RECENT JURISPRUDENCE

POLITICAL LAW

IN THE MATTER OF PETITION FOR WRIT OF AMPARO OF VIVIAN A. SANCHEZ

VIVIAN A. SANCHEZ v. PSUPT. MARC ANTHONY D. DARROCA, ET AL.

G.R. No. 242257, 15 June 2021, EN BANC RESOLUTION, (Leonen, J.)

DOCTRINE OF THE CASE

In inferring conclusions involving power deficits in relationships, judges must be careful not to be gender-blind. In denying the Petition for the writ of amparo, the Regional Trial Court echoed respondents' statement that the taking of petitioner's photo and the threats of obstruction of justice thrown at her were part of "the conduct of a logical investigation." It could not see, or it refused to see that these actions, together with the surveillance done, were actual or imminent threats against Sanchez and her children.

Thus, in determining the existence of substantial evidence to support a petition for a Writ of Amparo, judges should also be cognizant of the different power dynamics at play when assessing if there is an actual or future threat to a petitioner's life, security, or liberty. Refusing to acknowledge this might lead to an outright denial of protection to those who need it the most.

FACTS

On October 15, 2019, the Court granted the Petition for a Writ of Amparo after finding that Vivian A. Sanchez (Sanchez) proved with substantial evidence that she and her children became persons of interest and were put under surveillance because of her dead husband's suspected affiliation with the New People's Army (NPA), thereby "creating a real threat to their life, liberty, or security."

Further, the Court pointed out that spousal and filial privileges, which continue to exist after the death of a spouse, protected Sanchez, and her children from inquiries regarding her husband's activities. The Court likewise castigated the police officers' brusque treatment of Sanchez and their surreptitious surveillance. It was stressed that if they wanted to interview Sanchez, they should have formally done so by holding the interview in an intimidation-free environment and ensuring that she was ably assisted by legal counsel.

Finally, the Court called on the lower courts to be more perceptive in ferreting out the different dynamics at play between police officers and civilians, and to not make their privileged status be the benchmark when rendering judgment.

ISSUE

Did the Court, in the assailed decision, err in granting Sanchez's petition for a Writ of Amparo?

RULING

NO. The totality of Sanchez's evidence convincingly showed that she and her family became subject of unwarranted police surveillance due to their relationship with a suspected NPA member resulting in an actual threat to their life, liberty, and security due to the government's unparalleled zeal in eradicating communism.

Here, two tiers of power were at play: (1) law enforcer-civilian; and (2) male-female. Specifically, male police officers investigated and monitored Sanchez and her children due to their relationship with an alleged NPA member. Sanchez was targeted because she initially refused to divulge her relationship with her dead husband when she went to the funeral parlor.

In inferring conclusions involving power deficits in relationships, judges must be careful not to be gender-blind. In denying the Petition for the Writ of Amparo, the Regional Trial Court (RTC) echoed the police officers' statement that the taking of Sanchez's photo and the threats of obstruction of justice thrown at her were part of "the conduct of a logical investigation." It could not see, or it refused to see that these actions, together with the surveillance done, were actual or imminent threats against Sanchez and her children.

Moreover, in rendering judgment, judges must not impose a standpoint viewed from their implicit status in society. They must look beyond their status as well-connected people who can assert themselves against men in uniform and who have no filial relation to one tagged as a communist. By ignoring Sanchez's not so unique predicament as the spouse of a labeled communist, the RTC created standards that would deny protection to those who need it most.

Thus, in determining the existence of substantial evidence to support a petition for a Writ of Amparo, judges should also be cognizant of the different power dynamics at play when assessing if there is an actual or future threat to a petitioner's life, security, or liberty. Refusing to acknowledge this might lead to an outright denial of protection to those who need it the most.

SOCIAL SECURITY SYSTEM *v.* COMMISSION ON AUDIT

G.R. No. 217075, 22 June 2021, *EN BANC*, (Rosario, *J.*)

DOCTRINE OF THE CASE

In ruling that only rank-and-file employees are entitled to the benefits and/or incentives arising from the execution of the CNA and the high-level employees who are not parties-in-interest to the CNA are not entitled thereto, the COA applied different laws and regulations.

Allowances, honoraria, and other fringe benefits which may be granted to government employees shall be subject to the approval of the President as stated in Section 5 of Presidential Decree No. 1597. In turn, Section 3 of Executive Order No. 180 s. 1987, states that high-level employees, whose function as normally considered as policy-making or managerial or whose duties are of a highly confidential nature shall not be eligible to join the organization of rank-and-file government employees. Further, Section 3(b) of Administrative Order No. 103 s. 2004, suspends the grant of new or additional benefits to full-time officials and employees and officials, except CNA Benefits, which are to be given only upon strict compliance with PSLMC Resolution No. 4 s. 2002 and PSLMC Resolution No. 2 s. 2003. In turn, the PSLMC Resolutions 4 and 2 provide for the grant of CAN benefits only to rank-and-file employees of government-owned and controlled corporations, government financial institutions, national government agencies, local government units, and state universities and colleges. Finally, Section 4.2 of Department of Budget and management (DBM) Budget Circular 2006-1 defines rank-and-file employees as those who are not managerial employees; not coterminous employees; and not highly confidential employees.

Taking all the foregoing provisions together, high-level managerial and confidential employees are not entitled to CNA benefits because they cannot become members of the negotiating unit. Moreover, the Court found that the grant of "counterpart" CNA incentives in the fixed amount of PHP 20,000.00 is contrary to Section 5.6 of DBM Budget Circular No. 2006-1 insofar as the same prescribes that no incentive amount shall be predetermined in the CNAs since the amount of incentive ought to be dependent on the cost-cutting measures specified under the CNA or its supplements.

FACTS

The Social Security Commission (SSC) issued Resolution No. 259, Series of 2005, granting the following:

(1) P20,000.00 Collective Negotiation Agreement (CNA) incentive to each Social Security System (SSS) employee covered within the collective negotiation unit; and
(2) Counterpart benefit to the CNA Incentive (counterpart CNA benefit) of equivalent amount to SSS personnel who are not covered by the collective negotiating unit, which include confidential, coterminous, and contractual employees, lawyers, and executives.

