REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
Manila

SPECIAL FIRST DIVISION

RONEO S. CLAMOR, LEONILO DOLORICON, OFELIA B. BALLETA, RAYMUNDO L. APUHIN, MARGIE M. OCASLA, REYNAN A. GABAN, MA. LUCRECIA QUINAWAYAN, ROY S. MONTES, MARIA CHRISTINA S. MACABENTA, EDGARDO GONZALES AND COMMUNITY MEDICINE DEVELOPMENT FOUNDATION (COMMED) REPRESENTED BY ITS SECRETARY DR. JULIE P. CAGUIAT,
Petitioners,

- versus -

G.R. No. 191003
Petition for Habeas Corpus

GEN. VICTOR S. IBRADO, AFP CHIEF OF STAFF; LT. GEN. DELFIN N. BANGIT, COMMANDING GENERAL, PHILIPPINE ARMY; BRIG. GEN. JORGE SEGOVIA, CHIEF OF THE 2ND INFANTRY DIVISION, PHILIPPINE ARMY; COL. AURELIO BALADAD, COMMANDER OF THE 202ND INFANTRY BRIGADE, PHILIPPINE ARMY; PHILIPPINE NATIONAL POLICE DIRECTOR GENERAL JESUS A. VERZOSA; AND P/SUPT. MARION BALONGLONG, RIZAL PHILIPPINE NATIONAL POLICE,
Respondents.

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MEMORANDUM

PETITIONERS, by counsel, to the Honorable Court, most respectfully state: That –

PREFATORY STATEMENT

A product of the martial law regime, the notorious **Ilagan v. Enrile** doctrine which declares that a writ of habeas corpus is no longer available after an information is filed against the person detained and a warrant of arrest or an order of commitment is issued by the court where the information has been filed, was sought to be re-examined in **Umil v. Ramos**.[1] The High Court, while finding no compelling reason to abandon the said doctrine, ruled that:

> x x x The answer and better practice would be, not to limit the function of the habeas corpus to a mere inquiry as to whether or not the court which issued the process, judgment or order of commitment or before whom the detained person is charged, had jurisdiction or not to issue the process, judgment or order or to take cognizance of the case, but rather, as the Court itself states in *Morales, Jr. vs. Enrile*, **"*in all petitions* for habeas corpus the court must inquire into every phase and aspect of petitioner's detention – from the moment petitioner *was taken into custody up to the moment the court passes upon the merits of the petition*;" and "*only after such a scrutiny can the court satisfy itself that the due process clause of our Constitution has in fact been satisfied*."** This is exactly what the Court has done in the petitions at bar. This is what should henceforth be done in all future cases of habeas corpus. In short, all cases involving deprivation of individual liberty should be promptly brought to the courts for their immediate scrutiny and disposition.

The same ruling was reiterated in the appealed **Umil** case [2], thus:

> x x x **What is important is that every arrest without warrant be tested as to its legality via habeas corpus proceedings. This Court will promptly look into -- and all other appropriate courts are enjoined to do the same -- the legality of the arrest without warrant so that if the conditions under Sec. 5 of Rule 113, Rules of Court, as elucidated in this Resolution, are not met, then the detainee shall forthwith be ordered released** x x x.

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[1] 187 SCRA 311 (1990)
[2] 202 SCRA 251 (1991)

It is herein prayed that the Honorable Court scrutinize and inquire into every phase and aspect of the 43 health workers' detention – from the moment they were taken into custody, and promptly look into the legality of the arrest without warrant so that if the conditions prescribed by the rules and the Constitution are not met, ORDER their IMMEDIATE RELEASE.

STATEMENT OF FACTS [3]

Illegal search and planting of evidence

1. On February 5, 2010, an Application for Search Warrant [4] was filed before Presiding Judge Cesar A. Mangrobang of Branch 22, Regional Trial Court, Imus, Cavite, by respondent P/Supt. Marion Balonglong, Commanding Officer of the Rizal Philippine National Police, based on the following alleged reasons:

X x x

That, he has been informed and verified that MARIO CONDES of Brgy. Maybangcal, Morong, Rizal (please see attached sketch) is concealing, custody and control the following items to wit:

a. M16 Riffle *c. Caliber 45 Pistol*
b. Caliber 9mm Pistol *d. 12 Gauge Shotgun*

That the undersigned has personally verified the report and found it to be a fact and has therefore reason to believe that a Search Warrant be issued to enable him or any agent of the law to take possession of and bring to this Honorable Court all the above described items.

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[3] The facts are as narrated in the Individual Sinumpaang Salaysay of 40 doctors and medical workers, copies of which are hereto attached as **ANNEXES "B" to "NN".** Counsels tried to secure the signature of all the health workers who executed a written statement. However, not everybody was able to sign their statement due to time constraints, considering the distance of their place of detention to the office of the undersigned counsels. Counsels will furnish the Honorable Court signed copies of the remaining unsigned affidavits.

[4] Attached herein as **ANNEX "A-1".**

> *That the undersigned is applying the search warrant before this Honorable Court because the fact that the subject person to be searched is a well known individual in their community, an untouchable person and execution of Search Warrant is highly improbable because he is known to police officers in their community.*
>
> *X x x x*

2. In support of the application for search warrant, respondent P/Supt. Marion Balonglong attached the statement of a certain Ricardo Matias, a resident of Brgy. Maybangcal, Morong, Rizal, who allegedly reported that "one MARIO CONDES also a resident of aforementioned place is in the habit of brandishing firearms and would at times poke said firearms at who ever passes near his house." [5]

3. In his determination of probable cause for the issuance of a search warrant, Judge Mangrobang made routinary and pro forma examination of the applicant and the witnesses. Thus, in the alleged deposition of P/Supt. Marion D. Balonglong, the following questions were asked:

> *X x x x*
>
> Q. *What is your basis applying for a search warrant against MARIO CONDES of Brgy. Maybangcal, Morong, Rizal?*
>
> A. *This is in line with PNP's campaign against LOOSE FIREARMS aimed at recovering unlicensed firearms and to charge the violators before the court of law*
>
> Q. *How did you know that the subject is in possession of unlicensed firearms?*
>
> *The incident was brought to our attention by Mario Condes neighbor of subject person February 3, 2010 and was duly verified through surveillance and casing operation conducted by PO1 Arnel Tarasona.*
>
> Q. *When did he actually conduct the surveillance?*
>
> A. *On the morning of February 4, 2010.*

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[5] See Sworn Affidavit of PO1 Arnel Tarasona attached in the Return of the Search Warrant as **ANNEX "A-3"**

Q. *What was the result of the surveillance?*

A. *He confirmed the veracity of the information that indeed, MARIO CONDES has in his possession of loose firearms and ammunition and it was divulged to them that subject has two or more firearms that he uses to intimidate residents of said place.*

Q. *How were you able to confirm the veracity of the information?*

A. *PO1 Arnel Tarasona made discreet background investigation on the subject and it was divulged by neighbors that subject is the habit of showing off his firearms and intimidate people passing by near his house.*

X x x

4. Similarly, Judge Mangrobang propounded the following routinary and pro forma questions to PO1 Arnel Tarasona, [6] to wit:

X x x x

Q. *What did you do when you received information about MARIO CONDES of Brgy. Maybangcal, Morong, Rizal?*

A. *We immediately relayed the information to our Commanding Officer PSUPT MARION D. BALONGLONG.*

Q. *I have here an affidavit stating that you conducted discreet investigation on the veracity of the report you received. When did you actually conduct the investigation?*

A. *We conducted the discreet investigation in the morning of February 5, 2010.*

Q. *What is the result of your investigation?*

A. *Your Honor, We were able to confirm the report from the neighbors of MARIO CONDES, that subject person was seen by neighbors brandishing firearms of unknown caliber, we were also able to confirm that said person likes to poke his firearms at people passing by his house at Brgy. Maybangcal, Morong, Rizal.*

X x x

5. Likewise, in examining applicant's witness Ricardo Matias,[7] Judge Mangrobang asked the following pro forma questions:

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[6] See Sworn Affidavit of PO1 Arnel Tarasona attached in the Return of the Search Warrant as **ANNEX "A-6"**

[7] See Deposition of Ricardo Matias attached in the Return of the Search Warrant as **ANNEX "A-7"**

X x x x

Q. When did you witness MARIO CONDES brandishing his firearm?

A. Your Honor, it was on or about 5:00 o'clock in the afternoon of January 3, 2010, while I was walking toward my house, I saw Mario Condes alight from his vehicle and carrying a baby M16, when he saw me watching him, he confronted me saying "ANO PROBLEMA MO?"

Q. What did you do after you were advised to report the matter?

A. Your Honor, I went to Camp Gen. Geronimo, Taytay, Rizal and informed Police Superintendent MARION D. BALONGLONG COMMANDING OFFICER OF RIZAL PROVINCIAL PUBLIC SAFETY MANAGEMENT COMPANY and asked for their help.

Q. Cab you describe the person you are referring to?

A. MARIO CONDES is about 40 to 45 yrs old, medium height, fair complexion.

Q. Do you attest to the truth and veracity of what you have stated here?

A. Yes, I do you Honor.

X x x

6. Interestingly, Judge Mangrobang simply asked the applicant's witness Ricardo Matias to describe Mario Condes but he did not inquire on the exact address of Mario Condes; he failed to clarify the place to be searched with sufficient particularity. This is despite the statement of respondent P/Supt. Marion D. Balonglong that "PO1 Arnel Tarasona made discreet background investigation on the subject and it was divulged by neighbors that subject has the habit of showing off his firearms and intimidate people passing by near his house."

7. On the same day, i.e. February 5, 2010, Judge Cesar Mangrobang issued Search Warrant No. 1565-10, which provides as follows:

X x x x

SEARCH WARRANT

THIS SEARCH WARRANT IS VALID ONLY UNTIL 14 FEBRUARY 2010

TO ANY PEACE OFFICER:

G R E E T I N G S:

It appearing to the satisfaction of the undersigned after examining under oath PSUPT. MARION D. BALONGLONG and his witness PO1 ARNEL TARASONA that there is a probable cause to believed (sic) that Violation of RA 8294 (Illegal Possession of Firearms and Ammunition) has been committed and that there are good sufficient reason to believed (sic) that ***MARIO CONDES*** *has his possession or control at* ***Brgy. Maybangcal, Morong, Rizal*** *the following described properties to be seized to wit:*

a. M16 Rifle
b. Caliber 9mm Pistol
c. 12 Gauge Shotgun
d. Caliber 45 Pistol

You are hereby commanded to make an immediate search at any time in the day and night of the premises above described and forthwith seized and take possession of the above described properties and bring said properties to the undersigned to be dealt as the law directs.

WITNESS IN MY HAND this 5th day of February, 2010 at Imus, Cavite, Philippines.

(Sgd.)
CESAR A. MANGROBANG
JUDGE"

(Emphasis supplied)

A copy of said search warrant is attached herein as **Annex "A".**

8. On February 6, 2010, at around 6:00 a.m., around 300 heavily-armed soldiers and policemen headed by respondent Col. Aurelio Baladad, commander of the 202nd Infantry Brigade, and respondent P/Supt. Marion Balonglong unlawfully entered and searched the farmhouse owned by Dr. Melecia Velmonte, a renowned and respected infectious disease specialist in the medical profession, located at 266 Dela Paz St., Brgy. Maybangcal, Morong, Rizal.

9. During that time 43 medical doctors, nurses, midwives and community health workers from various organizations and provinces in Luzon were renting the premises for a training entitled *Community First Responders Health Training* for the period February 1-7, 2010. The health and medical training was sponsored by the Council of Health Development (CHD) and Community Medicine Development Foundation (COMMED), both are non-government organizations that aim, among others, to render medical and health services to poor communities by providing trainings and seminars to community health workers on how to address basic medical problems or emergency situations.

10. The military and police brought during the illegal search eight (8) 6 x 6 military trucks, two (2) armored personnel carriers, one (1) ambulance, one (1) KIA Pride vehicle, and an undetermined number of PNP vehicles. The plate numbers of all said military and police trucks and vehicles had been purposely covered by materials to avoid identification. They also brought with them two K9 units.

11. The military and police entered the premises without permission, and without informing Dr. Velmonte of their purpose and showing her a search warrant.

12. The military and police simultaneously barged into the two houses where the 43 participants of the seminar were occupying; Dr. Velmonte was staying in one of the houses together with the female participants. The military and police also went to the kitchen and the conference room.

13. When they raided the houses, some of the petitioners were still asleep; some were in the bathroom doing their daily rituals; others were having breakfast or getting ready for breakfast while the rest were doing some physical exercises.

14. The 43 doctors, nurses and medical workers were all herded in one corner and then ordered at gun point to line-up and go out of the houses, the kitchen and conference room where they were at the time of the raid. Thereafter, they were directed to proceed to the drive way. The participants asked for the reasons why they were being held, but no one from the military and police raiding team explained to them.

15. While the participants were all at the drive-way, the military and police went inside the two houses, the kitchen and the conference room and conducted the illegal search. Dr. Velmonte vigorously protested against the illegal search and demanded from the military and police to produce a search warrant. But her protestations fell on deaf ears. Dr. Velmonte or any member of her family was not also allowed to witness the search. Instead, Dr. Velmonte was ordered together with her helper to join the participants at the drive way.

16. No one from the military and police asked or looked for Mario Condes. Before the illegal search, some of the participants saw the military and police entered the houses with knapsacks full of load. When they went out

after the illegal search, some of the participants observed that the military were already carrying plastic bags, and the knapsacks were no longer loaded. They were surprised when the military announced that they found grenades, explosives and firearms in the houses and premises of the compound.

17. Upon the intervention of Dr. Velmonte's son, Jose Manuel, a search warrant was presented by respondent Col. Aurelio Baladad. But it was only after they have made the illegal search that Col. Baladad eventually showed to Jose Manuel the Search Warrant apparently procured from RTC Judge Cesar Mangrobang of Branch 22, Imus, Cavite.

