G.R. No. 252578 – Atty. Howard M. Calleja, et al., *petitioners*, v. Executive Secretary, et al., *respondents*.

G.R. No. 252579 – Rep. Edcel C. Lagman, *petitioner*, v. Executive Secretary Salvador C. Medialdea, et al., *respondents*.

G.R. No. 252580 – Melencio S. Sta. Maria, et al., *petitioners*, v. Executive Secretary Salvador C. Medialdea, et al., *respondents*.

G.R. No. 252585 – Bayan Muna Party-List Representatives Carlos Isagani T. Zarate, et al., *petitioners*, v. President Rodrigo Duterte, et al., *respondents*.

G.R. No. 252613 – Rudolf Philip B. Jurado, *petitioner*, v. The Anti-Terrorism Council, et al., *respondents*.

G.R. No. 252623 – Center for Trade Union and Human Rights (CTUHR), represented by Daisy Arago, et al., *petitioners*, v. Hon. Rodrigo R. Duterte, in his capacity as President and Commander-In-Chief of the Republic of the Philippines, et al., *respondents*.

G.R. No. 252624 – Christian S. Monsod, et al., *petitioners*, v. Executive Secretary Salvador C. Medialdea, et al., *respondents*.

G.R. No. 252646 – SANLAKAS, represented by Marie Marguerite M. Lopez, *petitioner*, v. Rodrigo R. Duterte, as President and Commander-In-Chief of all the Armed Forces, et al., *respondents*.

G.R. No. 252702 – Federation of Free Workers (FFW-NAGKAISA) herein represented by its National President Atty. Jose Sonny Matula, et al., *petitioners*, v. Office of the President of the Republic of the Philippines, et al., *respondents*.

G.R. No. 252726 – Jose J. Ferrer, Jr., *petitioner*, v. Executive Secretary Salvador C. Medialdea, et al., *respondents*.

G.R. No. 252733 – Bagong Alyansang Makabayan (BAYAN) Secretary General Renato Reyes, Jr., et al., *petitioners*, v. H.E. Rodrigo R. Duterte, et al., *respondents*.

G.R. No. 252736 – Antonio T. Carpio, et al., *petitioners*, v. Anti-Terrorism Council, et al., *respondents*.

G.R. No. 252741 – Ma. Ceres P. Doyo, et al., *petitioners*, v. Salvador Medialdea, in his capacity as Executive Secretary, et al., *respondents*.

G.R. No. 252747 – National Union of Journalists of the Philippines, et al., *petitioners*, v. Anti-Terrorism Council, et al., *respondents*.

G.R. No. 252755 – Kabataang Tagapagtanggol ng Karapatan represented by its National Convener Bryan Ezra C. Gonzales, et al., *petitioners*, v. Executive Secretary Salvador C. Medialdea, et al., *respondents*.

G.R. No. 252759 – Algamar A. Latiph, et al., *petitioners*, v. Senate, represented by its President, Vicente C. Sotto III, et al., *respondents*.

G.R. No. 252765 – The Alternative Law Groups, Inc. (ALG), *petitioner*, v. Executive Secretary Salvador C. Medialdea, *respondent*.

G.R. No. 252767 – Bishop Broderick S. Pabillo, et al., *petitioners*, v. President Rodrigo R. Duterte, et al., *respondents*.

G.R. No. 252768 – General Assembly of Women for Reforms, et al., *petitioners*, v. President Rodrigo Roa Duterte, et al., *respondents*.

UDK No. 16663 – Lawrence A. Yerbo, *petitioner*, v. Offices of the Honorable Senate President and Honorable Speaker of the House of Representatives of the Republic of the Philippines, *respondents*.

G.R. No. 252802 – Hendy Abendan of Center for Youth Participation and Development Initiatives, et al., *petitioners*, v. Hon. Salvador C. Medialdea, in his capacity as Executive Secretary and Chairperson of the Anti-Terrorism Council, et al., *respondents*.

G.R. No. 252809 – Concerned Online Citizens represented and joined by Mark L. Averilla, et al., *petitioners*, v. Executive Secretary Salvador C. Medialdea, et al., *respondents*.

G.R. No. 252903 – Concerned Lawyers for Civil Liberties (CLCL) Members Rene A.V. Saguisag, et al., *petitioners*, v. President Rodrigo Roa Duterte, et al., *respondents*.

G.R. No. 252904 – Beverly Longid, et al., *petitioners*, v. Anti-Terrorism Council, et al., *respondents*.

G.R. No. 252905 – Center for International Law (CENTERLAW), Inc., represented by its President, Joel R. Butuyan, et al., *petitioners*, v. Senate of the Philippines, et al., *respondents*.

