

# THE DEDURO CASE: RED-TAGGING AS A THREAT TO HUMAN RIGHTS AND THE PHILIPPINES' MOVE TOWARDS A SOLUTION

---

Ramon J. Sison\*

## *Abstract*

*In a democratic society, the ability to advocate for causes one believes in or to express dissent from government policy is a right that is often protected and deemed fundamental. In the U.S., freedom of speech is highly protected by the Constitution. Similarly, the Philippines' Constitution offers the same protection. In reality, the ability to speak or associate freely in the Philippines is jeopardized by red-tagging.*

*Red-tagging is a practice commonly perpetrated by government and military actors reminiscent of the blacklisting of public figures during the McCarthyism era. It began in the mid-twentieth century with the start of a communist insurgency that continues today. It is characterized by the labeling of individuals and organizations as members of the Communist Party of the Philippines without any substantial evidence. Most, if not all, red-tagging victims have no association with communist or guerrilla activities. Those who are red-tagged are typically activists, journalists, attorneys, and protesters. When red-tagged, individuals often face harassment, threats, assault, and even death.*

*This article focuses on a seminal Philippine Supreme Court case: *Deduro v. Vinoya*, where the Court ruled that red-tagging threatened human life and violated international law to which the Philippines was obligated to adhere. In the context of physical harm, the Court triumphed. Additionally,*

---

\* Ramon J. Sison is a SCALE II student at Southwestern Law School graduating in May 2025 and a staff editor for the Journal of International Law. He has a bachelor's degree in English and American Literature from New York University, specializing in creative writing. The author thanks Professor Jonathan Miller, faculty advisor to the Journal, for his help in developing the paper topic and providing extensive notes following the first draft. He also thanks his parents, Reuven Sison and Pauline Jose, for their limitless support and engaging conversation about the issue and the family's relationship to Jose Maria Sison.

*the Court established itself as an independent judiciary, making space for itself within the separation of powers necessary for a healthy functioning democracy. However, the Court fell short in its lack of discussion of freedom of speech. The government effectively uses red-tagging to quell political dissent and silence voices critical of the government. This article discusses several ways that, going forward, the Court could develop legal doctrines to combat red-tagging and protect freedom of speech.*

I.	INTRODUCTION.....	594
II.	BACKGROUND.....	596
	A. Historical Context.....	596
	B. Present Political Climate.....	599
	C. Instances of Red-tagging in the Country.....	602
III.	THE DEDURO DECISION OFFERED AN EXCELLENT APPROACH IN THE PHILIPPINES CONTEXT BECAUSE OF THE RISKS TO HUMAN LIFE .....	604
	A. The Decision .....	604
IV.	THE DECISION ADDRESSED THE PHILIPPINES’ PROPENSITY FOR AUTHORITARIAN LEADERSHIP BY REASSERTING THE JUDICIARY’S ROLE IN SEPARATION OF POWERS.....	608
	A. Judicial Independence .....	609
	B. Philippines Application.....	611
V.	THE APPROACH FAILS TO ADDRESS RED-TAGGING’S IMPLICATIONS IN FREE SPEECH CASE LAW AND TO PROVIDE FUTURE GUIDANCE .....	614
	A. Chilling Effect on Freedom of Expression.....	614
	B. Balancing Acts for Both Private and Public Speakers....	616
VI.	CONCLUSION .....	620

I. INTRODUCTION

In *Deduro v. Vinoya*, the Supreme Court of the Philippines ruled that “red-tagging, vilification, labeling, and guilt by association constitute threats to a person’s right to life, liberty, or security.”<sup>1</sup> Red-tagging involved labeling a person or group of people as Communist extremists or leftist terrorists without any substantial evidence.<sup>2</sup> In the Philippines, the practice occurs

1. *Deduro v. Vinoya*, G.R. No. 254753 1, 24 (July 4, 2023) (Phil.), <https://sc.judiciary.gov.ph/254753-siegfried-d-deduro-vs-maj-gen-eric-c-vinoya-in-his-capacity-as-commanding-officer-of-the-3rd-infantry-division-philippine-army/>.

2. Ruby Rosselle L. Tugade, *Persistent Red-tagging in the Philippines as Violation of the Principle of Distinction in International Humanitarian Law*, 95 PHIL. L. J. 560, 562 (2022).

when government agents falsely label someone as a member of the Communist Party of the Philippines-New People's Army (CPP-NPA).<sup>3</sup>

The history of red-tagging in the Philippines began when the Communist Party of the Philippines (CPP) formed in the late 1960s and started an insurgency that continues today.<sup>4</sup> The CPP formed the New People's Army (NPA) with the hope of overthrowing the government as part of its "people's democratic revolution."<sup>5</sup> The group rapidly expanded during the late twentieth century and has now amassed a sizable membership which operates in several guerrilla fronts throughout the country.

Beginning with the Duterte administration, the Philippine government used red-tagging as a tactic to quell political dissent.<sup>6</sup> Government and military officials would publicly label activists, journalists, educators, and lawyers as ranking officials in the CPP-NPA.<sup>7</sup> The result of such action was discrimination and even death.<sup>8</sup> The authoritarian tactic surged during Duterte's presidency but did not stop with the election of the current president, Ferdinand Marcos Jr., who continues to employ and permit red-tagging.<sup>9</sup>

The *Deduro* decision benefits Philippine society because red-tagging threatens human life and liberty, and it allows the judiciary to push back against a history of authoritarian tactics by the executive branch. At the same time, the Court left out any discussion regarding the implications of freedom of expression and left unanswered the question of how the government should comply with its condemnation of red-tagging. This note will explore the positive implications of the decision and develop ideas for how the government and the judiciary should proceed. Specifically, the Court should adopt balancing tests in controlling both private and government speech that creates a high risk of danger for individuals. The note begins by exploring the Philippines' modern political history, which set the stage for red-tagging today. The next section focuses on the case itself, outlining the Court's reasoning and why the ruling bolsters the fundamental rights to life, liberty, and security. The following section discusses the judiciary's role in the Philippine government and the significance of its ruling in the separation of powers. Finally, the last section criticizes the case for its lack of discussion

3. *Id.* at 560.

4. *See id.* at 562.

5. *Basic Rules of the New People's Army*, PHIL. REVOLUTION WEB CENT. (June 29, 1969), <https://philippinerevolution.nu/1969/06/29/basic-rules-of-the-new-peoples-army/>.

6. Gabrielle Carissa Marie A. Paras, *The Politics of Red-Tagging in Philippine Media: Framing the "Red October" Ouster Plot Controversy*, 5 S.E. ASIAN MEDIA STUD. J. 63, 64 (2023).

7. *Id.*

8. *Id.* at 65.

9. *Id.* at 64.

of freedom of speech and provides suggestions for how the Court could have developed legal standards to combat red-tagging.

## II. BACKGROUND

Red-tagging has deep roots in the Philippines' modern history, leading to the human rights crisis today. A combination of corrupt leadership and susceptible citizenry contributes to a political landscape where voices critical of the government are often hushed through fear tactics and violence.

### A. Historical Context

The Philippines's colonial history contributes to a longstanding tradition of corruption and authoritarian rule in the government.<sup>10</sup> Systems of colonial control and governance brought by Spain shaped the way Filipinos understand and operate in the political sphere.<sup>11</sup> Psychologists posit that a preference for political authoritarianism may stem from this colonial history as well as from Filipino family structures and dynamics.<sup>12</sup> Once Spain left and the United States (U.S.) took over, the U.S. did not remove the systems that gave large amounts of land to a few wealthy families.<sup>13</sup> Instead, the US bolstered its economic growth and colonial stability in the region by working with and providing incentives to the elite class.<sup>14</sup> By the time the Philippines gained its independence, most people were susceptible to authoritarian conservatism.<sup>15</sup> Additionally, U.S. colonialists and Filipino political elites

---

10. See Cristina Jayme Montiel & Victoria Marie Chiongbian, *Political Psychology in the Philippines*, 12 INT'L SOC'Y POL. PSYCH. 759, 762-63 (1991) (referencing RICHARD LEE STONE, PHILIPPINE URBANIZATION: THE POLITICS OF PUBLIC AND PRIVATE PROPERTY IN GREATER MANILA (1973)) (explaining how Filipino culture allows political transgression because it espouses the idea that there is no public property and that public officials own their office and anything attached to it).

11. María Dolores Elizalde, *Colonial Government and Social Organization in the Spanish Philippines: Interactions and Ruptures*, in (POST-) COLONIAL ARCHIPELAGOS: COMPARING THE LEGACIES OF SPANISH COLONIALISM IN CUBA, PUERTO RICO, AND THE PHILIPPINES 238, 238 (Univ. Mich. Press, 2022).