18. Upon examination of said search warrant, Dr. Velmonte and her son protested to respondent Col. Baladad the illegality and unconstitutionality of the same due to the following matters:

    a. The search warrant is directed against a person named MARIO CONDES, who is not a resident of the farmhouse nor known to and heard of by Dr. Velmonte and her son and the participants of the training;

    b. The search warrant did not describe with particularity the place to be searched, as it only indicated therein the address "Brgy. Maybangcal, Morong, Rizal" where so many houses are located; and

c. The search warrant did not state that the house to be searched is the farmhouse of Dr. Velmonte located at 266 Dela Paz St., Brgy. Maybangkal, Morong, Rizal.

19. Verily, the search warrant issued by Judge Cesar A. Mangrobang is a blatant disregard and violation of Section 2, Article III of the 1987 Constitution.

20. The protestations of the Velmontes, however, fell on deaf ears as the military and police continued the illegal search in every inch of the whole premises without the presence of Dr. Velmonte and other lawful occupants thereof as the latter had all been forcibly confined in one corner of the premises.

21. After the illegal search, Dr. Velmonte was told by the military and police about their *ridiculous* and *absurd* claim that grenades and landmine were allegedly recovered from one of the beds within the premises. Dr. Velmonte vehemently denied that there were grenades and landmines in any of the rooms or in any place within the compound. The same were definitely and without an iota of doubt "planted" by the military and police when they illegally searched the premises without any lawful occupant thereof to stand as witness during the search.

22. Despite their objections, the forty-three (43) men and women found within the premises were hand tied, blindfolded and forced to line up.

23. It has become apparent then that the military and police had no real intention to search and apprehend a certain MARIO CONDES for illegal possession of firearms and ammunition. Col. Baladad made the *ridiculous* and *absurd* claim that the forty-three (43) men and women of the medical profession are suspected communist rebels.

24. The glaring truth is that their real intention – as can be gathered from the foregoing circumstances – is to link the 43 doctors and medical workers who are perceived by the military raiding team as belonging to progressive organizations, to the CPP/NPA, harass and threaten them, illegally search the farmhouse, plant pieces of evidence and illegally arrest them, using a patently constitutionally defective search warrant in order for the raid or search to have a semblance or appearance of legality.

The Illegal and unlawful arrests

25. At around 8:00 a.m., the forty-three (43) men and women from the medical profession were forcibly taken and removed from the farmhouse by the military and police *without* informing them of the reasons for their arrests. No warrants of arrests were shown to them.

26. The 43 participants strongly objected their illegal arrests since they are not committing and have not committed any crime to justify their arrest. They

insisted on exercising their right to counsel. But the military and police raiding team did not heed their demand to allow them to call their lawyers. Instead they were blindfolded, handcuffed and forcibly placed inside the military vehicles and hurriedly left the premises.

27. It should be stressed that not one among them is the certain MARIO CONDES named in the patently constitutionally defective search warrant.

28. Dr. Velmonte and her son protested the arrests made on the forty-three (43) individuals but the military and police ignored them too. Col. Baladad did not say anything about the destination of the forty-three (43) individuals when he was asked by Dr. Velmonte and her son. No one explained to them the reasons for the arrests; they tried to assert their constitutional right to counsel but the military and police simply disregarded them.

29. It was only later that Dr. Velmonte and her son overheard from a soldier that the forty-three (43) individuals were to be brought to Camp Capinpin in Tanay, Rizal.

Violation of Due Process and Constitutional Rights

30. Dr. Velmonte informed the CHD and COMMED of the illegal raid and arrests made by the military and police raiding team on the participants of the seminar. Atty. Ephraim Cortez – the lawyer engaged by petitioner COMMED and by the families of some of the subjects of this petition to confer with the forty-three (43) individuals – together with the subjects' colleagues Dr. Edelina Dela Paz and Dr. Geneve E. Rivera, petitioners

Roneo S. Clamor and Atty. Raymundo L. Apuhin, and human rights defender Olivia Bernardo went to Camp Capinpin in Tanay, Rizal on the afternoon of February 6, 2010, hours after the illegal search and arrests. However, they were *prevented* and *not* allowed entry by respondents inside Camp Capinpin.

31. At around mid-afternoon the following day, i.e., February 7, 2010, the families and relatives of the illegally arrested 43 doctors and medical workers trooped to Camp Capinpin together with their counsels Attys. Amylyn B. Sato and Francis Anthony Principe to confer and check the condition of the 43 illegally arrested doctors and medical workers. They stayed at the gates of Camp Capinpin until around 7:00 p.m., but they were refused entry and not allowed to confer with the 43 medical workers. When Attys. Sato and Principe insisted on knowing the status of the 43 medical workers, they were even mislead and were informed that inquest proceedings will be conducted on the 43 medical workers at the prosecutors' office in Tanay, Rizal. Attys. Sato and Principe together with some of the relatives proceeded to the prosecutors' office in Tanay, Rizal only to find out that no inquest proceeding was scheduled on the said night.

32. During the time that the lawyers and relatives were prevented from seeing the 43 illegally arrested doctors and medical workers, the 43 were suffering from psychological and physical torture in the hands of the military inside Camp Capinpin. The ordeal that the doctors and medical workers

individually experienced in the hands of their military captors were narrated to the undersigned counsels when they were able to confer with them for the first time on February 11, 2010 or five (5) days from the time they were illegally arrested. Attached to this Memorandum are the individual statements issued by the doctors and medical workers, the due execution of which was stipulated by the Office of the Solicitor General. To summarize, the following are the specific violations committed against the 43 doctors and medical workers:

a. All the 43 doctors and medical workers were denied their right to counsel immediately after their arrest. They were allowed to see their lawyers only five (5) days after their illegal arrest;
b. They were placed in *incommunicado* status
c. They were subjected to prolonged and repeated interrogation while blindfolded and in handcuffs; they were still blindfolded when their fingerprints were taken;
d. They were deprived of sleep, interrogated individually at odd hours, made to listen to gun shots and the unnerving screams of the other detained persons.
e. They were deprived of visitation rights of families and relatives.
f. They were threatened and forced to admit membership in the New peoples Army;
g. They were threatened and convinced to cooperate with the military with a promise to help fix their cases or give rewards;

h. Jane Balleta and epileptic was deprived of her medicines; Glenda Murillo suffered internal bleeding leading to a miscarriage due to the early morning raid on 6 February 2010 and was refused medical attention;

i. They were subjected to psychological torture; the military threatened to harm their families if they refuse to cooperate; they were told that they will be executed if they refuse to cooperate; they were forced to admit membership in the NPA, otherwise they would be killed or members of their families will disappear;

j. Deprived of privacy; army officers take off their clothing and underwear every time they do their rituals or go to the comfort room;

k. Sexual harassment on Jane Balleta and Miann Oseo - soldiers took off their clothing during questioning; Mercy Castro - the soldiers express their desire to kiss her during interrogation

l. Physical torture on Ramon de la Cruz, the interrogators punch him near the liver area, tight handcuffs causing wounds on the wrists, knee blows to his legs, soldiers strike at his solar plexus, back, nape and shoulders; Dr. Alex Montes, suffered electrocution, punches on the chest; Lilibeth Donasco - was hit and punched in the head by a male soldier when she would not answer during interrogation; it caused the ringing of her ears and extreme dizziness, aggravated by the tightness of the blindfold; Eulogio Castillo prior to the taking of his fingerprints and photograph, firearms were aimed at his head and back

33. On the night of February 7, 2010, alleged inquest proceedings were conducted on the 43 doctors and medical workers by State Prosecutor Romeo B. Senson of the Department of Justice. Instead of inquiring into the circumstances of their arrest, prosecutor Senson simply made a roll call and head count of the doctors and medical workers; thereafter, he simply announced that they have all been subjected to inquest and that they will all be charged with illegal possession of firearms. They were not given a chance to inform the public prosecutor of the illegality of their arrest and of the ordeal they went through while in detention; they were not given a chance to manifest their demand to see and talk to their lawyers.

