G.R. No. 235935 – Representatives EDCEL C. LAGMAN, TOMASITO S. VILLARIN, EDGAR R. ERCE, TEDDY BRAWNER BAGUILAT, JR., GARY C. ALEJANO, and EMMANUEL A. BILLONES, *Petitioners* v. Senate President AQUILINO PIMENTEL III, Speaker PANTALEON D. ALVAREZ, Executive Secretary SALVADOR C. MEDIALDEA, Defense Secretary DELFIN N. LORENZANA, Budget Secretary BENJAMIN E. DIOKNO, and Armed Forces of the Philippines Chief of Staff General REY LEONARDO GUERRERO, *Respondents.*

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G.R. No. 236061 – EUFEMIA CAMPOS CULLAMAT, NOLI VILLANUEVA, RIUS VALLE, Atty. NERI JAVIER COLMENARES, Dr. MARIA CAROLINA P. ARAULLO, RENATO M. REYES, JR., CRISTINA E. PALABAY, Bayan Muna Partylist Representative CARLOS ISAGANI T. ZARATE, Gabriela Women's Party Representatives EMERENCIANA A. DE JESUS and ARLENE D. BROSAS, Anakpawis Representative ARIEL B. CASILAO, Act Teachers' Representatives ANTONIO L. TINIO and FRANCISCA L. CASTRO, and Kabataan Partylist Representative SARAH JANE I. ELAGO, *Petitioners* v. President RODRIGO DUTERTE, Senate President AQUILINO PIMENTEL III, House Speaker PANTALEON ALVAREZ, Executive Secretary SALVADOR MEDIALDEA, Defense Secretary DELFIN LORENZANA, Armed Forces of the Philippines Chief of Staff General REY LEONARDO GUERRERO, Philippine National Police Director-General RONALDO M. DELA ROSA, *Respondents.*

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G.R. No. 236145 – LORETTA ANN P. ROSALES, *Petitioner* v. President RODRIGO DUTERTE, represented by Executive Secretary SALVADOR MEDIALDEA, Martial Law Administrator Secretary DELFIN LORENZANA, Martial Law Implementer, General REY LEONARDO GUERRERO, and Philippine National Police Director-General RONALDO M. DELA ROSA, and the Congress of the Philippines, Consisting of the Senate of the Philippines, represented by Senate President AQUILINO PIMENTEL III and the House of Representatives, represented by House Speaker PANTALEON D. ALVAREZ, *Respondents.*

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G.R. No. 236155 – CHRISTIAN S. MONSOD, Dinagat Islands Representative ARLENE J. BAG-AO, RAY PAOLO J. SANTIAGO, NOLASCO RITZ LEE B. SANTOS III, MARIE HAZEL E. LAVITORIA, NICOLENE S. ARCAINA, and JOSE RYAN S. PELONGCO, *Petitioners* v. Senate President AQUILINO PIMENTEL III, Speaker PANTALEON D. ALVAREZ, Executive Secretary SALVADOR C. MEDIALDEA, Department of National Defense Secretary DELFIN N. LORENZANA, Department of the Interior and Local Government Secretary (Officer-in-Charge) EDUARDO M. AÑO, Armed Forces of the Philippines Chief of Staff General REY

LEONARDO GUERRERO, Philippine National Police Chief Director-General RONALD M. DELA ROSA, National Security Adviser HERMOGENES C. ESPERON, JR., ***Respondents.***

Promulgated:

February 6, 2018

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DISSENTING OPINION

JARDELEZA, *J.*:

In my Separate Opinion[1] in *Lagman v. Medialdea*,[2] I advanced the following views: (1) that a case filed under Section 18, Article VII of the Constitution is *sui generis*; (2) determination of the sufficiency of the factual basis is distinct from ascertaining whether there is grave abuse of discretion; (3) the standard of review for a proceeding under Section 18, Article VII should be reasonableness; and (4) the Government's presentation of evidence should, in the first instance, be conducted publicly and in open court.[3] After examining the evidence then presented before us, I found "nothing incredulous or far-fetched" about the Government's claims which, I also noted, were "not incompatible with local and foreign media reports and publicly available legal research." Thus, I concluded that there was an actual rebellion and the threat to public safety necessitated the President's declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao.

The Court's jurisdiction under Section 18, Article VII is again invoked, this time to determine the sufficiency of the factual basis for the *extension* of the President's declaration. If upheld, martial law will continue to be implemented and the privilege of the writ of *habeas corpus* suspended in the whole of Mindanao until December 31, 2018. The *ponencia* finds that there is sufficient factual basis for the extension.

I dissent and write this Opinion to explain my conclusion.

I

Section 18, Article VII of the Constitution provides:

> Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. **In case of invasion or rebellion, when the public safety**

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[1] Hereinafter "Separate Opinion."

[2] G.R. Nos. 231658, 231771, & 231774, July 4, 2017.

[3] Separate Opinion, pp. 4-13, 18-23.

> **requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law.** Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.**
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
>
> **The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.**
>
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis supplied.)

The text of the Constitution is clear. Two conditions must concur before a President can suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law: (1) actual rebellion or invasion; and (2) when public safety requires it. Much has been said about the concept of rebellion within the meaning of Section 18, Article VII. I myself have advanced views on this matter.[4] My present analysis is concerned not so much with the issue as to the existence of an actual rebellion as used under Section 18. In fact, given the facts and my proposed

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[4] Separate Opinion, pp. 13-18.

definition of rebellion within the meaning of Section 18,[5] which is simply armed public resistance to the government, I find the Government's claim that actual rebellion is continuously being waged in Mindanao to be *not* unreasonable.

I have very grave concerns, however, with the suggestion that the existence or persistence of a rebellion *per se* necessarily endangers public safety for purposes of Section 18, Article VII. According to the Government:

> 84. Since Cullamat, et al. admit the existence of rebellion in Mindanao, they cannot begrudge the Congress from agreeing to the extension of the proclamation and suspension in the interest of public safety. The danger posed by rebellion on public safety cannot be discounted. The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. x x x[6]

Otherwise stated, the Government's proposition is that since a rebellion, by definition, is carried out by a "vast movement of men," any rebellion, regardless of **scale**, may call for an exercise by the President of his extraordinary powers. I strongly disagree.