G.R. No. 252916 – Main T. Mohammad, et al., *petitioners*, v. Executive Secretary Salvador C. Medialdea, et al., *respondents*.

G.R. No. 252921 – Brgy. Maglaking, San Carlos City, Pangasinan Sangguniang Kabataan (SK) Chairperson Lemuel Gio Fernandez Cayabyab, et al., *petitioners*, v. Rodrigo R. Duterte, President of the Republic of the Philippines, et al., *respondents*.

G.R. No. 252984 – Association of Major Religious Superiors in the Philippines (Represented by its Co-Chairpersons, Fr. Ciclito R. Almazan OFM, et al.), *petitioners*, v. Executive Secretary Salvador C. Medialdea, et al., *respondents*.

G.R. No. 253018 – University of the Philippines, (UP)-System Faculty Regent Dr. Ramon Guillermo, et al., *petitioners*, v. H.E. Rodrigo R. Duterte, et al., *respondents*.

G.R. No. 253100 – Philippine Bar Association, *petitioner*, v. The Executive Secretary, et al., *respondents*.

G.R. No. 253118 – Balay Rehabilitation Center, Inc. (BALAY), et al., *petitioners*, v. Rodrigo R. Duterte, in his capacity as President of the Republic of the Philippines, et al., *respondents*.

G.R. No. 253124 – Integrated Bar of the Philippines, et al., *petitioners*, v. Senate of the Philippines, et al., *respondents*.

G.R. No. 253242 – Coordinating Council for People's Development and Governance, Inc. (CPDG) represented by Vice President Rochelle M. Porras, et al., *petitioners*, v. Rodrigo R. Duterte, President and Chief Executive and the Commander-In-Chief of the Armed Forces of the Philippines, et al., *respondents*.

G.R. No. 253252 – Philippine Misereor Partnership, Inc., et al., *petitioners*, v. Executive Secretary Salvador C. Medialdea, et al., *respondents*.

G.R. No. 253254 – Pagkakaisa ng Kababaihan Para Sa Kalayaan (KAISA KA) Action and Solidarity for the Empowerment of Women (ASSERT-WOMEN), et al., *petitioners*, v. Anti-Terrorism Council, et al., *respondents*.

G.R. No. 254191 – Anak Mindanao (AMIN) Party-List Representative Amihilda Sangcopan, et al., *petitioners*, v. The Executive Secretary, Hon. Salvador C. Medialdea, et al., *respondents*.

G.R. No. 253420 – Haroun Alrashid Alonto Lucman, Jr., et al., *petitioners*, v. Salvador C. Medialdea in his capacity as Executive Secretary, et al., *respondents*.

Promulgated:
December 7, 2021

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SEPARATE CONCURRING AND DISSENTING OPINION

GAERLAN, *J.*:

For the most part, I concur with the majority on the result, and congratulate the *ponente* for her well-reasoned, exquisitely written *Decision*. Nothing could perhaps be more poetic than punctuating a stellar career in the Judiciary with a nuanced and carefully crafted *Decision* on a case that has received much national attention. Nevertheless, I feel compelled to write a *Separate Opinion* in order that I may: *first*, express my reservations with the majority's decision to uphold the constitutionality of Section 29 of Republic Act (R.A.) No. 11479, otherwise known as the "Anti-Terrorism Act of 2020" (ATA), and *second*, provide additional thoughts on the third mode of designation under Section 25 of the ATA.

I. Section 29 of the ATA is Unconstitutional insofar as it Authorizes the Anti-Terror Council (ATC) to Issue a Warrant of Arrest or a Commitment Order.

Section 29 of the ATA states:

> SECTION 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 commission 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 hereof, 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.

The Anti-Terror Council (ATC) and the Department of Justice (DOJ), to effectively implement the ATA,[1] issued the ATA's Implementing Rules and Regulations (ATA-IRR). In relation to Section 29 of the ATA, the ATA-IRR, among others, states:

> RULE 9.1. *Authority from ATC in Relation to Article 125 of the Revised Penal Code.*—
>
> Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (c) of Rule 9.2, 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 the Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, 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 (a) further detention of the person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.
>
> The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism, and the relevant circumstances as basis for taking custody of said person.
>
> If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply.
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> RULE 9.2. *Detention of a Suspected Person without Warrant of Arrest.* —

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[1] REPUBLIC ACT NO. 11479, Anti-Terrorism Act of 2020, Section 54.

