

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

en banc

RAOUL ESPARAS, JESUS LLANTO,
MARIA A. RESSA, CECILIA L.
LAZARO, GLENDA M. GLORIA,
MARITES VITUG, CONRADO DE
QUIROS, MANUEL MOGATO,
MANUEL L. QUEZON III, CARLOS
CONDE, JOANNE MAG-LIPON
RINA JIMENEZ-DAVID, ROSARIO S.
VILLA, LUISITA C. VALDES, TINA
MONZON-PALMA, ANGELO
CASTRO, JR., RIA TANJUATCO-
TRILLO, THOMAS MANOTOC, JR.,
RAMON A. CARANDANG, JOANNA
WEBB, MARIE-NETTE NGO,
JORGE V. CARIÑO, JOY T.
GRUTA, MA. CONCEPCION T.
DUMO, CARMINA REYES, MA.
ROSARIO LOGARTA LAGAMON,
ISRAEL MALASA, HENRY OMAGA-
DIAZ, VINCE RODRIGUEZ, RAYMUND
GERARD LANGIT, FRITZY ANN
AMBROSIO, ADRIAN AYALIN, INA
REFORMINA, CHERYL COSIM, JOEY
VILLARAMA, DANILO P. LUCAS, JOSE
A. CABURNIDA, FEDERICO E.
FERNANDEZ, CLAUDE M. VITUG,
MIRANDA DE QUIROS, ANNA LIZA
EUGENIO, MIKAELA ORETA,
CATHERINE C. CORNELL, PETER
MUSNGI, ROEANNE MARIE A.
ANTONIO, ANTONETTE AGUILAR,
JOAN G. TUSI, ELLEN B. SAPA, JONAS
LIWAG, ROSAMY CASTANEDA-
VELASCO, JOSELITO A. AGUSTIN,
BERT APOSTOL, MARIELLE G.
CATBAGAN, DOLAND CASTRO,
NIKOLO BAUA, MARGIE DE VERA
AND THE PERSONS WHOSE
NAMES APPEAR IN THE ATTACHED
LIST OF ADDITIONAL PETITIONERS
[ANNEX "A"],

Petitioners,

- versus -

G.R. No. _____

[FOR ISSUANCE OF WRITS
OF PROHIBITION AND
INJUNCTION WITH AN
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER]

HON. EDUARDO ERMITA as
Executive Secretary, HON. RAUL
GONZALEZ as Secretary of Justice,
HON. RONALDO V. PUNO as
Secretary of the Interior and Local
Government, HON. GILBERTO C.
TEODORO, JR. as Secretary of
National Defense, GENERAL
HERMOGENES ESPERON as Chief
of Staff of the Armed Forces of the
Philippines, DIRECTOR GENERAL
AVELINO RAZON as Chief of the
Philippine National Police, Director
GEARY L. BARIAS as Head of the
PNP National Capital Region Police
Office and CHIEF SUPT. ASHER
DOLINA as Head of the PNP
Criminal Investigation and
Detection Group,

Respondents.

x ----- x

PETITION

COME NOW PETITIONERS, by counsel, to this Honorable Court
respectfully state that:

Statement of Urgent and Compelling Reasons

For Invoking this Honorable Court's Jurisdiction

This petition is urgent because the highest justice, police and
military officials of the State have unleashed a barrage of threats and
warnings against the press, ranging from arrest, criminal prosecution
and criminal liability to review of franchise and violation of NTC
Circular 22-89 banning the broadcast of "rebellious/terrorist
propaganda." The threats came right after the police arrested about
fifty (50) journalists covering the "siege" of the Manila Peninsula

Hotel siege” on 29 November 2007, including some of the petitioners in this case. While the threats died down in the latter part of December, 2007, they resumed—and have escalated—since the start of this year.

Threats made by government officials to the press, as this Court held in Cacho-Olivarez v. Ermita,¹ are plain censorship. Without this Honorable Court’s urgent intervention, petitioners and other journalists will suffer grave injustice and irreparable injury from acts that are plainly against the Constitution.

This petition is compelling for three reasons.

First, because respondents are using the strong arm of the law to censor, oppress and intimidate the press, and will continue to do so unless this Court intervenes and stops them.

Second, because public respondents’ threats have placed petitioners ESPARAS and LLANTO --and the other journalists arrested at the Manila Peninsula Hotel—under grave peril of re-arrest and criminal prosecution.

And third, because respondents’ blatant disregard of the rights of journalists, especially their treatment of journalists as combatants, calls for the exercise by this Honorable Court of its power of supervision to protect basic rights and freedoms;

Journalists cannot report from inside a prison cell. When the State arrests journalists for covering a newsworthy event, then unleashes a barrage of threats of re-arrest and criminal prosecution, the State is no longer preventing criminal activity but engaging in

¹ G.R. No.141709, a companion case to David v. Arroyo, G.R. No. 171396, 3 May 2006.

editorial and prior restraint—areas that the State must respect, not invade, under our Constitution.

The journalists who covered the November 29, 2007 siege at the Manila Peninsula Hotel risked their lives to deliver the news. Theirs was the delicate and vital task of delivering information of public concern to the people. They were not committing any crime, obstructing the authorities, or promoting any illegal activities when they covered the siege. And yet, they were treated like criminals, manacled like enemies of the State, publicly denounced as coddlers of military rebels, subjected to arrest and detention, and deluged with threats of re-arrest and criminal prosecution.

Threats by top-ranking government officials are damaging to a free press because of the chilling effect they produce: the fear and uncertainty they plant in the minds of journalists that leaves them constantly wondering if what they are going to publish or broadcast will land them in jail, and adjusting their actions accordingly. As this Court observed in the “PP 1017” cases,² *“(i)t is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do so, and no more and no less than what he is permitted to say, on pain of punishment should he be so rash as to disobey”* that makes the threat so damaging. That is why it has been said that the threat of government sanctions is just as damaging to a free press as the fact of it.

The threats and warnings, moreover, are continuing, and even appear to be escalating:

² Assailing Presidential Proclamation No. 1017 declaring a state of national emergency, see Cacho-Olivarez v. Ermita, G.R. No.141709, and David v. Arroyo, G.R. No. 171396, promulgated on 3 May 2006.

- 11 January 2008:
 - o Justice Secretary Gonzalez issues the following “DOJ ADVISORY” to all chief executive officers of media networks, media companies, press groups and entities:

“PLEASE BE REMINDED THAT YOUR RESPECTIVE COMPANIES, NETWORKS OR ORGANIZATIONS MAY INCUR CRIMINAL LIABILITIES UNDER THE LAW, IF ANYONE OF YOUR FIELD REPORTERS, NEWS GATHERERS, PHOTOGRAPHERS, CAMERAMEN AND OTHER JOURNALISTS WILL DISOBEY LAWFUL ORDERS FROM DULY AUTHORIZED GOVERNMENT OFFICERS AND PERSONNEL DURING EMERGENCIES WHICH MAY LEAD TO COLLATERAL DAMAGE TO PROPERTIES AND CIVILIAN CASUALTIES IN CASE OF AUTHORIZED POLICE OR MILITARY OPERATIONS.”³

- o In an interview aired over the ABS-CBN News Channel (ANC),⁴ Secretary Gonzalez discloses reports of mass actions to be held on the 22nd of January and wams:
 - That the event may necessitate the enforcement of the DOJ Advisory;
 - That if the media defy the authorities’ instructions to pull out and “...you (media) get hurt, don’t blame us;”
 - That the Government can order a particular media company or network not just to leave the area but to stop broadcasting or transmitting any video or audio of a particular event “if the announcements will...amount to propaganda on behalf of the rebels...;” and