On post-audit, the SSS Supervising Auditor, under a Notice of Disallowance (ND), disallowed the above the counterpart CNA benefit for violation of Section 3, Paragraph (b) of Administrative Order No. 103 and Section 3 of Executive Order No. 180. These provisions prohibit the grant of CNA to high-level and confidential employees and to those who are not eligible to join the organization of rank-and-file government employees for purposes of collective negotiation, since collective negotiation (CN) benefits arise out of membership in the collective negotiation unit.

The SSS appealed the disallowance to the Legal Services Sector (LSS) of the Commission on Audit (COA). However, LSS denied the same, holding that only rank-and-file employees are entitled to the benefits and/or incentives arising from the execution of the CNA, and high-level employees, who are not considered party-in-interest to the CNA, are not entitled thereto.

The SSS filed a petition for review before the COA Commission Proper *En Banc* which denied the SSS' petition for lack of merit and affirming the decision of the LSS.

ISSUES

(1) Was the instant petition timely filed?
(2) Did the COA commit grave abuse of discretion in denying SSS' motion for reconsideration through the assailed notice?
(3) Is the disallowance of the grant of CNA incentives to non-members of the negotiating unit proper?

RULING

(1) **NO.** Section 3, Rule 64 of the Rules of Court (ROC) provides that petition shall be filed within thirty (30) days from notice of the judgement or final order, or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgement or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

SSS admits that the COA Decision was promulgated on May 8, 2014, and it received a copy thereof on May 15, 2014. Thus, the 30 day-period should have ended on June 14, 2014. However, following Section 3, Rule 64 of the Rules Court, the period was interrupted when SSS filed a motion for reconsideration (MR) on June 11 2014, leaving three (3) days which extended to five (5) days by the same Rule within which to file this petition.

Since SSS received a copy of the Notice denying its MR on February 4, 2015, it had five (5) more days from said date, or until February 9, 2015 to file its petition before the Court. However, the record shows that SSS filed its petition only on March 20, 2015 or 39 days after the last day of filing. Thus, there is no dispute that SSS belatedly filed the instant petition before the Court.

(2) **NO.** COA Resolution No. 2013-018 amending Section 12, Rule X of the 2009 Revised Rules of Procedure of the COA, prescribes the format of the Notice when the COA Commission Proper denies a MR.

SSS' stance on rejecting the Notice officially prescribed by the COA Rules of Procedure, yet conveniently adopting a mere letter, dated March 12, 2015, as the reckoning point of the period

to file a petition before the Court highlights its awareness that when it filed the instant petition on March 20, 2015, which was filed beyond the 30-day reglementary period prescribed in Rule 64 of the ROC.

(3) **YES.** In Madera *v.* Commission on Audit, *et al.,* the Court stated that the Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties. In recognition of such constitutional empowerment, the Court has generally sustained the COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. Thus, the Constitution and the ROC provide the remedy of a petition for Certiorari in order to restrict the scope of inquiry to errors of jurisdiction or to grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COA. In this case, the COA committed no such abuse.

In ruling that only rank-and-file employees are entitled to the benefits and/or incentives arising from the execution of the CNA and the high-level employees who are not parties-in-interest to the CNA are not entitled thereto, the COA applied different laws and regulations.

Allowances, honoraria, and other fringe benefits which may be granted to government employees shall be subject to the approval of the President as stated in Section 5 of Presidential Decree No. 1597. In turn, Section 3 of Executive Order No. 180 s. 1987, states that high-level employees, whose function as normally considered as policy-making or managerial or whose duties are of a highly confidential nature shall not be eligible to join the organization of rank-and-file government employees. Further, Section 3(b) of Administrative Order No. 103 s. 2004, suspends the grant of new or additional benefits to full-time officials and employees and officials, except CNA Benefits, which are to be given only upon strict compliance with PSLMC Resolution No. 4 s. 2002 and PSLMC Resolution No. 2 s. 2003. In turn, the PSLMC Resolutions 4 and 2 provide for the grant of CAN benefits only to rank-and-file employees of government-owned and controlled corporations, government financial institutions, national government agencies, local government units, and state universities and colleges. Finally, Section 4.2 of Department of Budget and management (DBM) Budget Circular 2006-1 defines rank-and-file employees as those who are not managerial employees; not coterminous employees; and not highly confidential employees.

Taking all the foregoing provisions together, high-level managerial and confidential employees are not entitled to CNA benefits because they cannot become members of the negotiating unit. Moreover, the Court found that the grant of "counterpart" CNA incentives in the fixed amount of PHP 20,000.00 is contrary to Section 5.6 of DBM Budget Circular No. 2006-1 insofar as the same prescribes that no incentive amount shall be predetermined in the CNAs since the amount of incentive ought to be dependent on the cost-cutting measures specified under the CNA or its supplements.

Therefore, the Court found that the COA committed no grave abuse of discretion in upholding the disallowance of the grant of CNA "counterpart" incentives to highly confidential

and coterminous employees of the SSS who are not members of the negotiating unit, including lawyers and executives.

ATTY. HOWARD M. CALLEJA, *et al. v.* EXECUTIVE SECRETARY, *ET AL.*

G.R. No. 252578-, 7 December 2021, *EN BANC*, (CARANDANG, *J.*)

DOCTRINES OF THE CASE

Section 1, Article VIII of the 1987 Constitution provides that judicial power includes the duty of the courts of justice not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

The Court found that this case mainly called for the exercise of the Court's expanded judicial power. This is because the issue of the 37 petitions pertains to the constitutionality of the ATA. Moreover, the 37 petitions ascribed grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Congress in enacting a law violating fundamental rights.

Facial challenge is "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities." Jurisprudence also dictates that facial challenges on legislative acts are permissible only if they curtail the freedom of speech and its cognate rights based on overbreadth and the void-for-vagueness doctrine.

The Court granted due course to these consolidated petitions as challenges only in relation to the provisions of the ATA which involve and raise chilling effects on freedom of expression and its cognate rights in the context of actual and not mere hypothetical facts.