> A law enforcement officer or military personnel may, without a warrant, arrest:
>
> a. a suspect who has committed, is actually committing, or is attempting to commit any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act in the presence of the arresting officer;
>
> b. a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act, which has just been committed; and
>
> c. a prisoner who has escaped from a penal establishment or place where he is serving final judgment for or is temporarily confined while his/her case for any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, or 12 of the Act is pending, or has escaped while being transferred from one confinement to another.[2]

As it turns out, the ATA-IRR formed the foundation of the declaration by the majority that Section 29 of the ATA is not unconstitutional. To be precise, the majority held that when Section 29 is read together with Rules 9.1 and 9.2 of the ATA-IRR, it is supposedly patent that the *proviso* does not provide for an executive warrant of arrest. Otherwise stated, the majority placed much stock in the interpretation of the Executive of the intent of Congress in creating Section 29 of the ATA. Thus, the majority held:

> [T]he Court's construction is that under Section 29, **a person may be arrested without a warrant by law enforcement officers or military personnel for acts defined or penalized under Sections 4 to 12 of the ATA but only under any of the instances contemplated in Rule 9.2, *i.e.*, arrest *in flagrante delicto*, arrest in hot pursuit, and arrest of escapees, which mirrors Section 5, Rule 113 of the Rules of Court.** Once arrested without a warrant under those instances, **a person may be detained for up to 14 days, *provided* that the ATC issues a written authority in favor of the arresting officer** pursuant to Rule 9.1, upon submission of a sworn statement stating the details of the person suspected of committing acts of terrorism and the relevant circumstances as basis for taking custody of said

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2 Id., IMPLEMENTING RULES AND REGULATIONS, Rules 9.1-9.2.

> person. **If the ATC does not issue the written authority, then the arresting officer shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the RPC – the prevailing general rule.** The extended detention period – which, as will be explained in the ensuing discussions, is the crux of Section 29 – is therefore deemed as an exception to Article 125 of the RPC based on Congress' own wisdom and policy determination relative to the exigent and peculiar nature of terrorism and hence, requires, as a safeguard, the written authorization of the ATC, an executive agency comprised of high-ranking national security officials.[3] (Emphasis and underscoring in the original)

As construed by the majority, therefore, the *Written Authorization* issued by the ATC in Section 29 of the ATA bears the following characteristics: *one*, it is issued after a valid warrantless arrest is made by a law enforcement office or military personnel, and *two*, it authorizes the detention of an individual arrested for a period of fourteen (14) days, subject to a ten (10)-day extension. I believe that this interpretation is erroneous. As I shall demonstrate below, the language of Section 29 of the ATA already clearly and unmistakably reveals that what Congress intended is that the *Written Authorization* comes **before** the arrest is made.

A. Section 29 of the ATA is Clear and Unambiguous, Requiring No Extrinsic Aid for its Construction.

It bears emphasizing that as a general proposition, this Court and other subordinate courts determine the intent of the law from the literal language of the law, *i.e.*, within the four corners of the law itself.[4] Thus, resort to extrinsic aids must be avoided,[5] except in the narrow exception "that there be doubt or ambiguity in [the law's] language."[6] Stated differently, "[w]here the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction."[7] It is my submission that Section 29 of the ATA is

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3 Decision, pp. 199-200.
4 *Ramirez v. Court of Appeals*, 318 Phil. 701 (1995).
5 *League of Cities of the Phils. v. Commission on Elections*, 592 Phil. 1 (2008).
6 *United Paracale Mining Co., Inc. v. Dela Rosa*, 293 Phil. 117, 123-124 (1993).
7 *Insular Lumber Co. v. Court of Tax Appeals*, 192 Phil. 221, 231 (1981).

clear and unambiguous which should have given this Court pause from looking beyond the language *proviso*.

A cursory examination of the language of Section 29, specifically the first sentence thereof, immediately makes apparent that what the ATA contemplates is that before a law enforcement officer or military personnel arrests an individual suspected of violating any of the acts defined and penalized under Sections 4 to 12 of the ATA, they must first be armed with a previously issued *Written Authority* by the ATC. This is evident in the law's use of the phrase "having been duly authorized in writing by the ATC" and its interaction with the phrase "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[.]"

To expound, the phrase "having been duly authorized in writing by the ATC" is a perfect gerund—a phrase that combines the words "having been" plus the past participle form of a verb. Such phrases refer to the completion of an action at some point in the past, *before* another verb in the main clause.[8] For instance, "having been trained" is a perfect gerund phrase. If the phrase "having been trained" is followed by a verb in past tense, *e.g.*, "having been trained, she knew," this indicates that the training was complete at the time the subject of the sentence "knew."

