

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

CECILIA OREÑA-DRILON, MAYJAY
CABALIT, MELANIE MASECAMPO,
RUPERTO AMBIL II, MARK
CADAMPOG, EMELITO HAO,
NORBERT CALUPITAN, ALEXIS
ACUIN, BERNIE LITO MALLARI,
RANDY VILLAN, and NOEL
ALAMAR,

Petitioners,

- versus -

G.R. No. _____

HON. RONALDO V. PUNO, HON.
RAUL GONZALES, POLICE
DIRECTOR GENERAL AVELINO
RAZON, POLICE DIRECTOR GEARY
BARIAS, POLICE CHIEF
SUPERINTENDENT ASHER
DOLINA, JOHN DOES, THE
PHILIPPINE NATIONAL POLICE,
THE DEPARTMENT OF INTERIOR
AND LOCAL GOVERNMENT, and
THE DEPARTMENT OF JUSTICE,
Respondents.

x ----- x

PETITION
(For a Writ of Amparo and/or a Writ of Prohibition)

Petitioners, by counsel, respectfully state:

I.

**PREFATORY INVOCATION
OF THE HONORABLE SUPREME COURT'S JURISDICTION**

This Petition is raised before this Honorable Court for the most
urgent and compelling of reasons.

Petitioners are journalists. They were illegally arrested at the Manila Peninsula hotel last 29 November 2007, while they were lawfully doing their jobs of providing news on matters of public concern.

Their Constitutional Rights to Liberty and Security were violated when they were illegally arrested. But worse, there continue to be very real threats that such Rights will again soon be disregarded and infringed upon. No less than some of the most powerful officials in government have warned that Petitioners, and other journalists, may once more be illegally arrested, harassed, and prosecuted for such past, and future, coverage of news breaking events.

Aside from such Constitutional Rights to Liberty and Security and to Information, Petitioners' Rights of Free Speech and of the Press have also been violated and threatened. There are thus very urgent and compelling reasons for this Honorable Court to protect these Rights in light of the very real chilling effect and prior restraints engendered by such unwarranted threats.

“The Bill of Rights is designed to preserve the ideals of Liberty, equality and Security ‘against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of those who have no patience with general principles.’”¹

“In a democracy, the preservation and enhancement of the dignity and worth of the human personality is the central core as well as the cardinal article of faith of our civilization. The inviolable character of man as an individual must be “protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person.”²

¹ *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co. Inc.*, 50 SCRA 189 (1973).

² *American Com. v. Douds*, 339 U.S. 382, 421.

“The freedom to comment on public affairs is essential to the vitality of a representative democracy. x x x. The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete Liberty to comment on the conduct of public men is a scalpel in the case of Free Speech. The sharp incision of its probe relieves the abscesses of officialdom.”³

“In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions;⁴ and such priority gives these liberties the sanctity and the sanction not permitting dubious intrusions.”⁵

There is every reason, then, for this Highest Tribunal to take cognizance of the instant Petition, and to protect basic rights and freedoms enshrined in the Constitution, which protection is the very essence of the Writ of *Amparo* prayed for.

II.

THE NATURE OF THE PETITION

1. This is a Petition primarily filed under The Rule on the Writ of *Amparo*, issued by the Supreme Court on 25 September 2007,⁶ pursuant to its power and duty enshrined in the Constitution. Article VIII, Section 1 of the Constitution states that:

“Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine 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.” (Emphasis supplied.)

³ *Eastern Broadcasting v. Dans, Jr.* 137 SCRA 628

⁴ *Terminiello v. Chicago*, 337 U.S. 1.

⁵ *Thomas v. Collins*, 323 U.S. 516, 530, cited by Justice Castro in his concurring opinion in *Gonzales v. Comelec*, 27 SCRA 835, 895 (1969).

⁶ AM No. 07-9-12-SC, which took effect on 24 October 2007.

In addition, Section 5(5) of the same article provides that the Supreme Court shall have the power to:

“Promulgate rules concerning the protection and enforcement of Constitutional Rights, pleading, practice, and procedure in all courts, xxx.” (Emphasis supplied.)

2. This Petition prays that:

2.1. This Honorable Court declare illegal the arrests of Petitioners after the Manila Peninsula Stand-off on 29 November 2007; and

2.2. Accordingly, this Honorable Court issue a Permanent Protection Order:

(a) Enjoining Respondents from charging and prosecuting Petitioners in relation to their arrests on 29 November 2007; and

(b) Enjoining Respondents from effecting, and making threats of, future warrantless arrests and acts of harassment of Petitioners and other journalists, in the course or in consequence of the performance of their work, such as in the coverage of breaking news events similar to the Manila Peninsula Stand-off.

3. Petitioners' Constitutional Rights to Liberty and Security were grossly violated when they were arbitrarily and illegally arrested, harassed, and transported to Camp Bagong Diwa in Bicutan, headquarters of the PNP Special Action Force (SAF) and holding facility and detention center, in the course of their legitimate performance of

their work as journalists. Section 1 of the Bill of Rights of the Constitution states that “no person shall be deprived of life, liberty, or property without due process of law.”

4. These and other acts of Respondents, described below, likewise violated other Constitutional guarantees provided by the Bill of Rights such as the Right to Free Speech, the Right to Free Press, and the Right to Information, as follows:

“Section 4. No law shall be passed abridging the freedom of speech, of expression, or the press...xxx.

xxx

Section 7. The right of the people to information on matters of public concern shall be recognized.”⁷

5. Today, in light of menacing public statements made by Respondents Ronaldo Puno, Avelino Razon, and Raul Gonzales in the aftermath of the Manila Peninsula Stand-off, all these rights continue to be subjected to serious threat and future violation.