Said proviso invaded areas of protected freedoms and is void for vagueness as it has a chilling effect on an average person. Before the protester can speak, he must first guess whether his speech would be interpreted as a terrorist act pursuant to Sec. 4 of R.A. No. 11479 and whether he might be indicted, arrested, and/or detained for it. The clause likewise shifts the burden to the accused in explaining his intent. It would then allow for law enforcers to take an "arrest now, explain later" approach in the application of the ATA to protesters and dissenters. The vagueness of such provision would likely result in an arbitrary flexing of the government muscle which is equally aversive to due process.

The Court struck down the "Not Intended Clause" as unconstitutional and categorically affirmed that all individuals, in accordance with Section 4 of Article III of the 1987 Constitution, are free to protest, dissent, advocate, peaceably assemble to petition the government for redress of grievances, or otherwise exercise their civil and political rights, without fear of being prosecuted as terrorists under the ATA.

Sec. 4 of the R.A. No. 11479, circumscribes Sec. 10 of R.A. No. 11479, including the act of "voluntarily and knowingly joining any organization, association or group of persons knowing that such organization,

association or group of persons is organized for the purpose of engaging in terrorism." There is no disagreement that overt acts of terrorism are clearly defined in Sec. 4 of R.A. No. 11479. Consequently, any ordinary man on the street, would know that Sec. 10 of R.A. No. 11479 pinpoints to organizations whose purpose is to engage in any of the five (5) types of overt acts defined under Sec. 4 of R.A. No. 11479 as terrorism.

The last paragraph of Sec. 10 of R.A. No. 11479 should be read in pari materia with Sec. 4 of R.A. No. 11479 in order to give effect to the Legislature's intent. A statute must be so construed so as to harmonize and give effect to all its provisions whenever possible. Therefore, the "standards" or "guidelines" for which the purpose (of an organization suspected of being formed in view of terrorism) is to be determined are provided in the very definition of terrorism itself which is found in Sec. 4 of the R.A. No. 11479

Even if a compelling state interest exists, a governmental action would not pass the strict scrutiny test if the interest could be achieved in an alternative way that is equally effective yet without violating the freedom of expression and its allied rights.

The Court noted that the first mode of designation is narrowly tailored and the least restrictive means to achieve the objective of the State as it is merely an implementation of the country's standing obligation under international law to enforce anti-terrorism and related measures in accordance with doctrine of incorporation, whereby the Philippines adopts the generally accepted principles of international law and international jurisprudence as part of the law of the land and adheres to the policy of peace, cooperation, and amity with all nations.

While the State has established a compelling interest, the means employed under the second mode of designation of Sec. 25 of R.A. No. 11479 is not the least restrictive means to achieve such a purpose. This mode of designation does not pass the strict scrutiny test and is equally overboard.

In order to define "designation" by determining its nature, it is necessary to resort to other parts of the ATA by identifying the effects of its issuance. Based on the fourth paragraph of Sec. 25 of R.A. No. 11479 it was deduced that the effect of designation is to subject an individual, group, organization, or association to the AMLC's authority to freeze according to Section 11 of the Terrorism Financing and Prevention Act (TFPSA).

In the case of the AMLC's power to issue twenty (20)-day ex parte freeze orders, it is justified for being a precautionary and provisional measure intended to prevent the greater evil of infliction of massive casualties brought about by terrorism. Under the "principle of effective judicial protection," aggrieved parties are entitled to question the basis of the AMLC's ex parte freeze orders before the CA; provided that the same remedy is pursued within the 20-day period from issuance of such orders. Here, procedural due process is not violated when the deprivation of a right or legitimate claim of entitlement is just temporary or provisional. When adequate means or processes for recovery or restitution are available to a person deprived of a right or legitimate claim of entitlement are in place, everyone is assured that the State — even in the legitimate exercise of police power — cannot summarily confiscate these rights or entitlements without undergoing a process that is due to all.

The Court stated that the counterterrorism measure of proscription was enacted in line with the State's efforts to address the complex issue of terrorism in the country. Therefore, there is no question that there is a compelling State interest or lawful purpose behind proscription.

Likewise, in satisfaction of strict scrutiny and overbreadth, proscription under Sections 26, 27, and 28 of R.A. No. 11479 constitutes a lawful means of achieving the lawful State purpose considering that it provides for the least restrictive means by which the freedom of association is regulated.

A law is deemed unconstitutional under the overbreadth doctrine if it achieves a governmental purpose by means that are unnecessarily broad thus, invading areas of protected freedoms, while the strict scrutiny standard is a two-part test wherein a government act is constitutional only if it achieves a compelling state interest, and that such means is the least restrictive and narrowly tailored to protect such interest.

Sec. 29 of R.A. No. 11479 passes the strict scrutiny standard. It is clear that the state has a compelling interest to detain individuals suspected of having committed terrorism. Based on Senate deliberations, Congress thought that the 3-day maximum period under the HSA was insufficient for purposes of: (1) gathering admissible evidence for a prospective criminal action against the detainee; (2) disrupting the transnational nature of terrorist operations; (3) preventing the Philippines from becoming an "experiment lab" or "safe haven" for terrorists; and (4) putting Philippine anti-terrorism legislation at par with those of neighboring countries whose laws allow for pre-charge detention between 14 to 730 days, extendible, in some cases, for an indefinite period of time.

FACTS

This Court resolves thirty-seven (37) separate petitions all challenging and assailing the constitutionality of Republic Act No. 11479 (R.A. No. 11479), otherwise known as the Anti-Terrorism Act of 2020 (ATA). Signed by President Rodrigo R. Duterte (Duterte) on July 3, 2020, the legislation ultimately repealed Republic Act No. 9372 (R.A. No. 9372), otherwise known as the Human Security Act (HSA) of 2007, and likewise complemented Republic Act No. 9372 (R.A. No. 10168), otherwise known as the "Terrorism Financing Prevention and Suppression Act of 2012."