12. Montiel & Chiongbian, *supra* note 10, at 764.

13. Colleen Woods, *Seditious Crimes and Rebellious Conspiracies*, 53 J. CONTEMP. HIST., 61, 66 (2018).

14. See *id.* at 66-67 (explaining how elite class Filipinos in the sugar industry benefited from access to the U.S. market, expanding their production capacities to the detriment of poor Filipinos).

15. See Joshua Uyheng & Cristina Jayme Montiel, *Cognitive Polyphasia in a Global South Populist Democracy: Mapping Social Representations of Duterte's Regime in the Philippines*, 8 J. SOC. & POL. PSYCH., 30, 32-33 (2020) (discussing how President Duterte's populist message against "entrenched political elite" contributed to his popularity amongst ordinary Filipino people).

worked together to promote anti-communist politics to encourage capitalism and colonial rule.<sup>16</sup>

Shortly after Ferdinand Marcos Sr. became president in 1965, Jose Maria Sison founded the Communist Party of the Philippines (CPP).<sup>17</sup> The Party's mission was to overthrow the Philippine government through a violent revolution that would expel U.S. influence and favor the working-class proletariat.<sup>18</sup>

The practice of red-tagging began during the Marcos period alongside the growth of the CPP. The postwar era of the Philippines saw immense growth in wealth for the landed elite class, who capitalized from the wartime destruction of the country by profiting from its rebuilding.<sup>19</sup> During this time, people from the elite and working classes moved from the countryside to the capital city of Manila.<sup>20</sup> Many of the working-class youth began attending the city's universities, which were privately owned and financially supported by the wealthy elite.<sup>21</sup>

The Philippines entered a period of immense civil unrest leading into the 1970s, characterized by students protesting and workers striking to voice their dismay with the country. Students were aggrieved by increasing tuition and fees, and workers were displeased with low wages and insufficient working conditions.<sup>22</sup> Coinciding with this growth of dissent from the working classes was the development of the CPP's nationalist mission. The CPP attempted to align its mission with that of protesting students in order to strengthen its legitimacy, but the students' goals did not align with what the CPP wanted for the country.<sup>23</sup> Nevertheless, when Ferdinand Marcos was elected for his second term, student unions and student activist groups became synonymous with communist ideology in the Philippines.<sup>24</sup> This set the stage for red-tagging and the government and military's united attack on communist ideology in the country, aiming not only at the CPP but at any other defiant voices in range.

16. See Woods, *supra* note 13, at 67.

17. *Communist Party of the Philippines - New People's Army, Narrative*, MAPPING MILITANTS PROJECT (Aug. 1, 2018), <https://mappingmilitants.org/profiles/communist-party-of-the-philippines-new-peoples-army#narrative>.

18. *Id.*

19. JOSEPH SCALICE, *THE DRAMA OF DICTATORSHIP: MARTIAL LAW AND THE COMMUNIST PARTIES OF THE PHILIPPINES* 23 (Cornell Univ. Press 2023).

20. See *id.* at 24.

21. *Id.*

22. *Id.* at 43.

23. *Id.* at 47.

24. See *id.* at 183.

On January 26, 1970, student organizations that fought for government reform and supported democratic ideologies protested Ferdinand Marcos' second term during the first session of the Seventh Congress.<sup>25</sup> This marked the beginning of what is known as the First Quarter Storm.<sup>26</sup> The Marcos administration swiftly and forcefully shut down the demonstrations with police brutality.<sup>27</sup> Reports indicated that around 300 students were injured and several arrested.<sup>28</sup> Following the riot, President Marcos released a statement claiming that while legitimate student protestors largely attended the demonstrations, infiltrators from the CPP also attended, which warranted the use of forceful police tactics.<sup>29</sup> Marcos did not mention, however, that many of the supposed infiltrators were undercover police agents sent to provoke the riot that ensued.<sup>30</sup> This labeling as support for subsequent police action represents the genesis of the modern problem of red-tagging that persists today.

At the same time, the CPP took advantage of the labeling of student protests as part of the communist revolution it sought. The CPP recruited students and pushed its communist message onto student activist groups. The CPP's mission appealed to youth starving for change, and it developed the political ideology of the student protests through a nationalist message that resonated with the students.

However, when Marcos declared martial law in 1972, the CPP and its associate organizations had lost much of their urban muster.<sup>31</sup> The CPP moved into the countryside, where Sison continued to push for a revolution that did not happen.<sup>32</sup> He was eventually arrested and, when released, self-exiled to the Netherlands, where he lectured at universities and maintained the role of ideological leader of the CPP.<sup>33</sup> Leadership and reorganization of

---

25. *Id.* at 64.

26. The First Quarter Storm was a period of civil unrest in the 1960s and 70s in the Philippines that stemmed from increasing poverty, increasing debt of government, and concerns of imperialism, fascism, and feudalism. The period consisted of several public demonstrations, protests, and marches organized by student led movements advocating for systemic change. The protests led to violent conflict between demonstrators and police in the beginning of 1970 when Ferdinand Marcos was elected for a second term. *Appendix: A History of the Philippine Political Protest*, OFFICIAL GAZETTE <https://www.officialgazette.gov.ph/edsa/the-ph-protest-appendix/> (last visited Apr. 16, 2025).

27. SCALICE, *supra* note 19, at 66.

28. *Id.* at 67.

29. *Id.* at 69.

30. *Id.*

31. *Id.* at 173.

32. *See id.*

33. *Id.* at 260.

the CPP continues today, and the party has engaged in guerrilla warfare and terrorism to stay relevant, but the revolution has largely stagnated.<sup>34</sup>

### B. Present Political Climate

Despite the CPP's lack of power and influence today, the Philippine government remains at war and aims to destroy the CPP and its armed wing, the New People's Army (NPA).<sup>35</sup> The conflict between the Philippine military and the NPA exists primarily in remote areas of the countryside.<sup>36</sup> The government has largely weakened the NPA forces, which have dwindled to between 1,200 and 2,000 in number.<sup>37</sup>

At the beginning of his presidency in 2016, Rodrigo Duterte sought to end the conflict peacefully and engaged in peace talks with CPP leadership.<sup>38</sup> Duterte and the CPP engaged in several rounds of peace talks where they discussed ceasefires and potential agreements to reach peace.<sup>39</sup> In early 2017, Duterte called off the peace talks amidst a surge of violence in the southern region of the Philippines, where the Philippine army and communist insurgents battled.<sup>40</sup> Later that year, Duterte declared the CPP and NPA terrorist organizations through an official proclamation.<sup>41</sup>

In December 2018, Duterte issued Executive Order 70, which created the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC).<sup>42</sup> According to the Task Force, the CPP continues to recruit "idealistic and aggressive youth" through mass demonstrations and pseudo-educational discussions.<sup>43</sup> While the Philippines does have a legitimate interest in ending the communist insurgency that has existed since the CPP's

34. Georgi Engelbrecht, *Following the Red Star: Tracking the Communist Rebellion in the Philippines*, INT'L CRISIS GRP. (Nov. 18, 2024), <https://www.crisisgroup.org/asia/south-east-asia/philippines/following-red-star-tracking-communist-rebellion-philippines>.

35. *Id.*

36. INT'L CRISIS GRP., *Calming the Long War in the Philippine Countryside at i* (2024).

37. *Id.*

38. Kathy Quiano, *Philippines' Duterte calls ceasefire to 48-year battle with communist insurgents*, CNN (July 25, 2016, 10:05 AM), <https://www.cnn.com/2016/07/25/asia/state-of-nation-address-duterte/index.html>.

39. INT'L CRISIS GRP., *supra* note 36.

40. *Id.*

41. Office of the President, *Declaring the Communist Party of the Philippines (CPP) – New People's Army (NPA) as a Designated/Identified Terrorist Organization under Republic Act. No. 10168, Pres. Proc. No. 374* (Dec. 5, 2017), <https://www.officialgazette.gov.ph/2017/12/05/proclamation-no-374-s-2017/>.

42. *About*, NAT'L TASK FORCE TO END LOC. COMMUNIST ARMED CONFLICT, <https://www.ntfelcac.org/> (last visited Apr. 17, 2025).

43. *Recruitment of Minors and Students*, NAT'L TASK FORCE TO END LOC. COMMUNIST ARMED CONFLICT, <https://www.ntfelcac.org/recruitment> (last visited Apr. 20, 2025).

founding, the NTF-ELCAC operates through overly broad and punitive means.