34. This is despite the fact that at the time the alleged inquest was being conducted, the lawyers of the 43 doctors and medical workers were at the gates of Camp Capinpin waiting to be allowed to confer with their clients.

35. Considering the illegal arrest and detention of the 43 doctors and medical workers and considering further that no charges were filed against them, their families and relatives filed the instant Petition on February 9, 2010.

36. In a Resolution dated February 8, 2010, State Prosecutor Romeo B. Senson recommended the filing of charges against 40 of the 43 doctors and medical workers with illegal possession of explosives with no bail recommended under P.D. 1866 and amended by R.A. No. 9516; and respondents Romeo de la Cruz, Reynaldo Macabenta and Del Oyo Overa for illegal possession of firearms under P.D. 1866.

37. On February 11, 2010 or 120 hours from the time of their illegal arrest and detention, *Informations* were filed against the 43 doctors and medical workers for illegal possession of explosives with no bail recommended under P.D. 1866 and amended by R.A. No. 9516; and illegal possession of firearms under P.D. 1866.

38. During the hearing of this case, both parties were required to submit their respective Memoranda.

39. Hence, this Memorandum.

ISSUES

40. The issues to be resolved by the Honorable Court are the following:

I. WHETHER OR NOT THE SEARCH CONDUCTED BY THE MILITARY AND POLICE RAIDING TEAM ON THE FARMHOUSE/COMPOUND OWNED BY DR. MELECIA VELMONTE LOCATED AT 266 DELA PAZ ST., BRGY. MAYBANGCAL, MORONG, RIZAL IS VALID.

II. WHETHER OR NOT THE WARRANTLESS ARRESTS MADE ON THE 43 DOCTORS AND MEDICAL WORKERS ON FEBRUARY 6, 2010 ARE VALID.

III. WHETHER OR NOT THE CONSTITUTIONAL RIGHT TO DUE PROCESS AND OTHER CONSTITUTIONAL RIGHTS OF THE 43 DOCTORS AND MEDICAL WORKERS HAVE BEEN VIOLATED DURING THE CONDUCT OF THE SEARCH, ARREST AND WHILE UNDER DETENTION..

IV. WHETHER OR NOT THE HONORABLE COURT MUST AND SHOULD INQUIRE INTO THE LEGALITY OF THE PETITIONERS' ARREST AND CONTINUED DETENTION TO ENSURE THAT DUE PROCESS CLAUSE OF THE CONSTITUTION HAS IN FACT BEEN SATISFIED.

ARGUMENTS AND DISCUSSION

I

The search warrant is invalid for failure to comply with the constitutional and statutory requirements.
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41. **Section 2, Article III of the Constitution** guarantees the fundamental right against unreasonable searches and seizures and lays down the basic conditions for the issuance of a search warrant, to wit:

> *"**Section 2.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and **no search warrant** or warrant of arrest **shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."**(Emphasis ours.)*

42. As early as the year 1946, the Supreme Court had already pronounced that '[T]he purpose of the constitutional provision against unlawful searches and seizures is to prevent violations of private security in person and property, and unlawful invasion of the sanctity of the home, by officers of the law acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted.[8]

[8] Alvero v. Dizon, 76 Phil. 637 (1946).

43. Consistent with the foregoing constitutional provision, Section 3 and 4, Rule 126 of the Rules of Court, detail the requisites for the issuance of a valid search warrant as follows:

> *"Sec. 3. Requisite for issuing search warrant. — A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized.*
>
> *Sec. 4. Examination of complainant; record. — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted."*

44. More simply stated, the requisites of a valid search warrant are: (1) probable cause is present; (2) such presence is determined personally by the judge; (3) the complainant and the witnesses he or she may produce are personally examined by the judge, in writing and under oath or affirmation; (4) the applicant and the witnesses testify on facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[9]

45. The search warrant issued by Judge Cesar A. Mangrobang of the Regional Trial Court of Imus, Cavite, Branch 22 is invalid for failure to comply with the foregoing constitutional and statutory requirements. Failure to strictly comply therewith constitutes grave abuse of discretion.[10]

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[9] **Paper Industries Corporation of the Philippines, et al. v. Judge Maximiano Asunsion, et al.,** G.R. No. 122092, May 19, 1999

[10] **Uy v. Bureau of Internal Revenue,** 344 SCRA 36 (2000), citing **Silva v. Presiding Judge,** RTC of Negros Oriental, Br. XXXIII, 203 SCRA 140 (1991) cited in the case of **Vallejo v. Court of Appeals, et al.,** G.R. No. 156413, April 14, 2004.

46. There is no probable for the issuance of the search warrant. ***The probable cause for a valid search warrant has been defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched.*** This probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay. ***In determining its existence, the examining magistrate must make a probing and exhaustive, not merely routine or pro forma examination of the applicant and the witnesses.*** Probable cause must be shown by the best evidence that could be obtained under the circumstances. On the part of the applicant and witnesses, the introduction of such evidence is necessary especially where the issue is the existence of a negative ingredient of the offense charged, *e.g.*, the absence of a license required by law. On the other hand, the judge must not simply rehash the contents of the affidavits but must make his own extensive inquiry on the existence of such license, as well as on whether the applicant and the witnesses have personal knowledge thereof.

47. Clearly, in this case, the records would show that Judge Cesar A. Mangrobang failed to discharge his duties before issuing the subject search warrant. The record is bereft of proof to show that indeed he conducted probing, exhaustive and extensive inquiry as to the matters relative to the application and issuance of the said search warrant.

48. If indeed an examination has been conducted, records will show, nonetheless, that he conducted only *pro forma* examination of the applicant as evidenced by the respective depositions PSI Marion D. Balonglong, PO1 Arnel Tarasona and Ricardo Matias. The questions propounded in the said depositions were in fact, not probing but were merely routinary.

49. The lack of said probing and extensive inquiry is bolstered by the fact that the search warrant had included Caliber 9mm Pistol, 12 Gauge Shotgun and Caliber 45 Pistol as among the items to be seized when in fact the said items were never mentioned by the applicant nor his witnesses in their respective depositions.

50. This only shows that the judge merely relied on the Application for Search Warrant without confirming the veracity thereof by conducting the requisite inquiry. Had the required inquiry been conducted, the judge would have known that the aforesaid items were included as a means of fishing expedition.