6. The Petition thus prays for the issuance of a Writ of *Amparo* to protect and uphold the Constitutional Rights at stake. Section 1 of The Rule on the Writ of *Amparo* provides:

“The petition for a writ of *amparo* is a remedy available to any person whose Right to life, Liberty and Security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.” (Emphasis supplied.)

In the words of Chief Justice Reynato S. Puno, the Writ of *Amparo* is “the greatest legal weapon to protect the Constitutional Rights of our people.”⁸

⁷ Article III, Section 4 and Section 7, of the Constitution.

⁸ See “SC Approves Rule on Writ of *Amparo*” posted 25 September 2007 and “CJ Puno: Amparo Best Legal Weapon to Protect People’s

“The writ of amparo shall hold public authorities, those who took their oath to defend the constitution and enforce our laws, to a high standard of official conduct and hold them accountable to our people. The sovereign Filipino should be assured that if their Right to life and Liberty is threatened or violated, they will find vindication in our courts of justice.”⁹

7. Petitioners pray that this “great legal weapon” now be wielded in their defense and protection, for the illegal arrests and harassment of, and threats to journalists, is a matter of transcendental importance to our democratic way of life.

“xxx. One’s rights to life, liberty, and property, to free speech, or free press, freedom of worship and assembly, and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections.¹⁰ Laski proclaimed that ‘the happiness of the individuals, not the well-being of the state, was the criterion by which its behavior was to be judged. His interests, not its power, set the limits to the authority it was entitled to exercise.’”¹¹

8. Additionally and alternatively, this Petition may likewise be granted by this Honorable Court via a writ of prohibition under Section 2, Rule 65 which states:

“When the proceedings of any tribunal, corporation, board, or person, whether exercising functions judicial or ministerial are without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant to desist from further proceeding in the action or matters specified therein.

Constitutional Rights”, posted on 16 October 2007, on www.supremecourt.gov.ph

⁹ *Id.*

¹⁰ *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638.

¹¹ *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co. Inc.*, *supra*.

Inasmuch as the acts assailed herein do not proceed from the exercise of judicial or quasi judicial functions, the Petition is not accompanied by certified true copies of any questioned judgment or order, nor does it contain any statement of material dates.

III.

THE PARTIES

9. Petitioners are Filipinos, of legal age, and are presently employed by ABS-CBN Broadcasting Corporation, a corporation engaged in the operation of television and radio stations. Petitioners belong to the News and Current Affairs Group of ABS-CBN, and occupy the following positions:

- 9.1. Cecilia Oreña-Drilon – Senior Correspondent
- 9.2. Melanie Masecampo – Segment Producer
- 9.3. Mayjay Cabalit – Researcher
- 9.4. Mark Cadampog – Field Producer
- 9.5. Bernie Lito Mallari – Cameraman
- 9.6. Emelito Hao – Cameraman
- 9.7. Norbert Calupitan – Cameraman
- 9.8. Randy Villan – Microwave Technician
- 9.9. Ruperto Ambil II – Futures Desk Specialist/Field
Producer
- 9.10. Alexis Acuin – ENG Van Technical Crew
- 9.11. Noel Alamar – DZMM Radyo Patrol Correspondent

Petitioners may all be served with processes, notices, resolutions, and orders through undersigned counsel at the 5th Floor, SEDCCO I Building, 120 Rada Street, Legaspi Village, Makati City.

10. Individual Respondents are government officers and employees impleaded in their official capacities and/or who were responsible for the illegal arrests, harassment and threats herein complained of. Respondents Department of Interior and Local Government (DILG), Department of Justice (DOJ), and Philippine National Police (PNP) are instrumentalities of the Government of the Republic of the Philippines, to which individual Respondents belong.

10.1. Hon. Ronaldo V. Puno is the Secretary of the DILG. He may be served with summons, processes, notices, and other court papers at A. Francisco Gold Condominium II, EDSA cor. Mapagmahal St., Diliman, Quezon City.

10.2. Hon. Raul Gonzales is the Secretary of the DOJ. He may be served with summons, processes, notices, and other court papers at the DOJ, Padre Faura St., Ermita, Manila.

10.3. P/Dir. Gen. Avelino I. Razon, Jr. is the Chief of the Philippine National Police (PNP); P/Dir. Geary L. Barias is the Director of the National Capital Region Police Office (NCRPO); Chief Superintendent Asher Dolina is an officer of the PNP Criminal Investigation and Detection Group (CIDG); and the John Does are the other ground and on-site personnel of the PNP's Special Action Force (SAF) and the CIDG assigned and present at the Manila Peninsula Stand-off, responsible for the illegal arrests and

harassment of Petitioners. They may be served with summonses, processes, notices, and the like, at the PNP Headquarters, Camp Crame, Quezon City.

10.4. The DILG is a department under the Office of the President, with principal office at A. Francisco Gold Condominium II, EDSA cor. Mapagmahal St, Diliman, Quezon City.

10.5. The PNP is an attached agency of the DILG, with headquarters at Camp Crame, Quezon City.

10.6. The DOJ is a department under the Office of the President, with principal office at Padre Faura St., Manila.

IV.