II

It is my view that the second requirement of "when public safety requires it" introduced a level of **scale** as to qualify the first requirement of the existence of an actual rebellion or invasion. "Scale" is defined as "the relative size or extent of something."[7] It is synonymous with "scope, magnitude, dimensions, range, breadth, compass, degree, reach, spread, sweep."[8] The public safety requirement under Section 18, Article VII operates to limit the exercise of the President's extraordinary powers only to rebellions or invasions *of a certain scale* as to sufficiently threaten public safety. This conclusion, I find, is supported by: (a) the deliberations of the Constitutional Commission; (b) our law and jurisprudence on the concept of public safety as used in specific relation to the exercise of government powers which result in an impairment of civil rights; and (c) the experience of the Court both in this case and in *Lagman v. Medialdea* where it upheld the President's original declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao.

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5 *Id.*

6 Office of the Solicitor General Memorandum, pp. 34.

7 English Oxford Living Dictionaries <https://en.oxforddictionaries.com/definition/scale> (last accessed February 6, 2018).

8 *Id.*

A
Deliberations of the Constitutional Commission

A careful reading of the deliberations of the Constitutional Commission would clearly show that there was no intention to interpret the public safety requirement simply as a foregone consequence of the existence of the first requirement, *i.e.*, actual rebellion or invasion. Rather, it seems that the intention was to qualify the first requirement such that **not all cases of rebellion or invasion can be considered sufficient for purposes of the exercise of the President's extraordinary powers**:

> MR. DELOS REYES: As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacañang, for example? Let us take for example a contemporary event – this Manila Hotel incident everybody knows what happened. Would the Committee consider that an act of rebellion?
>
> MR. REGALADO: If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. I am not trying to pose as an expert about this rebellion that took place in the Manila Hotel, because what I know about it is what I only read in the papers. I do not know whether we can consider that there was really an armed public uprising. Frankly, I have my doubts on that because we were not privy to the investigations conducted there.
>
> Commissioner Bernas would like to add something.
>
> **FR. BERNAS: Besides, it is not enough that there is actual rebellion. Even if we will suppose for instance that the Manila Hotel incident was an actual rebellion, that by itself would not justify the imposition of martial law or the suspension of the privilege of the writ because the Constitution further says: "when the public safety requires it." So, even if there is a rebellion but the rebellion can be handled and public safety can be protected without imposing martial law or suspending the privilege of the writ, the President need not. Therefore, even if we consider that a rebellion, clearly, it was something which did not call for imposition of martial law.**[9] (Emphasis and underscoring supplied.)

The following exchange between Commissioners Jose N. Nolledo and Crispino M. De Castro further clarified that while the President *can* call out the armed forces to address actual rebellion or invasion, it is only when the situation has posed a *severe enough* threat to public safety is he empowered

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[9] RECORD, CONSTITUTIONAL COMMISSION 42 (July 29, 1986).

to resort to his extraordinary powers of declaring martial law or suspending the privilege of the writ of *habeas corpus*:

> MR. NOLLEDO: x x x
>
> Does Commissioner de Castro agree with me that the President need not declare martial law or suspend the privilege of the writ of *habeas corpus* if there is actual invasion [or] rebellion because he is authorized under Section 15 of the committee report to call out such Armed Forces to prevent or suppress lawless violence, invasion or rebellion?
>
> MR. DE CASTRO: We are talking of the next sentence with the words "in case of invasion or rebellion." This becomes a useless sentence. In fact, the questions of Honorable Suarez and the statements of Honorable Ople do not fall on these two situations.
>
> MR. NOLLEDO: No, the first sentence is very material because if there is an invasion, the President can immediately call upon the Armed Forces.
>
> x x x
>
> MR. DE CASTRO: That is why I said in case of actual invasion or actual rebellion. [T]he President will have no more time to say "I declare martial law." He will just order the Armed Forces to go there and repel the enemy.
>
> MR. NOLLEDO: Madam President, the argument of Commissioner de Castro seems to indicate that the President is powerless without declaring martial law. **The first sentence is very clear, that in case of lawless violence, invasion or rebellion, the President may immediately call the Armed Forces to prevent or suppress the same. And it is only when public safety requires it that the President may decide to declare martial law or suspend the privilege of the writ of *habeas corpus*.** So, I would like to correct the impression that the President has no power to meet the invasion or rebellion without declaration of martial law.
>
> x x x
>
> MR. GARCIA: x x x
>
> I also would like to remind ourselves that very often the doctrine of national security is given as a reason to impose extraordinary measures which, once begun, leads to many other violations. I believe this is something that we must guard against from the very beginning.[10] (Emphasis and underscoring supplied.)

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[10] RECORD, CONSTITUTIONAL COMMISSION 43 (July 30, 1986).

Mere invocations of issues of national security and public safety, without more, are not enough. The Constitution requires that there is sufficient factual basis to show not only that actual rebellion or invasion exists, but that the situation has reached such *scale* as to threaten public safety.

B

Public safety in Philippine law and jurisprudence

There is no one concept of public safety in Philippine law and jurisprudence, but attempts have been made to arrive at accepted meanings of the term. Public safety, for example, has been interpreted to be "synonymous" with the concept of "national security" and "security of the state,"[11] but narrower than those matters falling under the concept of "interest of the state."[12] On the other hand, dangers to public safety have been held to include traffic congestion;[13] hazards of traffic in the evening;[14] business establishments which give rise to conflagrations and explosions;[15] open canals, manholes, live wires and other similar hazards to life and property;[16] presence of motorcycles in toll ways;[17] billboards and signages in

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[11] *In re: Parazo*, 82 Phil. 230, 237-238 (1948). The Court held reporter Parazo in contempt for his refusal to reveal the sources for his article reporting leakage in the 1948 Bar Examinations. Invoking Republic Act No. 53, which provides that reporters cannot be compelled to reveal their confidential sources unless "such revelation is demanded by the interest of the state," Parazo contended that the phrase "interest of the state" is confined to cases involving the "security of the state" or "**public safety.**" Since concerns regarding the alleged leakage do not qualify as national security matters, Parazo argued that he cannot be compelled to reveal the source of his news information. The Court, however, found that while "**security of the state" and "public safety" to be "synonymous phrases"** which involve matters of "national security," the term "interest of the state" referred to a *much broader* concept which includes "matters of national importance in which the whole state and nation, x x x is interested or would be affected, x x x" such as protection of the integrity of the bar examinations and maintenance of the high standards for entry into the legal profession. (Emphasis supplied.)