51. In ***Prudente v. Dayrit*** [11], the Honorable Supreme Court declared the search warrant issued as invalid due to the failure of the judge to examine the witness in the form of searching questions and answers

[11] G.R. No. 82870, December 14, 1989, 180 SCRA 69,

52. In ***Paper Industries Corporation of the Philippines (PICOP) v. Asuncion***,[12] ***the Supreme Court declared as void the search warrant issued by the trial court* in connection with the offense of illegal possession of firearms, ammunitions and explosives, *on the ground, inter alia, of failure to prove the requisite probable cause.*** The applicant and the witness presented for the issuance of the warrant were found to be without personal knowledge of the lack of license to possess firearms of the management of PICOP and its security agency. They likewise did not testify as to the absence of license and failed to attach to the application a no license certification from the Firearms and Explosives Office of the Philippine National Police. (Emphasis supplied)

53. Moreover, the said search warrant is likewise invalid as it did not describe with particularity the place to be searched and the persons or things to be seized, to wit:

    a. The search warrant is directed against a person named MARIO CONDES, who is not a resident of the farmhouse nor known to and heard of by Dr. Melecia Velmonte and her son and the participants of the training and neither is he a participant of the training conducted thereat;

    b. The search warrant did not describe with particularly the place to be searched, as it only indicated therein the address “Brgy. Maybangcal, Morong, Rizal” where so many houses, residential or commercial, are located; and

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[12] *Supra.*

c. The search warrant did not state that the house to be searched is the farmhouse of Dr. Melecia Velmonte located at 266 Dela Paz St., Brgy. Maybangcal, Morong, Rizal.

54. In the present case, the search warrant failed to describe the place to be searched with sufficient particularity. Hence, it is invalid. The said warrant only mentions the address to be searched as Brgy. Maybangcal, Morong, Rizal where so many houses of different owners are found. The constitutional requirement is a description which particularly points to a definitely ascertainable place, so as to exclude all others.[13] But, clearly, in this case, the said requirement of particularity is absent which renders the search warrant void.

55. The fact that the police and the military raiding teams knew of where the house is located did not justify the lack of particulars of the place to be searched. Otherwise, confusion would arise regarding the subject of the warrant — the place indicated in the warrant or the place identified by the police. Such conflict invites uncalled for mischief or abuse of discretion on the part of law enforces.[14]

56. Thus, in ***People v. Court of Appeals*,**[15] the Honorable Supreme Court ruled that the police had no authority to search the apartment behind the store, which was the place indicated in the warrant, even if they intended it

[13] People v Simbahon, G.R. No. 132371, April 9, 2003.
[14] *Id.* citing **Burgos Sr. v. Chief of Staff,** 218 Phil. 754 (1984).
[15] GR. No. 126379, June 26, 1998, pp. 7-8, per Narvasa, CJ.

to be the subject of their application. Indeed, the place to be searched cannot be changed, enlarged or amplified by the police, *viz*.:

> *. . . In the instant case, there is no ambiguity at all in the warrant. The ambiguity lies outside the instrument, arising from the absence of a meeting of the minds as to the place to be searched between the applicants for the warrant and the Judge issuing the same; and what was done was to substitute for the place that the Judge had written down in the warrant, the premises that the executing officers had in their mind. This should not have been done. It [was] neither fair nor licit to allow police officers to search a place different from that stated in the warrant on the claim that the place actually searched — although not that specified in the warrant — [was] exactly what they had in view when they applied for the warrant and had demarcated in the supporting evidence. What is material in determining the validity of a search is the place stated in the warrant itself, not what the applicants had in their thoughts, or had represented in the proofs they submitted to the court issuing the warrant. Indeed, following the officers' theory, in the context of the facts of this case, all four (4) apartment units at the rear of Abigail's Variety Store would have been fair game for a search.*
>
> *The place to be searched, as set out in the warrant, cannot be amplified or modified by the officers' own personal knowledge of the premises, or the evidence they adduced in support of their application for the warrant. Such a change is proscribed by the Constitution which requires inter alia the search warrant to particularly describe the place to be searched as well as the persons or things to be seized. It would concede to police officers the power of choosing the place to be searched, even if it not be that delineated in the warrant. It would open wide the door to abuse of the search process, and grant to officers executing a search warrant that discretion which the Constitution has precisely removed from them. The particularization of the description of the place to be searched may properly be done only by the Judge, and only in the warrant itself; it cannot be left to the discretion of the police officers conducting the search. (Emphasis supplied.)*

57. In view of the manifest objective of the constitutional safeguard against unreasonable search, the Constitution and the Rules limit the place to be searched only to those described in the warrant. Thus, the Honorable Supreme Court has held that this constitutional right [i]s the embodiment of a spiritual concept: the belief that to value the privacy of home and person and to afford its constitutional protection against the long reach of government is no less than to value human dignity, and that his privacy must not be disturbed except in case of overriding social need, and then only under stringent procedural safeguard. Additionally, ***the requisite of***

particularity is related to the probable cause requirement in that, at least under some circumstances, the lack of a more specific description will make it apparent that there has not been a sufficient showing to the magistrate that the described items are to be found in a particular place.[16]

58. Furthermore, the name MARIO CONDES as appearing in the search warrant is utterly false. The said name could have been maliciously propounded by the applicant and the witnesses to mislead the court which issued the search warrant due to the fact that MARIO CONDES is neither a resident of the house searched nor is he known by the actual owners and residents thereof. Additionally, he is not among the forty three (3) community health workers that were illegally arrested and detained in Camp Capinpin, Tanay, Rizal.

59. The search warrant was procured in the Regional Trial Court of Imus, Cavite which is outside of the territory of Morong, Rizal and no compelling reasons were presented that would warrant the application therefor and in issuance thereof by a court outside the territorial jurisdiction of Morong, Rizal. Therefore, the issuance of the said warrant is a violation of ***Section 2(a) and (b) of Rule 126 of the Rules of Court,*** to wit:

> "Sec. 2. *Court where application for search warrant shall be filed.* – An application for search warrant shall be filed with the following:

[16] **Paper Industries Corporation of the Philippines, et al. v. Judge Maximiano Asuncion, et al.,** supra citing **Uy Kheytin *v.* Villareal,** 42 Phil 886, September 21, 1920, **Villanueva *v.* Querubin,** 48 SCRA 345, 350, December 27, 1972, per Fernando, *CJ*; cited in **People v. Judge Estrada,** GR No. 124461, September 25, 1998, and LaFave*, Search and Seizure: A Treatise on the Fourth Amendment*, 2nd ed., Vol. 2, 4.5, p. 207. (Emphasis ours.)

> (a) Any ***court within whose territorial jurisdiction a crime was committed.***
>
> (b) ***For compelling reasons*** stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced." (Underscoring ours.)

60. Apparently, the aforecited provisions were violated when Judge Mangrobang issued the search warrant due to the fact that there was no compelling reasons presented why the application for the issuance of search warrant was made thereat and not in Morong, Rizal which has territorial jurisdiction over the place that was illegally searched.