³ Certified true copy of DOJ Advisory attached hereto as **Annex “B.”**

⁴ The interview was part of the program “Top Story” which was aired over ANC at 5:00 p.m. on January 11, 2008. The relevant portions of the interview, on DVD format, are contained in the DVD attached to this petition as **Annex “C,” Title 1.** The transcription of the same is attached to this petition as **Annex “D”.**

- That the DOJ is empowered to evaluate whether a particular broadcast is fair or unfair to the government.
- 14 January 2008: PNP Chief Avelino Razon warns media that anyone who defies police instructions to leave an area during a police operation is committing the crime of obstruction of justice, and adds, “..after all, anong freedom of the press pa ang pag-uusapan natin, kung yung member ng press ay patay na?”⁵
- 16 January 2008: PNP Chief Razon accuses an unnamed “reporter” of helping Marine Captain Nicanor Faeldon “escape” from the Manila Peninsula Hotel on 29 November 2008, and warns that the reporter may soon be facing charges of rebellion and aiding and abetting a criminal.⁶

The arrests of the journalists who covered the hotel siege; the threats, warnings and “reminders” of re-arrest and/or criminal liability; the public denunciation of the press as coddlers of military rebels; and the treatment of the press as combatants are unconstitutional because they unduly restrict petitioners’ rights to free speech and expression, vitiate the freedom of the press, and prevent the exercise of the people’s constitutional right to information on matters of public concern.

⁵ See **Annex “C,” Title 2 and Annex “E”**, consisting of the videotape (on DVD format) and transcription of the interview with Gen. Razon.

⁶ See **Annex “N”** entitled “Reporter helped Faeldon escape,” an article that appeared in the 17 January 2008 issue of the Philippine Daily Inquirer newspaper.

Being in blatant violation of the Constitution, the questioned acts were committed without or in excess of their respective jurisdictions and/or with grave abuse of discretion amounting to lack or excess of jurisdiction; and have left petitioners without any plain, speedy and adequate remedy other than the writs prayed for in this case.

Hence petitioners' recourse to this Honorable Court.

I. Nature of Petition

1.1 This is a petition for Prohibition under Rule 65 of the Rules of Court, as amended, and Injunction under Rule 58 thereof. Petitioners also seek provisional relief in the form of a temporary restraining order.

1.2 Its purposes are:

(a) To restrain, enjoin and prohibit the Executive Secretary, the Secretaries of Justice, Defense and Interior & Local Government, the Chief of Staff of the Armed Forces of the Philippines, the Director General of the Philippine National Police, and their officers, agents, or other persons acting under their authority or supervision from —

(i) Enforcing the undated "DOJ Advisory"⁷ issued by respondent Justice Secretary Gonzalez "reminding" all chief executive officers of media networks,

⁷ See **Annex ""B,"** this petition.

media companies, press groups and entities that they may incur criminal liabilities when covering military and police operations and “emergencies;”

- (ii) Carrying out the public warnings, threats and “reminders” already made by these officials to the press, of arrest, re-arrest, criminal prosecution, criminal liability, administrative liability and revocation of franchise if they defy police instructions to leave an area or to stop recording, broadcasting or transmitting information;
- (iii) Issuing or making any further warnings, threats or “reminders” to the press, and/or engaging in other acts designed to stifle or intimidate the press;
- (iv) Publicly denouncing journalists as coddlers or protectors of rebels, as being in connivance or conspiracy with rebels, and/or publicly branding them with the stigma of being rebels or engaging in a rebellion, when they should be charged in court if there is evidence to warrant their prosecution.
- (v) Imposing any form of prior restraint/s on the press, whether direct and indirect, or in the form of thinly veiled threats of government sanctions, “reminders” of criminal liability and similar practices; and from

- (vi) Treating petitioners and other journalists as combatants during military or police operations.

II. Parties

2.1 **Petitioners.** Petitioners are all of age and may be served with court processes, notices and papers through undersigned counsel at his given address. Where the law or the court requires service of court processes, notices and papers on petitioners as parties-litigants in addition to or in lieu of counsel, petitioners may be served at their respective places of employment.

2.2 Petitioners RAOUL ESPARAS and JESUS LLANTO are journalists who were arrested without warrant on 29 November 2007 at the Manila Peninsula Hotel. Their personal circumstances are:

2.2.1 RAOUL ESPARAS, of age, Filipino, reporter of AM radio station DWIZ, with offices at 5/F Citystate Center, Shaw Boulevard, Pasig City;

2.2.2 JESUS LLANTO, of age, Filipino, reporter of Newsbreak magazine (Public Trust Media Group, Inc.), with offices at 1402-A, West Tower, Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City.

2.3 Petitioner CECILIA L. LAZARO is of age, Filipina, and is employed by Probe Productions, Inc., with offices at 13 Matipid St., Sikatuna Village, Quezon City.

2.4 Petitioners MARITES VITUG and GLENDA M. GLORIA, of age, Filipina, are the Editor-in-Chief and Managing Editor respectively of

Newsbreak Magazine (Public Trust Media Group, Inc.), with offices at 1402-A, West Tower, Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City.

2.5 Petitioners CONRADO DE QUIROS, MANUEL L. QUEZON III and RINA JIMENEZ-DAVID, of age, Filipino, are columnists of the Philippine Daily Inquirer newspaper, with offices at Chino Roces Ave. corner Yague and Mascardo Sts., Makati City.

2.6 Petitioner MANUEL MOGATO, of age, Filipino, is a correspondent of Reuters Limited, an international press agency, with offices at 18/F The Enterprise Center, Tower 1, 6766 Ayala Ave. corner Paseo de Roxas, Makati City.

2.7 Petitioner CARLOS CONDE, of age, Filipino, is a correspondent of the New York Times and the International Herald Tribune. He resides at 105-A, Scout Castor St., Brgy. Laging Handa, Quezon City.

2.8 Petitioner JOANNE MAG-LIPON, of age, Filipina, is the editorial director of Summit Media, with office address at G/F Robinsons Galleria, Ortigas Ave., Quezon City.

2.9 The petitioners whose names appear below are employed by ABS-CBN Broadcasting Corporation, a duly registered domestic corporation engaged in the operation of television and radio stations, with offices at Sgt. E.A. Esguerra Ave. corner Mother Ignacia St., 11203, Quezon City:

- 2.9.1 MARIA RESSA – Senior Vice President for News and Current Affairs and Managing Director for ANC News and Current Affairs
- 2.9.2 ROSARIO S. VILLA – Head of News Gathering
- 2.9.3 LUISITA C. VALDES –Vice-President for Current Affairs
- 2.9.4 TINA MONZON-PALMA – Senior Anchor, ANC
- 2.9.5 ANGELO CASTRO JR. – Senior Anchor, ANC
- 2.9.6 RIA TANJUATCO-TRILLO – Anchor/Host
- 2.9.7 THOMAS MANOTOC JR. – Anchor/Reporter
- 2.9.8 RAMON A. CARANDANG – Anchor/Reporter
- 2.9.9 JOANNA WEBB – Anchor/Reporter
- 2.9.10 MARIE-NETTE NGO – Supervising Producer, ANC
- 2.9.11 JORGE V. CARIÑO – Reporter
- 2.9.12 JOY T. GRUTA – Desk Editor
- 2.9.13 MA. CONCEPCION T. DUMO – Desk Editor
- 2.9.14 CARMINA REYES – Director of Coverage
- 2.9.15 MA. ROSARIO LOGARTA LAGAMON – Reporter
- 2.9.16 ISRAEL MALASA – Desk Editor
- 2.9.17 HENRY OMAGA-DIAZ – Anchor/Reporter
- 2.9.18 VINCE RODRIGUEZ – News Director, Studio 23
- 2.9.19 RAYMUND GERARD LANGIT - Reporter
- 2.9.20 FRITZY ANN AMBROSIO – Reporter
- 2.9.21 ADRIAN AYALIN – Reporter
- 2.9.22 INA REFORMINA – Reporter
- 2.9.23 CHERYL COSIM – Anchor/Reporter
- 2.9.24 JOEY VILLARAMA – Reporter
- 2.9.25 DANILO P. LUCAS - Senior Desk Editor
- 2.9.26 JOSE A. CABURNIDA - Executive Producer for TV Patrol
- 2.9.27 FEDERICO E. FERNANDEZ - Desk Editor
- 2.9.28 CLAUDE M. VITUG - Head of News Features
- 2.9.29 MIRANDA DE QUIROS - Reporter/Desk Editor
- 2.9.30 ANNA LIZA EUGENIO - Desk Editor
- 2.9.31 MIKAELA ORETA – Reporter
- 2.9.32 CATHERINE C. CORNELL - Desk Editor

- 2.9.33 PETER MUSNGI - Vice President for Radio and Sports
- 2.9.34 ROEANNE MARIE A. ANTONIO – Assistant, News & Current Affairs Group/ANC
- 2.9.35 ANTONETTE AGUILAR – Senior Producer
- 2.9.36 JOAN G. TUSI – Senior Producer
- 2.9.37 ELLEN B. SAPA – Production Coordinator
- 2.9.38 JONAS LIWAG - Executive Producer
- 2.9.39 ROSAMY CASTANEDA-VELASCO - Reporter
- 2.9.40 JOSELITO A. AGUSTIN - Executive Producer for Bandila
- 2.9.41 BERT APOSTOL - Desk Editor
- 2.9.42 MARIELLE G. CATBAGAN – Executive Producer
- 2.9.43 DOLAND CASTRO – Reporter
- 2.9.44 NIKOLO BAUA – Reporter
- 2.9.45 MARGIE DE VERA – Desk Editor

2.10 **List of Additional Petitioners, Annex “A.”** In addition to the petitioners whose names and personal circumstances are set out above, the names and personal circumstances of the other petitioners in this case are stated in the **List of Additional Petitioners** attached to this petition as **Annex “A.”**⁸

2.11 **Respondents.** HON. EDUARDO ERMITA is being sued in his official capacity as the Executive Secretary. He may be served with summons and other court processes, notices and papers at his official station, Malacañan Palace, Manila.

2.12 HON. RAUL GONZALEZ is being sued in his official capacity as Secretary of Justice. He may be served with summons and other court processes, notices and papers at his official station, Department of Justice, Padre Faura, Manila.

⁸ This annex (and all other annexes) constitutes an integral part of this petition.

2.13 Respondent HON. RONALDO V. PUNO is being sued in his official capacity as SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT. He may be served with summons and other court processes, notices and papers at his official station, Department of Interior and Local Government, A. Francisco Gold Condominium II, EDSA cor. Mapagmahal St., Diliman, Quezon City.

2.14 Respondent HON. GILBERTO C. TEODORO, JR. is being sued in his official capacity as Secretary of National Defense. He may be served with summons and other court processes, notices and papers at his official station at Camp Aguinaldo, Quezon City.

2.15 Respondent GENERAL HERMOGENES ESPERON is being sued in his official capacity as Chief of Staff of the Armed Forces of the Philippines. He may be served with summons and other court processes, notices and papers at his official station at General Headquarters, Camp Aguinaldo, Quezon City.

2.16 Respondent DIRECTOR GENERAL AVELINO I. RAZON is being sued in his official capacity as Chief of the Philippine National Police. He may be served with summons and other court processes, notices and papers at his official station at PNP Headquarters, Camp Crame, Quezon City.

2.17 Respondent DIRECTOR GEARY L. BARIAS is being sued in his official capacity as the head of the PNP National Capital Region Police

Office. He may be served with summons and other court processes, notices and papers at his official station at Camp Crame, Quezon City.

2.18 Respondent CHIEF SUPT. ASHER DOLINA is being sued in his official capacity as the head of the PNP Criminal Investigation and Detection Group. He may be served with summons and other court processes, notices and papers at his official station at Camp Crame, Quezon City.

III. Statement of Material Dates and Timeliness

3.1 On 29 November 2007, respondents RAZON, DOLINA and BARIAS arrested petitioners ESPARAS, LLANTO and about fifty (50) other journalists covering the Manila Peninsula Hotel siege.

3.2 Since 29 November 2007 up to the present time, respondents have threatened, and continue to threaten the press (including the arrested petitioners). The threats have been direct and indirect, and have ranged from arrest, criminal liability,⁹ review or revocation of franchise, and administrative liability. The threats are not only continuing but escalating.

3.3 On January 11, 2008 respondent Secretary Gonzalez issued a "DOJ ADVISORY" to all chief executive officers of media networks, media companies, press groups and entities "reminding" them that they may incur criminal liability if they defy the authorities during police or military operations. Petitioners received a copy of this "DOJ

⁹Allegedly for "obstruction of justice," "aiding and abetting a criminal," and/or rebellion.

Advisory” on the same date. A certified true copy of this document is attached to this petition as **Annex “B.”** Since that time up the present, the respondents have not let up in “reminding,” warning and/or threatening the press against covering such events.

3.4 The threats, warnings and reminders—coming at the heels of the arrest of about fifty (50) journalists covering the hotel siege— are actionable because of the danger to the liberty and security of journalists and the “chilling effect” on the rights of free speech, free press and the people’s constitutional right to information on matters of public concern. This Court, in fact, in Cacho-Olivarez v. Ermita,¹⁰ struck down a wave of warnings made by government officials in 2006 as “plain censorship” and declared them unconstitutional.

3.5 This petition, therefore, is timely and proper.

IV. Facts

4.1 **The PP 1017 Cases.** On May 3, 2006, this Court promulgated its decision in Cacho-Olivarez v. Ermita, G.R. No.141709, a companion case to David v. Arroyo, G.R. No. 171396. In declaring unconstitutional the “*arrogant warnings*” of government officials to the press as “*plain censorship*,” this Court held:

“G.R. No. 171409 (Cacho-Olivarez, et al.) presents another facet of freedom of speech, i.e., the freedom of the press. Petitioners’ narration of facts, which the Solicitor General failed to refute, established ...[that]...the Daily Tribune’s offices were searched without warrant [and that] the police operatives seized several materials for publication...xxx...”

¹⁰ G.R. No.141709, 3 May 2006, a companion case of David v. Arroyo, G.R. No. 171396.

Thereafter, a wave of warnings came from government officials. Presidential Chief of Staff Michael Defensor was quoted as saying that such raid was "meant to show a 'strong presence,' to tell media outlets not to connive or do anything that would help the rebels in bringing down this government." Director General [Arturo] Lomibao further stated that "if they do not follow the standards and the standards are if they would contribute to instability in the government, or if they do not subscribe to what is in General Order No. 5 and Proc. No. 1017 we will recommend a takeover." National Telecommunications Commissioner Ronald Solis urged television and radio networks to "*cooperate*" with the government for the duration of the state of national emergency. He warned that his agency will not hesitate to recommend the closure of any broadcast outfit that violates rules set out for media coverage during times when the national security is threatened.