Both predecessor laws to the ATA were aimed to counter terrorism in the country, but only did little to combat it. Therefore, the need to have a new law to be immediately enacted has been recognized "to address the urgent need to strengthen the law on anti-terrorism and effectively contain the menace of terrorist acts for the preservation of national security and the promotion of general welfare."

Despite the legislature's efforts to pass the law, petitioners primarily assailed the validity and constitutionality of the ATA. Petitioners asserted that Sections 4 to 12 of the ATA, due to their perceived facial vagueness and overbreadth that "purportedly repress free speech." Furthermore, it is argued that the unconstitutionality of the definition of the word "terrorism" and its variants will leave it with "nothing to sustain its existence." Petitioners who defied the constitutionality of the ATA came from different sectors of society inter alia members of party-lists, former and incumbent members of Congress, members of socio-civic and non-governmental organizations, members of Indigenous Peoples' (IPs) groups, Moros,

journalists, taxpayers, registered voters, members of the Integrated Bar of the Philippines (IBP), students, and members of the academe.

In the case at bar, the Court exerted effort in elucidating several petitions to demonstrate the petitioners' legal standing and how the enactment of the ATA personally affected them. One of the petitions mentioned was that of Carpio, et al. v. Anti-Terrorism Council, et al., which is led by two (2) former members of the Judiciary, former Senior Associate Justice Antonio Carpio and former Associate Justice and Ombudsman Conchita Carpio-Morales. The petition has primarily asserted that they would sustain direct injury upon passing the law for they are staunch activists and critics of the Duterte administration.

Another petition that was mentioned by the Court was the Rural Missionaries of the Philippines (RMP), who alleged that the Anti-Money Laundering Council (AMLC) caused the freezing of five (5) bank accounts belonging to the RMP-Northern Mindanao Sub-Region and RMP-Metro Manila "for allegedly being connected to terrorism under R.A. No. 10168."

Petitioner Sisters' Association in Mindanao (SAMIN) also asserted that its members experienced harassment due to their critical stand against the militarization of Moro and Lumad communities. Further, one of its members, Sr. Emma Cupin, MSM, is now allegedly facing trumped-up charges of robbery-arson and perjury. This was based on a complaint filed by the military in relation to a purported New People's Army (NPA) attack on a military detachment.

In addition, petitioners averred that the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC), on various occasions, has allegedly identified some of the religious or church groups, who are petitioners in the case, as established by the Communist Party of the Philippines (CPP)/NPA in its social media accounts. Petitioners assailed that these foregoing instances "demonstrate the credible threat of prosecution they face under the ATA."

Petitioner General Assembly of Women for Reforms, Integrity, Equality, Leadership and Action, Inc. (GABRIELA), another staunch critic of the government, has also averred that "they have been targets of human rights violations perpetuated by state forces and are constant targets of red-baiting and red-tagging." Lastly, alongside the other petitioners, the petition of the members of the academe has also maintained that the ATA would have a destructive chilling effect on academic freedom. According to them, their free thoughts and ideas to open debates and academic discussions on various issues about the government and society would expose them to potential prosecution under the ATA.

Following the passage of the ATA, the Department of Justice (DOJ) has commenced the crafting of the law's implementing rules and regulations (IRR) in August 2020. Succeeding this, the Anti-Terrorism Council (ATC) has automatically adopted the list of designated terrorists by the United Nations Security Council (UNSC) and likewise directed concerned agencies "to impose and implement the relevant sanction measures without delay, from the time of designation made by the UNSC and its relevant Sanctions Committee." Additionally, the ATC has also taken grave measures to implement the ATA, which include designating CPP/NPA and other sixteen (16) organizations associated with the Islamic State and "other Daesh-affiliated groups in the Philippines," ten (10) individuals for their alleged membership in extremist

groups, and nineteen (19) other individuals due to their alleged ties with the CPP/NPA, all as terrorists. Similarly, AMLC also issued Sanction Freeze Orders against the CPP/NPA and the Daesh-affiliated groups. Likewise, the ATC issued several resolutions wherein several individuals were designated as terrorists for their alleged membership in extremist groups and/or alleged ties with the CPP/NPA.

Incidentally, two (2) Aetas were arrested in August 2020, during the implementation of the ATA. They were reported to be the first individuals charged in violation of Section 4 of R.A. No. 11479 after allegedly firing at the military, which led to the death of one soldier to the side of the latter. However, in an Order released by the Regional Trial Court (RTC) of Olongapo, it granted the Demurrer of Evidence of the accused and ordered their dismissal on the ground of insufficiency of evidence.

ISSUES

Should the Court grant due course to 35 out of 37 petitions;

Should facial challenge or applied challenge be used in analyzing the ATA;

Is the "Not Intended Clause" in the proviso of Section 4 constitutional;

Is the phrase "organized for the purpose of engaging in terrorism" in the third paragraph of Section 10 constitutional;

Is the first mode of designation under Section 25 of R.A. No. 11479 constitutional;

Is the second mode of designation under Section 25 of R.A. No. 11479 constitutional;

Is the third mode of designation under Section 25 of R.A. No. 11479 constitutional;

Are the provisions on proscription in Sections 26 to 28 of R.A. No. 11479 constitutional; and

Is Section 29 of R.A. No. 11479 on arrest and detention without judicial warrant constitutional.

RULING

YES. The Court gave the petitions due course only in part.

Section 1, Article VIII of the 1987 Constitution provides that judicial power includes the duty of the courts of justice not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

The Court found that this case mainly called for the exercise of the Court's expanded judicial power. This is because the issue of the 37 petitions pertains to the constitutionality of the ATA. Moreover, the 37 petitions ascribed grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Congress in enacting a law violating fundamental rights.

The Court may exercise its power of judicial review upon compliance with the following requisites:

An actual and appropriate case and controversy exists;

A personal and substantial interest of the party raising the constitutional question;

The exercise of judicial review is pleaded at the earliest opportunity; and

The constitutional question raised is the very lis mota of the case.

First, the Court ruled that there is an actual case or controversy that exists when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical dispute. In this case, the consolidated petitions sufficiently raised concerns regarding freedom of speech, expression, and its cognate rights which only on these bases that the Court ruled upon the constitutionality of the law. As such, the petitions present a permissible facial challenge to the ATA. Furthermore, certain provisions of the ATA have sufficiently shown that there was a credible and imminent threat of injury.