The raiding team grossly violated the procedure in enforcing the search warrant.
--

61. The raiding team committed reprehensible acts in enforcing the search warrant. Among the irregularities are:

    a. The raiding team failed to perform the following before breaking into the premises:

        i. Properly identify themselves and showing necessary credentials including presentation of the Search Warrant;

        ii. Furnishing of Search Warrants and allowing the occupants of the place to scrutinize the same; and

iii. Giving ample time to the occupants to voluntarily allow the raiders entry into the place and to search the premises.

b. Dr. Velmonte's helper was held at gunpoint to open the gate for the raiding team.

c. The 43 participants of the training/seminar were herded out of their rooms and/or the building where they were confined for the duration of the raid.

d. The illegal search was conducted by the raiding team against the protests of Dr. Velmonte and her son in view of the fact that the search warrant is directed against a person not a resident of the farmhouse nor known to and heard of by Dr. Velmonte and the participants of the training. Worse, the same was done in their absence.

62. Their protestations fell on deaf ears as the military and the police continued the illegal search in every inch of the whole premises without the presence of Dr. Velmonte and/or other lawful occupants thereof as the latter had been forcibly confined in one corner of the premises. This is a violation of Section 8, Rule 126 of the Rules of Court, to wit:

> ***"Sec. 8.*** *Search of house, room, or premises to be made in presence of two witnesses. –* ***No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family*** *or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality." (Emphasis supplied)*

63. The government's drive against illegal possession of firearms and ammunitions deserve everybody's support. But it cannot be pursued by

ignoble means which are violative of constitutional rights. It is precisely when the government's purposes are beneficent that we should be most on our guard to protect these rights. As Justice Brandeis warned long ago, "the greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well meaning without understanding."[17]

II

The 43 Health Workers Were Unlawfully Arrested Without A Warrant In Blatant Violation Of Their Constitutional Right Against Warrantless Arrests And Unreasonable Searches And Seizures.
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64. Article III, Section 2 of the Constitution guarantees that:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

65. From the foregoing, it can be said that the State cannot simply intrude indiscriminately into the houses, papers, effects, and most importantly, on the person of an individual. The constitutional provision guarantees an impenetrable shield against unreasonable searches and seizures. As such, it protects the privacy and sanctity of the person himself against unlawful arrests and other forms of restraint.[18]

[17] **People v. Del Norte,** G.R. No. 149462, March 29, 2004, per Justice Reynato S. Puno (later to become Chief Justice)
[18] **People v. Bongalon**, G.R. No. 125025, January 23, 2002.

66. Therewithal, the right of a person to be secure against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. A statute, rule or situation which allows exceptions to the requirement of a warrant of arrest or search warrant must perforce be strictly construed and their application limited only to cases specifically provided or allowed by law. To do otherwise is an infringement upon personal liberty and would set back a right so basic and deserving of full protection and vindication yet often violated.[19]

67. Undisputed in this case is the fact that the 43 doctors, nurses and community health workers subject of this petition were arrested in the early morning of February 6, 2010 without the benefit of a warrant of arrest. The arresting team of soldiers and policemen numbering about 300 were heavily armed when they stormed the residence of Dr. Melecia Velmonte and they were not armed with a warrant of arrest.

68. In a vain attempt to justify the warrantless arrest of the 43 health workers, respondents claim that the said 43 were "caught in flagrante delicto" allegedly in possession of illegal firearms and explosives.[20] Such claim is inherently incredible and totally false.

69. Rule 113, Section 5 of the Revised Rules of Criminal Procedure provides the exceptions to the rule that a warrant must first be obtained before an arrest can be effected, to wit:

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19 Supra, citing **People v. Argawanon**, 215 SCRA 652.
20 Paragraph 4 of the Return of the Writ.

> Sec. 5. *Arrest without warrant; when lawful*. - 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 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.

70. The above-quoted rule provides three instances when warrantless arrest may be lawfully effected: (a) arrest of a suspect *in flagrante delicto*; (b) arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the author of a crime which had just been committed; (c) arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined while his case is pending.

71. In **People v. Hon. Perfecto Laguio, Jr.** (G.R. No. 128587, March 16, 2007), the Supreme Court explained that:

> For a warrantless arrest of an accused caught *in flagrante delicto* under paragraph (a) of Section 5 to be valid, two requisites must concur: (*1*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*2*) such overt act is done in the presence or within the view of the arresting officer.

72. The facts and circumstances surrounding the present case do not at all show that the 43 arrested had just committed, were actually committing, or were attempting to commit a crime.

    a. The 43 were attending a week-long *Community First Responders' Heath Training* organized by the Community Medicine Development Foundation (COMMED) and the Council for Health Development (CHD).

    b. It was about 6:15 in the morning of February 6, 2010 when the combined military and police teams forced their way into the compound of Dr. Melecia Velmonte. As it was early in the morning, some of the 43 participants in the stay-in training were still in bed, others were in the bathroom, and some others were having coffee, outside the house to do morning physical exercise, or otherwise preparing themselves for the sixth day of the training. These are all lawful activities.

    c. Moreover, the 43 did not manifest any suspicious behavior or conduct that would clearly indicate a criminal act.

    d. Therefore, they cannot be said to be committing a crime. Neither had they just committed or attempting to commit a crime.

73. Respondents' claim that 43 were seen in illegal possession of firearms or explosives at 6:15 in the morning of February 6, 2010 is ridiculously

specious, incredible and self-serving. It must be emphasized that immediately upon gaining entry into the property of Dr. Velmonte, the intruders, who are under the command of the respondents, held the 43 at gunpoint, herded them outside their quarters, blindfolded and handcuffed them, effectively shutting them out of the view of what the arresting team actually did inside the premises. The firearms and explosives alleged by the respondents to be in the possession of the 43 were intentionally planted.

74. The warrantless arrest of the 43 cannot be justified either under paragraph (b) of Section 5, Rule 113. Under this provision, two conditions must concur for a warrantless arrest to be valid: *first*, the offender has just committed an offense and, *second*, the arresting peace officer or private person has personal knowledge of facts indicating that the person to be arrested has committed it. It has been held that "'personal knowledge of facts' in arrests without a warrant must be based upon probable cause, which means an actual belief or reasonable grounds of suspicion."[21]

75. The following circumstances are insufficient to constitute probable cause for the warrantless arrest:

    a. Assuming without admitting the validity of the search warrant used by the arresting team, the same did not give a specific place to search. The search warrant merely stated "Brgy. Maybangcal, Morong, Rizal" without specifying the number of the house.

[21] **People v. Cubcubin, Jr.**, G.R. No. 136267, July 10, 2001.

b. The arresting team did not have the names or a physical description of each of the persons to be arrested.

c. They rounded up all the participants in the health training who had just risen in the early morning of February 6, 2010, still asleep, or getting ready for the day's training.

76. As the essential element of probable cause is wanting in this case, hence, the arrest of the 43 detainees without a warrant is unjustified and illegal.

77. Considering that the arrest without warrant made in this case was unlawful, the seizure of the alleged firearms/explosives was rendered illegal as well for being the proverbial "fruit of the poisonous tree." Consequently, such evidence obtained in violation of Section 2, Article III, shall be inadmissible for any purpose in any proceeding.[22]

78. In the landmark case of **Stonehill v. Diokno**[23], the Supreme Court observed that most jurisdictions have realized that the exclusionary rule is "the only practical means of enforcing the constitutional injunction" against unreasonable searches and seizures. Quoting Judge Learned Hand, the High Court explained that "only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will the wrong be repressed."