X X X

x x x The search and seizure of materials for publication, the stationing of policemen in the vicinity of *The Daily Tribune* offices, and **the arrogant warning of government officials to media, are plain censorship. It is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do so, and no more and no less than what he is permitted to say on pain of punishment should he be so rash as to disobey...xxx...**

x x x This Court cannot tolerate the blatant disregard of a constitutional right even if it involves the most defiant of our citizens. Freedom to comment on public affairs is essential to the vitality of a representative democracy. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. The motto should always be *obsta principiis*.

X X X

x x x **The imposition of standards on media or any prior restraint on the press, and...the warrantless search of the Daily Tribune offices and the whimsical seizure of its articles for publication...are not authorized by the Constitution, the law and jurisprudence. Not even by the valid provisions of PP 1017 and Ø No. 5."**

X X X

WHEREFORE...xxx...the imposition of standards on media or any form of prior restraint on the press, as well as the warrantless search of the *Tribune* offices and whimsical seizure of its articles for publication and other materials, are declared UNCONSTITUTIONAL."

4.2 **No Let-up to “Arrogant Warnings.”** Despite this Court’s condemnation of the “arrogant warnings” of government officials to the press as “plain censorship,” the practice of threatening the media has not stopped. In fact, the threats on the media have escalated since the November 29, 2007 siege of the Manila Peninsula Hotel and the warrantless arrest of about fifty (50) journalists covering the event.

4.3 **The Manila Peninsula Hotel Siege.** The siege of the Manila Peninsula Hotel began in the morning of 29 November 2007, when a group of military soldiers and officers arrived at the hotel and took over a part of the premises. The group had come from the courtroom of the Hon. Judge Oscar Pimentel of the Regional Trial Court of Makati City, and included Senator Antonio Trillanes and Marine Gen. Danilo Lim.

4.4 **Press Coverage of the Siege.** Press coverage of the event began as early as the hearing at the Regional Trial Court of Makati City. When the group of soldiers walked out of the courtroom and proceeded to the Manila Peninsula Hotel, the media were alerted and sent teams to cover the event. Petitioners ESPARAS and LLANTO and among those journalists who covered the siege.

4.5 **Events inside the Hotel.** Shortly after arriving at the hotel, the soldiers held a press conference where they called upon the people to go to the hotel and support them. The press conference was heavily covered by both the local and foreign media.

4.6 **The Police Respond.** At about 12:30 o'clock in the afternoon, respondent Director Geary Barias, the head of the PNP's National Capital Region Police Office, arrived at the hotel lobby. At about 2 o'clock that afternoon, Director Barias gave the soldiers an ultimatum of 3:00 p.m. to surrender. He also made a public appeal to the media to leave the hotel.

4.7 **Trillanes, Gen. Lim and supporters defy Police Ultimatum.** The 3:00 o'clock deadline arrived but the soldiers refused to leave the hotel or surrender. In their desire to continue delivering information of public concern to the people, about fifty (50) journalists stayed after the deadline had lapsed, including petitioners ESPARAS and LLANTO.

4.8 **The Police Move In.** At about five o'clock that afternoon, while petitioners ESPARAS, LLANTO and other journalists were at the hallway on the second floor of the hotel, they heard shots being fired and smelled teargas fumes coming from the ground floor. The journalists took refuge at the nearby Rizal function room. Some minutes later, they were joined by Senator Trillanes, Gen. Lim and the soldiers. Some civilians were also present.

4.9 **Petitioners and Other Journalists Arrested Without Warrant.** At that point, a decision was made by the group of Senator Trillanes to surrender peacefully. Police officers from the Special Action Force arrived and arrested Senator Trillanes, General Lim, the soldiers and civilians. They also arrested about fifty (50) journalists,

including petitioners ESPARAS and LLANTO. Respondents Director GEARY L. BARIAS as head of the PNP National Capital Region Police Office and CHIEF SUPT. ASHER DOLINA as head of the PNP Criminal Investigation and Detection Group were the officers in charge of the questioned police operations.

4.10 No factual basis for Petitioners' Warrantless Arrest.

Petitioners were not committing or attempting to commit any crime when the police arrested them without warrant. They were (and are) not escaped prisoners or detainees. No crime had just been committed in which they participated. They did not stop or obstruct the police from arresting the group of Sen. Trillanes and Gen. Lim. There were, in short, no grounds to arrest them without warrant.

4.11 Authorities Themselves Confused about Reason for Taking Petitioners into Custody; DILG warns of charges.

Shortly after the arrests, authorities gave various—and contradictory—reasons for taking the journalists into custody. Respondent Chief Superintendent Asher Dolina declared that the arrested journalists would be brought to Bicutan "for processing, as witnesses and suspects."¹¹ Respondent DILG Secretary Puno said that the journalists had not even been arrested: "Well technically that is not an arrest, that is a processing".¹² Respondent Razon disagreed with C/Supt. Dolina but agreed with Secretary Puno: "(A)ctually they were not arrested; they were brought to Bicutan for verification of their bona

¹¹ See **Annex "C," Title 3**, the videotaped interview with Chief Supt. Dolina on 29 November 2007, and, **Annex "F,"** the transcription of the same.

¹² See **Annex "C," Title 4**, the videotaped interview with Secretary Puno (on DVD format), and **Annex "G,"** the transcription of the same.

fide (sic)”¹³ While Secretary Puno, in a press conference that night, maintained that the journalists were brought to Bicutan “for processing,” he warned that some of them **“may face charges:”**

“Now, they have been brought to Bicutan for processing for two reasons. Number one, to verify identity. Number two, generally speaking I can say with all certainty that almost none of those who were there wittingly wanted to obstruct justice. I would like to say that generally speaking, in almost all cases, if not all cases, they were there to practice their profession. But nevertheless, we wanted to go through the process of verifying the associations of specific individuals with one another among all of those people that were arrested on the site.

So...whether they were really members of media. If they were really members of media, were they there because they were told by their station to go there, or they just happened to be there on their own volition.

So that’s the other thing that we will request our media broadcast stations and newsprint desks to verify. That whoever is there will claim to come from a particular publication or station will have been directed by their office to be there at that particular point in time. **Anyone who is there but was not on assignment and was not allowed or told to go there by his mother media organization might be facing some charges as well.**¹⁴

4.12 **Arrested Journalists Manhandled, Subjected to**

Indignities Under Custody. Petitioners ESPARAS, LLANTO and the other journalists arrested at the hotel siege, were subjected to the following indignities:

- During his arrest, petitioner ESPARAS was hit twice on the back of his head by a police operative; another policeman tried to take his cellular phone;
- Petitioner LLANTO was subjected to a body search for tattoos by a policewoman;

¹³ See **Annex “C,” Title 5**, the videotaped interview with Chief Razon (on DVD format), and **Annex “H,”** the transcription of the same.

¹⁴ See **Annex “C,” Title 6**, the videotape of relevant portions of Secretary Puno’s press conference (on DVD format) and **Annex “I,”** a transcription of the same.

