

**REPUBLIC OF THE PHILIPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
BRANCH _____, MAKATI**

ELLEN T. TORDESILLAS, CHARMAINE DEOGRACIAS, ASHZEL HACHERO, JAMES KONSTANTIN GALVEZ, MELINDA QUINTOS DE JESUS, VERGEL O. SANTOS, YVONNE CHUA, BOOMA B. CRUZ, ED LINGAO, ROBY ALAMPAY, JESSICA SOHO, MARIA JUDEA PULIDO, MICHAEL FAJATIN, CONNIE SISON, RAWNNA CRISOSTOMO, J.P. SORIANO, GENA BALAORO, MICHELLE SEVA, LEILANI ALVIS, DANILO ARAO, LETICIA Z. BONIOL, ROWENA PARAAN, LOURDES SIMBULAN, IRIS C. GONZALES, MA. CRISTINA RODRIGUEZ, MARLON RAMOS, LEAH FLOR, MANOLITO C. GAYA, EREL A. CABATBAT, VINCENT CRISTOBAL, JESUS D. RAMOS, MICHAEL C. CARREON, ED DE GUZMAN, MA. AURORA FAJARDO, ANGEL AYALA, NILO BACULO, THE CENTER FOR MEDIA FREEDOM AND RESPONSIBILITY (CMFR), REPRESENTED BY ITS DEPUTY DIRECTOR, DEAN LUIS V. TEODORO, THE NATIONAL UNION OF JOURNALISTS OF THE PHILIPPINES (NUJP), REPRESENTED BY ITS CHAIRMAN JOSE TORRES JR., THE PHILIPPINE CENTER FOR INVESTIGATIVE JOURNALISM (PCIJ) REPRESENTED BY ITS COFOUNDER AND CHAIRPERSON OF THE BOARD OF EDITORS, MARIA LOURDES MANGAHAS, AND THE PHILIPPINE PRESS INSTITUTE (PPI) , REPRESENTED BY ITS EXECUTIVE DIRECTOR, JOSE PAVIA,

Plaintiffs,

CIVIL CASE NO.

-versus-

**For: Damages and
Injunction with prayer for
Preliminary Mandatory
Injunction and/or a
Temporary Restraining
Order**

HON. RONALDO PUNO, SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT, HON. RAUL GONZALEZ, SECRETARY OF JUSTICE, HON. GILBERTO C. TEODORO, SECRETARY OF NATIONAL DEFENSE, DIRECTOR GENERAL AVELINO RAZON, JR., CHIEF OF THE PHILIPPINE NATIONAL POLICE, DIRECTOR GEARY BARIAS, NATIONAL CAPITOL REGION POLICE OFFICE (NCRPO) CHIEF, CHIEF SUPERINTENDENT LUIZO TICMAN, CHIEF SUPERINTENDENT LEOCADIO SANTIAGO JR., PNP SPECIAL ACTION FORCE (SAF) DIRECTOR, SENIOR SUPERINTENDENT ASHER DOLINA, CHIEF, CRIMINAL INVESTIGATION AND DETECTION

GROUP-NATIONAL CAPITAL REGION OFFICE
(CIDG-NCRPO), MAJ. GEN. HERMOGENES
ESPERON, CHIEF OF STAFF, ARMED FORCES OF
THE PHILIPPINES,
Defendants.

COMPLAINT

The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.¹

- Mr. Justice Hughes

[T]he value of the Sword of Damocles is that it hangs – not that it drops. For every [person who tests] the limits of the statute, many more will choose the cautious path and not speak at all.

**- Mr. Justice Thurgood
Marshall²**

[T]he 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.... 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

¹ De Jonge v. Oregon, 299 U.S. 353, 365 (1937).

² Arnett v. Kennedy, 416 U.S. 134 (1974). (See also J.B.L. Reyes, cited in *Ilagan v. Ponce Enrile*, G.R. No. 70748, 139 SCRA 349 (1985))

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*.

