F Far Eastern University Makati Campus, Senator Gil Puyat Avenue corner Malugay St., Makati City, after being duly sworn to in accordance with law, hereby depose and state:

1. That I am one of the petitioners and counsels in the instant petition;

2. That I hereby attest and certify that on July 5, 2020, I served copies of the pleading entitled **PETITION for CERTIORARI AND PROHIBITION UNDER RULE 65 WITH A PRAYER FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION** in the case entitled **MELENCIO S. STA. MARIA, EIRENE JHONE E. AGUILA, GIDEON V. PEÑA, MICHAEL T. TIU, JR., FRANCIS EUSTON R. ACERO, PAUL CORNELIUS T. CASTILLO, and EUGENE T. KAW** versus **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF JUSTICE SECRETARY MENARDO I. GUEVARRA, THE ANTI-TERRORISM COUNCIL, NATIONAL SECURITY COUNCIL OF THE PHILIPPINES ADVISER AND DIRECTOR GENERAL HERMOGENES C. ESPERON, JR., ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF FILEMON SANTOS, JR., PHILIPPINE NATIONAL POLICE CHIEF ARCHIE FRANCISCO F. GAMBOA, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY TEODORO L. LOCSIN, JR., DEPARTMENT OF NATIONAL DEFENSE SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT SECRETARY EDUARDO M. AÑO, DEPARTMENT OF FINANCE SECRETARY CARLOS G. DOMINGUEZ III, DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY SECRETARY GREGORIO HONASAN II, AND ANTI-MONEY LAUNDERING COUNCIL SECRETARIAT EXECUTIVE DIRECTOR MEL GEORGIE B. RACELA** docketed as _____**,** in compliance with the 1997 Rules of Civil Procedure as amended by AM No. 19-10-20 SC, in sealed envelopes through Registered Mail/ Courier service with postage fully prepaid to the following recipients/addressees as evidenced by the attached Registry

Receipts and/ or Official receipts, as well as through electronic mail evidenced by the attached printed copy of the transmittal to wit:

ADDRESSEE:	**PROOF OF SERVICE**
HON. SALVADOR C. MEDIALDEA Executive Secretary **OFFICE OF THE EXECUTIVE SECRETARY** Malacañang Palace, Manila oesop2016@gmail.com/ mro@malacanang.gov.ph	*Via email – see attached print-out of transmittal*
HON. MENARDO I. GUEVARRA Secretary **DEPARTMENT OF JUSTICE** Padre Faura Street, Manila osecmig@gmail.com	*Via email – see attached print-out of transmittal*
ANTI-TERRORISM COUNCIL Office of the Secretariat **NATIONAL INTELLIGENCE COORDINATING AGENCY** V. Luna Road, Quezon City	*Via email – see attached print-out of transmittal*
HERMOGENES C. ESPERON, JR. *Adviser and Director General* **NATIONAL SECURITY COUNCIL OF THE PHILIPPINES** East Avenue Road cor. V. Luna Quezon City publicaffairs@nsc.gov.ph	*Via email – see attached print-out of transmittal*
HON. FILEMON T. SANTOS, JR. *Chief of Staff* **ARMED FORCES OF THE PHILIPPINES** AFP Headquarters, Camp Aguinaldo EDSA, Quezon City paoafp@gmail.com	*Via email – see attached print-out of transmittal*
HON. ARCHIE FRANCISCO F. GAMBOA *Chief* **PHILIPPINE NATIONAL POLICE** PNP Headquarters, Camp Crame EDSA, Quezon City mcocpnp@gmail.com/ mcocpnp@yahoo.com.ph exofficio.commissioner2020@gmail.com	*Via email – see attached print-out of transmittal*