- Many of the arrested journalists were unnecessarily exposed to teargas when they were made to wait in an area still heavily laden with teargas which made breathing difficult; some of them, including petitioner ESPARAS, requested medical assistance but the request was not heeded;
- Many of the arrested journalists were handcuffed using painful plastic restraints that were unnecessary and unwarranted; a policeman also tried to handcuff petitioner ESPARAS, but when the policeman told ESPARAS that he was not being arrested, ESPARAS asked why he was being handcuffed if he was not being arrested; in reply, instead of handcuffing both of his hands, the policeman placed a plastic restraint on one of ESPARAS' hands as a "marker;"
- The arrested petitioners and their colleagues were not informed of their rights and the reason or "cause of the arrest;"
- None of the arrested petitioners was presented before any prosecutor for inquest, as required by the Rules of Court and the Department of Justice; and
- All of them were brought all the way to Camp Bagong Diwa at Bicutan, Taguig for "processing"— i.e., presentation of identification papers and signing of release documents—when the processing could have been done more easily at the Manila Peninsula Hotel as it only took a few minutes for each person.

4.13 **The Threats Begin.** Shortly after their release, in an interview with ABS-CBN News, respondent Defense Secretary Gilberto Teodoro defended the arrests of petitioners and other journalists.¹⁵ Thereafter, the government – through respondents who occupy high and sensitive positions -- unleashed a barrage of warnings and implied threats, as follows:

- On November 30, 2007, respondent AFP Chief of Staff Gen. Esperon, as reported in the Philippine Daily Inquirer, warned that the Armed Forces would look into the journalists' refusal to leave the Manila Peninsula hotel and the possible connivance between "some journalists"

¹⁵ See **Annex "C," Title 7**, videotaped interview with Secretary Teodoro on 29 November 2007, and **Annex "J,"** the transcription of the same.

and the renegade soldiers. He also singled out ABS-CBN for its coverage of the event:

“But Armed Forces Chief of Staff Hermogenes Esperon hinted at a possible connivance between some journalists and Trillanes’ group.

In an interview with reporters at Camp Aguinaldo yesterday, Esperon was asked what could have been the scenario had the journalists left Trillanes and company at the Manila Peninsula.

He replied: “That will have to be looked at separately because from what we are seeing it looked like there was a media set up there even before the incident. Did you see the cables there? Aren’t those cables TV stations?”

Asked if he thought there was connivance between the media and Trillanes’ group, Esperon said: “You call that connivance? I do not know, but they had good coverage. But certainly we will look into it.

Esperon also said the journalists’ refusal to vacate the hotel despite the authorities’ request would also be looked into because they “blocked the enforcement of the law.”

“We are not prohibiting you from covering all these things. But I hope that if we have a request for order in the coverage, you will not go into the middle of things because we don’t want you to get hurt.”¹⁶

- On December 2, 2007, senior government officials singled out the coverage of the siege conducted by ABS-CBN and questioned the motives of the company and its employees:

“The question is were they there for journalism or were they there conspiring and willingly obstructing justice?”¹⁷

¹⁶ See **Annex “K”** – Philippine Daily Inquirer newspaper, December 1, 2007 issue, “ABS-CBN Plans to sue; PNP readies countersuit.”

¹⁷ See **Annex “L”** entitled “ABS-CBN role probed,” an article that appeared in the December 3, 2007 issue of the Philippine Daily Inquirer newspaper.

- On December 5, 2007, in a public dialogue with the media, respondent DILG Secretary Puno warned that the police would not hesitate to arrest the media again in case of a similar event in the future:

“[Secretary] Puno said the journalists were arrested for ‘consistent and persistent refusal to obey’ police standard operative procedures’ and for ‘obstruction of justice.’

He said that unless these procedures were amended, journalists refusing to heed police ‘requests’ to vacate an area of conflict would continue to be arrested.”¹⁸

- As the dialogue was going on, respondent Executive Secretary Eduardo Ermita. reminded the press, at his weekly news briefing, that “the airing of rebellious/terrorist propaganda, comments, interviews, information and other similar and/or related materials shall be prohibited,” citing Memorandum Circular No. 22-89 of the National Telecommunications Commission;¹⁹
- Also on the same day, Justice Secretary Gonzalez declared that he had begun studying the franchises of the television networks to determine “*what they could and could not do.*”²⁰

4.14 **The Threats Escalate.** While the threats died down with the approach of the holiday season, they not only resumed but escalated this January, 2008:

¹⁸ See **Annex “M”** entitled “The Pen or the Sword: ABS-CBN news execs claw at gov’t officials in dialogue,” an article that appeared in the December 6, 2007 issue of the Philippine Daily Inquirer newspaper.

¹⁹ Id. NTC MC 22-89 and other related issuances are the subject of another case that is pending before this Court, entitled “Philippine Press Institute, et al., Petitioners, versus Executive Secretary Eduardo Ermita, et al., G. R. No. 180303.

²⁰ Id.

(a) **The DOJ Advisory.** On January 11, 2008 respondent Justice Secretary Gonzalez issued a “DOJ Advisory” to all chief executive officers of media networks, media companies, press groups and entities, which petitioners received, through Maria Ressa, on the same date. The Advisory states in full:

“PLEASE BE REMINDED THAT YOUR RESPECTIVE COMPANIES, NETWORKS OR ORGANIZATIONS MAY INCUR CRIMINAL LIABILITIES UNDER THE LAW, IF ANYONE OF YOUR FIELD REPORTERS, NEWS GATHERERS, PHOTOGRAPHERS, CAMERAMEN AND OTHER JOURNALISTS WILL DISOBEY LAWFUL ORDERS FROM DULY AUTHORIZED GOVERNMENT OFFICERS AND PERSONNEL DURING EMERGENCIES WHICH MAY LEAD TO COLLATERAL DAMAGE TO PROPERTIES AND CIVILIAN CASUALTIES IN CASE OF AUTHORIZED POLICE OR MILITARY OPERATIONS.”²¹

(b) On the same day (January 11, 2008), in an interview aired over the ABS-CBN News Channel (ANC), Secretary Gonzalez disclosed reports of mass actions to be held on the 22nd of January and warned:

- o That the event may necessitate the enforcement of the DOJ Advisory;
- o That if the media defy the authorities’ instructions to pull out and “...you (media) get hurt, don’t blame us;”
- o That the Government can order a particular media company or network not just to leave the area but to stop broadcasting or transmitting any video or audio of a particular event “if the announcements will...amount to propaganda on behalf of the rebels...;” and
- o That the DOJ is empowered to evaluate whether a particular broadcast is fair or unfair to the government.²²

²¹ Certified true copy of Advisory attached to this Petition as **Annex “B”**.

²² **See Annex “C,” Title 1**, the videotaped interview with Secretary Gonzalez (on DVD format) **and Annex “D,”** the transcription of the same. The interview was part of the program “Top Story” which was aired over the ABS-CBN News Channel at 5:00 p.m. on January 11, 2008.

(c) On 14 January 2008, PNP Chief Avelino Razon warned media that anyone who defies police instructions to leave an area during a police operation is committing the crime of obstruction of justice, and added, “..after all, among freedom of the press pa ang pag-uusapan natin, kung yung member ng press ay patay na?”²³

4.15 The Threats Grow to Include Rebellion. On 16 January 2008 PNP Chief Avelino Razon informed the press that a reporter had helped renegade Marine Captain Nicanor Faeldon escape from the Manila Peninsula Hotel during the November 29, 2007 siege, but refused to name the reporter. The following day, the Philippine Daily Inquirer newspaper published an article entitled “Reporter helped Faeldon escape” where Gen. Razon was quoted as having said that the the reporter had not yet been charged, but could face charges “...at a later date with aiding and abetting a criminal and rebellion.”²⁴

4.16 No End in Sight. The foregoing narration of events shows that respondents are bent on continuing with their intimidation of the press and the imposition of restraints on their delivery of news to the public; and will continue to do so until they are stopped.