- **Mme. Justice Sandoval-**

Gutierrez.³

Plaintiffs, by counsel, most respectfully state before this Honorable Court that:

PREFATORY STATEMENT

The liberty of the press to examine closely the conduct of public affairs is essential, so said Chief Justice Hughes in *Near v. Minnesota*, the first landmark case on prior restraint in American jurisprudence, because “the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press, especially in great cities.”⁴

“The fact that the liberty of the press may be abused by miscreant purveyors of scandal,” he stressed, “does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege.”⁵ Indeed, it has been said that “[a]ny prior restraint on expression comes.... with a ‘heavy presumption’ against its constitutional validity.”⁶

I. PARTIES

³ David et al., v. Macapagal-Arroyo, et al., G.R. No. 171409, May 3, 2006.

⁴ 283 U.S. 697, 716 (1931).

⁵ *Id.*

⁶ Carroll v. Princess Anne, 393 U.S. 175, 181 (1968).

A. Plaintiffs

1. The Plaintiffs in this case are:
 - (a) Ellen T. Tordesillas is of legal age, Filipino, and a columnist for the Malaya national newspaper.
 - (b) Charmaine Deogracias is of legal age, Filipino, and a Manila correspondent for the Japanese broadcast news agency NHK.
 - (c) Ashzel Hachero is of legal age, Filipino, and a reporter for the Malaya national newspaper.
 - (d) James Konstantin Galvez is of legal age, Filipino and a reporter for the Manila Times.
 - (e) Melinda Quintos De Jesus is of legal age, Filipino, journalist and Executive Director of the Center for Media Freedom and Responsibility (CMFR).
 - (f) Dean Luis V. Teodoro is of legal age, Filipino, journalist, professor of journalism at the University of the Philippines College of Mass Communication in Diliman, Quezon City and Deputy Director of the Center for Media Freedom and Responsibility (CMFR).
 - (g) Vergel O. Santos is of legal age, Filipino, and chairperson of the editorial board of the BusinessWorld newspaper.
 - (h) Yvonne T. Chua is of legal age, Filipino, journalist and professor of journalism at the University of the Philippines College of Mass Communication in Diliman, Quezon City.
 - (i) Booma B. Cruz is of legal age, Filipino, and a journalist.
 - (j) Ed Lingao is of legal age, Filipino and news director of television station ABC-5. He is joined by ABC-5 news staff who are all of legal age and Filipinos, namely, Manolito C. Gaya, Erel A. Cabatbat, Vincent Cristobal, Jesus D. Ramos, Michael C. Carreon, and Ed De Guzman.
 - (k) Roby Alampay is of legal age, Filipino, a journalist and Executive Director of the Bangkok-based South East Asian Press Alliance (SEAPA).
 - (l) Danilo Arao is of legal age, Filipino, a journalist and professor of journalism at the University of the Philippines College of Mass Communication in Diliman, Quezon City.
 - (m) Lourde Simbulan is of legal age, Filipino, journalist and a professor of journalism at the University of the Philippines College of Mass Communication in Diliman, Quezon City.

- (n) Leticia Z. Boniol is of legal age, Filipino and a desk editor of the Philippine Daily Inquirer.
- (o) Rowena C. Paraan is of legal age, Filipino and secretary general of the National Union of Journalists of the Philippines (NUJP).
- (p) Iris C. Gonzales is of legal age, Filipino and a reporter of the Philippine Star.
- (q) Maria Cristina V. Rodriguez is of legal age, Filipino and a freelance journalist.
- (r) Marlon Ramos is of legal age, Filipino and a reporter of the Philippine Daily Inquirer.
- (s) Jessica Soho, Maria Judea Pulido, Michael Fajatin, Connie Sison, Rawna Crisostomo, J.P. Soriano, Gena Balaoro, Michelle Seva and Leilani Alvis are all of legal age, Filipino and journalists working for television network GMA-7.
- (t) Leah Flor is of legal age, Filipino and a reporter of the Philippine Cable Television.
- (u) Ma. Aurora Reyes Fajardo, is of legal age, Filipino and a freelance journalist covering human rights and related issues.
- (v) Elizabeth Judith C. Panelo, is of legal age, Filipino and a reporter of the on-line news organization Bulatlat.com.
- (w) Angel Ayala is of legal age, Filipino and a member of the NUJP.
- (x) Nilo Baculo Sr. is of legal age, Filipino and a journalist based in Calapan City, Oriental Mindoro.
- (y) The Center for Media Freedom and Responsibility (CMFR) is a corporate media organization duly established under Philippine laws and an advocate of free and responsible media with address at 130 H.V. Dela Costa St., Salcedo Village, Makati City, and is represented in this suit by its Executive Director, Melinda Quintos De Jesus.
- (z) The Philippine Center for Investigative Journalism (PCIJ) is a corporate media organization duly established under Philippine laws and dedicated to producing investigative reports with impact on public policy and welfare, with address at 3rd Floor, Criselda Apartments, Scout De Guia, Quezon City, and is represented in this suit by its cofounder and Chairperson, Board of Editors, Maria Lourdes C. Mangahas.
- (aa) The National Union of Journalists of the Philippines (NUJP) is a national organization duly established under Philippine