[12] *Id.* at 239-241.

[13] *Luque v. Villegas*, G.R. No. L-22545, November 28, 1969, 30 SCRA 408, 423. Thus, the Court there upheld the Public Service Commission's imposition of "measures calculated to promote the safety and convenience of the people using the thoroughfares" by regulating the number of provincial buses and jeepneys allowed to enter Manila.

[14] *Edu v. Ericta*, G.R. No. L-32096, October 24, 1970, 35 SCRA 481, 489. The Court refused to sustain a challenge to the Reflector Law which required, for registration purposes, the installation of built-in reflectors and parking lights in vehicles. The Court therein held that "to close one's eyes to the **hazards of traffic in the evening** x x x betrays lack of concern for **public safety.**" (Emphasis supplied.)

See also *Agustin v. Edu*, G.R. No. L-49112, February 2, 1979, 88 SCRA 195, which dealt with a challenge to a rule issued by the Land Transportation Office requiring the procurement and use of reflectorized triangular early warning devices.

[15] In *Uy Matia & Co. v. The City of Cebu*, 93 Phil. 300, 304 (1953), the Court upheld the local government's power to regulate and impose taxes and fees on copra warehouses on the finding that it is an establishment likely to endanger the public safety and give rise to conflagrations or explosions: "[O]nce ignited, the fire resulting therefrom, because of the oil it contains, is difficult to put under control by water and to extinguish it the use of chemicals would be necessary."

[16] *Municipality of San Juan, Metro Manila v. Court of Appeals*, G.R. No. 121920, August 5, 2005, 466 SCRA 78, 87-89, citing *Todd v. City of Troy*, 61 N.Y. 506. The Court held a local government unit liable for damages for its failure to "adopt measures to ensure **public safety** against open canals, manholes, live wires and other similar hazards to life and property" which resulted to injuries to a motorist. According to the Court, the Municipality's obligation to constantly monitor road conditions to insure the safety of motorists includes the duty "to see that they are kept in a reasonably safe condition for public travel." (Emphasis supplied.)

[17] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 349 & 343. The Court did not find unreasonable the regulation which prohibited motorcycles from traversing toll ways. The Government there argued that the presence of motorcycles in the tollways "will

times of typhoons;[18] unrestricted right to travel of court employees;[19] and the failure of railroad companies to install, maintain and repair safety equipment and signages.[20]

For purposes of my analysis of "when public safety requires" within the meaning of Section 18, Article VII, however, I find that the interpretation of "public safety" in relation to the impairment of the liberty of travel[21] to be most proximate/appropriate in that both involve the derogation of civil rights to give way to a "higher" state interest.

In interpreting whether then President Corazon C. Aquino could legally ban the Marcoses from returning to the Philippines, the Court in *Marcos v. Manglapus*,[22] voting eight to seven, upheld the restriction on the Marcoses' right to travel as part of the President's residual power as "protector of the peace."[23] For me, however, the gripping dissents made for a more compelling analysis on how public safety may, in a proper case, be invoked by the Government to curtail fundamental rights. Justice Teodoro Padilla, for example, opined that:

> Mr. Marcos, I repeat, comes before the Court *as a Filipino*, invoking a specific constitutional right, *i.e.*, the right to return to the country. **Have the respondents presented sufficient evidence to offset or override the**

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compromise safety and traffic considerations." The Court upheld the Government's position, stating that "**[p]ublic interest and safety** require the imposition of certain restrictions on toll ways that do not apply to ordinary roads. As a special kind of road, it is but reasonable that not all forms of transport could use it." (Emphasis supplied.)

[18] *Department of Public Works and Highways v. City Advertising Ventures Corporation*, G.R. No. 182944, November 9, 2016, 808 SCRA 53, 57-58. The Court held that the DPWH's act of removing and confiscating billboards and signs which it determined to be "hazardous and pose imminent danger to life, health, safety and property of the general public" serve the overarching interest of public safety.

[19] *Leave Division, Office of the Administrative Services-Office of the Court Administrator v. Heusdens*, A.M. No. P-11-2927, December 13, 2011, 662 SCRA 126, 137. Here, the Court justified the regulations of judicial employees' right to travel thus: "To permit such unrestricted freedom can result in disorder, if not chaos, in the Judiciary and the society as well. In a situation where there is a delay in the dispensation of justice, litigants can get disappointed and disheartened. If their expectations are frustrated, they may take the law into their own hands which results in public disorder **undermining public safety**. In this limited sense, it can even be considered that the restriction or regulation of a court personnel's right to travel is a concern for public safety, one of the exceptions to the non-impairment of one's constitutional right to travel." (Emphasis supplied.)

[20] *Philippine National Railways Corporation v. Vizcara*, G.R. No. 190022, February 15, 2012, 666 SCRA 363, 379-380, citing *Philippine National Railways v. Court of Appeals*, G.R. No. 157658, October 15, 2007, 536 SCRA 147 and *Cusi v. Philippine National Railways*, G.R. No. L-29889, May 31, 1979, 90 SCRA 357. In finding negligence on the part of the Philippine National Railways in an action for damages for the death and injury of several civilians, the Court expounded on railroad companies' responsibility to secure public safety, that is, to "avoid injury to persons and property at railroad crossings."

[21] CONSTITUTION, Art. III, Sec. 6. This Section provides: "The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law."

[22] G.R. No. 88211, September 15, 1989, 177 SCRA 668; October 27, 1989, 178 SCRA 760.

[23] *Marcos v. Manglapus*, G.R. No. 88211, October 27, 1989, 178 SCRA 760, 762. Here, the Court resolved the issue of whether then President Corazon C. Aquino gravely abused her discretion when she determined that the return of the Marcoses to the Philippines posed a serious threat to national interest and welfare. President Aquino sought to justify her action "[i]n the interest of the safety of those who will take the death of Mr. Marcos in widely and passionately conflicting ways, and for the tranquility of the state and order of society x x x."