Second, the Court declared that there was a personal and substantial interest that concerns legal standing or the "right of appearance in a court of justice on a given question." The Court found that the petitioners had sufficiently alleged the presence of credible threat of injury for being constant targets of "red-tagging" or "truth-tagging." Furthermore, the Court held that even if some of the petitioners had not come under the actual operation of the ATA, there would still have been no legal standing impediments to grant due course to the petitions because they presented actual facts that also partook a facial challenge in the context of free speech and its cognate rights.

Third, the Court held that the exercise of judicial review of "earliest opportunity" was complied with because the issue of constitutionality was directly filed with the Court at the first instance.

Lastly, the Court found that there was presence of lis mota which means that the Supreme Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground. It further held that lis mota was complied with by the very nature of the constitutional challenge raised by petitioners against the ATA which dealt squarely with the freedom of speech, expression, and its cognate rights. Nevertheless, the Court dismissed Balay Rehabilitation Center, Inc. v. Duterte and Yerbo v. Offices of the Honorable Senate President and Honorable Speaker of the House of Representative. The Balay Rehabiliation Center, Inc. was dismissed based on the ground of lack of merit since the arguments were hinged on existing laws and not the Constitution. On the other hand, Yerbo was dismissed for being fundamentally flawed both in form and substance.

YES. Facial challenge is "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities." Jurisprudence also dictates that facial challenges on legislative acts are permissible only if they curtail the freedom of speech and its cognate rights based on overbreadth and the void-for-vagueness doctrine.

The Court grants due course to these consolidated petitions as challenges only in relation to the provisions of the ATA which involve and raise chilling effects on freedom of expression and its cognate rights in the context of actual and not mere hypothetical facts.

Section 4 of R.A. No. 11479 consists of two distinct parts: the main part and the proviso. The main part of Sec. 4 of R.A. No. 11479 provides three components. The first component enumerates the conduct which consists of the actus reus of terrorism or the overt acts that constitute the crime. The second component enumerates the purposes of the actus reus or the mens rea. The third component provides for the imposable penalty. In contrast, the proviso purports to allow for advocacies, protests, dissents, stoppages of work, industrial or mass actions, and other similar exercises of civil and political rights to be punished as acts of terrorism if they are "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." Thus, it is evident that the main part chiefly pertains to conduct, while the proviso innately affects the exercise of the freedom of speech and expression.

The main part of Sec. 4 of R.A. No. 11479 cannot be assailed through a facial challenge as it is evident that the enumeration refers to punishable acts, or those pertaining to bodily movements that produce an effect in the external world, and not speech. The acts constitutive of the crime of terrorism under paragraphs (a) to (e) are clearly forms of conduct unrelated to speech, while the proviso are forms of speech or expression, or are manifestations thereof. Thus, the perceived vagueness and overbreadth of the main part of Section 4 may be inconsistent with the delimited facial challenge framework as discussed.

Terrorism, as defined in Sec. 4 of R.A. No. 11479, is not impermissibly vague. The Court did not agree that Sec. 4 of R.A. No. 11479 deserved total invalidation due to the perceived vagueness and imprecision of the definition of terrorism as crime. The main part of Sec. 4 of R.A. No. 11479 has three components with the first component providing the actus reus and the second component providing the mens rea. It is from these first two components that the crime of terrorism should be construed.

A textual review of the main part of Sec. 4 of R.A. No. 11479 shows that its first and second components provide a clear correlation and a manifest link as to how or when the crime of terrorism is produced. When the two components of the main part of Section 4 are taken together, they create a valid and legitimate definition of terrorism that is general enough to adequately address the evolving forms of terrorism, but neither too vague nor too broad as to violate due process or encroach upon the freedom of speech and expression and other fundamental liberties.

It is well-settled that penal laws, such as the ATA, inherently have an in terrorem effect which is not reason enough to invalidate such laws. Otherwise, the state may be restricted from preventing or penalizing socially harmful conduct. Moreover, lawmakers have no positive constitutional or statutory duty to define each and every word in an enactment, as long as the legislative will is clear.

In Dans v. People, the Court used a simpler test which consists merely of asking the question: "What is the violation?" Here, petitioners failed to demonstrate that a person of common intelligence can understand that Sec. 4 (a) of R.A. No. 11479 punishes an "act intended to cause death, serious physical injury, or danger to another person." He cannot, under the guise of "vagueness," feign ignorance and claim

innocence because the law had not specified, in exacting detail, the instances where he might be permitted to kill or seriously endanger another person to intimidate the government. The same goes for all the other acts listed in Sec. 4 (b) to (e) of R.A. No. 11479 in conjunction with the mens rea components.

A cursory examination of each of the general terms in the main part of Section 4 betrays no reasonable or justifiable basis to hold them as unconstitutionally vague. Firstly, the Court is not without authority to draw from the various aids to statutory construction, such as the legislative deliberations, to narrowly construe the terms used in the ATA and thus limit their scope of application. Secondly, the meaning of the other terms used in the main part of Section 4 can be found in jurisprudence as well as in dictionaries.

In the same vein, Sec. 4 of R.A. No. 11479 penalizes any of the enumerated acts under subsections (a) to (e) regardless of the stage of execution is not vague. The three stages of execution are defined under Article 6 of the RPC. The Court noted that Article 10 of the RPC shall have supplementary effect to special penal laws, such as the ATA.

Terrorism as defined in the ATA is not overbroad. The language employed in Sec. 4 of R.A. No. 11479 is almost identical to the language used in other jurisdictions. This simply shows that Congress did not formulate the definition of terrorism out of sheer arbitrariness, but out of a desire to be at par with other countries taking the same approach. The Court also recognized that the general wording of the law is a response to the ever-evolving nature of terrorism.

NO. The "Not Intended" clause of Section 4's proviso is unconstitutional under the (1) strict scrutiny test, (2) void for vagueness, and (3) overbreadth doctrines.