The NTF-ELCAC and its constituents identify and label individuals and organizations as part of the CPP without any substantial evidence.<sup>44</sup> One such target organization is the Bagong Alyansang Makabayan, also known as Bayan; Bayan is an alliance of left-wing organizations that espouses an anti-imperialist and national democratic ideology but is not affiliated with the CPP or NPA.<sup>45</sup> Bayan is particularly critical of the Philippine government and expresses its opposition through demonstrations and protests, but its leadership openly denies any association with the communist front.<sup>46</sup> As support for labeling Bayan as a communist front organization, Duterte has said, “I know because I know.”<sup>47</sup>

In 2020, Duterte signed into law the Anti-Terrorism Act of 2020.<sup>48</sup> This bill increased the government’s ability to act with impunity to advance its goal of supplanting communist and terrorist organizations.<sup>49</sup> The Act partially defines terrorism as engagement in acts “intended to cause death or serious bodily injury to any person, or endangers a person’s life.”<sup>50</sup> Additionally, the Act allows police to arrest individuals suspected of perpetrating terrorism without a warrant and to detain them for fourteen days before delivering them to the proper judicial authority.<sup>51</sup> Critics of the bill argue that it infringes on human rights by potentially allowing unreasonable searches and seizures and prolonged warrantless detention.<sup>52</sup>

Perhaps the most defining characteristic of Duterte’s presidency was his “war on drugs,” which has resulted in the deaths of thousands of Filipinos in extrajudicial killings and enforced disappearances.<sup>53</sup> While Duterte only

---

44. INT’L CRISIS GRP., *supra* note 36, at 7-8.

45. *What is Bayan?*, BAGONG ALYANSANG MAKABAYAN, <https://bayan.ph/site/about/> (last visited Apr. 20, 2025).

46. *Id.*

47. Azer Parrocha, *Not red-tagging, we are identifying you, PRRD to CPP-NPA fronts*, PHIL. NEWS AGENCY (Dec. 1, 2020, 1:30 AM), <https://www.pna.gov.ph/articles/1123408>.

48. The Anti-Terrorism Act of 2020, Rep. Act No. 11479, (July 3, 2020) (Phil.), <https://www.officialgazette.gov.ph/2020/07/03/republic-act-no-11479/>.

49. *See id.*

50. *Id.* § 4(a).

51. *Id.* § 29.

52. Julie McCarthy, *Philippines’ High Court Upholds Most of a Terrorism Law, but Strikes Down a Key Point*, NPR, (Dec. 12, 2021, 6:03 PM), <https://www.npr.org/2021/12/10/1062937692/philippines-supreme-court-rules-parts-of-the-countrys-terrorism-law-unconstitution>.

53. Sui-Lee Wee & Camille Elemia, *Years Later, Philippines Reckons with Duterte’s Brutal Drug War*, N.Y. TIMES (June 29, 2024), <https://www.nytimes.com/2024/06/29/world/asia/philippines-drug-war-duterte-justice.html>.



claimed responsibility for the death of 6,252 “drug suspects,” rights groups estimate the death toll to be closer to 30,000.<sup>54</sup>

Duterte’s authoritarian rule operated on a populist message that carried his approval ratings amongst voters exceptionally high, even in the face of heinous acts.<sup>55</sup> Yuko Kasuya and Hirofumi Miwa hypothesize that the reason for Duterte’s high level of popularity throughout his presidency is likely social desirability bias (SDB).<sup>56</sup> Kasuya and Miwa argue that when answering surveys about Duterte, respondents have no incentive to criticize or present truthful opinions about him.<sup>57</sup> In light of the vindictive action he takes against those who oppose him, respondents would prefer to give safe answers that would not subject them to such action.<sup>58</sup> Duterte’s presidency contributes to a “climate of fear” characterized by pressure to conform to societal norms he promotes.<sup>59</sup> The fact that Duterte’s daughter Sara was elected as Vice President to Marcos Jr. further illustrates the Filipino people’s willingness to accept leadership from authoritarians and their heirs.<sup>60</sup>

Red-tagging is simply a device Duterte employed in his presidency to maintain the “climate of fear.” By amplifying the frequency and severity of red-tagging, Duterte silenced opposition and instilled fear in people who dissented from his reign.

Duterte’s successor, Ferdinand Marcos Jr., son of the infamous dictator who declared martial law in 1972, promised to protect human rights as president.<sup>61</sup> Marcos Jr. claimed that he would ensure a high level of accountability for human rights violations.<sup>62</sup> Despite his promises, Marcos Jr. has not dismantled the institutions Duterte put in place, such as the NTF-ELCAC.<sup>63</sup> Red-tagging persists in Marcos Jr.’s administration, and while

54. *Id.*

55. Yuko Kasuya & Hirofumi Miwa, *Pretending to Support? Duterte’s Popularity and Democratic Backsliding in the Philippines*, 23 J. E. ASIAN STUD. 411, 414 (2023) (discussing the suspicious nature of Duterte’s high approval ratings throughout his presidency).

56. *Id.* at 412.

57. *Id.* at 415 (referencing Bulatlat Contributors, *Surveys and the Fear Factor*, BULATLAT (Oct. 17, 2020, 5:34 PM), <https://www.bulatlat.com/2020/10/17/surveys-and-the-fear-factor/>).

58. *Id.*

59. *Id.*

60. See Sheila S. Coronel, *Philippine Elections 2022: The End of Accountability? Impunity and the Marcos Presidency*, 44 CONTEMP. S.E. ASIA 367, 368 (2022) (arguing that in the Philippine context, political heirs to controversial leaders vindicate their parents’ legacies when running for office, allowing politicians like Rodrigo Duterte to evade accountability).

61. Ruth Abbey Gita-Carlos, *Marcos Vows to Protect Human Rights*, PHIL. NEWS AGENCY (June 10, 2022, 4:16 PM), <https://www.pna.gov.ph/articles/1176399>.

62. *Id.*

63. Jean Mangaluz, *NTF-Elcac Won’t Be Abolished by Marcos, Says Security Council Exec*, INQUIRER.NET (May 13, 2024, 1:12 PM), <https://newsinfo.inquirer.net/1940034/ntf-elcac-wont-be-abolished-by-marcos-says-security-council-exec>.

Marcos Jr. has spoken about his commitment to justice and human rights, his actions or omissions say otherwise.

*C. Instances of Red-tagging in the Country*

In October 2024, Amnesty International released a report documenting several instances of red-tagging in the Philippines, beginning with Rodrigo Duterte's presidency and continuing through the present administration.<sup>64</sup> The report begins by laying out the landscape for freedom of expression in the Philippines and the importance of student protests throughout the country's modern history.<sup>65</sup> The report then discusses how the State's use of red-tagging creates a hostile environment for young human rights activists and produces a chilling effect on human rights advocacy.<sup>66</sup> The comprehensive report includes in-depth interviews and accounts of red-tagging, almost all of which happen to dissenting youth.

Hailey Pecayo is a young student whose school was forced to close during the Covid-19 pandemic.<sup>67</sup> At the time, she took an interest in human rights as a way to raise awareness about inequality in the education system.<sup>68</sup> Hailey then joined a human rights organization and began to attend rallies.<sup>69</sup> Pecayo was red-tagged by a military officer when she was nineteen years old.<sup>70</sup> The officer accused her of being part of a rebel group that engaged in a shootout with the military.<sup>71</sup> The military then filed a complaint against her under the Anti-Terrorism Act.<sup>72</sup> The red-tagging continued once her name and face appeared on a pro-government television station and Facebook troll pages.<sup>73</sup> Pecayo explained to Amnesty that although the criminal charges against her were dropped, she continues to get harassed and labeled as a terrorist.<sup>74</sup> She argues that the Anti-Terrorism Act is so vague that it acts as a state-sponsored weapon against progressive groups.<sup>75</sup>

---

64. See generally AMNESTY INT'L, "I TURNED MY FEAR INTO COURAGE": RED-TAGGING AND STATE VIOLENCE AGAINST YOUNG HUMAN RIGHTS DEFENDERS IN THE PHILIPPINES 15 (2024), <https://www.amnesty.org/en/documents/asa35/8574/2024/en/> [hereinafter AMNESTY INT'L REP.].

65. *Id.* at 6, 7, 8.

66. *Id.* at 8.

67. *Id.* at 36.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

Gene Roz Jamil de Jesus, nicknamed Bazoo, was a young student activist who advocated for the right to free education.<sup>76</sup> After he graduated, Bazoo joined the Philippine Task Force on Indigenous Peoples' Rights.<sup>77</sup> After being red-tagged in both public spaces and on Facebook, Bazoo disappeared in April 2023, when he was forcibly taken by individuals who had previously identified themselves as police agents.<sup>78</sup> The enforced disappearance of activists such as Bazoo profoundly affects other activists.<sup>79</sup> Many activists must adjust their daily lives by concealing their locations or implementing buddy systems.<sup>80</sup> At the same time, many activists choose to abandon the causes they fight for.<sup>81</sup> Some point to the decision to the strain on their mental health, and others' parents force them to leave or transfer schools.<sup>82</sup>

Amnesty's numerous interactions and interviews with Filipino student activists suggest that red-tagging affects not only human rights defenders and activists but also the entire political landscape.<sup>83</sup> Activists report struggles recruiting volunteers and members, who hesitate to join movements for fear of government action.<sup>84</sup> Additionally, red-tagging jeopardizes independent journalism because of a fear that reporting against the government will lead to harassment or threats.<sup>85</sup>

Red-tagging effectively discourages any form of dissent or critique of the government and threatens democratic values. The Philippines protects freedom of speech and expression in its Constitution,<sup>86</sup> but the government faces little accountability for its malicious practices that stifle these enumerated rights. With its recent ruling in the *Deduro v. Vinoya* case, the Supreme Court of the Philippines has taken a step forward in establishing accountability for the physical harm red-tagging causes. Still, it falls short of

76. *Id.* at 40.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 40-41.