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[22] Section 3 (2), Article III of the Constitution.
[23] 20 SCRA 383

79. It has been oft-repeated that those who are supposed to enforce the law are not justified in disregarding the rights of the individual in the name of order. Order is too high a price for the loss of liberty. As Justice Holmes once said, "I think it is less evil that some criminals should escape than that the government should play an ignoble part." It is simply not allowed in free society to violate a law to enforce another, especially if the law violated is the Constitution itself.[24]

III

The 43 health workers' other Constitutional rights have been blatantly violated.
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80. The respondents herein are responsible for the malevolent manner of the conduct of the military and police operations on February 6, 2010 at 266 Dela Paz St., Brgy. Maybangcal, Morong, Rizal, at around 6:15 a.m..

81. To reiterate, the search of the premises therein; the unlawful arrest and detention *incommunicado* of 43 innocent civilians; the planting of spurious incriminating evidence against them; the denial of their right to counsel of their choice; prolonged tactical interrogation and the right against self-incrimination; physical and psychological torture and deprivation of visitation rights of relatives of the detained persons, to name a few of the myriad violations they have committed and continue to perpetrate.

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[24] **People v. Laguio, Jr.**, supra.

82. The military and police operatives blindfolded, handcuffed and took the 43 doctors, nurses and medical workers to Camp Capinpin, Tanay, Rizal for tactical interrogation and questioning. Thereafter, they were subjected to physical and psychological torture. They were deprived of sleep, interrogated individually at odd hours, made to listen to gun shots and the unnerving screams of the other detained persons.

83. The 43 doctors, nurses and medical workers were all blindfolded and handcuffed. They cannot even relieve themselves without the assistance of their captors. The women are particularly vulnerable. The soldiers are the ones to take off the clothes of the women detainees and their underwear whenever the latter have to relieve themselves.

84. Some of the men, such as Mr. Ramon de la Cruz, experienced getting physically beaten up during interrogation sessions. The soldiers would punch him repeatedly at his sides and at the back, where his liver is located. The interrogators would also strike at his solar plexus and they would slap his nape and his back hard. They likewise inflict knee blows on the sides of his legs, a torment which is excruciatingly painful. The handcuffs on Mr. Ramon de la Cruz are particularly tight, thus, causing wounds and lacerations on his wrists.

85. The psychological torture is no less severe upon the 43 detained doctors, nurses and medical workers. The interrogators threaten them with pain, incarceration, sexual abuse, isolation, death, and other corporeal

punishments not only of the detainees themselves but even of their relatives and loved ones.

86. On the other hand, the captors offer rewards, better treatment and the dismissal of the criminal cases to those detainees who would admit their membership in the New People's Army (NPA), surrender to the government and conform to the whims and directives of the military.

87. These depraved acts of torture that the military personnel inflicted upon the 43 doctors, nurses and medical workers are crimes under Article 235 of the Revised Penal Code and other pertinent laws, such as Republic Act 9745, the Anti-Torture Act of 1990, as well as the Convention Against Torture (CAT), of which the Philippines is a signatory.

88. The psychological and physical torture also violate the detained 43 health workers' constitutional right against self-incrimination since the coercion and punishment inflicted upon them are intended to secure their admission of their membership with the NPA and their confession for criminal offenses charged against them.

89. The fundamental guarantee against torture is enshrined in Section 12 of the Bill of Rights, Article III of the 1987 Philippine Constitution,

> SECTION 12. (1) 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.
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.
>
> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

90. The relatives and counsels of the 43 doctors, nurses and medical workers went to Camp Capinpin, Tanay, Rizal in order to visit them but the soldiers manning the gate refused to grant them entry. This is a clear violation of Section 2 (f) of Republic Act 7438 (RA 7438), and is a criminal offense that officers under the respondents' command have committed for which they are responsible under Executive Order 226 (EO 226), a presidential issuance institutionalizing the doctrine of command responsibility. The pertinent portions of EO 226 are as follows,

> Sec. 1. Neglect of Duty Under the Doctrine of "Command Responsibility". - Any government official or supervisor, or officer of the Philippine National Police or that of any other law enforcement agency shall be held accountable for "Neglect of Duty" under the doctrine of "command responsibility" if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during, or immediately after its commission.
>
> Sec. 2. Presumption of Knowledge. - A government official or supervisor, or PNP commander, is presumed to have knowledge of the commission of irregularities or criminal offenses in any of the following circumstances:
>
> a. When the irregularities or illegal acts are widespread within his area of jurisdiction;

b. When the irregularities or illegal acts have been repeatedly or regularly committed within his area of responsibility; or

c. When members of his immediate staff or office personnel are involved.

91. Meanwhile, Section 2 (f) of RA 7438 provides,

> Section 2. *Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers*. –
>
> XXXX
>
> (f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights of by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

92. In fact, the inquest proceedings were conducted during the afternoon of 7 February 2010 against the 43 doctors, nurses and medical workers without the assistance of their lawyers who were outside the gates of Camp Capinpin and who were demanding entry in order to see the detainees, as expressly provided for under the law.

93. This is yet another criminal violation of RA 7438, at Section 2 (a) and (b) thereof, that mandates that public officers shall ***at all times*** permit persons arrested, detained or undergoing custodial investigation access to legal assistance and to allow them to confer privately with competent counsel of their choice.

> Section 2. *Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers*. –

> (a) Any person arrested detained or under custodial investigation **shall at all times be assisted by counsel**.
>
> (b) Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who **shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation**. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

94. The detainees can singularly attest that the inquest that Prosecutor Romeo Senson conducted was grossly irregular and violates the National Prosecution Service's Manual for Prosecutors. The 43 doctors, nurses and medical workers were all made to line up at in an open space and Prosecutor Romeo Senson initiated a head count and he merely stated that they were all charged with the illegal possession of firearms and explosives and that he is simply submitting his findings to his boss for approval.

95. The rules enunciated in the National Prosecution Service's Manual for Prosecutors expressly provide that,

> SECTION 1. *Concept.* – Inquest is an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under custody and correspondingly be charged in court.
>
> *XXXX*
>
> SECTION 8. *Initial duty of Inquest Officer*. – The Inquest Officer shall first determine if the arrest of the detained person was made in accordance with paragraphs (a) and (b) of Section 5, Rule 113 of the 1985 Rules on

Criminal Procedure, as amended, which provide that arrest without a warrant may be affected:

> a) When, in the presence of the arresting officer, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; or
>
> b) When an offense has in fact just been committed, and the arresting officer has personal knowledge of facts indicating that the person to be arrested has committed it.
>
> For this purpose, the Inquest Officer may summarily examine the arresting officers on the circumstances surrounding the arrest or apprehension of the detained person.

SECTION 9. *Where arrest not properly effected*. – Should the Inquest Officer find that the arrest was not made in accordance with the Rules, he shall:

a) Recommend the release of the person arrested or detained;

b) Note down the disposition on the referral document;

c) Prepare a brief memorandum indicating the reasons for the action taken; and

d) Forward the same, together with the record of the case, to the City or Provincial Prosecutor for appropriate action.