The proviso under Sec. 4 of R.A. No. 11479 states that "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."

Said proviso invaded areas of protected freedoms and is void for vagueness as it has a chilling effect on an average person. Before the protester can speak, he must first guess whether his speech would be interpreted as a terrorist act pursuant to Section 4 and whether he might be indicted, arrested, and/or detained for it. The clause likewise shifts the burden to the accused in explaining his intent. It would then allow for law enforcers to take an "arrest now, explain later" approach in the application of the ATA to protesters and dissenters. The vagueness of such provision would likely result in an arbitrary flexing of the government muscle which is equally aversive to due process.

The "Not Intended Clause" renders the proviso overbroad. Section 4 supposes that the speech that is "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" is punishable as terrorism. This abridges free expression since this kind of speech ought to remain protected for as long as it does not render the commission of terrorism imminent as per the Branderburg standard, which is the proper standard to delimit the prohibited speech provisions, such as inciting to terrorism, proposal, and threat.

By plainly punishing speech intended for such purposes, the imminence element of the Branderburg standard is discounted as a factor and as a result, the expression and its mere intent, without more, is enough to arrest or detain someone for terrorism. This is a clear case of the chilling of speech.

Lastly, the "Not Intended Clause" also failed the strict scrutiny test. The said test can additionally be used to determine the validity of the clause, being a government regulation of speech. Thus, applying this test, the government has the burden of proving that the regulation is necessary to achieve a compelling state interest; and that it is the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.

In this case, the Government failed to show that said clause passed strict scrutiny. While there appears to be a compelling state interest, such as to forestall possible terrorist activities considering the global efforts to combat terrorism, punishing speech 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" was not the least restrictive means to achieve the same.

For speech to be penalized, it must pass the Brandenburg standard, which the "Not Intended Clause" completely discounts. Furthermore, there are already provisions that subsume such standard, such as the provision on Inciting to Terrorism. Thus, as it stands, the "Not Intended Clause" only blurred the distinction between terroristic conduct and speech. Hence, the said clause was not narrowly tailored to subserve the said State interest.

Therefore, the Court struck down the "Not Intended Clause" as unconstitutional and categorically affirmed that all individuals, in accordance with Section 4 of Article III of the 1987 Constitution, are free to protest, dissent, advocate, peaceably assemble to petition the government for redress of grievances, or otherwise exercise their civil and political rights, without fear of being prosecuted as terrorists under the ATA.

NO. The Supreme Court, agreeing with the opinion of Chief Justice (CJ) Gesmundo, ruled that Sec. 4 of the R.A. No. 11479, circumscribes Section 10 of R.A. No. 11479, including the act of "voluntarily and knowingly joining any organization, association or group of persons knowing that such organization, association or group of persons is organized for the purpose of engaging in terrorism." There is no disagreement that overt acts of terrorism are clearly defined in Sec. 4 of R.A. No. 11479. Consequently, any ordinary man on the street, would know that Sec. 10 of R.A. No. 11479 pinpoints to organizations whose purpose is to engage in any of the five (5) types of overt acts defined under Section 4 as terrorism.

A law must not be read in truncated parts and its provisions must be read in relation to the whole law. Every part of the statute must be interpreted with reference to the context. Thus, in construing a statute, courts must take the thought conveyed by the statute as a whole: construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.

Accordingly, the last paragraph of Sec. 10 of R.A. No. 11479 should be read in pari materia with Sec. 4 of R.A. No. 11479 in order to give effect to the Legislature's intent. A statute must be so construed so as to harmonize and give effect to all its provisions whenever possible. This is consistent with the principle that every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter. Therefore, the "standards" or "guidelines" for which the purpose (of an organization suspected of being formed in view of terrorism) is to be determined are provided in the very definition of terrorism itself which is found in Sec. 4 of R.A. No. 11479

YES. Even if a compelling state interest exists, a governmental action would not pass the strict scrutiny test if the interest could be achieved in an alternative way that is equally effective yet without violating the freedom of expression and its allied rights. Per the provision of the ATA, the first mode of designation pertains to a mechanism of automatic adoption of the UNSC Consolidated List. Here, it was not shown that there is a less restrictive alternative to comply with the State's international responsibility pursuant to UNSC Resolution (UNSCR) No. 1373 and related instruments to play an active role in preventing the spread of the influence of terrorists included in the Consolidated List. Neither was it proven that the first mode of designation imposes burdens more than necessary to achieve the State's articulated interest.

The Court noted that the first mode of designation is narrowly tailored and the least restrictive means to achieve the objective of the State as it is merely an implementation of the country's standing obligation under international law to enforce anti-terrorism and related measures in accordance with doctrine of incorporation, whereby the Philippines adopts the generally accepted principles of international law and international jurisprudence as part of the law of the land and adheres to the policy of peace, cooperation, and amity with all nations. In automatically adopting the designation pursuant to UNSCR No. 1373, the Anti-Terrorism Council (ATC) does not exercise any discretion to accept or deny the listing, and it will not wield any power nor authority to determine the corresponding rights and obligations of the designee. Instead, it merely confirms a finding already made at the level of the UNSC, and affirms the applicability of sanctions existing in present laws. As such, while the ATA mentions only the country's obligations under UNSCR No. 1373, this reference should be understood as reflecting the country's commitments under the UN Charter.

Furthermore, the lack of prior notice and hearing in the process of designation is understandably justified by the exigent nature of terrorism, which is a relatively new global-phenomenon that must be met with commensurate effective response of the Nation-State. Nonetheless, due process is satisfied by an opportunity to be heard as designees will be subsequently notified of their designation in accordance with Rule 6.5 of the IRR. Even further, the Court noted that the UNSC also provides delisting process for those who are designated as terrorist.

Therefore, the first mode of designation under Section 25 of R.A. No. 11479 is constitutional as it is narrowly tailored and the least restrictive means to achieve the objective of the State, especially as there are adequate guidelines in the UNSCR No. 1373.

NO. While the State has established a compelling interest, the means employed under the second mode of designation of Sec. 25 of R.A. No. 11479 is not the least restrictive means to achieve such a purpose. This mode of designation does not pass the strict scrutiny test and is equally overbroad.