> **exercise of this right invoked by Mr. Marcos?** Stated differently, have the respondents shown to the Court sufficient factual bases and data which would justify their reliance on national security and public safety in negating the right to return invoked by Mr. Marcos?
>
> I have given these questions a searching examination. I have carefully weighed and assessed the "briefing" given the Court by the highest military authorities of the land last 28 July 1989. I have searched, but in vain, for convincing evidence that would defeat and overcome the right of Mr. Marcos *as a Filipino* to return to this country. **It appears to me that the apprehensions entertained and expressed by the respondents, including those conveyed through the military, do not, with all due respect, escalate to proportions of national security or public safety.** They appear to be more speculative than real, obsessive rather than factual. Moreover, such apprehensions even if translated into realities, would be "under control," as admitted to the Court by said military authorities, given the resources and facilities at the command of government. But, above all, the Filipino people themselves, in my opinion, will know how to handle any situation brought about by a political recognition of Mr. Marcos' right to return, and his actual return, to this country. **The Court, in short, should not accept respondents' general apprehensions, concerns and perceptions at face value, in the light of a countervailing and even irresistible, specific, clear, demandable, and enforceable right asserted by a *Filipino*.**
>
> Deteriorating political, social, economic or exceptional conditions, if any, are not to be used as a pretext to justify derogation of human rights.[24] (Emphasis and underscoring supplied, citations omitted, italics in the original.)

Similarly, in his Dissent, Justice Hugo Gutierrez, Jr. stated that while there may be disturbances which may be directly attributable to the Marcoses' return to the country, they are "not of a **magnitude** as would compel this Court to resort to a doctrine of non-justiciability and to ignore a plea for the enforcement of an express Bill of Rights guarantee:"

> And except for citing breaches of law and order, the more serious of which were totally unrelated to Mr. Marcos and which the military was able to readily quell, the respondents have not pointed **to any grave exigency which permits the use of untrammeled Governmental power in this case and the indefinite suspension of the constitutional right to travel.**
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> x x x

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[24] *Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989, 177 SCRA 668, 719-720.

> Significantly, we do not have to look into the factual bases of the ban Marcos policy in order to ascertain whether or not the respondents acted with grave abuse of discretion. Nor are we forced to fall back upon *judicial notice* of the implications of a Marcos return to his home to buttress a conclusion.
>
> In the first place, there has never been a pronouncement by the President that a clear and present danger to national security and public safety will arise if Mr. Marcos and his family are allowed to return to the Philippines. It was only after the present petition was filed that the alleged danger to national security and public safety conveniently surfaced in the respondents' pleadings. Secondly, **President Aquino herself limits the reason for the ban Marcos policy to—(1) national welfare and interest and (2) the continuing need to preserve the gains achieved in terms of recovery and stability.** x x x **Neither ground satisfies the criteria of national security and public safety.** The President has been quoted as stating that the vast majority of Filipinos support her position. x x x We cannot validate her stance simply because it is a popular one. Supreme Court decisions do not have to be popular as long as they follow the Constitution and the law. The President's original position "that it is not in the interest of the nation that Marcos be allowed to return at this time" has not changed. x x x On February 11, 1989, the President is reported to have stated that "considerations of the highest national good dictate that we preserve the substantial economic and political gains of the past three years" in justifying her firm refusal to allow the return of Mr. Marcos despite his failing health. x x x "**Interest of the nation," "national good," and "preserving economic and political gains," cannot be equated with national security or public order. They are too generic and sweeping to serve as grounds for the denial of a constitutional right.** The Bill of Rights commands that the right to travel may not be impaired except on the stated grounds of national security, public safety, or public health and with the added requirement that such impairment must be "as provided by law." **The constitutional command cannot be negated by mere generalizations.**[25] (Emphasis and underscoring supplied, italics in the original.)

Justice Isagani A. Cruz, for his part, found "mere conjectures of political and economic destabilization without any single piece of concrete evidence to back up their apprehensions" to be insufficient to overcome the Marcoses' right to travel.[26] Justice Edgardo L. Paras, on the other hand, stated that while there may be some danger to national safety and national security as claimed by the Government, "there is no showing as to the **extent**" as to warrant the curtailment of the Marcoses' rights.[27] Justice

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[25] *Id.* at 703, 710-711.
[26] *Id.* at 715.
[27] *Id.* at 717. Emphasis supplied.

Abraham F. Sarmiento, Sr. similarly objects, thus, "[i]t is his constitutional right, a right that cannot be abridged by personal hatred, fear, founded or unfounded, and by speculations of the man's 'capacity' 'to stir trouble.'"[28] These dissents, to me, clearly present a powerful case to require of the Government a clear showing of danger to national security or public safety *of such scale* sufficient to defeat the right to travel guaranteed by the Constitution to Filipino citizens.

I submit that no less than this same requirement should be demanded of the Government in this case.

For, the powers to declare martial law and suspend the privilege of the writ of habeas corpus implicate not only one's right to travel, but many other basic civil liberties, including the most fundamental, namely, "individual freedom."[29] There was thus a conscious effort on the part of our Framers to reserve their exercise only in the **direst** of situations and under the **strictest** of conditions. The realization that a declaration of martial law and suspension of the privilege of the writ of habeas corpus impacts our most basic and fundamental rights was foremost on the minds of the members of the Constitutional Commission:

> FR. BERNAS: I quite realize that that is the practice and, precisely, in proposing this, I am consciously proposing this as an exception to this practice because of **the tremendous effect on the nation when the privilege of the writ of *habeas corpus* is suspended and then martial law is imposed.** Since we have allowed the President to impose martial law and suspend the privilege of the writ of *habeas corpus* unilaterally, we should **make it a little more easy for Congress to reverse such actions for the sake of protecting the rights of the people**.
>
> x x x
>
> MR. SARMIENTO: I thank Commissioner Monsod. May I join Commissioner Monsod and Commissioner Guingona that the Congress, voting jointly, should have the power to revoke the proclamation of martial law or suspension of the writ of *habeas corpus*. In this way, we make it easy for the people's representatives to cut short a power which is very potent that could be the subject of abuse, and in the words of Commissioner Bennagen, could open the way for the resurgence of tyranny and dictatorship. x x x
>
> x x x
>
> MR. BROCKA: x x x **We are talking about a possible situation, a declaration of martial law, wherein the very basic and fundamental rights of the citizens are**

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[28] *Id.* at 729.