Applying the foregoing to Section 29 of the ATA, the phrase "having been duly authorized in writing by the ATC" is a perfect gerund, followed by the main verb "take" in the past participle tense, "has taken custody," which indicates that the officer in question had been authorized in writing by the ATC **prior to** the taking of a suspect into custody. Otherwise stated, under the procedure detailed in Section 29 of the ATA, the issuance of a *Written Authority* by the ATC is a condition *sine qua non* before agents of the State may arrest any individual "suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of [the ATA]."[9]

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8 Jose Carillo, *The Perfect Gerund And Its Uses*, The Manila Times Website, *available at* https://www.manilatimes.net/2020/01/02/campus-press/the-perfect-gerund-and-its-uses/669877 (last visited November 10, 2021).

9 ANTI-TERRORISM ACT OF 2020, Section 29.

However, even if we were to resort to extrinsic aids, specifically the *Records* of the legislative deliberations,[10] one would find that the construction given by the majority on Section 29 of the ATA (with respect to the *Written Authority*) is without basis. I have exhaustively poured through the *Records* of the deliberations of the Philippine Senate on the ATA. In both the *Records* of Committee hearing and the *Records* of at least fourteen (14) days of deliberations conducted, there is no mention that an arresting officer must request for the issuance of a *Written Authority* from the ATC after a valid warrantless arrest. Significantly, whenever Section 29 is discussed, it only highlights that the obligation of the apprehending law enforcement officer and/or military personnel post-arrest are primarily twin fold: *first*, to notify the judge of the court nearest the place of the apprehension of the details surrounding the arrest; and *second*, to furnish the ATC a copy of the notice sent to the aforementioned judge.[11] It was only after an amendment introduced by Senator Risa Hontiveros that the Commission on Human Rights (CHR) was also furnished a copy of the notice to the judge.[12]

B. The ATA-IRR Should Not Form as the Main Basis to Support the Finding that the *Written Authorization* is not an Executive Warrant of Arrest.

In finding Section 29 of the ATA as not unconstitutional, the majority moored its reasoning on the principle of executive or contemporaneous construction, *i.e.*, the interpretation of a law by the administrative agency charged with its implementation.[13] Doubtlessly, the issuance by the Executive, through an implementing agency, of the implementing rules and regulations is an exercise of contemporaneous construction.[14] Concededly, it is elementary that the Executive's construction of a law must be entitled to full

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10 *See e.g.* Senate of the Philippines, *Legislative History of The Anti-Terrorism Act of 2020*, Senate of the Philippines, 18th Congress Website, *available at* http://legacy.senate.gov.ph/lis/bill_res.aspx?congress=18&q=SBN-1083 (last visited December 11, 2021).

11 Records dated February 18, 2020, pp. 54-55; Records dated January 29, 2020, pp. 26-28; Records dated January 23, 2020, p. 43; Records dated January 22. 2020, pp. 32-33, 54-58; Records dated October 2, 2019, pp. 34-35. See Records dated June 7, 2006, p. 16.

12 Records dated February 18, 2020, pp. 54-55; Records dated February 3, 2020, p. 43.

13 Dante B. Gatmaytan, *Legal Method Essentials 4.0* (2020), p. 315.

14 *AFP General Insurance Corporation v. Molina*, 579 Phil. 114 (2008); *Alvarez v. Guingona, Jr.*, 322 Phil. 774 (1996); *In re Allen*, 2 Phil. 630 (1903).

respect and should be accorded great weight by this Court.[15] Nevertheless, executive construction is not binding upon the courts. Indeed, it is equally elementary that "courts may disregard contemporaneous construction in instances where the law or rule construed possesses no ambiguity, where the construction is clearly erroneous, where strong reason to the contrary exists, and where the court has previously given the statute a different interpretation."[16]

In this case, even if it were to be assumed—without conceding—that ambiguity in the language of Section 29 of the ATA exists which thus requires the use of extrinsic aids of construction,[17] the contemporaneous construction of the ATC, as seen in the language of the ATA-IRR, does not hold water. Indeed, it is not only inconsistent with the clear and unambiguous language of the ATA (as discussed in the immediately preceding section), but also conflicts with the intention of Congress as indicated in its legislative deliberations. I offer two (2) points in this regard.

First, while there is a paucity of discussion in the *Records* of the Philippine Senate on the phrase "who, having been duly authorized in writing by the ATC" in Section 29 of the ATA, the *Records* on Section 18 of R.A. No. 9372 or the "Human Security Act of 2007" (HSA) is enlightening. Notably, Section 18 of the HSA was amended by Section 29 of the ATA, with the latter maintaining the aforequoted phrase despite amendment.