82. *Id.* at 41.

83. *See id.* at 43.

84. *Id.* at 44.

85. *Id.*; see Sarthak Gupta, *Red-Tagging in the Philippines: The Modern McCarthyism Threatening Freedom of Expression*, COLUMBIA UNIV. GLOB. FREEDOM OF EXPRESSION (Aug. 22, 2024), <https://globalfreedomofexpression.columbia.edu/publications/red-tagging-in-the-philippines-the-modern-mccarthyism-threatening-freedom-of-expression/> (outlining the numerous instances of red-tagging throughout Duterte's presidency as part of his "war on drugs," leading to the deaths of dozens of human rights activists and journalists).

86. CONST. (1987), art. III, § 4 (Phil.).

recognizing the broader threats red-tagging poses to democratic values such as freedom of speech and expression.

### III. THE DEDURO DECISION OFFERED AN EXCELLENT APPROACH IN THE PHILIPPINES CONTEXT BECAUSE OF THE RISKS TO HUMAN LIFE

In *Deduro v. Vinoya*, the Supreme Court of the Philippines reviewed a lower court's decision to dismiss the petitioner's *writ of amparo* stemming from allegations of red-tagging against a high-ranking military official.<sup>87</sup> The lower court claimed the allegations were baseless, unsupported by evidence, and insufficient for the writ.<sup>88</sup> The Supreme Court reversed the dismissal and declared that under the auspices of international law, red-tagging constituted threats to a person's right to life, liberty, and security, and such allegations were worthy of the issuance of the *writ of amparo*.<sup>89</sup>

#### A. The Decision

The petitioner, Siegfred Deduro, was an activist from Iloilo who was the founding member and elected officer of several organizations and activist groups.<sup>90</sup> Deduro supported causes such as environmental and agricultural reform.<sup>91</sup> The respondent was Major General Eric C. Vinoya, the commanding officer of the Third Infantry Division of the Philippine Army.<sup>92</sup>

On June 19, 2020, Vinoya and his agents gave a presentation and discussion where they alleged that specific individuals, including Deduro, were part of the NPA hierarchy.<sup>93</sup> After the event, a news agency circulated photographs of Deduro from the presentation, and the Philippine News Agency publicized his alleged connection with the NPA.<sup>94</sup> This false association led to further red-tagging and surveillance against him.<sup>95</sup> Some of these instances included posters of his image in public alongside other activists, lawyers, and NGO members.<sup>96</sup> Specifically, posters contained captions labeling Deduro and other activists as "criminal, extortionists,

---

87. *Deduro v. Vinoya*, G.R. No. 254753-1 (July 4, 2023) (Phil.), <https://sc.judiciary.gov.ph/254753-siegfred-d-deduro-vs-maj-gen-eric-c-vinoya-in-his-capacity-as-commanding-officer-of-the-3rd-infantry-division-philippine-army/>.

88. *Id.* at 10.

89. *Id.* at 24.

90. *Id.* at 2.

91. *Id.*

92. *Id.*

93. *Id.* at 2-3.

94. *Id.* at 3.

95. *Id.*

96. *Id.* at 3-4.

syndicates, terrorists.”<sup>97</sup> Deduro was also explicitly named as part of the NPA on Facebook posts.<sup>98</sup> The government primarily utilizes the social media platform Facebook to red-tag, as it is the most widely used platform in the Philippines.<sup>99</sup> Aside from being personally red-tagged, organizations Deduro was involved with were also red-tagged as front organizations for the CPP.<sup>100</sup> Deduro even described instances where unidentified men followed him and his colleagues.<sup>101</sup> Unknown assailants killed two other people that Deduro was red-tagged with, further exacerbating his distress.<sup>102</sup>

At the trial court level, Deduro filed a *writ of amparo*, which asks for relief based on constitutional violations.<sup>103</sup> In his petition, Deduro sought a hearing for interim relief, at which a production order would be issued directing the respondent to produce all records and documents related to Deduro and associated red-tagging activities.<sup>104</sup> Afterwards, Deduro requested a judgment enjoining the respondent and his agents from red-tagging him and directing him to destroy all materials related to the red-tagging.<sup>105</sup>

The Regional Trial Court (RTC) immediately dismissed the case due to a lack of support for the red-tagging allegations.<sup>106</sup> As a basis for its ruling, the RTC found that the petitioner’s allegations were “baseless, unsupported by evidence, and insufficient for the grant of the extraordinary writ.”<sup>107</sup> The RTC explained that the *writ of amparo* was a special judicial remedy that expeditiously provides relief for “violations of a person’s constitutional right to life, liberty, and security...”<sup>108</sup> Specifically, the writ addressed remedial action for victims of extralegal killings and enforced disappearances.<sup>109</sup> As such, the RTC found that the factual allegations Deduro posed as threatening his right to life, liberty, and security were “totally untenable.”<sup>110</sup>

---

97. *Id.* at 4.

98. *Id.* at 6.

99. AMNESTY INT’L REP., *supra* note 64, at 27.

100. *Deduro*, G.R. No. 254753 at 5.

101. *Id.*

102. *See id.* at 6.

103. *See id.* at 7; *see generally* Paulo Cardinal, *The Writ of Amparo: A New Lighthouse for the Rule of Law in the Philippines*, 87 PHIL L.J. 229 (2012) (discussing the application of the writ of amparo across different jurisdictions as varying in scope but commonly focusing on protection of either a fundamental or constitutionally recognized right).

104. *See Deduro*, G.R. No. 254753 at 7.

105. *See id.*

106. *Id.* at 8.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 9.

In his appeal to the Supreme Court, Deduro asked the Court to determine if he was eligible for relief under the *writ of amparo* and if the lower court erred in dismissing his claim without a hearing or requiring Vinoya to comment or answer the petition.<sup>111</sup> The Supreme Court required Vinoya to comment on the petition in early 2021.<sup>112</sup> In his response, Vinoya claimed that Deduro failed to establish by substantial evidence that he or any of his agents or subordinates participated in or authorized the threats to his right to life, liberty, and security.<sup>113</sup> Vinoya challenged the veracity of Deduro's evidence, saying that the documents, posters, and social media posts were all made by accounts not run or influenced by the military.<sup>114</sup> Vinoya explained that the posters were not sponsored by the military but by the Panay Alliance of Victims of the CPP-NPA-NDF.<sup>115</sup>

In its review of the decision, the Supreme Court began by outlining the history and purpose of the *writ of amparo* in the Philippines.<sup>116</sup> It explained that the issuance of the writ must be distinguished from the granting of the privilege of the writ.<sup>117</sup> Because the writ was meant to provide an expeditious remedy to any person who experiences violations of the right to life, liberty, and security, the writ may be issued immediately on its face.<sup>118</sup> For the initial evaluation of the petition, the petitioner need only outline the ultimate facts.<sup>119</sup> Afterwards, the court may evaluate the petition based on a substantial evidence standard to determine if the privilege should be granted or denied.<sup>120</sup> The Court recognized that the writ was meant to apply to extralegal killings and enforced disappearances or threats thereof.<sup>121</sup> In recognizing threats as a type of harm that warranted the writ, the Court explained that in protecting the rights to life, liberty, and security, security could exist independently of the right to liberty.<sup>122</sup> Therefore, a person's right to security could be threatened even if they maintain their freedom and are not in the government's or persecutors' custody.<sup>123</sup>

---

111. *See id.* at 10.

112. *See id.* at 11.

113. *Id.*

114. *See id.*

115. *See id.*

116. *See id.* at 12-13.

117. *See id.* at 14.

118. *See id.* at 14-15.

119. *See id.* at 28.

120. *See id.* at 31.

121. *Id.* at 15.

122. *Id.* at 20.