FACTS OF THE CASE

11. The facts of the case as narrated below are fully documented and supported by affidavits and video footage of the events that took place on 29 November 2007 and subsequent related events thereafter, attached as annexes to this Petition. These are:

Annex A-	Supporting Affidavit of Cecilia Oreña-Drilon
Annex B-	Supporting Affidavit of Mayjay Cabalit
Annex C-	Supporting Affidavit of Melanie Masecampo
Annex D-	Supporting Affidavit of Ruperto Ambil II
Annex E-	Supporting Affidavit of Mark Cadampog
Annex F-	Supporting Affidavit of Emelito Hao
Annex G-	Supporting Affidavit of Norbert Calupitan
Annex H-	Supporting Affidavit of Alexis Acuin

Annex I-	Supporting Affidavit of Bernie Lito Mallari
Annex J-	Supporting Affidavit of Randy Villan
Annex K-	Supporting Affidavit of Noel Alamar
Annex L -	Supporting Affidavit of Rosario S. Villa
Annex M-	Digital Video Disc of events, with index of chapters
Annex N-	Statements made by Media Organizations regarding the 29 November 2007 arrests of journalists
Annex O-	Statements made by Media Organizations on the 11 January 2008 Media Advisory issued by DOJ Secretary Raul Gonzalez

A. Events Prior to the Arrests

12. Petitioners were lawfully performing their journalistic duties as part of the ABS-CBN News and Current Affairs Group on 29 November 2007. Petitioner Cecilia Oreña-Drilon (popularly known as Ces Drilon), and her team composed of Petitioners Mayjay Cabalit and Melanie Masecampo and other ABS-CBN personnel, Jimmy Encarnacion, and Angelo Valderama, were assigned to cover the Magdalo hearing at the Makati Regional Trial Court.¹² During the hearing, Brig. General Danilo Lim, Senator Antonio Trillanes, and several other Magdalo soldiers walked out of the courtroom, marched to the Makati commercial area, and ended up at the Manila Peninsula hotel. The team of Petitioner Drilon immediately followed and kept alongside the group of Senator Trillanes, together with other journalists also covering the Magdalo

¹² See Annex “A”, par. 2; Annex “B”, par. 2; Annex “C”, par. 2.

hearing.¹³ Petitioners Mark Cadampog and Noel Alamar joined them along Makati Avenue.¹⁴ They followed the group of Senator Trillanes inside the Manila Peninsula to the second floor hallway, all the while covering the event and feeding live radio and television broadcasts.

13. The rest of the Petitioners, namely Bernie Lito Mallari, Emelito Hao, Norbert Calupitan, Randy Villan, Alexis Acuin, and Ruperto Ambil II, were sent straight to the Manila Peninsula by the management of the ABS-CBN News and Current Affairs Group, specifically to set up a live coverage there.¹⁵ They positioned themselves in the hallway of the second floor of the Manila Peninsula where journalists from other news entities were already gathered.

14. Negotiations between the group of Senator Trillanes and the PNP ensued. These were followed by displays of force by the government assault team sent to Manila Peninsula. Warning shots were fired.¹⁶ Teargas was released into the area.¹⁷ An Armored Personal Carrier (APC-150) was rammed into the lobby of the hotel.

15. When the teargas fumes reached the second floor, the journalists, including the Petitioners, were forced to take refuge in the Rizal function room, which was near the hallway area where they were

¹³ See Annex “A”, par. 3; Annex “B”, par. 3; Annex “B”, par. 3; Annex “C”, par. 3.

¹⁴ See Annex “E”, par. 3; Annex “K”, par. 3.

¹⁵ See Annex “D”, par. 2; Annex “F”, par. 2; Annex “G”, par. 2; Annex “H”, par. 2; Annex “I”, par. 3; Annex “J”, par. 2.

¹⁶ See Annex “B”, par. 4; Annex “C”, par. 5; Annex “D”, par. 3; Annex “E”, par. 6; Annex “G”, par. 4; Annex “H”, par. 4; Annex “J”, par. 4, Annex “K”, par. 5.

¹⁷ See Annex “A”, par. 5; Annex “B”, par. 5; Annex “C”, par. 5; Annex “D”, par. 3; Annex “E”, par. 6; Annex “F”, par. 4; Annex “G”, par. 4; Annex “H”, par. 4; Annex “I”, par. 5; Annex “J”, par. 5; Annex “K”, par. 5.

set up.¹⁸ When the first of the Petitioners reached the said room, only members of “civil society” and other journalists were there. Subsequently, Fr. Robert Reyes, Bishop Julio Labayen, other civilians and other journalists also entered. Later, when there were already many journalists in the Rizal function room, Senator Trillanes, Brig. Gen. Lim, the Magdalo soldiers and their civilian supporters followed inside and stayed there.¹⁹ Petitioners continued their live coverage from the Rizal function room.

16. The Manila Peninsula Stand-off was finally resolved when Senator Trillanes and his supporters decided to surrender peacefully. The SAF troops arrived to arrest Senator Trillanes, Gen. Lim, and their group.

B. Arrest of Petitioners

17. To the great shock and dismay of Petitioners and the other journalists who had taken refuge in the Rizal function room, they were all likewise arrested.²⁰ They were ordered out of the Rizal function room with their arms raised above their heads.²¹ Petitioners Cadampog, Calupitan, Acuin and Hao (who were among the first to exit from the

¹⁸ See Annex “A”, par. 5; Annex “B”, par. 5; Annex “C”, par. 5; Annex “D”, par. 4; Annex “E”, par. 6; Annex “F”, par. 4; Annex “G”, par. 5; Annex “H”, par. 5; Annex “I”, par. 6; Annex “J”, par. 6.

¹⁹ See Annex “A”, par. 5; Annex “B”, par. 6; annex “C”, par. 5; Annex “D”, par. 5; Annex “E”, par. 7; Annex “F”, par. 6; Annex “G”, par. 5; Annex “H”, par. 6; Annex “I”, par. 7; Annex “J”, par. 6.

²⁰ Petitioners Ruperto Ambil II, Emelito Hao, Norbert Calupitan, and Alexis Acuin were the first journalists to be arrested. See Annex “D”, par. 7; Annex “F”, par. 7; Annex “G”, par. 6; Annex “H”, par. 7. Petitioner Noel Alamar was arrested in the lobby and asked to join the group of Ruperto Ambil II at the main entrance, where they were already detained. See Annex “K”, par. 8. The rest of the Petitioners were arrested along with the journalists from other media institutions.

