



# ATA Case Briefing

29 March 2022



For this session:

- Our arguments
- What we asked the court to do
- Relevant Issues discussed by the Supreme Court
- The Decision
- Rationale of the Decision
- How the case affects us



# Our arguments

1. ATA should be declared void for vaguely defining “terrorism” (Sec. 4)
2. Section 12 (providing material support to terrorists) of the ATA impinges on the right of Petitioners against deprivation of life, liberty, and security without due process of law
3. Section 13 (humanitarian exemption) of the ATA violates the Petitioners’ right to form associations and societies under Article III, section 8 of the Constitution
4. The ATA impinges on the right to free speech and expression (Sec. 9, Inciting to commit terrorism)
5. The ATA violates the right to property (Sec. 25, Designation of terrorists)
6. The ATA violates a person’s right to privacy (Sec. 16, Surveillance)
7. The ATA infringes on the power of the judiciary (Sec.. 29, Detention of suspected terrorists)



## What we asked the court to do

1. The Petition be given due course
2. Temporary Restraining Order
3. Declare Sections 4, 9, 12, 13, 16, 25 (i.e. mode 3 of designation), 29, and all other provisions dependent, unconstitutional
4. Other reliefs just and equitable



## Relevant issues discussed by the Supreme Court

1. Vagueness of Sec 4
2. Constitutionality of other provisions of the ATA
  - a. Section 9
  - b. Section 12 (connected to our argument vs Section 13)
  - c. Section 16
  - d. Section 25
  - e. Section 29



# The Decision

1. Changes how terrorism is defined by removing the phrase “which are not intended to cause death or serious physical harm to a person, to endanger a person’s life, or to create serious risk to public safety”
2. Second mode of designation under Section 25 is unconstitutional
3. All other provisions referring to the above are unconstitutional



# Rationale of the Decision

## On vagueness of “terrorism” under the ATA:

Terrorism is NOT impermissibly vague. Section 4 is composed of: 1.) the overt acts that constitute the crime; 2.) the purpose or intents of the overt acts that constitute the crime (i.e., to intimidate the general public or segment thereof, etc); 3.) the penalty; and 4.) the “proviso” that allows advocacy, protest, dissent, stoppage of work, mass actions and similar exercises of civil and political rights.

The general terms of Section 4 are NOT vague. Terrorism as defined is NOT overbroad, since it fosters a valid state policy to combat terrorism and protect national security and public safety. BUT: the “not intended” clause attached to the proviso is UNCONSTITUTIONAL



## Rationale of the Decision

The “not intended” clause invades the area of protected freedoms as it shifts the burden to the accused of proving that their actions constitute an exercise of their civil and political rights, contrary to the principle that it is the government that has the burden to prove the unconstitutionality of the speech. There is serious ambiguity as there are no parameters sufficient that render it capable of judicial construction. It has a chilling effect on the average person, and abridges free expression.





# Rationale of the Decision

On Section 9:

Speech or statements can be penalized as inciting under Section 9 if they are 1.) direct and explicit calls to engage in terrorism; 2.) made with intent to promote terrorism; and 3.) directly and causally responsible for increasing the actual likelihood of a terrorist attack. These parameters are incorporated in the IRR



# Rationale of the Decision

On Section 12:

“Training” under Section 12 refers only to that directed to produce the commission of terrorism. Training and expert advice can only be penalized under Section 12 when they are: 1.) directed to producing imminent terrorism; and 2.) likely to produce such action



# Rationale of the Decision

On Section 16:

Surveillance of suspects and interception and recording of communications are preventive and extraordinary counterterrorism measures. Similar processes are also adopted in other jurisdictions and are accepted preventive and extraordinary forms of counterterrorism measures.

Designation and proscription in the ATA must be viewed as an exercise of police power by the state.



# Rationale of the Decision

On Section 25:

Compelling state interest exists in enacting the first mode of designation under section 25. The intentions of Section 25 are: to forestall possible terrorist activities of foreigners to Filipinos, cooperate with global efforts against terrorist groups, and comply with international obligations.

The first mode of designation (automatic adoption) is reasonable given its underlying purpose. The designee will be given an opportunity to be heard as they will be notified of their r=designation according to the IRR.



# Rationale of the Decision

On Section 25:

BUT: the 2nd mode of designation (request for designation by other jurisdictions may be adopted by the ATC) is unconstitutional. This is because the means employed are not the least restrictive to achieve the compelling interest of the state as requests for designation will fall under the discretion of the ATC. There are no sufficient standards to be observed in granting or denying the request, which may lead to a designation at the expense of the rights of a prospective designee.. There are no proper procedural safeguards or remedies for erroneous designation unlike the first mode, which allowed for delisting.



# Rationale of the Decision

On Section 25:

On justifying the third mode (i.e., ATC designation of individuals or organizations upon finding probable cause that the subject commits, attempts to commit, or conspires to commit acts of terrorism), the SC reasoned that: 1.) postponing the hearing after deprivation is justified, as public interest is the collection of everyone's private rights; 2.) the power to determine probable cause is also allowed for law enforcers to prevent the effects or direct results of crimes; and 3.) the aggrieved party has the ability to file a petition with the CA to question the basis of an ex parte order. They can also pursue the administrative remedy of delisting.



# Rationale of the Decision

On Section 29:

A person may be arrested without a warrant by law enforcement officers or military personnel for acts defined and penalized under Secs. 4-12 of the ATA but only under the instances contemplated in Rule 9.2. (resembles the grounds for valid warrantless arrests) xxx Once arrested without a warrant under those instances, a person may be detained for up to 14 days if the ATC issues authority to the arresting officer. If no authority, the arresting officer shall deliver the suspect to judicial authority within the period under Article 125 of the RPC – the prevailing general rule. Section 29 is the exception to Article 1225 for allowing 14 days.



# Rationale of the Decision

On Section 29:

Warrantless arrests not based on mere suspicion; probable cause must still be observed. Rule 9.2 of the IRR is patterned under the Rules of Court.

Section 29 supplements Art. 125 of the RPC. It is specifically applicable only to cases where 1.) there is probable cause to believe that the crime committed is punishable under sections 4-12 of the ATA; and 2.) a written authorization from the ATC is secured for that purpose.

Terrorism is *sui generis*. Case building in terrorism cases is incomparable to case building in ordinary crimes. The length and time for detention is aimed to prevent and disrupt future acts of terrorism





## How the case affects us

1. The change in definition of terrorism clarifies that the exercise of civil and political rights are not acts of terrorism
2. The law has been interpreted to give depth on how the provisions should be interpreted. This will act as a guide to law enforcers on how they will implement the law, and to the accused on how to defend themselves in light of the decision.