123. *Id.*

Continuing their analysis, the Court determined that red-tagging was a form of harassment and intimidation and that, in many instances, threats led to death.<sup>124</sup> The Court declared that red-tagging by the government constituted threats to a person's right to life, liberty, or security.<sup>125</sup> Analysis of accounts of red-tagging show that it is "a likely precursor to abduction or extrajudicial killing."<sup>126</sup>

For Siegried Deduro, redress would be possible because the lower court erred in dismissing his petition.<sup>127</sup> The petition for a *writ of amparo* does not require the specific and detailed factual allegations that the RTC claimed the petitioner was missing.<sup>128</sup> Realistically, the petitioner may not have all the details of the respondent's violations because the respondent would naturally keep them hidden.<sup>129</sup> As such, requiring a high level of specificity and detail would make the *Amparo* Rule a "token gesture of judicial concern."<sup>130</sup>

The Court reversed the RTC's dismissal and held that petitioner Deduro was entitled to at least the issuance of the writ based on his factual allegations.<sup>131</sup> Although he had not been subject to an enforced disappearance or extralegal killing, the circumstances surrounding his red-tagging constituted threats that could lead to his harassment, assault, or death.<sup>132</sup> The Court issued the *writ of amparo* in favor of Deduro and remanded the case to the RTC to hold a summary hearing to determine whether Deduro should be granted the privilege of the writ.<sup>133</sup> While the Court ultimately left final judgment in the hands of the RTC, the decision means the Philippines has taken a sizable step forward in addressing one of its most significant human rights issues.

Furthermore, the Supreme Court's ruling in *Deduro* marks a turning point in the judicial branch's movement toward independence. In ruling that a normalized government practice violates human rights, the Court demonstrates its willingness to invalidate unchecked executive authority and protect constitutional emplacements. To support its findings, the Court looked to international law.<sup>134</sup> The Court noted that as early as 2007, the UN Human Rights Council observed the prevalence of red-tagging of left-leaning

---

124. *Id.* at 21.

125. *Id.* at 24.

126. *Id.* at 22.

127. *See id.* at 12, 33, 35, 36.

128. *Id.* at 28, 33, 34.

129. *Id.* at 28.

130. *Id.*

131. *Id.* at 33.

132. *Id.* at 33-34.

133. *Id.* at 36, 37.

134. *See id.* at 21.

individuals and organizations.<sup>135</sup> The Court then refers to the UN special rapporteurs who made a public plea for the Philippines to stop the practice of red-tagging.<sup>136</sup> To further strengthen the Court's recognition of the problem of red-tagging, the opinion cites Senior Associate Justice Marvic M.V.F. Leonen's dissenting opinion in *Zarate v. Aquino*,<sup>137</sup> a case from 2015 involving red-tagging, in which the majority dismissed the petitioner's *writ of amparo*.<sup>138</sup> Leonen's dissent in that case provided the most comprehensive definition of red-tagging at the time: "to make it easy for military and paramilitary units to silence or cause untold human rights abuses on vocal dissenters, government agents usually resort to stereotyping or caricaturing individuals."<sup>139</sup> The stereotyping results in physical danger to the victims as well as a chilling effect on political dissent. According to Leonen, communist ideology has long been used as a "bogey to create nonexistent exigencies for purposes of national security."<sup>140</sup> He noted that perhaps a better way to debunk "worn-out ideologies" such as communism would be to have tolerance and the creation of wider-deliberative spaces.<sup>141</sup>

#### IV. THE DECISION ADDRESSED THE PHILIPPINES' PROPENSITY FOR AUTHORITARIAN LEADERSHIP BY REASSERTING THE JUDICIARY'S ROLE IN SEPARATION OF POWERS

Democracies with separation of powers function best when the judiciary can perform judicial review independently. In countries with a history of authoritarian leadership, like the Philippines, the judiciary's willingness to rule against the executive branch helps to maintain a healthy democracy and prevents democratic backsliding into authoritarianism. By declaring red-tagging a human rights violation, the Supreme Court of the Philippines demonstrated its independence by condemning a practice perpetrated mainly by government officials.

---

135. *Id.*; Philip Alston (Special Rapporteur on extrajudicial, summary or arbitrary executions), *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council,"* § 3 ¶ 8, U.N. Doc. A/HRC/4/20/Add.3 (Mar. 22, 2007).

136. See *Deduro*, G.R. No. 254753 at 21; Press Release, Special Procedures, Philippines: Drop murder charge against indigenous rights defender, UN experts urge (Jan. 28, 2021), <https://www.ohchr.org/en/press-releases/2021/01/philippines-drop-murder-charge-against-indigenous-rights-defender-un-experts?LangID=E&NewsID=26696>.

137. Direct citation of this case has been omitted as the decision is not officially published by the Supreme Court of the Philippines. The *Deduro* decision, however, directly quotes and cites the relevant portions of the *Zarate* case.

138. See *Deduro*, G.R. No. 254753 at 22-23.

139. *Id.* at 22.

140. *Id.*

141. *Id.*



### A. Judicial Independence

Although red-tagging had been a practice in the Philippines since the beginning of the communist insurgency, its frequency and gravity increased during the Duterte presidency. The country had moved away from authoritarianism when it ousted Marcos, but when Rodrigo Duterte became president, it began to shift back.<sup>142</sup> Duterte's presidency constituted a renewed campaign of red-tagging, threats, and harassment against defenders of human rights and political activists.

Moreover, Duterte's presidency threatened judicial independence. The Philippine constitution explicitly grants the Supreme Court judicial review,<sup>143</sup> but Duterte's strong-arm leadership tactics caused the Court to diminish its function as a check on executive power.<sup>144</sup>

Article VIII of the 1987 Philippine Constitution outlines the powers of the Judicial Department of the Philippines.<sup>145</sup> The judicial power is vested in one Supreme Court and lower courts as established by law.<sup>146</sup> Part of the judicial power includes determining "whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."<sup>147</sup> Additionally, while Congress maintains the power to "define, prescribe, and apportion" the jurisdiction of various courts, Congress may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5.<sup>148</sup> In a country like the Philippines, with a history of authoritarian leaders both internally and through colonialism, judicial independence is essential for maintaining its relatively new democracy. Without judicial independence, the country risks returning to authoritarianism and unchecked executive power.

A judiciary is independent when a neutral third party impartially resolves a conflict.<sup>149</sup> In 2011, Douglas M. Gibler and Kirk A. Randazzo conducted a study to explain that strong independent judiciaries bolster democratic regimes and prevent them from backsliding toward

142. See SCALICE, *supra* note 19, at 264.

143. CONST. (1987), art. VIII, § 1 (Phil.).

144. Edcel John A. Ibarra, *The Philippine Supreme Court under Duterte: Reshaped, Unwilling to Annul, and Unable to Restrain*, SOC. SCI. RSCH. COUNCIL, (Nov. 10, 2020), <https://items.ssrc.org/democracy-papers/democratic-erosion/the-philippine-supreme-court-under-duterte-reshaped-unwilling-to-annul-and-unable-to-restrain/>.

145. CONST. (1987), art. VIII (Phil.).

146. *Id.* § 1.

147. *Id.*

148. *Id.* § 2.

149. Douglas M. Gibler & Kirk A. Randazzo, *Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding*, AM. J. POL. SCI. 696, 697 (2011).

authoritarianism.<sup>150</sup> They claim that independent judicial systems ensure peaceful transitions of power, assist in maintaining the rule of law, and protect individual rights within democracies.<sup>151</sup> In determining whether a judiciary is independent, Gibler and Randazzo emphasize the importance of insulation from other political actors.<sup>152</sup> While protections such as lifetime appointments and salary guarantees exist to ensure such insulation, examples from countries such as El Salvador and even the U.S. show that political influence seeps through these measures.<sup>153</sup>

In posing their hypothesis that independent judiciaries decrease the likelihood of regime conversions toward authoritarian governmental systems, Gibler and Randazzo qualify the hypothesis by stating that newly independent judiciaries do not affect the likelihood of regime reversions towards authoritarianism.<sup>154</sup> New courts have a strong interest in establishing their legitimacy, and in doing so, they tend to focus on constitutional issues over which the majority of a given society agrees. New courts dislike resolving hotly contested issues because executive branches can easily challenge unfavorable decisions if the court is new and dependent on them.<sup>155</sup> Therefore, a judiciary can only become independent as it builds legitimacy over time and makes decisions outside of political influence.

Gibler and Randazzo suggest several causes for democratic backsliding into authoritarian regimes.<sup>156</sup> One such reason pertinent to the context of the Philippines is the role of military crises as a response to external threats.<sup>157</sup> The executive branch seeks increased political power to deal with threats in

---

150. *Id.* at 696.

151. *Id.*

152. *Id.* at 697.

153. *Id.* (explaining how executive branches in certain countries entice the judiciary to act in conformity with their objectives either through incentives or intimidation by threatening action).

154. *Id.* at 696.