²¹ See DVD at Chapter 1, Annex “M”.

Rizal function room) were handcuffed with plastic ties.²² The police officers also insisted on handcuffing the rest of the Petitioners. They only relented when Petitioner Drilon loudly and vehemently protested.

18. When they were being arrested, Petitioners repeatedly asked the police the reason for their arrests. The only explanation given to them at the time of their arrests, came from Respondent Dolina: for processing and identification as witnesses or suspects.²³ Yet, even after they had identified themselves several times and shown their media identification cards, the Petitioners and other journalists were still herded by the arresting officers to buses and brought to Camp Bagong Diwa in Bicutan.²⁴

19. During their entire detention at the Manila Peninsula and on their way to Bicutan, Petitioners experienced different acts of harassment from the arresting officers, as described below.

20. Despite their arrests, Petitioners were never charged. But in a 30 November 2007 press conference, Respondent Razon threatened that the PNP will file countercharges against journalists who lodge complaints:

“and, meron kaming naririnig na balita na some networks will file charges against us. Eh kami naman eh, libreng bansa po ‘to. . . kung gusto nila di kami naman po ay mag fa-file rin ng charge against them kung talagang, gusto nilang dumating po tayo dun sa parteng iyon..No.. Eh kaya nga po tinitingnan din natin yung area ng obstruction of justice.. no.. Eh kung gusto nilang paratingin sa ganong

²² See DVD at Chapter 2, Annex “M”.

²³ See Annex “A”, par. 9; Annex “B”, par. 9; Annex “C”, par. 9; Annex “I”, par. 11; Annex “J”, par. 10.

²⁴ See Annex “A”, par. 11; Annex “B”, par. 12; Annex “C”, par. 12; Annex “D”, par. 13; Annex “E”, par. 11; Annex “F”, par. 11; Annex “G”, par. 10; Annex “H”, par. 10; Annex “I”, par. 13; Annex “J”, par. 12; Annex “K”, par. 9.

*punto, eh sabihin na lang po.. eh.. pero kami naman po ayaw namin, at tayo nga ay magkakaibigan.*²⁵

In addition, at the PNP-Kapisanan ng mga Brodkaster sa Pilipinas (KBP) dialogue on 5 December 2007, Respondent Puno made the following threat in reply to a question:

“Deo Macalma (radio journalist):

Isa lang po ang tanong ko kay Secretary Puno. Kasi masyadong humiliating yung nangyari sa media na pinosasan. Secretary, sa susunod ba kung may mga coverage pang ganito, poposasan ba po ulit ang mga media?

Sec. Puno:

*Ah, honestly, kung may scene of, may crime scene, at hiniling ng pulis doon sa mga nandoon sa crime scene, na likasin ang mga nandoon dahil mag-uumpisa na yong enforcement operations at malalagay sa peligro yung mga nandoon at hindi nila sinunod yung hiling ng ating kapulisan, walang ibang puedeng gawin yung police on the ground except arestuhin yung mga hindi sumusunod, no. So, malamang sa posasan talaga.”*²⁶

And on 11 January 2008, Respondent Gonzales issued a Media Advisory that 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 media practitioners 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. These acts and threats of Respondents constitute blatant violations of fundamental Constitutional Rights and guarantees. Petitioners were denied their Rights to Liberty and Security when they were illegally arrested. Moreover, these illegal arrests, acts of harassment

²⁵ See DVD at Chapter 3, Annex “M”.

²⁶ See DVD at Chapter 4, Annex “M”.

and threats were intended to intimidate, scare, cow, and bully Petitioners and other journalists. These unlawful acts also violated the Constitutional liberties of Free Speech, Free Press, and the public Right to Information.

V.

GROUND FOR ISSUANCE OF THE WRIT OF AMPARO

A. Illegality of the Arrests

22. First. There was absolutely no ground for the warrantless arrest of Petitioners. Section 5, Rule 113 of the Rules on Criminal Procedure provides:

“A peace officer or a private person may, without a warrant, arrest a person:

(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 the facts and circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who 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.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.”

23. Petitioners were not committing, were not attempting to commit, nor had they just committed an offense in the presence of the arresting officers. They were simply covering the Manila Peninsula Stand-

off as a breaking news event, in fulfillment of their duty as journalists to provide the public with information.

24. Petitioners were never investigated by the police (except for the verification of their identities and broadcasting assignments, done in the evening of 29 November 2007). They were never charged before the Department of Justice, the Makati City Prosecutor's Office, or the courts.

25. "Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense."²⁷ Yet, in their statements made on 29 November 2007 just hours after the incident, Respondents and other PNP officers refrained from characterizing the restraint of Petitioners as arrests. At the hotel itself at the time of the arrests, Respondent Dolina unequivocally told Petitioner Drilon "we're not charging you. We're processing you."²⁸ That same night, Respondent Puno categorically denied that Petitioners had been arrested: "Well technically that is not an arrest, that is a processing".²⁹ Respondent Razon, in turn, said that "actually they were not arrested; they were brought to Bicutan for verification of their bona fide. (sic)"³⁰ While they would later change their story and declare that Petitioners had indeed been arrested³¹, their initial denial of any arrests indicated that Petitioners had not been arrested "for the commission of an offense". By its very definition, arrest requires that the detention be for a crime, and Respondents' clear, initial position that no arrests took place, reveals that even in Respondents' minds, no crime had been committed.

²⁷ Section 1, Rule 113 of the Rules of Court.

²⁸ See DVD at Chapter 5, Annex "M".