[29] *Lansang v. Garcia*, G.R. No. L-33964, December 11, 1971, 53 SCRA 448, 471-476.

> **involved, x x x. Whether martial law is declared for one day or 60 days, the fact is, when martial law is declared the very basic and fundamental human rights of the citizenry are taken away from them. It does not matter whether it is one day, one hour, or 60 days.** So, I would like to express my agreement to Commissioner Monsod's amendment because yesterday we already took away the condition of prior concurrence of Congress; and now, Commissioner Monsod agrees that we have to provide a better safeguard by inserting this particular amendment of a joint decision of Congress.[30] (Emphasis supplied.)

It stands to reason that the President may exercise his extraordinary powers only when the danger to public safety has reached such *scale* that some restriction of fundamental rights becomes constitutionally permissible, under the circumstances.

C

Appreciation of scale is evident in the experience of the Court in both martial law cases

First. The characterization by the Government of the evidence they presented to justify the proclamation, and later, extension, of martial law and suspension of the privilege of the writ of *habeas corpus* would show that it admits scale *is* an element of the public safety requirement. In the presentation in this case made by the Armed Forces of the Philippines (AFP) before the Court, they described the manpower and number of firearms of the rebels/terrorist groups to be of such "magnitude" as to "endanger the public safety" in this wise:

> The **magnitude** as well as the presence of rebel groups endanger the public safety.[31]

REBEL/TERRORIST GROUPS	MANPOWER	FIREARMS	CONTROLLED BARANGAYS
Communist Rebels	1,748	2,123	426
Dawlah Islamiyah	137	162	-
BIFF	388	328	59
ASG	508	598	52
TOTAL	**2,781**	**3,211**	**537**

Thereafter, the Government attempted to pack the record with statistics to show that the "magnitude of scope"[32] of the threat to public safety was such as to put the security of Mindanao at stake. To support this conclusion about

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[30] RECORD, CONSTITUTIONAL COMMISSION 44 (July 31, 1986). Here, the Constitutional Commission was debating whether to require a joint or separate vote by the two houses of Congress for purposes of revoking the President's declaration of martial law or suspension of the privilege of the writ. Members of the Constitutional Commission considered the effect of such action on civil rights. After a lengthy debate, the amendment to introduce joint voting by both houses of Congress was able to garner the majority of votes (25 in favor, 4 against, and 1 abstention).

[31] AFP Powerpoint Presentation, Slide No. 75.

[32] AFP Briefing Paper on the Extension of Martial Law in Mindanao, p. 15.

"magnitude" and "magnitude of scope," they presented specifics as to the number of violent incidents initiated by the different rebel groups,[33] the number of victims,[34] the amounts received as a result of kidnap-for-ransom activities,[35] intensification of recruitment activities,[36] and presence of foreign-trained terrorist fighters.[37] These, to me, show a clear admission on the part of the Government that the public safety requirement under Section18, Article VII involves a showing of scale.

Second, the Court, in *Lagman v. Medialdea*, defined public safety as "involv[ing] the prevention of and protection from events that could endanger the safety of the general public from **significant** danger, injury/harm, or damage, such as crimes or disasters."[38] Again, this clearly acknowledged scale by using the word "significant"[39] to qualify any existing danger, injury/harm or damage to public safety. While it would continue to state that "public safety is an *abstract* term" whose "range, extent or scope could not be physically measured by metes and bounds,"[40] the Court, after an analysis of all the evidence presented, nevertheless found that they have reached a *level* of danger sufficient to risk public safety:

> Invasion or rebellion alone may justify resort to the calling out power but definitely not the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. For a declaration of martial law or suspension of the privilege of the writ of *habeas corpus* to be valid, there must be a concurrence of actual rebellion or invasion and the public safety requirement. In his Report, the President noted that the acts of violence perpetrated by the ASG and the Maute Group were directed not only against government forces or establishments but likewise against civilians and their properties. In addition and in relation to the armed hostilities, bomb threats were issued; road blockades and checkpoints were set up; schools and churches were burned; civilian hostages were taken and killed; non-Muslims or Christians were targeted; young male Muslims were forced to join their group; medical services and delivery of basic services were hampered; reinforcements of government troops and civilian movement were hindered; and the security of the entire Mindanao Island was compromised.
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> **These particular scenarios convinced the President that the atrocities had already escalated to a level that risked public safety and thus impelled him to declare**

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33 AFP Powerpoint Presentation, Slide Nos. 19, 26, and 52.
34 AFP Powerpoint Presentation, Slide No. 62.
35 AFP Powerpoint Presentation, Slide No. 28.
36 AFP Powerpoint Presentation, Slide No. 33.
37 AFP Powerpoint Presentation, Slide No. 39-43.
38 *Lagman v. Medialdea, supra* note 2 at 73.
39 The Oxford dictionary defines "significant" as "Sufficiently great or important to be worthy of attention; noteworthy." <https://en.oxforddictionaries.com/definition/significant> (last accessed February 6, 2018)
40 *Lagman v. Medialdea, supra.*

> **martial law and suspend the privilege of the writ of *habeas corpus*. In the last paragraph of his Report, the President declared**:
>
> > While the government is presently conducting legitimate operations to address the on-going rebellion, if not the seeds of invasion, public safety necessitates the continued implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao until such time that the rebellion is completely quelled.
> >
> > Based on the foregoing, we hold that the parameters for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* have been properly and fully complied with. Proclamation No. 216 has sufficient factual basis there being probable cause to believe that rebellion exists and that public safety requires the martial law declaration and the suspension of the privilege of the writ of *habeas corpus*.[41] (Emphasis and underscoring supplied, citations omitted.)