An examination of the *Records* with respect to Section 18 of the HSA would show that the phrase "who, having been duly authorized in writing by the Anti-Terrorism Council[,]"[18] was crafted to authorize "any police or law enforcement personnel" to only take into custody "a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism" upon the confluence of two circumstances: (1) that a written authority is issued by the Anti-Terrorism Council, and (2) an arrest premised upon the conduct of surveillance under Section 7 and examination of bank

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15 *Nestle Philippines, Inc. v. Court of Appeals*, 280 Phil. 548 (1991).
16 *Adasa v. Abalos*, 545 Phil. 168 (2007).
17 Supra note 13 at 297.
18 REPUBLIC ACT NO. 9372, Human Security Act of 2007, Section 18.

deposits under Section 27 of the HSA.[19] These two requisites, especially the second, combine to ensure that there is sufficient "basis to arrest without a warrant," and the charge or arrest is not "whimsical."[20] Worth mentioning that during the deliberations on Section 18 of the HSA, the late Senator Miriam Defensor Santiago cautioned the Senate to carefully craft the *proviso* in view of its nature as a grant of "judicial police function."[21] These discussions make clear that the intention of Congress is for the ATC to issue the *Written Authorization* **prior** to an arrest.

Second, and related to the *first*, the deliberations of the ATA reveal that this intent remains unchanged. Notably, one of the key amendments to Section 18 of the HSA, now Section 29 of the ATA, was to remove the phrase "[p]rovided, [t]hat the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act."[22] According to Senator Panfilo Lacson, the deletion of the clause was necessary to enable the State, through the ATC, to be more "proactive" in the fight against terrorism.[23] To be precise, "to prevent the occurrence of acts of terrorism because the damage is so huge—loss of lives and properties."[24]

Accordingly, Congress, in deleting the requirement of prior surveillance from the HSA when it crafted Section 29 of the ATA, presumed that no act of terrorism has yet been made. The *Written Authorization* was to serve as the basis to arrest an individual in an attempt to suppress the initiation of acts that could lead to a terroristic attack. Under these circumstances, it is once more patent that the intent of Congress is that the *Written Authority* should be given by the ATC **before** an arrest is made, and not after, so as to effectively quell any potential terrorist attack. Any other construction would undermine the intention of Congress to enable the Executive to be "proactive" in the fight against terrorism.

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19 Records dated December 5, 2006, pp. 43-44; Id.

20 Id. at 44.

21 Records dated November 14, 2006, pp. 54-55. See Edward A. Tomlinson, *Symposium: Comparative Criminal Justice Issues in the United States, West Germany, England, and France: Nonadversarial Justice: The French Experience*, 42 MD. L. REV. 131, 157 (1983) (defining "judicial police function" as investigating offenses by gathering proof and apprehending offenders).

22 Supra note 18.

23 Records dated February 3, 2020, pp. 40-43.

24 Id.

Flowing from the foregoing, this Court finds itself in a situation where it has determined that the language of the statute is unclear and ambiguous; has sought assistance from extrinsic aids to untangle the ambiguity; and is now confronted with the problem of two (2) extrinsic aids offering diverging conclusions. In particular, the extrinsic aid of contemporaneous construction suggests that the *Written Authority* referred to in Section 29 of the ATA is to be issued post-arrest, while the ATA's legislative history insinuates that such *Written Authority* is issued prior to arrest. In my opinion, under such circumstance, this Court must give preference to the law's legislative history over that of the Executive's contemporaneous construction.[25] Indeed, this Court's constitutionally mandated function of interpreting the law necessarily commands that it must do so in a manner that will not conflict with the intention of Congress[26]—the great branch of government charged with the function to create laws and declare policy.[27] To hold that the contemporaneous construction of the Executive is superior to the Congressional intent, as gleaned from the statute's legislative history, leads to a regime where the Executive determines "what the law is" and "how that law should be interpreted."[28] Accordingly, I am of the opinion that what Section 29 of the ATA contemplates, as far as the *Written Authorization* is concerned, is that the same is to be issued preceding an arrest in order to equip State agents with the ability to quickly suppress a potential terrorist attack.

C. Since the *Written Authorization* is Issued Prior to Arrest, it Partakes of the Nature of a Warrant of Arrest or a Commitment Order, Both of which may only be Properly Issued by a Judge.