²⁹ See DVD at Chapter 6, Annex "M".

³⁰ See DVD at Chapter 7, Annex "M".

³¹ See DVD at Chapter 8, Annex "M".

26. Respondents instead averred that the Petitioners had been taken into custody to verify their identities as journalists and whether they were on official broadcasting assignment at Manila Peninsula. At the hotel, PNP Chief Superintendent Jefferson Pattau Soriano is recorded as telling Respondent P/Dir. Barias that “*doon (referring to Bicutan) na natin salain*”, even as P/Superintendent Jaime Calungsod said “*Mga media naman talaga mga ito.*”³² For his part, Respondent Puno said in a press conference that night:

“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.”³³

27. But verification of identities and mere suspicion that a person is committing or has committed a crime is not a ground for a

³² See DVD at Chapter 9, Annex “M”.

³³ See DVD at Chapter 10, Annex “M”.

warrantless arrest. As early as 1912, in the case of *U.S. v. Hachaw*,³⁴ this Supreme Court held:

“xxx

Mendoza presents as the only reason why he ordered the arrest of the Chinaman that he was acting suspiciously. He did not say in what way he was acting suspiciously or what was the particular act or circumstance which aroused his curiosity.

xxx

This testimony of the witness does not present any clear reason why he arrested the Chinaman. He arrested him because, as he said, 'I wanted to see if he had committed a crime.' Among free men and under constitutional and statutory guaranties of personal Liberty, this furnishes no reason whatever why a person should be arrested.” (Emphasis supplied.)

28. The illegality of arrests based merely on suspicion was affirmed in *People v. Rodriguez*,³⁵ where this Honorable Court stated:

“xxx. The arrest of appellant itself was also made without a warrant of arrest. In such a case, the arrest can be justified only if there was a crime committed in the presence of the arresting officers.

The arresting officers went to the ‘Wonder Dog Circus’ to verify a telephone call that a person with a knapsack had marijuana in his possession. Pat. Gonzales admitted that they arrested appellant because he acted suspiciously.

xxx

The cardinal rule is that no person may be subjected by the police to a search of his house, body or personal belonging except by virtue of a search warrant or on the occasion of a lawful arrest (*People v. De la Cruz*, 184 SCRA 416 [1990]).

‘If a person is searched without a warrant, or under circumstances other than those justifying an arrest without warrant in accordance with law, merely on suspicion that he is engaged in some felonious enterprise, and in order to discover if he has indeed committed a crime, it is not only the arrest which is illegal but also, the search on the occasion thereof as being "the fruit of the poisonous tree’

³⁴ 21 Phil. 514.

³⁵ 232 SCRA 498 (1994).

(Guazon v. De Villa, 181 SCRA 623 [1990]; People v. Aminnudin, 163 SCRA 402 [1988]; U.S. v. Santos, 36 Phil. 853 [1917]; U.S. v. Hachaw, 21 Phil. 514 [1912]).” (Emphasis supplied.)

29. The case of *People v. Mengote*³⁶ summarizes pertinent doctrines on warrantless arrests under circumstances similar to those in the arrests of Petitioners. It is plain from *Mengote* that, contrary to the statements of Respondents Puno and Razon, warrantless arrests cannot be made when the arresting officers do not know, at the time of the arrests, what offense, if any, had been committed. It is an indispensable requisite that a crime had actually just been or is being committed, or is attempted to be committed. This Honorable Court thus ruled:

“xxx. At the time of the arrest in question, the accused-appellant was merely ‘looking from side to side’ and ‘holding his abdomen,’ according to the arresting officers themselves. There was apparently no offense that had just been committed or was being actually committed or at least being attempted by Mengote in their presence.

xxx

Par. (b) is no less applicable because its no less stringent requirements have also not been satisfied. The prosecution has not shown that at the time of Mengote's arrest an offense had in fact just been committed and that the arresting officers had personal knowledge of facts indicating that Mengote had committed it. All they had was hearsay information from the telephone caller, and about a crime that had yet to be committed.

The truth is that they did not know then what offense, if at all, had been committed and neither were they aware of the participation therein of the accused-appellant. It was only later, after Danganan had appeared at the Police headquarters, that they learned of the robbery in his house and of Mengote's supposed involvement therein. As for the illegal possession of the firearm found on Mengote's person, the policemen discovered this only after he had been searched and the investigation conducted later revealed that he was not its owner nor was he licensed to possess it.

³⁶ 210 SCRA 174 (1992).

Before these events, the Peace officers had no knowledge even of Mengote's identity, let alone the fact (or suspicion) that he was unlawfully carrying a firearm or that he was involved in the robbery of Danganan's house.

In the landmark case of *People v. Burgos*, this Court declared:

Under Section 6(a) of Rule 113, the officer arresting a person who has just committed, is committing, or is about to commit an offense must have personal knowledge of the fact. The offense must also be committed in his presence or within his view. (*Sayo v. Chief of Police*, 80 Phil. 859). (Emphasis supplied)

xxx xxx xxx

In arrests without a warrant under Section 6(b), however, it is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime. A crime must in fact or actually have been committed first. That a crime has actually been committed is an essential precondition. It is not enough to suspect that a crime may have been committed. The fact of the commission of the offense must be undisputed. The test of reasonable ground applies only to the identity of the perpetrator. (Emphasis supplied)

xxx

It would be a sad day, indeed, if any person could be summarily arrested and searched just because he is holding his abdomen, even if it be possibly because of a stomach-ache, or if a peace officer could clamp handcuffs on any person with a shifty look on suspicion that he may have committed a criminal act or is actually committing or attempting it. This simply cannot be done in a free society. This is not a police state where order is exalted over Liberty or, worse, personal malice on the part of the arresting officer may be justified in the name of Security. (Emphasis supplied.)