Significantly, it appears to me that all the other members of the Court, including myself, who voted to sustain the President's proclamation of martial law and suspended the privilege of the writ in Mindanao appreciated (whether instinctively or deliberately) to a certain extent the *scale* to which public safety has been endangered by the situation in Marawi City.

Justice Tijam, in his Separate Concurring Opinion for example, also considered essentially the same circumstances to arrive at his conclusion that the President's proclamation was firmly grounded on the requirements of public safety, that is: (1) destruction of government and privately-owned properties; (2) significant number of casualties; (3) government inability to deliver basic services; (3) government inability to send troop reinforcements to restore peace in Marawi City; and (4) lack of easy access for civilians and government personnel to and from the City.[42]

III
Scale as a measure for determining the existence of the public safety requirement; Proposed indicators of scale

The *ponencia* cites an *Amicus Curae* Brief submitted by esteemed constitutionalist Father Joaquin G. Bernas, S.J., in *Fortun v. Macapagal-Arroyo*,[43] to justify a "permissive approach" to the President's assessment of the public safety requirement under Section 18, Article VII.[44] The portion quoted reads:

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41 *Id.* at 65-66.
42 Separate Concurring Opinion, J. Tijam, *Lagman v. Medialdea*, p. 16.
43 G.R No. 190293, March 20, 2012, 668 SCRA 504.
44 *Ponencia*, p. 52.

> From all these it is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code. The concern of the Penal Code, after all, is to punish acts of the past. **But the concern of the Constitution is to counter threat to public safety both in the present and in the future arising from present and past acts.** Such nuance, it is submitted, gives to the President a degree of flexibility of determining whether rebellion constitutionally exists as basis for martial law even if facts cannot obviously satisfy the requirements of the Penal Code, whose concern is about past acts. To require that the President must first convince herself that there can be proof beyond reasonable doubt of the existence of rebellion as defined in the Penal Code and jurisprudence can severely restrict the President's capacity to safeguard public safety for the present and the future and can defeat the purpose of the Constitution.[45]

While I am in complete agreement with Father Bernas' statement, I disagree with the conclusion reached by the *ponencia* on account thereof.

First, I believe Father Bernas' statement was given in the context of a discussion regarding the definition of "rebellion" as it is used in the Constitution. The conclusion of the statement was that while the Revised Penal Code definition may be considered, the President is not bound to assume "the function of a judge trying to decide whether to convict a person for rebellion or not."[46] It was not meant to define public safety requirements or otherwise proscribe the future provision of guidelines for its determination.

Second. Father Bernas' statement that the determination of the requirements of public safety "involves the verification of factors not as easily measurable"[47] is not conceptually incompatible or irreconcilable with the identification of minimum reasonable indicators, "verifiable through the visual or tactile sense,"[48] through which to determine whether public safety requires the exercise of the President's extraordinary powers. Indeed, when our Framers tasked the Court to determine the sufficiency of the factual basis for the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*, it certainly did not mean for the Court to verify only the factual bases for the alleged rebellion and "permissively" rely on the President's assessment of the public safety requirement given the facts presented.

For the Court to take such an approach goes against the very reason why it was given the specific mandate under Section 18, Article VII in the first place. Such an approach defeats the deliberate intent of our Framers to

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45 *Id.*
46 Dissenting Opinion, J. Velasco, *Fortun v. Macapagal-Arroyo, supra* at 594-595.
47 *Id.* at 594.
48 *Id.*

"shift [the] focus of judicial review to determinable facts, as opposed to the manner or wisdom of the exercise of the power" and "[create] an objective test to determine whether the President has complied with the constitutionally prescribed conditions."[49]

In fact, I realize that I have previously articulated some views on public safety which may seem opposed to the views I now embrace. I initially took the position that since the requirements of public safety appear to be phrased in discretionary terms, it would be difficult to set parameters *in a vacuum* as to what predicate facts should exist. The facts and experience from this case, however, have opened my eyes to the mischief that a "permissive" approach to the President's "prudential estimation" of the public safety requirement can cause. Permissive deference can be used to justify the imposition or extension of martial law by the simple expedient of alleging the existence or persistence of "rebel" groups *capable* of opposing the Government. I fail to see the difference between sustaining the extension of martial law based on the *capability* of hostile "rebel" groups to sow discord against the Government and sustaining martial law on the basis of an imminent danger of rebellion. That would be a movement back to the *Lansang* formulation, and an abject abdication of this Court's "newly assumed power" to review the declaration, or extension, of martial law based on sufficiency of factual basis.[50]

Worse, it would open the country to the possibility of a permanent state of martial law, as the Philippines has a long history of rebellions motivated by diverse religious, ideological, regional, and other interests. That rebellion is a continuing crime is a handle for the prosecution of rebels wherever they may be. This criminal law doctrine, however, was never envisioned to be a justification to declare martial law and/or suspend the privilege of the writ of *habeas corpus* whenever and wherever *a* rebel may operate or be found. Our history and the evidence presented in this case and in *Lagman v. Medialdea* have shown that there are rebellions and rebellions. Each rebellion is episodic and will have, as shown in the cases of the Maute Group, the Abu Sayyaf Group (ASG), the Bangsamoro Islamic Freedom Fighters (BIFF) and the New People's Army (NPA), their ebbs and flows.

I believe a proper and principled approach to deciding this and future cases require this Court to identify some *reasonable indicators* which can be used as guides to determine *scale* for purposes of the public safety requirement. Certainly, we will not be able to catalogue all indicators with mathematical precision. Such an endeavor, while difficult, is nevertheless doable using all aids available to us, including interpretative aids and knowledge derived from past experience.[51] Surely, in deciding this and

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[49] Separate Opinion, p. 10.

[50] Separate Opinion, p. 9, citing Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 541.

[51] The development of the standards for what constitutes obscenity comes to mind. In the 1957 case of *Roth v. United States*, 354 U.S. 476 (1957), the United States Supreme Court was first confronted with the issue of "whether obscenity is utterance within the area of protected speech and press." While it

future cases, the Court is not limited in determining the sufficiency of the factual basis of the requirements of public safety to the extremes of an "*I know it when I see it*" and "*the President knows better*" analysis.