4.17 Respondents’ Acts without/in excess of jurisdiction and Committed with Grave Abuse of Discretion. Respondents’ foregoing acts were done without or in excess of their respective

²³ See **Annex “C,” Title 2,** the videotaped interview with Chief Razon (on DVD format), **and Annex “E,”** the transcription of the same.

²⁴ See **Annex “N,”** the article entitled “Reporter helped Faeldon escape” that appeared in the 17 January 2008 issue of the Philippine Daily Inquirer newspaper.

jurisdictions, with grave abuse of discretion and with utter disregard of the constitutional rights of petitioners and other journalists.

4.18 **Chilling Effect.** Respondents' acts, moreover, were done for the purpose of placing a "chilling effect" on the press, in order to stifle their ability to deliver information of public concern to the people.

4.19 **Judicial intervention urgently needed.** Unless this Honorable Court intervenes, the foregoing acts will not only continue but escalate, to the damage and prejudice not only of petitioners and other journalists, but also the people's constitutional right to information of public concern.

4.20 **Issues raised of Transcendental Importance.** The issues raised in this case are of transcendental importance, since they involve the rights to liberty, security, speech, expression and the press, as well as the people's right to information on matters of public concern—rights which stand on a higher level than other rights because they are the indispensable condition of nearly every other form of freedom.

4.21 Hence this petition.

V. Issues

5.1 Are petitioners entitled to writs of prohibition and injunction to stop respondents from:

- (a) Enforcing the undated “DOJ Advisory” issued by respondent Justice Secretary Gonzalez “reminding” all chief executive officers of media networks, media companies, press groups and entities that they may incur criminal liabilities when covering military and police operations and “emergencies?”
- (b) Carrying out their public warnings, threats and “reminders” of arrest, re-arrest, criminal prosecution, criminal liability, administrative liability and/or review/revocation of franchise?
- (c) Issuing or making any further warnings, threats or “reminders” to the press of a similar nature, and/or engaging in other acts designed to stifle or intimidate the press?
- (d) Publicly denouncing journalists as coddlers or protectors of the rebels, for conniving, conspiring or aiding rebels, and/or publicly branding them with the stigma of being engaged in a rebellion, when the proper procedure is to charge them in court if there is evidence to warrant their prosecution?
- (e) Imposing prior restraint/s on the press, direct and indirect, in the form of thinly veiled threats, warnings or “reminders” of government sanctions?

- (f) Treating petitioners and other journalists as combatants during military or police operations and events involving rebels?

VI. Grounds for Issuing a Writ of Prohibition

6.1 **Prohibition lies to stop the strong arm of the law from being used oppressively and vindictively.** This Court has intervened, in appropriate cases, to prevent the oppressive exercise of legal authority, or the use of the strong arm of the law in an oppressive and vindictive manner:

“x x x The statutory rule in this jurisdiction is that the writ of prohibition is not confined exclusively to courts or tribunals to keep them within the limits of their own jurisdiction and to prevent them from encroaching upon the jurisdiction of other tribunals, but will issue, in appropriate cases, to an officer or person whose acts are without or in excess of his authority. Not infrequently, ‘the writ is granted where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions. This court, therefore, has jurisdiction over the instant proceedings and will accordingly proceed to determine the merits of the controversy.”

--Planas v. Gil, 67 Phil. 75, 76, citing Aglipay v. Ruiz, 64 Phil.204, 205, and Dimayuga v. Fernandez, 43 Phil. 304, 307.

x x x

“...The remedy of prohibition is somewhat *sui generis*, and is one of more or less legal discretion, and is intended to prevent the oppressive exercise of legal authority. xxx”

--Tong v. Santamaria, 54 Phil. 376.

6.2 **Respondents’ oppressive exercise of authority must be stopped.** A writ of prohibition is appropriate because this case

involves the oppressive exercise of authority, the vindictive use of the strong arm of the law, and the invasion of basic rights and liberties.

6.3 Respondents' actions oppressive and vindictive. No extended discussion is needed to show that Petitioners' unlawful arrest and maltreatment, coupled with the deluge of threats and warnings that followed their release, constitute oppressive and vindictive acts.

6.3.1 Journalists cannot report from inside a prison cell. When a journalist is unlawfully arrested for performing his duties as a journalist, it is not only his right to liberty that is affected but also his right to free speech and expression. In fact, it is not only that journalist's right that is affected, but the right of the press itself to be free and the right of the people to information of public concern.

6.3.2 Journalists cannot report when they are constantly being threatened with re-arrest, criminal prosecution and criminal liability. The chilling effect is all too present, and all too clear. When journalists are constantly left wondering if what they broadcast or publish will land them in jail, they cannot fulfill their vital constitutional function of delivering information of public concern to the people.

6.3.3 The acts of arresting and threatening the press are vindictive and oppressive not only because of their nature but also because they are intended for one purpose and one purpose alone: to stop the free flow of information essential to a democratic state. These acts are oppressive, vindictive and arbitrary because they are in the nature of prior restraints, are totally unwarranted, and trample on basic rights and freedoms.

6.3.4 The Honorable Court's intervention, it is submitted, is not only desirable in this case but absolutely necessary to stop respondents' oppressive, vindictive and arbitrary acts.

6.4 Journalists taken into custody for covering hotel siege arrested, not merely "processed" by police. Respondents tried to justify their actions by asserting that they did not arrest the journalists but merely "processed" them. Respondent Secretary Puno maintained that "...technically that is not an arrest, that is a processing,"²⁵ while Respondent Razon claimed that "...actually they were not arrested; they were brought to Bicutan for verification of their bona fide (sic)"²⁶

6.4.1 Section 1, Rule 113 of the Rules of Court define an arrest as "*the taking of a person into custody in order that he may be bound to answer for the commission of an offense.*" Section 2 of Rule 113 provides that an *arrest is made "by an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest."* By both standards, the journalists arrested at the Manila Peninsula Hotel were arrested.

6.4.2 By his own admission, respondent Chief Superintendent Asher Dolina declared that the arrested journalists were being brought to Bicutan "**for processing, as witnesses and suspects.**"²⁷ Even Secretary Puno, in the press conference have

²⁵ See **Annex "C," Title 4**, the videotaped interview with Secretary Puno, and **Annex "G,"** the transcription of the same.

²⁶ See **Annex "C," Title 5**, the videotaped interview with Chief Razon (on DVD format), and **Annex "H,"** the transcription of the same.