30. Second. Petitioners were not informed of the “cause of the arrest” when they were taken into custody. Section 8, Rule 113 of the Rules of Court provides:

“Sec. 8. Method of arrest by officer *without warrant*. – When making an arrest without a warrant, the officer shall

inform the person to be arrested of his authority and the cause of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, has escaped, flees, or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest.”

31. When Petitioner Drilon, while being held at the staircase with the other journalists, demanded to know what was to be done with them, Respondent Dolina loudly announced that they would be processed as “witnesses or suspects”. The following exchange occurred:

CES DRILON:
“Anong gagawin n’yo sa amin?”

C. SUPT. DOLINA:
“Iprocess sa Bicutan.”

CES DRILON:
“Bakit? Anong process, Sir?”

C. SUPT. DOLINA:
“Diba, pag may crime scene, lahat ng tao iprocess natin sa Bicutan.”

CES DRILON:
“As what. . . witnesses?”

C. SUPT. DOLINA:
“Witnesses or suspects.”³⁷

This vague, if not absurd, reply did not indicate what offense they had committed and does not fulfill the requirements of Section 8, Rule 113. And even if it were true that they were being arrested as “suspects”, then the police violated the basic rule that an arrest cannot be made on mere “suspicion” alone.

32. Third. Even assuming, without conceding, that the Respondents had basis to arrest Petitioners without warrants, these

³⁷ See DVD at Chapter 11, Annex M.

arrests were nonetheless illegal because Petitioners were not proceeded against in accordance with Section 7, Rule 112, which states:

“Sec. 7. When accused lawfully arrested without warrant. – When a person is lawfully arrested without a warrant involving an offense, which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provision of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.”

After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same Right to adduce evidence in his defense as provided in this Rule.”

In fact, no charges were ever filed against Petitioners for the supposed “offense” justifying their arrests. Instead, Respondent Razon emphatically threatened that if journalists will file a complaint against the PNP, then charges will be filed against them.³⁸ This makes any case filed against the Petitioners a mere malicious retaliatory measure, and not a legitimate basis of the arrests.

33. Fourth. The arrests were illegal because Respondents did not advise Petitioners of their so-called Miranda rights³⁹ immediately upon

³⁸ See DVD Chapter 12, Annex “M”.

³⁹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

taking them into custody. Under Article III, Section 12(1) of the Constitution:

“Any person under investigation for the commission of an offense shall have the Right to be informed of his Right to remain silent and to have competent and independent counsel, preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.”

34. When queried at the KBP-PNP dialogue on 5 December 2007 on why the arrested journalists were not advised of their Constitutional Rights at the time of arrest, Respondent Puno defended this omission by explaining:

“Now the question...Why was there no Miranda warning? The Miranda warning in existing jurisprudence takes effect only when custodial investigation begins. And custodial investigation did not begin here. What happened here was a securing of everyone who was in the crime scene, who were brought subsequently to the processing center and then there was a segregation between those that were to be charged and to be subject to custodial investigation and those that were not subjected to custodial investigation. Everybody who was arrested and brought to Camp Crame and charged in court were given their Miranda warning. Everybody that was released in Camp Bagong Diwa were not because they were not technically under custodial investigation.”⁴⁰

Secretary Puno’s explanation violates the rule that immediately advising arrested persons of such rights is among the “duties which the arresting, detaining, inviting, or investigating officer or his companions must do and observe *at the time of making an arrest* and again at and during the time of the custodial investigation in accordance with the Constitution, jurisprudence and Republic Act No 7438”.⁴¹ Under that law, “custodial

⁴⁰ See DVD at Chapter 13, Annex M.

⁴¹ *People v. Mahinay*, 302 SCRA 455 (1999).

investigation” already covers the “practice of issuing an invitation to a person who is investigated in connection with an offense he is suspected to have committed”. Accordingly, with all the more reason should Petitioners have been immediately informed of their rights, as they were not being merely restrained but were actually being arrested to be brought to a detention facility.

35. Fifth and last. Warrantless arrests require not only probable cause, but also good faith on the part of the arresting officers⁴². Here, there was no probable cause. Worse, the arrests were tainted by bad faith and malice, and were intended to harass, intimidate, cow, and scare journalists in the legitimate performance of their duties. This is evident from the palpable arbitrariness and heavy-handedness attending the arrests.

35.1. Petitioners Cadampog, Calupitan, Acuin, and Hao, were handcuffed though they posed no risk or danger to the arresting officers, nor did they evince any attempt to escape or resist the officers.⁴³ And when the arresting officers attempted to handcuff the rest of the journalists, Petitioner Drilon vehemently protested and engaged Respondent Dolina in a heated argument.⁴⁴ This handcuffing is in violation of Section 2, Rule 113 of the Rules of Court, which states:

“No violence or unnecessary force shall be used
in making an arrest. The person arrested shall not be

⁴² See *Umil v. Ramos*, 202 SCRA 251 (1991).

⁴³ See Annex “E”, par. 10; Annex “F”, par. 11; Annex “G”, par. 10; Annex “H”, par. 11.

⁴⁴ See Annex A, par. 10; Annex “B”, par. 10; Annex “C”, par. 10; Annex “I”, par. 12; Annex “J”, par. 11. See also DVD at Chapter 14, Annex “M”.

subject to a greater restraint than is necessary for his detention.”