As I have endeavored to show above, there were incidents which were considered by the *ponencia* in *Lagman v. Medialdea* as *indicators of the scale* of the danger to public safety which may justify a declaration of martial law and/or suspension of the privilege of the writ of habeas corpus. These are: (1) "armed hostilities" directed not only against government forces or establishments but likewise against civilians and their properties; (2) bomb threats; (3) set up of road blockades and checkpoints by the hostile groups; (4) burning of schools and churches; (5) taking and killing of civilian hostages; (6) targeting of non-Muslims or Christians; (7) forced recruitment of young male Muslims; (8) hampering of the delivery of medical and other basic services; and (9) hindrance to movements of civilians and troop reinforcements.[52]

Building on the indicators provided in *Lagman v. Medialdea*, there appears to be two **minimum** indicators of scale as to reasonably meet the public safety requirement necessary for a declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. These are: (1) the presence of hostile groups engaged in *actual and sustained armed hostilities* with government forces;[53] and (2) these groups have actually *taken over, and are holding*, territory.[54] Following our experience in Marawi, these indicators may further result in, or may be attended by, the interruption in the sending of troop reinforcements or local authorities being prevented, or unable to, perform their regular functions,[55] including law enforcement and the delivery of basic services. Bomb threats, burning of schools or churches, kidnapping of civilian hostages, and forced recruitment of young male Muslims only fall under the rubric of lawless violence; they do not, by themselves, satisfy the requirements of public safety. When, as in the Marawi crisis, however, these acts of lawless violence are being committed

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acknowledged that the law on obscenity at the time was not as developed as to clearly/textually show that it was beyond the protection of the Fourth Amendment, the Court nevertheless found "sufficiently contemporaneous evidence to show that obscenity, too, was outside the protection intended for speech and press." Over the course of several years, and several cases later, the Court would continue to grapple with the "intractable obscenity problem," refining, testing and improving the Roth test until 1973, when it decided *Miller v. California*, 413 U.S. 15 (1973). This experience of the U.S. Supreme Court is, to me, testimony that it is possible to arrive at principled parameters despite the seeming "novelty" of the issue at hand, by utilizing relevant interpretative aids available.

[52] *Supra* note 2 at 65.

[53] In Marawi City, there was an actual shooting standoff between the military and the hostile elements. There were also instances of the hostile groups attacking and occupying public and private establishments, such as schools and hospitals adversely affecting the delivery of their respective services. The city was overrun and local police were unable to restore peace and order. See *Lagman v. Medialdea*, *supra* note 2 at 5-7.

[54] Bridge and road blockades by hostile groups. Sustained occupation of government or civilian properties. *Id.*

[55] "Law enforcement and other government agencies x x x face pronounced difficulty sending their reports to the Chief Executive due to the city-wide power outages. x x x [B]ridge and road blockades [were] set up by groups x x x. Movement by both civilians and government personnel to and from the City is likewise hindered." *Supra* note 2 at 8, citing the Proclamation No. 216 and the President's Report to Congress.

at or about the same time, and within the same defined territory, they *may* indicate a significant enough breakdown of general peace and order as to reasonably meet the public safety requirement under Section 18, Article VII.

The *ponencia* argues that "[t]he adoption of the extreme scenario as the **measure** of threat to public safety as suggested by petitioners is to invite doubt as to whether the proclamation of martial law would be at all effective in such case considering that enemies of the State raise unconventional methods which change over time."[56] It posits that to require parameters may result in a situation where the declaration of martial law "would be of no useful purpose and such could not be the intent of the Constitution."[57]

Again, and with respect, I disagree. Our experience in Marawi has proven this to **not** be the case. At the time, armed hostile groups opposed to the government have already succeeded in overrunning a large part of the city. They engaged government troops in sustained firefights, forcing many of the city's residents to evacuate their homes and flee to temporary shelters outside the city.[58] In the end, however, our military forces were still able to restore peace and order and not without great sacrifice. No "unconventional methods" were alleged to have been resorted to by these hostile groups which were beyond the experience and capacity of our government forces to meet. The *mere possibility* that hostile groups may, in the future, be able to devise such unconventional methods is, however, not an acceptable reason to do away with reasonable proof of scale for purposes of the public safety requirement under Section 18, Article VII. The requisite scale of the danger to public safety **must** be shown in every exercise of the President's extraordinary powers, regardless of the unconventionality of their causing.

Finally, that there are laws in place which would rectify possible abuses *after the fact* also does not justify this "permissive" approach. The best safeguard is still vigilance on the part of the agencies tasked to check the exercise of the power *in the first place*. Ensuring that the President has enough flexibility and discretion on when to impose martial law is not sufficient justification for taking on a "permissive" approach. If at all, the identification of reasonable indicators to determine whether the danger to public safety has reached such scale as to warrant the exercise of the President's extraordinary powers is recognition of the extreme nature of the extraordinary powers and its tremendous effect on civilian lives.

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[56] *Ponencia*, p. 52.

[57] *Id.*

[58] Maxine Betterige-Moes, What happened in Marawi?, October 30, 2017 <http://www.aljazeera.com/indepth/features/2017/10/happened-marawi-171029085314348.html> (last accessed February 1, 2018). Given the gravity of the situation, no member of the Court appeared to question the scale of the danger to public safety at the time. In fact, the debates mostly revolved around legal concepts: what is the nature of the action filed under Section 18, what is the scope of the Court's review, what is the proper standard to assess the President's action, and how to define rebellion.

IV
Conclusion: No sufficient factual basis to show that public safety requires the continued implementation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao

The weight of concerns about the continued implementation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao seem to stem from the absence of a categorical statement on the part of the Court on what martial law means under our Constitution. It cannot mean the assumption by the military, headed by the President, of either judicial or legislative power, at least not in the sense that it was used and abused by the former President Marcos. The 1987 Constitution textually prohibited such results. What then does martial law entail?