155. *Id.* at 698; Russia and Ukraine provide strong examples of the role of independent judiciaries in emerging democracies. In elections that took place in the years soon after the dissolution of the U.S.S.R., courts in Russia and Ukraine heard thousands of cases regarding electoral disputes. *See* MARIA POPOVA, *POLITICIZED JUSTICE IN EMERGING DEMOCRACIES: A STUDY OF COURTS IN RUSSIA AND UKRAINE* 68 (2012). An independent judiciary is extremely important when it is highly involved in the electoral process as Russian and Ukrainian courts were. *Id.* at 69. Although new formal institutions were meant to ensure that politicians could not pressure judiciaries to conform to their will, “informal practices” from the Soviet era continued to allow politicians to strategically pressure the judiciary. *Id.* at 128 and 146. Popova’s research seems to suggest that judiciaries often lack the ability to review independently if they are newly formed. *Id.* at 146; *see also* John E. Finn, *The Rule of Law and Judicial Independence in Newly Democratic Regimes*, 13 *THE GOOD SOC’Y* 12, 14 (2004) (arguing that independent judiciaries are paramount to forming the rule of law in democracies, but that in nascent democracies, judiciaries often reflect elite self-interests until the process of becoming independent develops over long periods of time).

156. Gibler & Randazzo, *supra* note 149, at 699.

157. *Id.* at 699-700.

these contexts.<sup>158</sup> What follows is a sense of nationalism and public pride surrounding the response to the threat, and the increase in power in the executive branch quells dissent through a centralized military force.<sup>159</sup>

### B. *Philippines Application*

The *Deduro* decision displayed the Supreme Court's willingness to defy the executive and condemn state action that violated human rights. However, as Gibler and Randazzo point out, a judiciary's ability to prevent democratic backsliding largely depends on the length of its independence.<sup>160</sup> In previous cases, specifically under Duterte's presidency, the Supreme Court lacked the willingness to rule against the government. Edcel John Ibarra, assistant professor at the Department of Political Science at the University of the Philippines Diliman, examined several Philippine Supreme Court cases to determine its willingness to rule against the executive.<sup>161</sup> Ibarra found that during Duterte's presidency, the Supreme Court mostly ruled in favor of his executive actions or orders.<sup>162</sup>

In 2016, Duterte ordered the late President Ferdinand Marcos' body moved into the Libingan ng mga Bayani, or the "Cemetery of the Heroes."<sup>163</sup> This order was met with backlash, with several petitioners filing oppositions to the burial as a "grave injustice" to victims of Marcos' martial law.<sup>164</sup> The Supreme Court dismissed the petitions, holding that Duterte's decision to bury Marcos at the Heroes' Cemetery was neither against the law nor a grave abuse of discretion.<sup>165</sup> Critics argued that while it is possible that Duterte's order was not unconstitutional, the Court's decision to allow the infamous dictator a hero's burial was puzzling, given his grave transgressions against the country.<sup>166</sup> Under the Gibler and Randazzo framework, this decision shows the judiciary's lack of independence and deference to executive power, even though public opinion may differ.

158. *Id.* at 700 (referencing Karen Rasler, *War Accommodation, and Violence in the United States, 1890-1970*, 80 AM. POL. SCI. REV. 921 (1986)).

159. *Id.*

160. *Id.* at 707.

161. Edcel John Ibarra, *Is There Judicial Independence in Duterte's Philippines?*, DEMOCRATIC EROSION CONSORTIUM (Dec. 2, 2019), <https://democratic-erosion.org/2019/12/02/is-there-judicial-independence-in-dutertes-philippines/>.

162. *See id.*

163. Efigenio Toledo IV, *Supreme Court Allows Libingan Burial for Marcos*, PHILSTAR GLOBAL (Nov. 8, 2016, 2:18 PM), <https://www.philstar.com/headlines/2016/11/08/1640905/supreme-court-allows-libingan-burial-marcos>.

164. *Id.*

165. *Ocampo v. Enriquez*, 798 PHIL. REP. 227, 353 (Nov. 8, 2016).

166. *See* Toledo IV, *supra* note 163.

Another example of the Supreme Court's lack of independence occurred when the Supreme Court ousted Chief Justice Maria Lourdes Sereno based on a quo warranto petition filed by Solicitor General Jose Calida.<sup>167</sup> Under the Philippine Constitution, members of the Supreme Court can be removed through an impeachment process initiated by the House of Representatives and tried by the Senate.<sup>168</sup> Sereno was a critic of Duterte's war on drugs who openly spoke out against his blatant use of force and lack of due process.<sup>169</sup> The House of Representatives had already initiated impeachment proceedings against Sereno before Calida filed the quo warranto petition.<sup>170</sup> The representatives who endorsed her impeachment claimed that Sereno failed to fully declare her financial assets before entering office as Chief Justice.<sup>171</sup> Sereno's supporters argue that her work in criticizing Duterte impeded authoritarian policies and that the impeachment process was a "pathetic telenovela."<sup>172</sup> However, rather than wait for the impeachment process to potentially remove Sereno, the executive branch filed the quo warranto petition to have Sereno ousted immediately.<sup>173</sup> The quo warranto petition is a legal procedure to challenge an individual's right to authority over a position in public office.<sup>174</sup> When Calida filed the petition, critics, including the former Solicitor General, argued that the measure was unconstitutional and that the only way to remove a Justice was through the formal impeachment process.<sup>175</sup> Nevertheless, the Supreme Court held oral arguments on the petition, and the Court ruled in favor of the petition, ousting Chief Justice Sereno.<sup>176</sup> Sereno was the first judicial officer removed from office without an impeachment trial.<sup>177</sup> In his dissenting opinion, Justice

---

167. See Tetch Torres-Tupas, *Peers Kick Sereno Out Via Calida's QW*, PHILIPPINE DAILY INQUIRER (May 11, 2018, 10:57 AM), <https://newsinfo.inquirer.net/989390/justices-remove-sereno-from-sc>; see generally *Calida v. Sereno*, 831 PHIL. REP. 271 (May 11, 2018).

168. CONST. (1987), art. XI, § 3 ¶¶ 1, 4 (Phil.).

169. *Philippine Chief Justice Sereno, Duterte's Critic, Removed*, AL JAZEERA (May 11, 2018), <https://www.aljazeera.com/news/2018/5/11/philippine-chief-justice-sereno-dutertes-critic-removed>.

170. See Felipe Villamor, *She Stood up to Duterte. Now She Faces Impeachment*, N.Y. TIMES (Mar. 2, 2018), <https://www.nytimes.com/2018/03/02/world/asia/philippines-chief-justice-duterte.html>.

171. *Id.*

172. *Id.*

173. See Torres-Tupas, *supra* note 167.

174. RULES OF CIVIL PROCEDURE, R. No. 66, as amended (Phil.).

175. Nicole-Anne C. Lagrimas, *Law Profs Say Quo Warranto vs. Sereno Unconstitutional*, GMA NEWS ONLINE (May 10, 2018, 2:38 PM), <https://www.gmanetwork.com/news/topstories/nation/652911/law-faculties-let-sereno-impeachment-trial-begin-quo-warranto-petition-unconstitutional/story/>.

176. Torres-Tupas, *supra* note 167.

177. *Id.*

Marvic Leonen stated that the precedent set by the Court that the executive's petition could override the impeachment process was a "legal abomination."<sup>178</sup> He further explained that the decision showed the Court's complete lack of judicial independence.<sup>179</sup> The campaign against Sereno appeared on its face to be based on her unfitness to hold office for financial misgivings, but Duterte retaliated against Sereno for her harsh criticism of him. The fact that the Supreme Court was willing to go along with Duterte's motives shows the lack of independence Leonen was appalled by.

Rodrigo Duterte's presidency mirrored the type of crisis that caused the democratic backsliding described by Gibler and Randazzo. By ending peace talks with the CPP, installing a punitive task force, signing legislation to override due process, and designating the CPP as a terrorist organization, Duterte consolidated power within the executive branch. This consolidation allowed Duterte to ignore constitutional rights under the guise of a military crisis. Duterte crafted a narrative that ostensibly inflated the issue of communism in the country, espousing a nationalist message attacking communism but also dragging political dissent along with it. Even though Duterte is no longer president, the new president, Ferdinand Marcos Jr., has not removed the institutions his predecessor left in place, even though, he claimed he would shift the Task Force to more peaceful tactics in its campaign to end the communist insurgency.<sup>180</sup> Marcos Jr. has even reversed Duterte's policy of ending peace talks with the CPP-NPA.<sup>181</sup> However, the Philippine government remains engaged in military operations against the CPP.<sup>182</sup>

Similarly, under Marcos Jr., the problem of red-tagging persists. The reason the Task Force is shifting to a "bringers of peace" strategy is because the military has already weakened a majority of the NPA's guerrilla fronts in

178. *Calida v. Sereno*, 831 PHIL. REP. 271, 911 (May 11, 2018) (Leonen, J., dissenting).

179. *Id.* at 911-912.