HON. TEODORO L. LOCSIN, JR. *Secretary* **DEPARTMENT OF FOREIGN AFFAIRS** 11/F DFA Home Office 2330 Roxas Boulevard Pasay City osec@dfa.gov.ph osec.coord@dfa.gov.ph	*Via email – see attached print-out of transmittal*
HON. DELFIN N. LORENZANA *Secretary* **DEPARTMENT OF NATIONAL DEFENSE** DND Building Segundo Ave. Camp General Emilio Aguinaldo Quezon City 1110 publicaffairs.dnd@gmail.com	*Via email – see attached print-out of transmittal*
HON. EDUARDO M. AÑO *Secretary* **DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT** DILG-NAPOLCOM Center EDSA corner Quezon Avenue West Triangle, Quezon City 1104 emano@dilg.gov.ph	*Via email – see attached print-out of transmittal*
HON. CARLOS G. DOMINGUEZ III *Secretary* **DEPARTMENT OF FINANCE** DOF Bldg., BSP Complex Roxas Blvd. Manila 1004 secfin@dof.gov.ph	*Via email – see attached print-out of transmittal*
HON. GREGORIO B. HONASAN II *Secretary* **DEPARTMENT OF INFORMATION & COMMUNICATIONS TECHNOLOGY**	*Via email – see attached print-out of transmittal*

C.P Garcia Ave., Diliman Quezon City 1101 gregorio.honasan@dict.gov.ph	
ATTY. MEL GEORGIE B. RACELA *Executive Director* **ANTI-MONEY LAUNDERING COUNCIL SECRETARIAT** 5/F EDPC Building Bangko Sentral ng Pilipinas Complex Mabini corner Vito Cruz Streets Malate, Manila1004 secretariat@amlc.gov.ph	*Via emaiil - see attached print-out of transmittal*

3. That I executed this Affidavit of Service to attest to the truth of all the foregoing.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of July 2020 in the City of Pasig.

FRANCIS EUSTON R. ACERO

SUBSCRIBED AND SWORN to before me this 6th day of July 2020, in the City of Pasig affiant having exhibited to me his Driver's License with No. DL No.D16-95-121730 which is valid proof of his identity.

Doc. No. 198
Page No. 41
Book No. I
Series of 2020.

NOTARY PUBLIC

REGINALD L. CISCO
Appointment No. 198 (2019-2020)
Notary Public for Pasig, Pateros, San Juan
Until 31 December 2020
1606 OMM-Citra, San Miguel Ave Pasig City 1605
Roll No. 69840
PTR No. 7335539 Makati
IBP No. 071098 RSM

Gmail

Francis Euston Acero <lawyer@francisacero.com>

[Melencio S. Sta. Maria, et. al, v. Executive Secretary, et. al. G.R. No. _____] Filing for Petition for Certioari and Prohibition with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction

1 message

Francis Euston Acero <lawyer@francisacero.com> Mon, Jul 6, 2020 at 2:41 AM
To: "'Salvador C. Medialdea" <oesop2016@gmail.com>, Malacañang Records Office <mro@malacanang.gov.ph>, "Menardo I. Guevarra" <osecmig@gmail.com>, "Hermogenes C. Esperon Jr." <publicaffairs@nsc.gov.ph>, "Filemon T. Santos Jr." <paoafp@gmail.com>, "Archie Francisco F. Gamboa" <exofficio.commissioner2020@gmail.com>, "Archie Francisco F. Gamboa" <mcocpnp@gmail.com>, "Archie Francisco F. Gamboa" <mcocpnp@yahoo.com.ph>, "Teodoro L. Locsin Jr." <osec@dfa.gov.ph>, Office of the Secretary of Foreign Affairs <osec.coord@dfa.gov.ph>, "Delfin N. Lorenzana" <publicaffairs.dnd@gmail.com>, "Eduardo M. Año" <emano@dilg.gov.ph>, "Carlos G. Dominguez III" <secfin@dof.gov.ph>, "Gregorio B. Honasan II" <gregorio.honasan@dict.gov.ph>, "Mel Georgie B. Racela" <secretariat@amlc.gov.ph>
Cc: Eirene Jhone Aguila <eirene.aguila@aguilarances.com>, "Eugene T. Kaw" <eugenekaw@yahoo.com>, Mel Sta Maria <mstamaria2016@gmail.com>, "Paul Cornelius T. Castillo" <jdpc@jdpclaw.com>, "Michael T. Tiu Jr." <michaeljr.tiu@gmail.com>

6 July 2020

HON. SALVADOR C. MEDIALDEA
Executive Secretary
Office of the Executive Secretary
Malacañang Palace, Manila
oesop2016@gmail.com
mro@malacanang.gov.ph