laws to protect the common welfare of journalists in the Philippines, with address at 105-A Scout Castor Street, Baranggay Laging Handa, Quezon City and is represented in this suit by its Secretary General, Jose Torres, Jr.

2. All the Plaintiffs can be served with all the papers and processes relevant to this case through undersigned counsel, the Roque & Butuyan Law offices, with postal address at Unit 1904 Antel 2000 Corporate Center 121 Valero Street Salcedo Village, Makati City 1200.

B. Defendants

3. Defendant Hon. Ronaldo Puno is the incumbent Secretary of the Department of the Interior and Local Government (DILG), with address at A. Francisco Gold Condominium II, EDSA corner Mapagmahal St., Diliman, Quezon City, Philippines, 1100, where he may be served with summons and all papers and processes relevant to this case.
4. Defendant Hon. Raul Gonzalez is the incumbent Secretary of the Department of Justice, with address at Padre Faura St., Ermita, Manila, where he may be served with summons and all papers and processes relevant to this case.
5. Defendant Hon. Gilberto C. Teodoro, Jr. is the incumbent Secretary of National Defense, with address at Camp Aguinaldo, Quezon City, where he may be served with summons and all papers and processes relevant to this case.
6. Defendant Avelino Razon Jr. is the PNP Director General with office address at Camp Crame, Quezon City, Metro Manila, where he may be served with summons and all papers and processes relevant to this case.
7. Defendant Director Geary Barias, is chief of the PNP-National Capitol Region Police Office (NCRPO), with offices at Camp Bagong Diwa, Bicutan, Taguig, where he may be served with summons and all papers and processes relevant to this case.
8. Defendant Chief Superintendent Luizo Ticman is chief of the Southern Police District, with office address with at Fort Bonifacio, Makati City Camp Crame, Quezon City, Metro Manila where he may be served with summons and all papers and processes relevant to this case.
9. Defendant Chief Superintendent Leocadio Santiago Jr., is director of the PNP Special Action Force (SAF), with office

address at Camp Bagong Diwa, Bitucan, Taguig Metro Manila where he may be served with summons and all papers and processes relevant to this case.

10. Defendant Senior Superintendent Asher Dolina is head of the Criminal Investigation and Detection Group-National Capital Region Office (CIDG), with office address at Camp Crame, Quezon City, where he may be served with summons and all papers and processes relevant to this case.
11. Maj. Gen. Hermogenes Esperon is the incumbent Chief of Staff of the Armed Forces of the Philippines, with address at the GHQ, Camp Aguinaldo, Quezon City, where he may be served with summons and all papers and processes relevant to this case.

II. ALLEGATIONS COMMON TO THE PLAINTIFFS

12. On November 29, 2007, at around 10:00 a.m. Sen. Antonio Trillanes IV, Brigadier General Danilo Lim and other members and/or sympathizers of what is known as the Magdalo Group walked out of the Makati City Regional Trial Court where their rebellion cases are being heard, marched toward the nearby Manila Peninsula hotel, took over it and called for the ouster of Mrs. Gloria Macapagal-Arroyo as President of the Philippines.
13. Hundreds of journalists from various organizations both foreign and local, including many of the Plaintiffs in this case, rushed to the hotel to cover what has become known as the Manila Peninsula standoff.
14. At around 2 p.m. of the same day, police tried to serve an arrest warrant issued by Judge Oscar Pimentel of the Makati City Regional Trial Court to the Magdalos at the hotel but were rebuffed and the members of the press were ordered to leave the hotel. PNP-NCRPO Director Geary Barias subsequently announced that a police assault to arrest Sen. Trillanes, Gen. Lim and their supporters holed up at the hotel was forthcoming. He also issued an ultimatum for journalists to leave the hotel premises by three o'clock in the afternoon.
15. Many cleared the premises but scores of other chose to stay behind, including Plaintiffs Tordesillas, Deogracias, Hachero, Galvez.⁷