Similarly with the first mode, there are underlying compelling State interests and purposes for legislating the second mode of designation. However, the methods used are neither overly restricted nor specifically tailored to the State's compelling interest. The ATC is allowed unrestricted freedom in granting designation petitions based on its own judgment in this second manner of designation. Similarly, there appears to be no adequate criteria to follow when granting or declining such requests. The ATC is left to make its own decision based on a vague interpretation of "the criteria for designation of UNSCR No. 1373," with no more direction.

In addition, there are no adequate procedural safeguards or remedies for an incorrect designation in this regard. In comparison, the first manner of designation with the UNSC provides a system for delisting, which is specified in the UNSCR No. 1373 supplementing resolutions. As previously stated, Rule 6.9 of the ATA IRR recognizes two options for delisting under the first mode of designation. Furthermore, unlike Section 26 of R.A. No. 11479, there is no automatic review provision that applies to designations made under the second manner (on proscription). When the Court considers analogous counterterrorism measures taken by other nations, such as those described above, the lack of a remedy becomes even more apparent.

Aside from the lack of a remedy, there are other viable options that are significantly less intrusive and potentially harmful to protected rights. These include law enforcement authorities adopting an internal watchlist or maintaining a database to track prospective threats, as well as judicial proscription under Sec. 26 of R.A. No. 11479. As previously stated and as will be discussed further below, the effects of designation are nearly identical to those of proscription.

Because this measure has the unintended consequence of stifling free speech and related rights, it should not be implemented based on a decision made by an executive body that lacks adequate criteria and safeguards. In conclusion, the second manner of designation fails to withstand strict scrutiny and overbreadth for the reasons indicated, and is thus illegal.

YES. The ponencia was outvoted by a vote of 8-7. Eight (8) members of the Court, including CJ Gesmundo, voted that the third paragraph of Sec. 25 of R.A. No. 11479 is not unconstitutional. CJ Gesmundo explained that in order to define "designation" by determining its nature, it is necessary to resort to other parts of the ATA by identifying the effects of its issuance.

Based on the fourth paragraph of Sec. 25 of R.A. No. 11479, it was deduced that the effect of designation is to subject an individual, group, organization, or association to the AMLC's authority to freeze according to Section 11 of the Terrorism Financing and Prevention Act (TFPSA). A comparison of the two laws revealed that: 1) The AMLC may issue 20-day ex parte freeze orders; either: (a) motu proprio; (b) upon the ATA's request; or (c) in compliance with UN Security Council resolutions; 2) Pursuant to the "principle of effective judicial protection," parties aggrieved by the aforementioned ex parte freeze order may file a petition with the Court of Appeals (CA) to determine such order's basis; and 3) the properties of designated individuals, organizations, associations, or groups may be the subject of forfeiture proceedings under the TFPSA.

In the case of the AMLC's power to issue twenty (20)-day ex parte freeze orders, it is justified for being a precautionary and provisional measure intended to prevent the greater evil of infliction of massive casualties brought about by terrorism. Under the "principle of effective judicial protection," aggrieved parties are entitled to question the basis of the AMLC's ex parte freeze orders before the CA; provided that the same remedy is pursued within the 20-day period from issuance of such orders. Here, procedural due process is not violated when the deprivation of a right or legitimate claim of entitlement is just temporary or provisional. When adequate means or processes for recovery or restitution are available to a person deprived of a right or legitimate claim of entitlement are in place, everyone is assured that the State — even in the legitimate exercise of police power — cannot summarily confiscate these rights or entitlements without undergoing a process that is due to all.

Even assuming that the aggrieved parties fail to question the basis of the AMLC's ex parte freeze orders before the CA within the 20-day period from issuance of such orders, remedies are still available for the recovery of the use of such frozen assets. Sections 8 and 9 of the Rules on Civil Forfeiture, as made applicable by Section 18 of the TFPSA, affords parties aggrieved by the AMLC's ex parte freeze orders notice as well as opportunity to participate in the forfeiture proceedings. What this essentially means is that aggrieved parties may still have a chance to assail the basis of freeze orders and to discharge the properties from State custody in their favor.

Furthermore, CJ Gesmundo stated that the power to determine probable cause is not only limited to magistrates of regular courts. Even law enforcers may resort to the determination of probable cause to prevent the effects or direct results of crimes being committed in flagrante delicto. Allowing or requiring law enforcers to determine the presence of probable cause in conducting in flagrante arrests and other preventive measures discourages and puts in check any arbitrariness or potential abuse on the part of State agents. The reason being is that the presence or absence of probable cause may be assailed by aggrieved parties during court proceedings. In this regard, law enforcers as well as statutorily authorized administrative agencies are inherently empowered to abate any nuisance per se.

Lastly, as to an aggrieved party's ability to timely file a petition with the CA to question the basis of an ex parte freeze order, Section 15 of the TFPSA provides a mode of notice for aggrieved parties. This particular provision on publication of the list of designated persons guarantees the due process rights of aggrieved parties to notice and opportunity to be heard. In this regard, an aggrieved party cannot reasonably complain of being denied due process in view of the statutorily mandated publication requirement.

Apart from judicial remedies, parties aggrieved by the AMLC's ex parte freeze order may also pursue the administrative remedy of delisting as provided under Section 22 of the TFPSA. Furthermore, Rule 6 of the IRR of the ATA provides for a detailed administrative procedure as regards delisting and exemption in addition to judicial guarantees. Under Rule 6.9, a designated party may file a verified request for delisting before the ATC within fifteen (15) days from publication of the designation based on specified grounds. The said Rules also ensure that parties aggrieved by the AMLC's ex parte freeze order can ventilate their grievances through an expedient administrative recourse such as delisting or exemption. In effect, such administrative procedure of delisting and exemption complements and strengthens an aggrieved party's due process rights already guaranteed by the "principle of effective judicial protection."