I wish to state that I am completely mindful of the rule that whenever this Court is confronted with the question of constitutionality of a statute, or any provision thereof, it "should favor that interpretation of legislation which gives it the greater chance of surviving the test of constitutionality."[29] Nevertheless, this Court's solemn duty to interpret the law is not

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25 *Re: Vicente S.E. Veloso*, 760 Phil. 62 (2015); *Director of Lands v. Arruza*, 63 Phil. 559 (1936). Note the version of the Philippine Senate of both the HSA and the ATA was adopted by the House of Representatives (*for reference see* Supra note 10 and Records dated February 8, 2007).

26 *Corpuz v. People*, 734 Phil. 353 (2014)

27 *Belgica v. Ochoa*, 721 Phil. 416 (2013); *Cruz v. Franco*, 146 Phil. 554 (1970).

28 *Cf. Boumediene v. Bush*, 553 U.S. 723 (2008).

29 Decision, p. 199, citing *San Miguel Corp. v. Avelino*, 178 Phil. 47 (1979).

unbounded[30]—it must interpret the law in a manner consistent with the intent of Congress,[31] while crucially maintaining the resolve to strike down the law should it be inconsistent with the Constitution.[32] Thus, having presented what I believe is the appropriate construction of Section 29 of the ATA, this begs the question: does our Constitution, allow the Congress to grant the Executive the authority to order the arrest and detention of an individual that is suspected to be undertaking terroristic acts? The answer is unequivocally in the negative.

Our Constitution exclusively commits the power to issue warrants of arrest to the judges of the courts of law.[33] In *Viudez II v. Court of Appeals*,[34] this Court held that the power of a judge "to issue a warrant of arrest upon the determination of probable cause is exclusive[,]" extending to judges even the authority to order the suspension of its implementation after issuance. Otherwise stated, outside the context of a lawful warrantless arrest, judges are vested with the sole authority to direct that an individual be taken into custody in order that such individual may be bound to answer for the commission of an offense.[35] Thus, in *Salazar v. Achacoso*,[36] this Court struck down a provision of the old Labor Code which authorized the ministry of labor to issue warrants of arrest; to wit:

> The Court finds that a lone issue confronts it: May the Philippine Overseas Employment Administration (or the Secretary of Labor) validly issue warrants of search and seizure (or arrest) under Article 38 of the Labor Code? It is also an issue squarely raised by the petitioner for the Court's resolution.
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> **Under the new Constitution, which states:**
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> **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.**

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30 *People v. Quijada*, 328 Phil. 505 (1996).
31 *Corpuz v. People*, 734 Phil. 353 (2014).
32 *Endencia v. David*, 93 Phil. 696 (1953); *Angara v. Electoral Commission*, 63 Phil. 139 (1936).
33 1987 CONSTITUTION, Article III, Section 2.
34 606 Phil. 337 (2009).
35 RULES OF COURT, Rule 113, Section 1.
36 *Salazar v. Achacoso*, 262 Phil. 160 (1990).

it is only a judge who may issue warrants of search and arrest. In one case, it was declared that mayors may not exercise this power:

x x x x

But it must be emphasized here and now that what has just been described is the state of the law as it was in September, 1985. The law has since been altered. **No longer does the mayor have at this time the power to conduct preliminary investigations, much less issue orders of arrest. Section 143 of the Local Government Code, conferring this power on the mayor has been abrogated, rendered *functus officio* by the 1987 Constitution which took effect on February 2, 1987, the date of its ratification by the Filipino people. Section 2, Article III of the 1987 Constitution pertinently provides that "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 person or things to be seized." The constitutional proscription has thereby been manifested that thenceforth, the function of determining probable cause and issuing, on the basis thereof, warrants of arrest or search warrants, may be validly exercised only by judges,** this being evidenced by the elimination in the present Constitution of the phrase, "such other responsible officer as may be authorized by law" found in the counterpart provision of said 1973 Constitution, who, aside from judges, might conduct preliminary investigations and issue warrants of arrest or search warrants.

Neither may it be done by a mere prosecuting body:

We agree that the Presidential Anti-Dollar Salting Task Force exercises, or was meant to exercise, prosecutorial powers, and on that ground, it cannot be said to be a neutral and detached "judge" to determine the existence of probable cause for purposes of arrest or search. Unlike a magistrate, a prosecutor is naturally interested in the success of his case. Although his office "is to see that justice is done and not necessarily to secure the conviction of the person accused," he stands, invariably, as the accused's adversary and his accuser. To permit him to