⁷ See their respective affidavits, attached as ANNEXES A, B, and C.

16. The planned assault took place at 3:58 p.m. and ended at 5:30 p.m. when Senator Antonio Trillanes IV and Brigadier General Danilo Lim surrendered to the arresting authorities so as not to endanger the lives of the civilians and journalists inside the hotel.
17. But those who stayed behind were taken into custody by police, many of them in handcuffs, following the arrest of the Magdalos and their alleged supporters. Police also seized equipment and video footage taken by television crew taken into custody by the police. Police officers – led by Director Geary Barias, Chief Supt. Leocadio Santiago Jr., Chief Supt. Luizo Ticman and Senior Supt. Asher Dolina – did not inform the members of the media of their Miranda rights, nor did they inform them of the offenses for which they were being arrested.
18. The official treatment of media in the police operation to retake the hotel is unprecedented since the dark days of martial rule. Officers ordered journalists to raise their arms in surrender, despite the fact that tear gas fumes SAF commandos had earlier deployed to flush out the Magdalos have yet to dissipate.
19. Later, officers would handcuff many of them, though a few of the journalists – including plaintiffs Tordesillas, Deogracias and Hachero – because of their vigorous resistance, escaped such a degrading treatment. Yet it was undeniable that the same officers treated the journalists as suspects in a crime, taking them into custody but without informing them what offense or crime they have committed and without providing them with a counsel of their own choice.
20. The arrest of members of the press and their subsequent detention were arbitrary and illegal having been made with grave abuse of discretion, on the part of PNP, the police officers being FULLY AWARE that there was NO PROBABLE CAUSE to believe they were committing or had committed an offense.
21. In addition, the arrested members of the press were not formally charged at all. This is clear indication that they were detained in bad faith by police officers, who knew fully well that they had no reason to believe that the arrested members of the media had committed, were committing or were about to commit an offense, much less did they have personal knowledge of such. The official treatment of media in the wake of the Manila Peninsula standoff was clearly meant to intimidate, cow and muzzle the media. Official acts and pronouncements before, during and after the standoff indicate an official policy that violates the most sacred of rights of citizens in a democratic society such as ours.

22. As shown by their public conduct and pronouncements, Sec. Ermita, Sec. Puno, Sec. Teodoro and Sec. Gonzalez, as well as Director Gen. Razon and Maj. Gen. Esperon were all complicit in the issuance of the orders to arrest and detain the journalists including Plaintiffs Tordesillas, Deogracias and Hachero without formally charging them of any offense or crime, and in violation of their rights.
23. In a meeting with the media at the Peninsula Manila Hotel on December 5, 2007 Sec. Puno said that “journalists who ignore police orders to leave a crime scene will be arrested and charged with obstruction of justice and willful disobedience to authority.”⁸
24. AFP Chief of Staff, Maj. Gen. Esperon also issued a veiled threat that the military would go along with the PNP in investigating journalists “who blocked the enforcement of law.”⁹ He was joined by Defense Sec. Teodoro, who likewise defended the arrest by police of journalists covering the police assault on the Manila Peninsula.¹⁰
25. On January 11, 2008 the Sec. Gonzalez issued an advisory addressed to the Chief Executive Officers (CEOs) of media networks and press organizations, written in all capital letters, which reads:

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.¹¹
26. Sec. Gonzalez would go as far as telling international media organizations who, in support of their Philippine

⁸ See *The Pen or the Sword? ABS-CBN news execs claw at gov't officials in dialogue*, available at http://services.inquirer.net/print/print.php?article_id=105154. A hard copy of the news article is attached as ANNEX D.