180. John Eric Mendoza, *NTF-Elcac Switches From 'Aggressive' Strategy to Become 'Bringers of Peace'*, INQUIRER.NET (May 11, 2023), <https://newsinfo.inquirer.net/1767664/under-marcos-administration-ntf-elcac-switches-from-aggressive-strategy-to-become-bringers-of-peace>; see also *Philippines: Marcos Rights Gains Fall Short*, HUMAN RIGHTS WATCH (Jan. 16, 2025), <https://www.hrw.org/news/2025/01/16/philippines-marcos-rights-gains-fall-short>; see also *Philippines: Marcos Failing on Rights*, HUMAN RIGHTS WATCH (June 28, 2023), <https://www.hrw.org/news/2023/06/28/philippines-marcos-failing-rights>.

181. See News Release, Office of the President of the Philippines, Presidential Communications Office, PBBM admin optimistic about sign peace deal with CPP-NPA-NDF (Sept. 2, 2024), [https://pco.gov.ph/news\\_releases/pbbm-admin-optimistic-about-sign-peace-deal-with-cpp-npa-ndf/](https://pco.gov.ph/news_releases/pbbm-admin-optimistic-about-sign-peace-deal-with-cpp-npa-ndf/).

182. Mikhail Flores & Karen Lema, *Philippine Government, Rebels Agree to Peace Negotiations*, REUTERS (Nov. 28, 2023, 1:59 AM), <https://www.reuters.com/world/asia-pacific/philippine-government-rebels-agree-peace-negotiations-2023-11-28/>.

the countryside.<sup>183</sup> Had this not been the case, it is unclear whether Marcos would have supported such a policy or granted amnesty to former members of the CPP.<sup>184</sup> In the shadow of his father's authoritarian regime, Marcos Jr. has not yet declared martial law or exerted brash executive authority, but he still refuses to acknowledge or take responsibility for the harm his father's regime inflicted on the country.<sup>185</sup>

Although the Court in *Deduro* appeared to reclaim space in the separation of powers in a political sphere that seems to be dominated by the executive role, time will tell if the Court has a high enough level of independence to prevent a reversion to authoritarianism. It is possible that under the new administration, the Supreme Court may feel more freedom to exercise its independence. The current leadership is not as brazen as Duterte's administration, but the Court must continue to ignore political influence and rule against Marcos Jr. in pertinent issues in the future.

#### V. THE APPROACH FAILS TO ADDRESS RED-TAGGING'S IMPLICATIONS IN FREE SPEECH CASE LAW AND TO PROVIDE FUTURE GUIDANCE

The practice of red-tagging threatens the democratic right to freedom of speech and freedom of expression. The Court focused solely on the threats to life, liberty, and security but disregarded the threats to freedom of expression. The Philippines guarantees freedom of speech and expression through its Constitution and international law instruments, so it has an obligation to protect these rights. Foreign jurisdictions may provide guidance the Court could use to develop legal standards to prevent red-tagging in the future.

##### A. *Chilling Effect on Freedom of Expression*

The Supreme Court's decision developed human rights law because it directly acknowledged the physical danger red-tagging poses to its victims. However, the decision fails to address all the freedom of expression aspects of red-tagging. Red-tagging has numerous implications for free speech, as it primarily consists of neither direct threats nor calls for illegal action that still produce enormous danger. Aside from the legitimate fear of violent death,

---

183. Mendoza, *supra* note 180.

184. See News Release, Office of the President of the Philippines, Presidential Communications Office, PBBM Orders Implementation of Amnesty Program to Communist Rebels (Apr. 4, 2024), [https://pco.gov.ph/news\\_releases/pbbm-orders-implementation-of-amnesty-program-to-communist-rebels/](https://pco.gov.ph/news_releases/pbbm-orders-implementation-of-amnesty-program-to-communist-rebels/).

185. Jim Gomez, *Marcos Takes Helm in Philippines, Silent on Father's Abuses*, AP (June 30, 2022), <https://apnews.com/article/covid-health-asia-kamala-harris-82d6fee9838271d030fbd1b46e9927d1>.

victims of red-tagging often discuss the chilling effect it has on freedom of expression, for victims become afraid to voice their opinions or political dissent.<sup>186</sup>

As discussed, the Philippine Constitution protects the right to freedom of expression.<sup>187</sup> Additionally, the Philippines is a party to several instruments of international law that protect free speech and freedom of expression. The Universal Declaration of Human Rights grants freedom of expression, which includes the right to seek, receive, and impart information and ideas through any media, regardless of frontiers.<sup>188</sup> Article 19 of the International Covenant on Civil and Political Rights contains the same rights.<sup>189</sup> The Philippines is obligated to protect the right to freedom of expression from international law devices and through the language of its constitution.<sup>190</sup> The Philippine Constitution guarantees press freedom, and the numerous cases of red-tagged journalists expose the country's mass violation of this right.<sup>191</sup> Red-tagging also implicates the rights to information and privacy, which are both recognized in the Philippines through its constitution or international law.<sup>192</sup> When state actors red-tag individuals, they violate those individuals' rights to privacy because their private information is often disseminated publicly.<sup>193</sup> Perpetrators violate people's right to information because red-tagging creates an environment where people feel less inclined to share different and contrasting opinions.<sup>194</sup>

In *Deduro*, the Court declined to rule that red-tagging threatened freedom of speech and expression. However, the Court's review focused on the *writ of amparo*, which is a remedy solely for threats to physical life, liberty, and security in the Philippines. The Court had no obligation to address freedom of speech in the scope of *Deduro*. Yet by citing Justice Leonen's dissenting opinion in *Zarate*, the Court acknowledged that red-tagging had a "chilling effect on dissent."<sup>195</sup> So, the Court could have

---

186. Gupta, *supra* note 85 (discussing the numerous violations of international human rights law the practice involves regarding freedom of expression).

187. CONST. (1987), art. III § 4 (Phil.).

188. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 19 (Dec. 10, 1948) [hereinafter UDHR].

189. International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

190. See Gupta, *supra* note 85; CONST. (1987), art. III § 4 (Phil.).

191. *Id.*; CONST. (1987), art. III § 4 (Phil.).

192. Gupta, *supra* note 85 (referencing CONST. (1987), art. III, § 7 (Phil.); then referencing UDHR, *supra* note 188; and also referencing ICCPR, *supra* note 189).

193. *Id.*

194. *Id.*

195. *Deduro v. Vinoya*, G.R. No. 254753 1, 22 (July 4, 2023) (Phil.), <https://sc.judiciary.gov.ph/254753-siegfried-d-deduro-vs-maj-gen-eric-c-vinoya-in-his-capacity-as->

developed its doctrine further by incorporating international standards on freedom of expression to guide lower courts in dealing with future cases. The following section will discuss possible solutions based on international law that the Supreme Court should develop in future cases.

*B. Balancing Acts for Both Private and Public Speakers*

Red-tagging, especially in contexts where consequences may not be as grave as in the Philippines, begs the question of whether it is protectable under free speech case law. The discussion of this question splinters into two types of speech: speech by private parties with close ties to the government and speech by the government itself.

The Court seemingly declared that private acts of red-tagging are not protected under free speech. In ruling for the petitioner, the Court ordered that he join the two private organizations that participated in his red-tagging through posters and social media.<sup>196</sup> For the Court, red-tagging prohibitions apply both to private and public actors.<sup>197</sup> As such, the Court covers situations in which the government may try to hide red-tagging through private entities, as the respondent did in its denials of the petitioner's allegations.<sup>198</sup>

At the same time, the Court did not determine a standard or test in regulating private red-tagging speech, which leaves open the possibility that private red-taggers can invoke the right to free speech as a defense to prosecution. If the U.S. is used as a model, under *Brandenburg*, the U.S. bans speech based on an "imminent lawless action" standard,<sup>199</sup> under which the red-tagging done in the Philippines would still be protected. When private parties red-tag individuals, they label them as members of the CPP but do not directly call for attacks against them. In Deduro's case, the private organizations he was ordered to join allegedly caused the circulation of tarpaulins and posters with his name on them.<sup>200</sup> However, this action alone still falls short of an "imminent lawless action" standard. Interestingly, the Philippines has enumerated laws prohibiting sedition, which is defined as a crime committed by persons who "rise publicly and tumultuously in order to attain by force any of the following objects: ... To commit, for any political or social end, any act of hate or revenge against private persons or any social

---

commanding-officer-of-the-3rd-infantry-division-philippine-army/ (Zarate v. Aquino, G.R. No. 220028 (Nov. 10, 2015) (Leonen, J., dissenting)).

196. *Deduro*, G.R. No. 254753 at 12, 36.

197. *Id.* at 24.

198. *Id.* at 24, 36.

199. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (holding that hate speech by Ku Klux Klan members was lawful so long as it did not directly incite violence or call for lawless action).

200. *Deduro*, G.R. No. 254753 at 36.



class....”<sup>201</sup> This presents a legal standard like *Brandenberg* because language that incites harmful action against private parties can be criminalized. Still, it likely would not apply in the context of red-tagging because it is not inciting enough. In fact, Senator M.A. Madrigal, during the Thirteenth Congress, introduced a bill suggesting repealing this provision of the penal code, explaining that the law acted as another device for the overzealous executive to stifle freedom of expression.<sup>202</sup> Ultimately, a *Brandenberg* standard may likely prove inadequate in the Philippines context, which sustains a much higher level of political violence and lacks a tradition of tolerance in comparison to the U.S.