> issue search warrants and indeed, warrants of arrest, is to make him both judge and jury in his own right, when he is neither. That makes, to our mind and to that extent, Presidential Decree No. 1936 as amended by Presidential Decree No. 2002, unconstitutional.
>
> x x x x
>
> On January 26, 1986, he, Mr. Marcos, promulgated Presidential Decree No. 2018, giving the Labor Minister search and seizure powers as well:
>
> > (c) The Minister of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-licensee or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Minister shall order the search of the office or premises and seizure of documents, paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishment and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.
>
> The above has now been etched as Article 38, paragraph (c) of the Labor Code.
>
> **The decrees in question, it is well to note, stand as the dying vestiges of authoritarian rule in its twilight moments.**
>
> **We reiterate that the Secretary of Labor, not being a judge, may no longer issue search or arrest warrants. Hence, the authorities must go through the judicial process. To that extent, we declare Article 38, paragraph (c), of the Labor Code, unconstitutional and of no force and effect.**[37] (Emphasis supplied; citations omitted)

Ineluctably, therefore, case law provides that the exclusive authority to issue warrants of arrest vests with the judiciary and its judges. However, even if it were to be assumed, without conceding, that the *Written Authority* is issued post-arrest, the conclusion would not be different. As a post-arrest

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37 Id. at 164-167.

issuance, the *Written Authority* will then partake of the nature of a commitment order, which is similar in effect to a warrant of arrest. The difference is that in a commitment order, the continued detention of a person is premised upon a previously valid warrantless arrest of a person.[38] In other words, individuals subject to a commitment order refer to those already in official custody. Nevertheless, the goal is the same: to authorize the detention of an individual, temporarily depriving him/her of his/her liberty. Thus, like a warrant of arrest, a commitment order can also only be properly issued by a judge, and not by any administrative agency.[39]

At this point, it bears to emphasize that the Constitutional injunction that only judges can issue warrants of arrest was deliberately placed to avoid the situation wherein the liberty of an individual would be subject to the whim of State officers charged with the duty to prosecute the arrested individual. Thus, in *Presidential Anti-Dollar Salting Task Force v. Court of Appeals*:[40]

> We agree that the Presidential Anti-Dollar Salting Task Force exercises, or was meant to exercise, prosecutorial powers, and on that ground, **it cannot be said to be a neutral and detached "judge" to determine the existence of probable cause for purposes of arrest or search.** Unlike a magistrate, a prosecutor is naturally interested in the success of his case. x x x **To permit him to issue search warrants and indeed, warrants of arrest, is to make him both judge and jury in his own right**, when he is neither. x x x[41] (Emphasis supplied; citation omitted)

Not coincidentally, the ATC, the agency charged with the obligation to determine whether an arrestee may be detained for periods beyond those mandated under Article 125 of the RPC is likewise tasked to "[d]irect the speedy investigation and prosecution of all persons detained or accused for any crime defined and penalized under this Act[.]"[42] Otherwise stated, if Section 29 of the ATA is allowed to stand, this Court is permitting the ATC to act as both judge and jury. Certainly, this should not be allowed.

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38 *Villa Gomez v. People*, G.R. No. 216824, November 10, 2020; *People v. Cariño*, G.R. No. 234155, March 25, 2019; *Sayo v. Chief of Police*, 80 Phil. 859 (1948).

39 *Carandang v. Base*, 573 Phil. 198 (2008).

40 253 Phil. 344 (1989).

41 Id. at 362.

42 ANTI-TERRORISM ACT OF 2020, Section 46(c).

For the foregoing reasons, I am of the opinion that Section 29 of the ATA should be struck down as unconstitutional. Lest it be forgotten, the Constitutional prescription that warrants of arrest be issued only by a judge is firmly moored in our country's history:

> THE PRESIDENT: Thank you, Mr. Vice-President Ambrosio Padilla.
>
> x x x x
>
> The Marcos provision that search warrants or warrants of arrest may be issued not only by a judge but by any responsible officer authorized by law is discarded. **Never again will the Filipino people be victims of the much-condemned presidential detention action or PDA or presidential commitment orders, the PCOs, which desecrate the rights to life and liberty, for under the new provision a search warrant or warrant of arrest may be issued only by a judge.** x x x[43] (Emphasis supplied)

For the foregoing reasons, I vote that Section 29 of the ATA be declared as unconstitutional for unduly infringing on the exclusive right of the Judiciary to issue warrants of arrest and commitment orders.