⁹ See *ABS-CBN plans to sue; PNP readies counter-suit*, available at http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=104158. A copy of the news article is attached as ANNEX E.

¹⁰ See *Mediamen tagged, arrested as siege suspects*, available at <http://www.abs-cbnnews.com/storypage.aspx?StoryId=100910>. A copy of the news article is attached as ANNEX F.

¹¹ See *DOJ: uncovered plot led to media restraint*, available at http://services.inquirer.net/print/print.php?article_id=111997. A copy of the news report is attached as ANNEX G.

counterparts, raised a cry of protest over this pronouncement, to go jump in the lake instead of “meddling with us.”¹²

27. The PNP chief, Director Gen. Razon, expressed support for Gonzalez’ statement, saying that members of the media could be charged with obstruction of justice for failing to heed police warnings.¹³ This is apparently part of an official policy being implemented by the PNP which another top official has menacingly called “the final option.”¹⁴
28. As if to affirm this policy of abuse, intimidation, repression and prior restraint directed at the media, Sec. Puno and Director Gen. Razon would subsequently cite for supposedly “exemplary acts” the police generals who implemented or carried out the police assault on the Manila Peninsula –Director Barias, Chief Supt. Ticman, and Chief Supt. Santiago.¹⁵
29. For this reason, Plaintiffs Teodoro, Santos, Chua, Cruz, Alampay, Paraan, Fajardo, Panelo, Ayaza and Baculo, as well as the CMFR, PCIJ and NUJP all share with Plaintiffs Tordesillas, Deogracias and Hachero a common cause of concern about the official public warnings, direct and implied threats and “reminders” of arrest, re-arrest and criminal prosecution of media persons whom officialdom apparently now deems to be combatants or active criminal participants in any news event.

III. DISCUSSION OF THE CAUSE OF ACTION

30. The warrantless and oppressive arrest of journalists who were only peacefully exercising their constitutional rights – clearly violates their right to a free press and project a “chilling effect” on such freedom protected by the fundamental law of the land. The U.S. Supreme Court declared for the first time as unconstitutional a chilling effect measure in the case of *Lamont v. Postmaster General*:

¹²See *Go jump in the lake, Gonzalez tells media*, available at http://services.inquirer.net/print/print.php?article_id=20080115-112400. A copy of the news report is attached as ANNEX H.

¹³See *PNP chief backs Gonzalez memo on media coverage*, available at http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=112256. A copy of the news report is attached as ANNEX I.

¹⁴See *PNP to use force to eject media from ‘crisis situation’*, available at http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=112655. A copy of the news report is attached as ANNEX J.

¹⁵ See *3 police generals awarded for ending Makati standoff*, available at http://newsinfo.inquirer.net/breakingnews/metro/view_article.php?article_id=107289.A copy of the news article is attached as ANNEX K.

[T]he protection of the Bill of Rights goes beyond the specific guarantees to protect from congressional abridgment those equally fundamental personal rights necessary to make the express guarantees fully meaningful. I think the right to receive publications is such a fundamental right. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers. (*Lamont v. Postmaster General*, 381 U.S. 301 (1965), Brennan, concurring)

31. As the American High Court stressed (and thus addressing those who say citizens must suffer minor infractions without complaint):

In any event, we cannot sustain an intrusion on First Amendment rights on the ground that the intrusion is only a minor one. As the Court said in *Boyd v. United States*, 116 U.S. 616:

It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. (emphasis supplied)

32. The acts complained of constitute prior restraint, as these acts prevented journalists from carrying out the duties of their profession to report on a matter of public interest. These illegal arrests and detention, including the devious manner by which they were carried out, followed by subsequent statements by Defendants, Sec. Puno, Sec. Teodoro, Sec. Gonzalez, Director Gen. Razon and Maj. Gen. Esperon constitute a chilling effect on the media covering coups and rebellions.
33. The Supreme Court has lashed out at such arrogant warnings as are the subject of this complaint for being “plain censorship,” calling such an official who tells citizens, under pain of punishment in case of breach, of what they may speak and when they may so speak as an “officious functionary of the repressive government.” The High Court has put its foot down on such official

arrogance, stressing thus: "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*."¹⁶