When regulating private acts of red-tagging, the Philippines needs to adopt a balancing test that weighs the value of protecting speech but considers the legitimate state interest with the possibility of harm it may cause to the target of such speech. The Philippines has pertinent case law on restrictions on freedom of speech, such as the *Chavez v. Gonzales* case.<sup>203</sup> In that case, the Court admitted that not all types of speech were protected under the country’s constitution.<sup>204</sup> The Court articulated three different tests related to the restraint of free speech: (a) the dangerous tendency doctrine, (b) the balancing of interests tests, and (c) the clear and present danger rule.<sup>205</sup> The clear and present danger rule has been adhered to the most by the Court and states that speech may be restrained if there is a substantial danger that the speech will likely lead to an evil the government has a right to prevent.<sup>206</sup> The Court continues by describing content-neutral and content-based regulation and explains that when government restriction is content-based, the act must survive a strict scrutiny standard and overcome the clear and present danger rule.<sup>207</sup> This framework presents a very clear kind of balancing test that the Philippine government could use to pass anti-red-tagging legislation, which has already been introduced by Congress.<sup>208</sup> The widespread frequency of red-tagging in the country and its detrimental results

201. Revised Penal Code, art. 139, Act No. 3815, as amended (Phil.).

202. See An Act Amending Republic Act 3815, Otherwise Known as The Revised Penal Code of the Philippines, by Repealing Sections 139, 140, 141, and 142 Therein, S.B. No. 25 (June 30, 2007) (Phil.).

203. See *Chavez v. Gonzales*, 569 PHIL. REP. 155 (Feb. 15, 2008).

204. *Chavez*, 569 PHIL. REP. at 157; see generally Thomas Hochmann, *Why Freedom of Expression is Better Protected in Europe Than in the United States*, 2 J. FREE SPEECH L. 63 (2022) (arguing that the EU’s method of government restricting speech better serves the public’s ability to exercise freedom of expression than the US’s lack of government restricted private speech because the EU’s method affords greater protection against private actors).

205. *Chavez*, 569 PHIL. REP. at 200.

206. *Id.* at 200-01.

207. *Id.* at 204-05, 206.

208. See An Act Defining and Penalizing Red-Tagging, S.B. No. 2121 (Mar. 24, 2021).

warrant passing a law restricting red-tagging as a form of speech, and the restriction would overcome the clear and present danger rule. It would be in Marcos Jr.'s best interest as a supposed human rights advocate to sign a law bill criminalizing red-tagging and denying free speech protection to private red-tagging perpetrators. The law would ideally criminalize falsely associating a person with a group deemed so unpopular that alleged membership with such a group would lead to that person's endangerment.

The more challenging issue in combating red-tagging is restricting the government as a speaker. Given the country's history and tendency to afford government actors great latitude in official action, the solution must be creative. Looking to the United States for guidance is helpful, yet the U.S. Supreme Court has historically hesitated to restrict government speech unless it is used to coerce private parties.<sup>209</sup> In *NRA v. Vullo*, the Court held that a government speaker violates free speech if they engage in conduct that amounts to coercion of private parties to suppress views the government disfavors.<sup>210</sup> In that case, the director of a government agency coerced financial institutions from doing business with the NRA following a tragic school shooting.<sup>211</sup> The Court reasoned that such action could reasonably be understood to convey a threat of adverse government action to punish or suppress speech.<sup>212</sup> Such a rule in the Philippines context could prove helpful because the government does engage in conduct that amounts to coercion when it red-tags people. The government labels people, and then the red-tagging influences undercover government actors or private parties. Their actions can reasonably be understood to convey a threat of government action, especially given the fact that many victims of red-tagging have faced detrimental action. One such instance of red-tagging by the NTF-ELCAC consisted of a photo collage on Facebook titled "Scholars turned NPA."<sup>213</sup> The post depicted six students who supposedly joined the CPP, and all were subsequently killed by the Philippine army.<sup>214</sup> The post served as a reminder that students who join activist groups will die. This kind of red-tagging post fits well within the coercion framework that *Vullo* prohibits because it aims to coerce private parties to conform with viewpoints the government supports.

Another framework for restricting government speech comes from the European Court of Human Rights (ECHR). The Court held in *Sanchez v.*

---

209. See *NRA of Am. v. Vullo*, 602 U.S. 175, 180 (2024).

210. *NRA of Am.*, 602 U.S. at 198.

211. *Id.* at 180.

212. *Id.* at 191, 198.

213. AMNESTY INT'L REP., *supra* note 64, at 28.

214. *Id.*

France that an individual could be criminalized for failing to control the acts of third parties in relation to their speech.<sup>215</sup> The applicant, a mayor in France who was running for parliament, created a public forum on Facebook where his followers could leave comments regarding the incumbent seat he was running for.<sup>216</sup> Numerous people left comments that expressed hate and discontent with the Muslim community.<sup>217</sup> The applicant was charged with numerous crimes, including incitement of hatred of a specific group of people.<sup>218</sup> He appealed to the Court, claiming his right to freedom of expression was violated.<sup>219</sup> The Court declared that his freedom of expression rights were not violated and reasoned that even if he was unaware of hateful comments on his page, he had an obligation to monitor the comments and remove any unlawful ones, mainly because his use of the forum was in a public and political capacity.<sup>220</sup> The ECHR has effectively developed a standard by which public intermediaries who speak, even if not personally engaged in unlawful hate speech, can be held liable for the hate speech of third parties under their influence.

This ruling would fit particularly well in the Philippines context, especially since Facebook has become the primary platform of red-tagging for the government. Under a similar rule, the courts could hold state actors liable for inciting hatred towards a group based on comments that third parties leave on red-tagging posts. In Deduro's case, Vinoya could be held liable for the actions of third parties who circulated Deduro's image after his initial red-tagging by the military. The Court in *Sanchez* recognized that when imposing liability in such a context, careful examination would be required to not infringe on self-expression and create a chilling effect.<sup>221</sup> After all, the Philippines' executive often justifies its speech in the context of combating the communist insurgency. Therefore, in the Philippines, the Supreme Court should develop a standard for determining the level of liability a state actor should be held to, considering both the risks involved and the actor's level of influence. The Court could go further and extend liability beyond comments left on a Facebook page. Inciting hatred in the Philippines has uniquely drastic results, as extrajudicial killings and enforced

---

215. *Sanchez v. France*, App. No. 45581/15, ¶ 209 (May 15, 2023), <https://hudoc.echr.coe.int/eng/?i=001-224928>.

216. *Id.* ¶¶ 13-14.

217. *Id.* ¶¶ 15-16.

218. *Id.* ¶¶ 24, 25.

219. *Id.* ¶ 33.

220. *Id.* ¶¶ 32, 37, 200.

221. *Id.* ¶ 184.

disappearances have become more commonplace.<sup>222</sup> In building upon the *Sanchez* standard, the Court could hold state actors liable for the disappearance or death of a red-tagging victim. The perpetrators of these acts are often never identified, so it best serves the interests of justice to hold the public official criminally liable, especially if they are a person of high influence.

While no international standard from the E.U. or the U.S. offers a perfect solution, these recommendations provide interesting approaches that the Philippines could look to in developing rules that discourage red-tagging and hold perpetrators accountable.

## VI. CONCLUSION

The Philippine Supreme Court's decision in *Deduro* addressed serious human rights violations in the country, especially in the shadow of the authoritarian leadership at that time.<sup>223</sup> The Supreme Court imposed its authority by showing judicial independence, but a stronger showing of judicial independence must come from more similar rulings. Finally, while the ruling addresses the physical harm of red-tagging, it stops at a point where it could have identified and acknowledged the harm red-tagging causes more broadly to a democratic society's freedom of expression.

The Court granted Deduro his requested writ, but Deduro could be denied the privilege of the writ upon remand. The Court should have used the opportunity to create more substantial legal doctrines that deal with red-tagging and more clearly guide the lower courts. Ideally, the Court will utilize future red-tagging cases to develop a precedent that discourages the government from red-tagging, preserving safety and freedom of expression in Philippine society.

---

222. *Philippines: Events of 2023*, HUMAN RIGHTS WATCH: WORLD REPORT 2024, <https://www.hrw.org/world-report/2024/country-chapters/philippines>.

223. On March 11, 2025, Rodrigo Duterte was arrested based on an International Criminal Court (ICC) warrant for charges of murder as a crime against humanity. Duterte currently sits in custody at the Hague awaiting trial. By arresting Duterte and surrendering him to the custody of the ICC, the Philippines has taken another small yet firm step to demonstrate its willingness to uphold international law and protect human rights.