²⁷ See **Annex "C," Title 3**, videotaped interview with Chief Supt. Dolina, 29 November 2007, and **Annex "F,"** the transcription of the same.

gave in the evening of 29 November 2007, admitted that the so-called “processing” was to determine whether criminal charges would be filed against the journalists and even warned that some of them could be criminally charged:

“Now, they have been brought to Bicutan for processing for two reasons. Number one, to verify identity. Number two, generally speaking I can say with all certainty that almost none of those who were there wittingly wanted to obstruct justice. I would like to say that generally speaking, in almost all cases, if not all cases, they were there to practice their profession. But nevertheless, we wanted to go through the process of verifying the associations of specific individuals with one another among all of those people that were arrested on the site.

x x x

So that’s the other thing that we will request our media broadcast stations and newsprint desks to verify. That whoever is there will claim to come from a particular publication or station will have been directed by their office to be there at that particular point in time. **Anyone who is there but was not on assignment and was not allowed or told to go there by his mother media organization might be facing some charges as well.**²⁸

6.4.3 The journalists taken into custody at the hotel, moreover, were actually restrained of their liberty and physical movement. While not all of them were handcuffed, all of them were held at gunpoint, and could not leave the hotel of their own volition. In all, the police arrested about fifty (50) journalists, boarded them on buses and brought them to police headquarters (Camp Bagong Diwa) at Bicutan, Taguig.

²⁸ See **Annex “C,” Title 6**, the videotape of relevant portions of Secretary Puno’s press conference (on DVD format) and **Annex “I,”** a transcription of the same.

6.5 **Warrantless arrests of journalists unlawful.** Section 5, Rule 113 of the Rules of Court provides that warrantless arrests are lawful only --

“(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

None of these grounds were present in this case when the journalists were arrested. They were not committing or attempting to commit a crime at time. They were (and are) not escaped detainees or prisoners. No crime, moreover, had just been committed in which they had criminally participated.

6.6 **Arrest and indignities inflicted on arrested journalists meant to intimidate, and smack of bad faith.** The unlawful arrests, the use of plastic restraints, the unnecessary exposure to teargas while under custody, the unnecessary trip to Bicutan and processing at police headquarters, the body search for tattoos, and the utter failure of the police to follow the procedures provided in the Rules of Court for warrantless arrests, smack of bad faith and show a design on the part of the respondents to intimidate the press.

6.7 Journalists treated as combatants in violation of international standards for the protection of civilians in armed conflicts.

6.7.1 The Medellin Declaration of 2007 entitled “Securing the Safety of Journalists and Combating Impunity,” signed at the UNESCO conference on Press Freedom, Safety of Journalists and Impunity on 3 May 2006, provides that:

“Deeply concerned by attacks on the freedom of expression of the press including murder, deliberate attacks, abductions, hostage-taking, harassment, intimidation, illegal arrest and detention against journalists, media professionals and associated personnel because of their professional activity;

Believing that press freedom can only be enjoyed when media professionals are free from intimidation, pressure and coercion, whether from political, social or economic forces;

Recalling Article 19 of the Universal Declaration of Human Rights that guarantees freedom of expression as a fundamental right, and confirming that freedom of expression is essential to the realization of other rights set forth in international human rights instruments;

Underscoring the provisions of the Colombo Declaration of 3 May 2006 on Media and Poverty Eradication, and Dakar Declaration of 3 May 2005 on Media and Good Governance, and of the Belgrade Declaration of 3 May 2004 on Media in Violent Conflict and Countries in Transition,

Welcoming the adoption by the Security Council of the United Nations of Resolution 1738 on 23 December 2006 calling on all parties to an armed conflict to fulfill their obligations toward journalists under international law, including the need to prevent impunity for crimes against them and further requesting the Secretary-General to include as a sub-item in his next reports on the protection of civilians in armed conflict the issue of the safety and security of journalists, media professionals and associated personnel;

Urging all the parties concerned to ensure the safety of journalists, media professionals and associated personnel and respect for their media equipment and installations;

x x x

Call on Member States:

To investigate all of violence of which journalists, media professionals and associated personnel are victim which have occurred in their territory or abroad when their armed or security forces may have been involved in them;

x x x

To release immediately journalists detained to this day for having freely exercised their profession;

To promote awareness and train their armed forces and police forces to respect and promote the safety of journalists in situations of risk, and to ensure that journalists are able to work in full security and independence in their territory.

x x x

To sign and ratify the Additional Protocols I and II to the Geneva Conventions, the Rome Statute of the International Criminal Court and other relevant international instruments of international humanitarian law and international human rights law, and to take the appropriate legislative, judicial and administrative measures to ensure application of the aforementioned instruments nationally, in so far as they provide protection for civilians, in particular those working in journalism.”

6.7.2 On 23 December 2006 the Security Council of the United Nations unanimously adopted Resolution 1738 (2006) condemning attacks against journalists in conflict situations. The Resolution provides in pertinent part:

“Recognizing that the consideration of the issue of protection of journalists in armed conflict by the Security Council is based on the urgency and importance of this issue...xxx...

1. Condemns intentional attacks against journalists, media professionals and associated personnel, such as, in situations of armed conflict, and calls upon all parties to put an end to such practices;

2. Recalls in this regard that journalists, media professionals and associated personnel engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and shall be respected and protected as such, provided that they take no action adversely affecting their status as civilians...xxx...

x x x

8. Urges all parties involved in situations of armed conflict to respect the professional independence and rights of journalists, media professionals and associated personnel as civilians;

x x x

11. Requests the Secretary-General to include as a sub-item in his next reports on the protection of civilians in armed conflict the issue of the safety and security of journalists, media professionals and associated personnel."²⁹

6.7.3 The respondents and their subordinates miserably failed to comply with these standards when they arrested the journalists covering the 29 November 2007 hotel siege. Their acts of arresting the journalists, handcuffing and manhandling them, searching their bodies for tattoos and unnecessarily exposing them to teargas show that the authorities, especially herein respondents, viewed them as combatants or enemies of the state, and treated them accordingly.

6.7.4 Respondents' failure, and that of their subordinates, to treat the journalists as non-combatants, calls for the exercise of this Court's power of supervision for the protection of basic rights and liberties.

²⁹ 5613th Meeting (PM) of the Security Council of the United Nations, 23 December 2006.

6.8 **Prior restraints.** The rule in this jurisdiction is that prior restraints are presumed to be invalid:

“Doctrinally, the Court has always ruled in favor of the freedom of expression, and any restriction is treated as an exemption. The power to exercise prior restraint is not to be presumed; rather, the presumption is against its validity. And it is respondents’ burden to overthrow such presumption. Any act that restrains speech should be greeted with furrowed brows, so it has been said.

To justify a restriction, the promotion of a substantial government interest must be clearly shown. Thus:

‘A government regulation is sufficiently justified if it is within a constitutional power of the government, if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on First Amendment freedoms is no greater than is essential to the furtherance of that interest.’”

Hence, even though the government’s purposes are legitimate and substantial, they cannot be pursued by means that broadly stifle fundamental personal liberties, when the end can be more narrowly achieved.”

ABS-CBN Broadcasting Corporation v. Commission on Elections, G.R. No. 133486, January 28, 2000.

6.8.1 The questioned acts of respondents –the illegal arrest of petitioners and other journalists for covering the siege, the public denunciation of journalists as coddlers of military rebels, and the wave of threats to the press-- are prior restraints because they are directed at stopping the delivery of news before it reaches the public. They are unjustified because do not further any important governmental interest, they have no other purpose except to suppress free expression, and the means employed (i.e., threats and intimidation) broadly trample on fundamental personal liberties.

6.8.2 The questioned acts are void not only because they impugn the rights of free speech, expression and the press, but also – and even more importantly – because they violate the people’s constitutional right to information of public concern. As this Court observed in a recent case, “Not only does the press have the task of imparting such information and ideas, the public also has the right to receive them.”³⁰

6.8.3 To paraphrase Justice Black of the U.S. Supreme Court, the questioned acts in this case not only jeopardize the free and open public discussion which our Constitution guarantees, but can wholly stifle it.³¹

6.9 **DOJ ADVISORY not a mere “reminder.”** Journalists, the U.S. Supreme Court observed in Bantham Books v. Sullivan, 372 U.S. 628 (1985), do not lightly disregard the thinly veiled threats of criminal proceedings by public officers. It would be naïve, the court said, to assert that this form of informal censorship is merely a restatement or reminder of the law.