34. Under Art. 32 of the New Civil Code, violators of the constitutional right to a free press incur civil liability. Relevant provisions of the Art. 32 states thus:

Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

... (2) Freedom of speech;

(3) Freedom to write for the press or to maintain a periodical publication;

(4) Freedom from arbitrary or illegal detention;

....(6) The right against deprivation of property without due process of law;

35. Moreover, superior officers are responsible and incur liability not only for their own acts but also for the acts of their subordinates, according to the principle of *respondeat superior* as enunciated by the Supreme Court in the case of *Aberca v. Ver*.¹⁷ As held by the High Court in that case:

The law speaks of an officer or employee or person 'directly' or "indirectly" responsible for the violation of the constitutional rights and liberties of another. Thus, it is not the actor alone (i.e. the one directly responsible) who must answer for damages under Article 32; the person indirectly responsible has also to answer for the damages or injury caused to the aggrieved party.

....By this provision, the principle of accountability of public officials under the Constitution acquires added meaning and as assumes a larger dimension. No longer may a superior official relax his vigilance or abdicate his duty to supervise his subordinates, secure in the thought that he does not have to answer for the transgressions committed by the latter against the constitutionally protected rights and liberties of the citizen.¹⁸

Hence, herein Respondents who are superior officers are equally liable for the acts carried out by their subordinates that violated the rights and freedoms of the Plaintiffs.

¹⁶ David et al., v. Macapagal-Arroyo, et al., G.R. No. 171409, May 3, 2006.

¹⁷ G.R. No. L-69866 April 15, 1988

¹⁸ *Id.*

36. The arrests of members of the press and their subsequent detention were arbitrary and illegal, the requisites for warrantless arrests not being met, that is: (a) the members of the press did not commit, were not committing and were not about to commit an offense in their presence; (b) they had no probable cause based on personal knowledge of facts or circumstances that the members of the press have just committed an offense.

IV. PETITIONERS ARE ENTITLED TO THE ISSUANCE OF A WRIT OR PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER AGAINST DEFENDANTS DIRECTING THEM TO REFRAIN FROM MAKING THE THREATS - OR OTHERWISE IMPLEMENTING THE THREATS - TO ARREST ANY MEMBER OF THE MEDIA COVERING AN EVENT SIMILAR TO THE MANILA PENINSULA INCIDENT IN THE FUTURE, UNTIL SUCH TIME THAT THE ISSUES PRESENTED IN THIS INSTANT SUIT ARE RESOLVED BY THIS HONORABLE COURT.

37. Under Rule 58, an applicant for a Writ of Preliminary Injunction is entitled to such relief demanded, when it is established that (a) he is entitled to the relief demanded, wherein whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of act or acts, either for a limited period or perpetually; (b), the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c), a party, court or agency is doing, threatening, or is attempting to do, or is procuring is suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual
38. “[T]he value of the Sword of Damocles is that it hangs – not that it drops,” observed a noted American jurist. “For every [person who tests] the limits of the statute, many more will choose the cautious path and not speak at all.”¹⁹ Nothing could be truer now than the case of members of the media –including the individual Plaintiffs in this case – in the wake of the threats made by Respondent authorities.
39. Such threats have a “chilling effect” on the exercise of Petitioners’ rights, these being declarations with ambiguous legal reach that breaches the zone of

¹⁹ Thurgood Marshall, J., in *Arnett v. Kennedy*, 416 U.S. 134 (1974). (See also J.B.L. Reyes, cited in *Ilgan v. Ponce Enrile*, G.R. No. 70748, 139 SCRA 349 (1985))

protection accorded to the citizen by the Bill of Rights. To the extent that the law is vague, it might have an *in terrorem* effect and deter persons from engaging in protected activities. An unclear law, that is, a law that does not draw bright lines, might regulate, or appear to regulate, more than is necessary, and thus deter or chill persons from engaging in protected activities.²⁰