II. The Third Mode of Designation under Section 25 of the ATA is not Unconstitutional.

Section 25 of the ATA is equally as controversial as Section 29 thereof. Section 25 is the provision which permits the designation of individuals, groups, organizations or associations as terrorist by the ATC. It provides for three modes of designation: "***first***, through the automatic adoption by the ATC of the designation or listing made by the UNSC [United Nations Security Council]; ***second***, through the ATC's approval of requests made by other jurisdictions or supranational jurisdictions to designate individuals or entities that meet the criteria under UNSC Resolution No. 1373; and ***third***, designation by the ATC itself, upon its own finding of probable cause that the person or organization commits, or is attempting to commit, or conspired in the commission of, the acts defined and penalized under Sections 4 to 12 of the ATA."[44] Concurring with the majority in that the third mode of designation is not unconstitutional, I endeavour some additional discussion below.

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43 RECORD, CONSTITUTIONAL COMMISSION 1009 (October 15, 1986).

44 Decision, pp. 141-142.

Under the third mode of designation, the ATC is empowered to characterize any individual, group, organization, or association as terrorists if it finds "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."[45] I agree with the *ponencia* that designation is an exercise of police power,[46] and must thus be assessed on the basis of reasonableness.[47]

Under Rule 6.3 of the ATA-IRR, the ATC may only designate "an individual, groups of persons, entity, organization, or association" upon a showing of probable cause that such "an individual, groups of persons, entity, organization, or association" can be reasonably believed to have committed, or attempted to commit, or conspired or participated in or facilitated the commission of any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the ATA.[48] As a consequence of such designation, "[t]he assets of the designated individual, groups of persons, organization, or association under the [ATA] shall be subject to the authority of the AMLC [Anti-Money Laundering Council] to freeze pursuant to Sections 35 and 36 of the [ATA] and Section 11 of [R.A.] No. 10168."[49]

To my mind, Section 25 of the ATA and Rules 6.3 and 6.4 are appropriate and reasonably necessary to accomplish the goal of combatting the domestic terrorism and its "pernicious and widespread effects."[50] The ATA and the ATA-IRR provide a narrowly tailored standard to permit the designation of an individual or group as a terrorist organization by the ATC, *i.e.*, that there is probable cause. Nevertheless, the petitioners bewail that such probable cause determination lacks a discernable criterion. However, to my mind, the criterion to determine the "probable cause" under Section 25 is easily identified when one considers the *proviso* together with Section 11 of R.A. No. 10168 or "The Terrorism Financing Prevention and Suppression Act of 2012."

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45 ANTI-TERRORISM ACT OF 2020, Section 25.

46 Decision, p. 153.

47 *Land Transportation Franchising and Regulatory Board v. Stronghold Insurance Co., Inc.*, 718 Phil. 660 (2013). The use of the test of reasonableness to assess claims of violations of substantive due process rights vis-à-vis the exercise of police power is illustrated in the case of *Ermita-Malate Hotel & Motel Operators Association, Inc. v. The City Mayor of Manila*, 128 Phil. 473 (1967).

48 ANTI-TERRORISM ACT OF 2020-IMPLEMENTING RULES AND REGULATIONS, Rule 6.3.

49 Id., Rule 6.4.

50 Decision, pp. 153 and 171.

To expound, Section 11 of R.A. No.10168, the AMLC may freeze funds if "(a) property or funds that are in any way related to financing of terrorism or acts of terrorism; or (b) property or funds of any person, group of persons, terrorist organization, or association, in relation to whom there is probable cause to believe that they are committing or attempting or conspiring to commit, or participating in or facilitating the commission of financing of terrorism or acts of terrorism as defined herein."[51] In other words, if there are reasonable grounds to believe that an individual or group have engaged or will engage in terrorist acts, then freezing the assets may follow. This standard is essentially what is observed in designation albeit differently worded in Rule 6.3 of the ATA-IRR, *i.e.*, that there is sufficient evidence to cause the freezing of the assets of the individual or group. Congress could not have contemplated another standard for probable cause since that would render Section 25 inutile. Indeed, if the determination of probable cause in Section 25 is not in sync with the probable cause threshold needed to trigger Section 11 of R.A. No. 10168, then the former would have no practical effect in the fight against terrorism—a situation that Congress, in its wisdom, could not have contemplated.

Another concern raised by petitioners is that there exists no remedy available to question or challenge an erroneous designation. Suffice it to state that this is erroneous since the extraordinary remedy of *certiorari* under Rule 65 is available. Relevantly, the determination of probable cause is essentially an exercise of quasi-judicial function,[52] and the lack of evidence to support a probable cause determination is arguably grave abuse of discretion amounting to lack or excess of jurisdiction.

SAMUEL H. GAERLAN
Associate Justice

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51 REPUBLIC ACT NO. 10168, The Terrorism Financing Prevention and Suppression Act of 2012, Section 11.

52 *Amarga v. Abbas*, 98 Phil. 739 (1956).