6.10 **DOJ ADVISORY supplants the criminal justice system.** Respondents, by means of the DOJ ADVISORY and verbal threats, have used the threat of criminal liability in place of the actual filing of criminal charges, thereby supplanting the formal criminal justice system—with its built-in safeguards—with an informal and arbitrary system of threats and without safeguards.

³⁰ Guinguing v. Court of Appeals, G.R. No. 128959, 30 September 2005, citing the decision of the European Court of Human Rights in Lingens v. Austria where the Republic of Austria was held liable to pay damages “as just satisfaction” to a journalist found guilty of defamation under the Austrian Criminal Code.

³¹ Garrison v. Louisiana, 379 U.S. 64, 80 (1964), Justice Black, concurring.

6.11 DOJ ADVISORY Unduly Inhibits Speech, Constitutes an Unlawful Prior Restraint and Obstructs the Exercise of the People's Right to Information of Public Concern. The DOJ Advisory inhibits speech before it can be delivered to the public. It is void because it does further any important governmental interest, it has no other purpose except to suppress free expression and it broadly stifles fundamental personal liberties.

6.12 Petitioners have no plain, speedy and adequate remedy. Petitioners have no plain, adequate and speedy remedy at law other than the writs prayed for in this petition.

- (a) Respondents are bent on continuing their unlawful acts and enforcing their unlawful threats and issuances; it would, therefore, be a waste of time and an exercise in futility to seek redress or relief from them.
- (b) The danger of a failure of justice; the need to promptly relieve petitioners of the injurious effects of respondents' continued actions; the oppressive and patently illegal nature of respondents' acts and issuances; the urgent need to resolve a question of law that involves public interest; and the need to dispel as quickly as possible any doubt regarding the rights of free speech, expression and the press, show that there is no appeal or plain, speedy and adequate remedy in the ordinary course of the law other than the writs prayed for in this petition.

6.13 Thus, prohibition lies in this case.

VII. Grounds for Issuing a Writ of Preliminary Injunction and Temporary Restraining Order

7.1 **Injunction proper to afford adequate protection to constitutional rights, avoid oppression and persecution and because respondents' acts are without or in excess of their authority.** It is well settled that injunctions are proper in the following instances:

- To afford protection to constitutional rights;
- When necessary for the orderly administration of justice;
- When the acts of the officer is without or in excess of authority;
- Where it is a case of persecution rather than prosecution; and
- To prevent the threatened unlawful arrest of petitioners.³²

7.2 A writ of injunction is not only proper but absolutely necessary in this case to protect the basic rights of journalists and to give due recognition to the people's right to information of public concern. It is also appropriate here for the orderly administration of justice, to prevent the threatened unlawful arrests, to stop petitioners'

³² Brocka v. Enrile, G.R. Nos. 69863-65, 10 December 1990, 192 SCRA 183, 188-189.

persecution and because the questioned acts are without or in excess of respondents' authority.

7.3 Petitioners are entitled, by right, to the relief that they are seeking, as the preceding paragraphs show; and the whole or part of the relief consists in restraining the commission or continuance of the acts complained of, provisionally and perpetually.

7.4 However, unless restrained, respondents will continue the acts complained of which are in violation of the Constitution and petitioners' rights.

7.5 The continuance of the acts complained of will definitely work injustice to petitioners.

7.6 Petitioners' application for a temporary restraining order and preliminary injunction is verified, and shows facts entitling them to the relief demanded.

7.7 A temporary restraining order is most urgently needed to prevent any violation, or further violation, of petitioners' rights and to preserve their rights pending these proceedings.

7.8 Considering the primacy of the right of free expression and a free press, the matter must be considered of extreme urgency.

7.9 Thus, unless respondents are enjoined, petitioners will suffer grave injustice and irreparable injury.

7.10 By the time this petition is filed and heard, petitioners may already be criminally charged, arrested or detained by respondents or by their officers, agents and representatives, or some other government entity, without any legal basis or authority.

Prayer

WHEREFORE, petitioners respectfully pray that the Honorable Court:

1. Give due course to this petition and issue a temporary restraining order immediately upon receipt hereof, on such terms as it may deem just, to restrain the respondents, and their officers, agents or other persons acting under their authority or supervision, from:

- 1.1 Enforcing the undated "DOJ Advisory" issued by respondent Justice Secretary Gonzalez [Annex "B"] "reminding" the press that they may incur criminal liability when covering military and police operations and "emergencies;"
- 1.2 Carrying out the public warnings, threats and "reminders" already made by these officials to the press, of arrest, re-arrest, criminal prosecution, criminal liability, administrative liability and revocation of franchise if they defy police instructions to leave an area or refuse to stop

recording, broadcasting or transmitting information;

- 1.3 Issuing or making any further warnings, threats or “reminders” to the press, and/or engaging in other acts designed to stifle or intimidate the press;
 - 1.4 Publicly denouncing journalists as coddlers or protectors of rebels, as being in connivance or conspiracy with rebels, and/or publicly branding them with the stigma of being rebels or engaging in a rebellion, when they should be charged in court if there is evidence to warrant their prosecution.
 - 1.5 Imposing any form of prior restraint/s on the press, whether direct and indirect, or in the form of thinly veiled threats of government sanctions, “reminders” of criminal liability and similar practices; and from
 - 1.6 Treating petitioners and other journalists as combatants during military or police operations.
2. After notice and hearing, issue a writ of preliminary injunction on the same terms as the temporary restraining order.
 3. After due proceedings, to render judgment –
 - 3.1 Making the preliminary injunction permanent;
 - 3.2 Prohibiting, by means of a writ of prohibition, the respondents from:

(i) Enforcing the undated “DOJ Advisory” issued by respondent Justice Secretary Gonzalez [Annex “A”] “reminding” the press of criminal liability;

(ii) Carrying out the public warnings, threats and “reminders” already made by these officials to the press, of arrest, re-arrest, criminal prosecution, criminal liability, administrative liability and revocation of franchise if they defy police instructions to leave an area or to stop recording, broadcasting or transmitting information;

(iii) Issuing or making any further warnings, threats or “reminders” to the press, and/or engaging in other acts designed to stifle or intimidate the press;

(iv) Publicly denouncing journalists as coddlers or protectors of rebels, as being in connivance or conspiracy with rebels, and/or publicly branding them with the stigma of being rebels or engaging in a rebellion, when they should be charged in court if there is evidence to warrant their prosecution.

(v) Imposing any form of prior restraint/s on the press, whether direct and indirect, or in the form of thinly veiled threats of government sanctions,

“reminders” of criminal liability and similar practices; and from

(vi) Treating petitioners and other journalists as combatants during military or police operations.

Petitioners pray for other or further just and equitable relief.

Quezon City for Manila, 28 January 2008.

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IBP No. No. 730333/01-02-08/Makati City

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EXPLANATION

Service of this Petition was made on respondents by registered mail on even date due to time and personnel constraints. Filing of this Petition, however, is being personally done with the Honorable Court.

ORIGINAL COPY SIGNED

JOSE MANUEL I.

DIOKNO