40. Plaintiff-organizations CMFR, PCIJ and NUJP likewise have a legitimate interest that suffers and stands to suffer in the face of official threats of arrest, inasmuch as theirs is a common concern for the rights and welfare of journalists. All three organizations are advocates of press freedom and the right of the public to information that concern them and that matter to them.
41. Plaintiffs De Jesus, Santos, Chua, Cruz, Alampay, Arao, Paraan, Fajardo, Panelo, Ayala and Baculo and all the other individual journalists herein, as practicing journalists and advocates of press freedom and the right to information of the public on matters that concern their interest, face the continuing threat of arrest and prosecution while in the exercise of their professional duty.
42. Herein Plaintiffs Tordesillas, Hachero and Deogracias have executed their respective Affidavits of Merit in support of this Complaint's prayer for a preliminary prohibitory injunction and/or a temporary restraining order.
43. For this reason, a preliminary mandatory injunction and/or a temporary restraining order is in order, if only to prevent any violation, or further violation, of Plaintiffs' rights and to preserve such rights while the case is being heard. As the primordial role of the right of free expression and a free press in a democratic society cannot be gainsaid, the matter is unquestionably of extreme urgency.
44. Plaintiffs suffered and will suffer grave injustice and irreparable injury and thus pray of this Honorable Court to issue *ex parte* a 20-day restraining order enjoining the Respondents from issuing such threats, warnings, directives, or otherwise enforcing such threats, warnings and directives, and further ask that within the same period, the Honorable Court conduct a summary hearing to determine whether the issuance of a preliminary mandatory injunction is called for, under the circumstances. *By reason of the nature of the instant complaint and the causes of action on which it is founded, Plaintiffs pray for exemption from the filing of a mandatory injunction bond.*

²⁰ JOHN E. NOWAK AND RONALD ROTUNDA, CONSTITUTIONAL LAW, 1071 (2000, 6th Ed.)

V. DAMAGES

45. Defendants' acts have caused the Plaintiffs actual damages amounting to at least Five hundred Thousand Pesos (Php 500,000.00) in the aggregate, which is only a rough approximation of the amount they are entitled to for the suppression of their constitutional rights.
46. Defendant's actions have also caused the Plaintiffs undue anxiety, embarrassment and sleepless nights and subjected them to public ridicule for which he should be liable to pay them moral damages equivalent to at least Five Million Pesos (Php 5,000,000.00) for all of them.
47. Defendants should also be made to pay Plaintiffs exemplary damages equivalent to a total of at least Four Million Five Hundred Thousand Pesos (Php4,500,000.00) so that such unconstitutional and malicious acts as Defendant has been guilty of will not be repeated by them or by others.

PRAYER

WHEREFORE, the premises considered, Petitioners respectfully pray that this Honorable Court:

- a) **DECLARE**, after trial on the merits, that Respondents are liable for violations of the Plaintiffs' constitutional rights under Art. 32 of the New Civil Code under the circumstances described above.
- b) **FIND** the Respondents, after trial on the merits, liable to pay the Plaintiffs in the aggregate (i) actual damages amounting to at least Five Hundred Thousand Pesos (Php 500,000.00); (ii) moral damages in the amount of Five Million Pesos (Php 5,000,000.00); (iii) and exemplary damages amounting to Four Million Five Hundred Thousand Pesos (Php 4,500,000.00);
- c) **ISSUE**, after trial on the merits, a Permanent Writ of Injunction enjoining Respondents and/or their agents from issuing threats of arrest or from implementing such threats, against Plaintiffs and/or other members of the media, who are

covering events similar to the Manila Pen standoff in the future.

- d) **ISSUE**, upon the filing of this complaint, Writ of Preliminary Prohibitory Injunction and/or a Temporary Restraining Order against the Defendants and/or their agents and other instrumentalities, restraining them from further issuing the aforementioned threats or from implementing the same until such time that the issues presented in this instant suit are resolved by this Honorable Court.

Other relief just and equitable is also prayed for.

Makati City, January 26, 2008.

By the Counsels for the Plaintiffs:

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Copy Furnished:

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EXPLANATION

Due to the shortage of messengerial services and lack of time this Manifestation is being served to the other parties by registered mail in accordance with Section 11, Rule 13 of the Revised Rules of Court.

ROMEL REGALADO BAGARES