YES. The Court stated that the counterterrorism measure of proscription was enacted in line with the State's efforts to address the complex issue of terrorism in the country. Therefore, there is no question that there is a compelling State interest or lawful purpose behind proscription. Likewise, in satisfaction of strict scrutiny and overbreadth, proscription under Sections 26, 27, and 28 of R.A. No. 11479 constitutes a lawful means of achieving the lawful State purpose considering that it provides for the least restrictive means by which the freedom of association is regulated.

There are proper procedural safeguards that the DOJ is required to observe to avoid an erroneous proscription. The DOJ, on its own, cannot apply for the proscription of a group of persons, organizations, or associations. Sec. 26 of R.A. No. 11479 requires that the application for proscription shall be with "the authority of the ATC upon the recommendation of the National Intelligence Coordinating Agency (NICA)." Thus, even before an application is filed with the CA, the matter has already passed through three levels of investigation.

The layers of protection ensure that the proscription mechanism under the ATA is narrowly tailored and constitutes the least restrictive means to achieve the compelling state interest. Section 27 of R.A. No. 11479 states that if the CA finds probable cause based only on the DOJ's application to prevent the commission of terrorism, it must issue a preliminary order of proscription within 72 hours of the application's filing. Allowing the issuance of a preliminary order of proscription would not result in the premature labeling of a group as a terrorist without the benefit of a judicial trial, contrary to the restriction on the enactment of bills of attainder, according to the Court.

The phrasing of Sec. 26 of R.A. No. 11479 implies that anyone who may be proscribed under the ATA will be given notice and a hearing, and the procedure will undoubtedly be judicial in nature. As a result, the challenged provision appears to be adequately limited in order to avoid an unwarranted infringement on protected freedoms. Because judicial proscription is such a potent counterterrorism instrument, the controls in place may not be enough to prevent abuse or misuse. Where the Court can properly assess the issues, the courts should not be barred from resolving matters impacting the real and practical application of these laws.

The Court recognized that existing procedural procedures may not be enough for the process of proscription, if and when such an application is made. The Court ruled that it is an appropriate moment to issue certain instructions for the bench, bar, and public to follow when asking for a proscription order under Sec. 26 of R.A. No. 11479. This is in accordance with the Court's rule-making competence granted under Section 5, Paragraph (5) of Article VIII of the 1987 Constitution.

The Court orders the CA to create factual procedural rules based on the preceding recommendations for submission to the Committee on the Revision of the ROC, as well as final approval and promulgation by the Court En Banc.

YES. The general rule is that no arrest can be made without a valid warrant issued by a competent judicial authority. Warrantless arrests, however, have long been allowed in certain instances as an exception to this rule. The enumeration in Rule 9.2 of the IRR substantially mirrors Section 5, Rule 113 of the ROC.

Section 29 of R.A. No. 11479 is an exception to Article 125 of the RPC wherein the apprehending officer will not incur criminal liability for delay in the delivery of detained persons to the authorities so long as a written authorization from the ATC is secured. As a safeguard, Sec. 29 of R.A. No. 11479 requires the arresting officer to notify the judge of the court nearest the place of the apprehension in writing within 48 hours with the ATC and CHR being furnished copies of said notification.

Thus, the arrest and detention contemplated in Sec. 29 of R.A. No. 11479 did not divert from the rule that only a judge may issue a warrant of arrest. This was confirmed by Rule 9.2 of the ATA IRR which replicated the enumeration in Section. 5, Rule 113 relative to the crimes defined under the ATA. When the circumstances for a warrantless arrest under Sec. 5, Rule 113 of the ROC or Rule 9.2 are not present, the government must apply for a warrant of arrest with the proper court. The written authorization contemplated in Sec. 29 of R.A. No. 11479 does not substitute a warrant of arrest that only the courts may issue.

Sec. 29 of R.A. No. 11479 does not repeal nor overhaul Art. 125 of the RPC. These provisions are not irreconcilably inconsistent. The proper construction is to consider Article 125 of the RPC as the general rule that also applies to ATA-related offenses when the conditions under Sec. 29 of R.A. No. 11479 are not met. The periods under Sec. 29 of R.A. No. 11479 will only become operative once the arresting officer has secured a written authorization from the ATC, in compliance with the requirements of Sec. 29 of R.A. No. 11479.

Since Sec. 29 of R.A. No. 11479 applies exclusively to persons validly arrested without a warrant for terrorism and its related crimes under the ATA and written authorization is secured from the ATC, the 14-day detention period should then be read as supplementing the periods provided under Art. 125 of the RPC.

A law is deemed unconstitutional under the overbreadth doctrine if it achieves a governmental purpose by means that are unnecessarily broad thus, invading areas of protected freedoms, while the strict scrutiny standard is a two-part test wherein a government act is constitutional only if it achieves a compelling state interest, and that such means is the least restrictive and narrowly tailored to protect such interest.

Sec. 29 of R.A. No. 11479 passes the strict scrutiny standard. It is clear that the state has a compelling interest to detain individuals suspected of having committed terrorism. Based on Senate deliberations, Congress thought that the 3-day maximum period under the HSA was insufficient for purposes of: (1) gathering admissible evidence for a prospective criminal action against the detainee; (2) disrupting the transnational nature of terrorist operations; (3) preventing the Philippines from becoming an "experiment lab" or "safe haven" for terrorists; and (4) putting Philippine anti-terrorism legislation at par with those of neighboring countries whose laws allow for pre-charge detention between 14 to 730 days, extendible, in some cases, for an indefinite period of time.

It is worth remembering that the prolonged detention period under Sec. 29 of R.A. No. 11479 is not only for gathering the necessary evidence. Congress also intended it to be a practical tool for law enforcement to disrupt terrorism.

In light of the above, Sec. 29 of R.A. No. 11479clearly satisfies the compelling state interest requirement under the strict scrutiny standard. Moreover, the second prong of strict scrutiny, i.e. , least restrictive means, has also been complied with by Sec. 29 of R.A. No. 11479, if read in conjunction with Sections 30, 31, 32, and 33 of the R.A. No. 11479, because: (1) it only operates when the ATC issues a written authorization; (2) the detaining officer incurs criminal liability if he violates the detainee's rights; and (3) the custodial unit must diligently record the circumstances of the detention.