35.2. Petitioner Ambil, who was the first to leave the Rizal function room, was forced to kneel and his ID card around his neck was jerked by a SAF policeman.⁴⁵

35.3. When he was trying to identify himself by showing his ID to the arresting officers, Petitioner Acuin was violently pushed to lie face down on the floor, which was then strewn with shards of broken glass and debris. His right hand was thus cut by a piece of broken glass.⁴⁶

35.4. At the lobby, Petitioner Hao was also pulled down at the neck by a SAF policeman who yanked his ID. He was ordered to kneel on the floor with his hands behind his head. His radio unit was taken from him by the SAF policeman. Likewise Petitioner Calupitan was forced to kneel at gunpoint by another SAF policeman.⁴⁷

35.5. Petitioner Melanie Masecampo was prevented from using the restroom the entire time she was detained, despite her repeated urgent requests, which she started to make while they were detained at the Manila Peninsula lobby. She was forced to relieve herself outside the bus in Camp Bagong Diwa, Bicutan, in view of the other detained journalists and PNP officers.⁴⁸

⁴⁵ See Annex “D”, par. 7.

⁴⁶ See Annex “H”, par. 9.

⁴⁷ See Annex “F”, par. 9.

⁴⁸ See Annex “C”, par. 13; Annex “H”, par. 13.

35.6. The reason given by the PNP officers for Petitioners' arrests ("for processing and identification") was illogical and obviously sham, in light of certain facts. At the press conference on the night of 29 November 2007, PNP Spokesperson Samuel Pagdilao justified the arrests by saying that the journalists were not known to the arresting officers:

"Yung mga miyembro ng Magdalo ay nakihalubilo, nakihalo sa mga media, sa mga legitimate media...sa mga tao roon, at kinakailangan gawin ang isang mabilis na hakbangin para masiguro na nobody escapes, especially those responsible ay makatakas. Sapagkat noong panahon ng Magdalo sa Oakwood, ganun ang ginawa nila and some of them were able to escape the clutches of law enforcement. So we don't want that to happen again. Kaya po ginawa ito.

*Yun po namang media na naposasan ng ating mga ordinaryong pulis ay hindi kaagad na-identify. Hindi naman sila yung mga kamukha ni...yung mga sikat na media practitioners natin...sina Korina, sina Ted, yung merong recognizable na kaagad."*⁴⁹

Yet, all the Petitioners were prominently wearing appropriate ID's designating them as media men. And with respect to Pagdilao's statement that the journalists were unknown, it is a fact that the PNP arrested and attempted to handcuff even Petitioner Drilon, a very prominent "celebrity journalist". She is even personally known to Respondent Dolina,⁵⁰ the officer who tried to handcuff her.

35.7. Additionally, and as already mentioned, Respondent Puno explained that the PNP wanted to verify not just the journalists' identities but also that, indeed, their organization

⁴⁹ See DVD at Chapter 15, Annex "M".

⁵⁰ See par. 10 of Annex "A".

assigned them to cover the event. If this were true, this could have been done right at the Manila Peninsula. Ms. Rosario Villa, the head of Newsgathering of ABS-CBN, was present at the entrance of the Manila Peninsula and actually offered to the PNP to identify the Petitioners there and then so that they could be immediately released.⁵¹ Regretfully, Ms. Villa's efforts were in vain, as the police just went ahead and brought Petitioners to Bicutan.

35.8. The bus carrying eight of the Petitioners⁵², upon reaching Camp Bagong Diwa, went past the well-lit covered court where the processing was taking place⁵³ and brought the journalists to the dark and intimidating Maximum Security Detention Facility inside the camp. This was done, despite the presence of PNP officers inside the bus and patrol car escorts. The bus remained there for around forty (40) minutes before the PNP escorts brought them to the correct processing area. This caused great fear and apprehension to the journalists who did not know what was going to happen next.⁵⁴

35.9. In the processing area, Petitioners were simply asked to show their ID's to a police officer, and they were released at

⁵¹ See Annex "L", par. 7. See also DVD at Chapter 16, Annex "M". Ms. Rosario Villa is the lady in black sweater pleading with the PNP officer to identify the ABS CBN reporters and crew.

⁵² Rupert Ambil, Mark Cadampog, Norbert Calupitan, Emil Hao, Alexis Acuin, Noel Alamar, Mayjay Cabaliy, and Melanie Masecampo.

⁵³ See Annex "A", par. 13, in which Petitioner Drilon stated that while in the covered court area, she saw the bus carrying the eight Petitioners drive past the processing areas. She even brought this to the attention of Respondent Barias and asked him why the bus did not stop at the processing area and where they would be taken.

⁵⁴ See Annex "B", par. 13; Annex "C", par. 14; Annex "D", par. 15, Annex "E", par. 13; Annex "F", par. 13; Annex "K", par. 12.

around 10:00 p.m.⁵⁵ This cursory “processing and identification” could have been done on site at the Manila Peninsula, without having to arrest, handcuff, and detain Petitioners. Indeed, in the case of Petitioners Hao, Acuin, and Calupitan, they had been asked for identification twice previously while they were still at the Manila Peninsula. Petitioner Ambil was asked thrice. On the last occasion which took place right outside the hotel’s lobby, the PNP officers had already asked said Petitioners to write down their names, address, company and position. This was the same procedure they were later subjected to at Camp Bagong Diwa. The Petitioners’ immediate release after a mere presentation of ID’s underscores the malice and bad faith surrounding the arrests. It was evident that, the arrests were undertaken not just to “identify and process” but to harass and intimidate the journalists.