Quoting Willoughby, Father Bernas enumerates three types of "martial law:" (1) Military Law Proper, that is, the body of administrative laws created by Congress for the government of the army and navy as an organized force; (2) the principles governing the conduct of military forces in time of war, and in the government of occupied territory; and (3) Martial Law in *sensu strictiore*, or that law which has application when the military arm does not supersede civil authority but is called upon to aid it in the execution of its civil functions.[59]

According to Father Bernas, martial law as it is understood in our jurisdiction cannot refer to the first meaning because it "refers to a body of administrative laws which are operative all the time, whereas martial law in the Constitution can be operative only 'in case of invasion or rebellion, when the public safety requires it.'"[60] After differentiating between the second (military government) and third (martial rule) types of martial law, he concludes that martial law *under our Constitution* is simply martial rule, that is, the military "takes the place of certain governmental agencies which for the time being are unable to cope with existing conditions in a locality which remains subject to the sovereignty."[61] It is a "public exigency which may rise in time of war or peace" and "ceases when the district is sufficiently tranquil to permit the ordinary agencies of government to cope with existing situations."[62]

Otherwise stated, martial law as allowed under our Constitution, is simply authority for the military to act vigorously for the maintenance of an ordinary civil government. It is brought about by necessity,[63] an exigency

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[59] Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 899.

[60] *Id.*

[61] Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 901.

[62] *Id.*

[63] Concurring Opinion of Chief Justice Stone in *Duncan v. Kahanamoku*, 327 U.S. 304, 335 (1946), citing *Luther v. Borden*, 48 U.S. 1 (1849); *Mitchell v. Harmony*, 54 U.S. 115 (1851); *United States v. Russell*, 80 U.S. 623 (1871); *Raymond v. Thomas*, 91 U.S. 712 (1875); and *Sterling v. Constantin*, 287 U.S. 378 (1932).

brought about by **extreme** danger to public safety, that its object is simply the "preservation of the public safety and good order."[64] Since necessity calls it forth and defines its scope, it is imperative that the Government sufficiently establish the necessity. There must be proof of the **graveness** of the exigency confronting the Government as to call for the imposition of martial law. Without this, the Court is obliged, if not compelled, to strike down its exercise.

I have examined the written submissions of the Government and listened closely to the briefing provided by representatives from the AFP on the factual bases behind the continued implementation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao. As earlier stated, the Government, through the AFP, sought to prove the "**magnitude of scope**"[65] of the threat to public safety was such as to put the security of Mindanao at stake. Aside from the data on manpower, arms, and controlled barangays, the following 2017 statistics were also presented: (1) total of 116 BIFF-initiated violent incidents;[66] (2) total of 44 ASG-initiated violent incidents;[67] (3) total of 53 Dawlah Islamiyah-initiated violent incidents;[68] and (4) total of 422 communist-initiated incidents of rebellion in Mindanao.[69] When tested, however, against the *minimum reasonable indicators* above proposed, none of the evidence presented were similar to, or at least somewhat approximating, the scale of the situation which obtained in Marawi City during the initial Proclamation.[70] There is nothing in the record to show that there are hostile groups engaged in actual and sustained armed hostilities with government forces. Neither are there allegations, much less, proof of hostile groups actually taking over and holding territory, or otherwise causing a significant breakdown of the general peace and order situation as to prevent local civilian authorities from going about their regular duties. Neither is there evidence presented to support the claimed linkages with foreign terrorist groups. The Islamic State, with its blitzkrieg campaign for the re-founding of an Islamic caliphate, has seen a dramatic decline in its influence in 2017, with its last stronghold, the city of Raqqa, falling into the hands of US-led coalition of Syrian Kurdish and Arab fighters in October of last year.[71] And while several Philippine

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64 *Id.*

65 AFP Briefing Paper on the Extension of Martial law in Mindanao, p. 15.

66 These incidents, broken down, are as follows: 3 ambuscades; 1 shelling/strafing; 64 firing/attacks upon government troops; 2 shootings; 4 liquidation/sniping; 2 arsons; 32 landmining and attacks using improvised explosive devices (IEDs); and 8 grenade throwing/explosions. See AFP Powerpoint Presentation, Slide No. 19.

67 These incidents, broken down, are as follows: 13 kidnappings; 3 IED landmining/explosions; 17 attacks; 3 murders; 2 strafing; 1 liquidation; 1 shooting; 1 ambuscade; 1 arson; 1 firefight; and 1 grenade throwing. See AFP Powerpoint Presentation, Slide No. 26.

68 AFP Powerpoint Presentation, Slide No. 37.

69 AFP Powerpoint Presentation, Slide No. 52.

70 It must be noted that reference to the Marawi Siege is especially relevant considering that what is at issue here is the extension of a declaration of martial law brought about by said incident.

71 BBC News, Islamic State and the Crisis in Iraq and Syria in Maps, January 10, 2018 <http://www.bbc.com/news/world-middle-east-27838034> (last accessed on February 6, 2018). The city was the de facto capital of the caliphate the group declared. An intensive aerial bombardment by the US-led coalition helped secure victory in Raqqa for the Syrian Democratic Forces (SDF), which was formed

factions of radical Islamic leanings may have pledged allegiance to the Islamic State, the AFP has not presented evidence that the organization has reciprocated, or that the Islamic State has publicly acknowledged an official *wilayat* or franchise in the country, or extended logistical, financial, manpower, or armament support to any, some or all of such factions.[72]

Lest I be misunderstood, I am not discounting or belittling the damage to life, limb, and property caused by the reported continued attacks of the hostile groups. Granting all of the Government's allegations to be true, however, I do not find these to be sufficient basis to warrant any continued restriction on or suspension of fundamental civil liberties.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 235935, 236061, 236145, and 236155, and **DECLARE INVALID** Joint Resolution No. 4 of the Senate and the House of Representatives dated December 13, 2017, for failure to comply with Section 18, Article VII of the 1987 Constitution.

FRANCIS H. JARDELEZA
Associate Justice

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in 2015 by the Kurdish Popular Protection Units (YPG) militia and a number of smaller, Arab factions. Since early June, coalition planes have carried out almost 4,000 air strikes on the city.

[72] Patrick B. Johnston and Colin P. Clarke, Is the Philippines the Next Caliphate?, November 28, 2017 <https://www.rand.org/blog/2017/11/is-the-philippines-the-next-caliphate.html?> (last accessed February 6, 2018).