HON. MENARDO I. GUEVARRA
Secretary
Department of Justice
Padre Faura Street, Manila
osecmig@gmail.com

ANTI-TERRORISM COUNCIL
Office of the Secretariat
National Intelligence Coordinating Agency
V. Luna Road, Quezon City

HERMOGENES C. ESPERON, JR.
Adviser and Director General
National Security Council Of The Philippines
NICA Compound
East Avenue Road cor. V. Luna
Quezon City
publicaffairs@nsc.gov.ph

HON. FILEMON T. SANTOS, JR.
Chief of Staff
Armed Forces of the Philippines
AFP Headquarters, Camp Aguinaldo
EDSA, Quezon City
paoafp@gmail.com

HON. ARCHIE FRANCISCO F. GAMBOA
Chief
Philippine National Police
PNP Headquarters, Camp Crame
EDSA, Quezon City
mcocpnp@gmail.com

mcocpnp@yahoo.com.ph
exofficio.commissioner2020@gmail.com

HON. TEODORO L. LOCSIN, JR.
Secretary
Department of Foreign Affairs
11/F DFA Home Office
2330 Roxas Boulevard
Pasay City
osec@dfa.gov.ph
osec.coord@dfa.gov.ph

HON. DELFIN N. LORENZANA
Secretary
Department of National Defense
DND Building
Segundo Ave. Camp General Emilio Aguinaldo
Quezon City 1110
publicaffairs.dnd@gmail.com

HON. EDUARDO M. AÑO
Secretary
Department of the Interior and Local Government
DILG-NAPOLCOM Center
EDSA corner Quezon Avenue
West Triangle, Quezon City 1104
emano@dilg.gov.ph

ATTY. MEL GEORGIE B. RACELA
Executive Director
Anti-Money Laundering Council Secretariat
5th Floor, EDPC Building, Bangko Sentral ng Pilipinas Complex
Mabini corner Vito Cruz Streets
Malate, Manila 1004

Gentlepersons,

I write for myself and on behalf of my fellow petitioners, Dean Melencio S. Sta. Maria, Eirene Jhone F. Aguila, Gideon V. Peña, Michael T. Tiu, Jr., Paul Cornelius T. Castillo, and Eugene T. Kaw, pursuant to the rules on electronic filing and service under A.M. No. 19-10-20-SC. We hereby submit the following information, together with the attached document, for the consideration of the Supreme Court.

1. **The Party Filing and/or Serving the Pleading**: Petitioners Melencio S. Sta. Maria, Eirene Jhone F. Aguila, Gideon V. Peña, Francis Euston R. Acero, Michael T. Tiu, Jr., Paul Cornelius T. Castillo, and Eugene T. Kaw.

2. **Nature of the Paper**: Petition for Certiorari and Prohibition Under Rule 65 with a Prayer for The Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

3. **The Party Against Whom Relief is Sought:** Executive Secretary Salvador C. Medialdea, Department of Justice Secretary Menardo I. Guevarra, The Anti-Terrorism Council, National Security Council of The Philippines Adviser and Director General Hermogenes C. Esperon, Jr., Armed Forces of The Philippines Chief of Staff Filemon Santos, Jr., Philippine National Police Chief Archie Francisco F. Gamboa, Department of Foreign Affairs Secretary Teodoro L. Locsin, Jr., Department of National Defense Secretary Delfin N. Lorenzana, Department Of The Interior And Local Government Secretary Eduardo M. Año, Department of Finance Secretary Carlos G. Dominguez III, Department of Information and Communications Technology Secretary Gregorio Honasan II, and Anti-Money Laundering Council Secretariat Executive Director Mel Georgie B. Racela

4. **Nature of the Relief Sought**: Certiorari and Prohibition Under Rule 65 with a Prayer for The Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

5. **Annexes to the Petition for Certiorari and Prohibition Under Rule 65 with a Prayer for The Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction**: NONE

We submit this pleading and the supporting documents for the kind consideration of the Court. Thank you!

--

Francis Euston R. Acero
JD, CIPP/E, CDPO (v.2019), C)PTE, C)DFE, C)NFE
Attorney-at-Law
Independent Data Privacy Professional

Melencio Sta.Maria et al. vs. Executive Secretary et al. re The Anti-Terrorism Act of 2020.pdf
2923K