B. The Threats and their Chilling Effect

36. The malice and bad faith underlying the arrests were all the more highlighted by the subsequent, unfounded threat from Respondent Razon that journalists who legally vindicate their rights will face charges as well, and by Respondent Puno’s statement that arrests and handcuffings of journalists will be carried out in similar future situations. These are unmistakably acts of pure harassment and a continuing suppression of and threat to the Constitutional Rights to Free Speech, to Free Press, and to Information involved. They raise the specter of retaliation against Petitioners should they decide to vindicate

⁵⁵ See Annex “A”, par. 13; Annex “B”, par. 14; Annex “C”, par. 15; Annex “D”, par. 17; Annex “E”, par. 14; Annex “F”, par. 15; Annex “G”, par. 15; Annex “H”, par. 14; Annex “I”, par. 14; Annex “J”, par. 13; Annex “K”, par. 13.

their violated rights. Respondents are impairing the Liberty and Security of Petitioners, and are eroding Free Speech, Free Press, and the Right to Information as well in the process. These threats from Respondents further constitute a gross abuse of the judicial system, for the menace of unfounded prosecution is being used to stifle the protection of Constitutional Rights.

37. Undeniably, the consequences of violating the Rights to Liberty and Security of journalists, such as Petitioners, especially in the course of the performance of their professional duties to bring the news to the public, are far-reaching and negatively affect the rights to Free Speech, press, and information. The chilling effect on journalists arising from their illegal arrests, threats, and harassment cannot be underestimated.

38. In fact, both the domestic and the international communities of journalists immediately reacted against the statements of Razon and Puno. The general sentiment among journalists was that the illegal arrests on 29 November 2007 and the subsequent statements given by Respondents Razon and Puno constituted prior restraint and had a chilling effect on the rights of Free Speech, Free Press and information.⁵⁶

39. This chilling effect was intensified by the issuance on 11 January 2008 by Department of Justice (DOJ) Secretary Raul Gonzalez of a Media Advisory to news organizations warning their personnel that they may incur criminal liabilities if they disobey orders from authorities during “emergencies”. Like Respondents Razon’s and Puno’s warnings,

⁵⁶ See Annex “N”.

this so-called Media Advisory has been similarly met with condemnation⁵⁷ by the community of media practitioners as this again is a threat not only to the legitimate exercise of their profession but also to the protected Freedoms of Speech, Press, and the Right to Information. The timing of this Media Advisory is calculated (issued just over a month after the Manila Peninsula Stand-off) and its use of the term “emergencies” plainly refers to situations similar to the Manila Peninsula Stand-off. In addition, the Media Advisory unduly expands the coverage of Article 151 of the Revised Penal Code to all “emergencies”, as the term is left undefined and therefore subject to interpretations by persons in authority to conveniently justify their actions against journalists even if they are already violating Constitutional Rights.

40. Allowing similar conduct from Respondents in future breaking news events and situations would intimidate journalists and hamper the effective exercise of their duties, which are crucial in upholding Freedom of Speech and of the Press, and of the Right to Information. These are the essential precepts of our democracy. When these liberties are threatened, subjected to what can even be construed as prior restraint, or placed at the mercy of despotic and arbitrary actions, it is our nation’s very democracy that is put on the line.

V.A

Grounds for Issuing a Writ of Prohibition, as Additional or Alternative Basis for Granting this Petition

41. All the foregoing are repleaded by reference.

⁵⁷ See Annex “O”.

42. The writ of prohibition is also available to address situations, which do not involve the exercise of judicial or quasi-judicial functions. Eminent remedial law authority summarizes the rule thus:

“Action of prohibition; its basis. - While, under the common law, prohibition as an extraordinary legal writ will not issue to restrain or control the performance of other than judicial or *quasi judicial* functions, in this jurisdiction it may issue to a inferior tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, which are without or in excess of the jurisdiction of such tribunal, corporation, board or person. Accordingly, 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. Thus, prohibition would lie against the Director of Posts should he attempt to do an act that is against the Constitution, or against the Commissioner of Civil Service should he attempt to conduct an investigation that is violative of the Constitution, or against the City of Manila if it is attempting to enforce an ordinance that is null and void, or against a sheriff who is attempting to execute a judgment before it becomes final.”⁵⁸

43. As already narrated above, the arrests of Petitioners were illegal, and Respondents’ threats of still possibly arresting and prosecuting Petitioners violate the latter’s Constitutional Rights to Liberty, of Free Speech and of the Press. With Respondents’ ominous warnings, journalists may not write and speak and cover the news as freely as they should, for fear of detention and prosecution for crimes which may be ascribed to them by authorities who may justify their acts as necessary because of some “national emergency”. As was ruled in *David v. Arroyo*,⁵⁹ “(i)t is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do

⁵⁸ Moran Vol. 3, 1997 ed., pp. 239-240, citing *Aglipay v. Ruiz*, 64 Phil. 201; *Planas v. Gil*, 67 Phil. 62; *Rodriguez v. Manila*, 46 Phil. 171; *Blossom & Co. v. Manila Gas Corp.*, 47 Phil. 670.

⁵⁹ G.R.No. 141709, 3 May 2006.

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”.

PRAYER

WHEREFORE, it is respectfully prayed that a Writ of *Amparo* and/or a Writ of Prohibition be issued:

A. Declaring illegal Respondents’ arrest of Petitioners after the Manila Peninsula Stand-off on 29 November 2007; and

B. Accordingly, this Honorable Court issue a permanent protective order enjoining Respondents from:

1. Charging and prosecuting Petitioners in relation to their arrests on 29 November 2007; and

2. Effecting, and making threats of, future warrantless arrests and acts of harassment of Petitioners and other journalists, in the course or in consequence of the legal performance of their work, such as in the live coverage of breaking news events similar to the Manila Peninsula Stand-off.

Other reliefs just and equitable under the premises are likewise prayed for.

Makati City, 20 January 2008.

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... Verification and Certification
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Explanation

Copies of the foregoing Petition were served by registered mail, instead of the preferred mode of personal service, due to the lack of messengerial manpower at the office of the undersigned counsel.

NICK EMMANUEL C. VILLALUZ