XXXX

SECTION 12. *Meaning of probable cause*. – Probable cause exists when the evidence submitted to the Inquest Officer engenders a well-founded belief that a crime has been committed and that the arrested or detained person is probably guilty thereof.

XXXX

SECTION 15. *Absence of probable cause*. – If the Inquest Officer finds no probable cause, he shall:

> a) Recommend the release of the arrested or detained person;
>
> b) Note down his disposition on the referral document;
>
> c) Prepare a brief memorandum indicating the reasons for the action taken; and
>
> d) Forthwith forward the record of the case to the City or Provincial Prosecutor for appropriate action.

If the recommendation of the Inquest Officer for the release of the arrested or detained person is approved, the order of release shall be served on the officer having custody of the said detainee.

> Should the City or Provincial Prosecutor disapprove the recommendation of release, the arrested or detained person shall remain under custody and the corresponding complaint/ information shall be filed by the City or Provincial Prosecutor or by any Assistant Prosecutor to whom the case may be assigned.
>
> *XXXX*
>
> SECTION 18. *Recovered articles.* - The Inquest Officer shall see to it that all articles recovered by the police at the time of the arrest or apprehension of the detained person are physically inventoried, checked and accounted for with the issuance of corresponding receipts by the police/investigator concerned.
>
> The said articles must be properly deposited with the police evidence custodian and not with the police investigator.
>
> The Inquest Officer shall ensure that the items recovered are duly safeguarded and the chain of custody is properly recorded.

96. The very concept of an inquest is to determine if the persons arrested should remain under custody and charged in court. Contrary to this very basic objective, Prosecutor Romeo Senson declared that the 43 doctors, nurses and medical workers are charged with crimes without even once asking them a question or the military who are their jailors.

97. The inquest prosecutor certainly has not made any sort of inquiry as to whether the arrest of the 43 doctors, nurses and medical workers was properly conducted pursuant to Section 5 (a) and (b) of Rule 113 of the Rules of Criminal Procedure.

98. In Prosecutor Romeo Senson's Resolution dated 8 February 2010, he admits that he merely performed a head count of the 43 doctors, nurses and medical workers and declared that they are charged for possession of explosives and firearms.

99. Even on this admission of the fiscal alone, it is evident that no genuine investigation during the so-called inquest proceedings before Prosecutor Romeo Senson was ever conducted.

100. If Prosecutor Romeo Senson had done his task in accordance with the National Prosecution Service's Manual for Prosecutors, he would have found the arrest blatantly illegal and he would have immediately recommended the immediate release of the 43 health workers pursuant to Section 9, Part II of their Manual, and, if he has even the slightest notion or concept at all of right and justice, he should have sternly reprimanded the respondents for their contemptible and beastly conduct in the treatment of the detainees.

101. It is therefore clear that Prosecutor Romeo Senson did not conduct a proper inquest of the 43 health workers.

102. Prosecutor Romeo Senson was merely a tool in the respondents' attempt to give a semblance of legitimacy to the illegal arrest of the 43 doctors, nurses and medical workers herein. The complicity of Prosecutor Romeo Senson to the propensity of the military and the police to commit human rights violations is precisely the deplorable and harebrained that the Supreme Court censured in the cases of ***Ladlad v. Velasco*** and ***People v. Beltran***,[25]

[25] G.R. Nos. 172070-72, G.R. Nos. 172074-76, G.R. No. 175013, 1 June 2007.

A Final Word

The obvious involvement of political considerations in the actuations of respondent Secretary of Justice and respondent prosecutors brings to mind an observation we made in another equally politically charged case. We reiterate what we stated then, if only to emphasize the importance of maintaining the integrity of criminal prosecutions in general and preliminary investigations in particular, thus:

[W]e cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective of observing the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may the public's perception of the impartiality of the prosecutor be enhanced.[26]

"All powers need some restraint; practical adjustments rather than rigid formula are necessary.[1] Superior strength – the use of force – cannot make wrongs into rights. In this regard, the courts should be vigilant in safeguarding the constitutional rights of the citizens, specifically their liberty.

Chief Justice Artemio V. Panganiban's philosophy of liberty is thus most relevant. He said: "**In cases involving liberty, the scales of justice should weigh heavily against government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak**." (**David, et.al. vs. Arroyo, et.al. , May 3, 2006**

"The challenge to our liberties comes frequently *not* from those who *consciously seek to destroy our system of government,* but from men of goodwill-good men who allow their proper concerns to *blind them* to the fact that what they propose to accomplish involves an *impairment of liberty.*

... The Motives of these men are often commendable. What we must remember, however, is that *preservation of liberties does not depend on motives. A suppression of liberty has the same effect whether the suppressor be a reformer or an outlaw. The only protection against misguided zeal is constant alertness* of the infractions of the guarantees of liberty contained in our Constitution. *Each surrender of liberty to the demands of the moment makes easier another larger surrender.* The battle over the Bill of Rights is a never ending one.

... *The liberties of any person are the liberties of all of us.*

... In short, *the liberties of none are safe unless the liberties of all are protected."*

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[26] *Tatad v. Sandiganbayan*, No. L-72335-39, 21 March 1988, 159 SCRA 70, 81.

xxx…xxx

For as Brandeis called it, "*Crime is contagious. If the government becomes the lawbreaker it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.*" (Dissenting Opinion of Justice Teehankee in Ilagan Vs. Enrile, **G.R. No. 70748 October 21, 1985**

IV

This Honorable Court must and should inquire into the legality of the petitioners' arrest and continued detention to ensure that due process clause of the Constitution has in fact been satisfied.
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103. In **In the Matter of the Petition for Habeas Corpus of Roberto Umil, et.al., July 9, 1980,** the Supreme Court categorically held that:

"We find, however, no compelling reason to abandon the said doctrine. It is based upon express provision of the Rules of Court and the exigencies served by the law. The fears expressed by the petitioners are not really unremediable. As the Court sees it, re-examination or re-appraisal, with a view to its abandonment of the Ilagan case doctrine is not the answer. The answer and the better practice would be, not to limit the function of habeas corpus to a mere inquiry as to whether or not the court which issued the process, judgment or order of commit- judgment or before whom the detained person is charged, had jurisdiction or not to issue the process, judgment or order or to take cognizance of the case, but rather, as the Court itself states in *Morales, Jr. vs. Enrile*, "*in all petitions* for habeas corpus the court must inquire into every phase and aspect of petitioner's detention from the moment petitioner *was taken into custody up to the moment the court passes upon the merits of the petition;"* and "*only after such a scrutiny can the court satisfy itself that the due process clause of our Constitution has in fact been satisfied.*" This is exactly what the Court has done in the petitions at bar. This is what should henceforth be done in all future cases of habeas corpus. In short, all cases involving deprivation of individual liberty should be promptly brought to the courts for their immediate scrutiny and disposition.

104. Said directive was further reiterated in the resolution of the Supreme Court dated October 3, 1991 in the same case. This time, the Supreme Court was more specific on what the court where the petition for Habeas Corpus was instituted should inquire into, thus:

> "As to the argument that the doctrines in *Garcia vs. Enrile*, and *Ilagan vs. Enrile* should be abandoned, this Court finds no compelling reason *at this time* to disturb the same, particularly In the light of prevailing conditions where national security and liability are still directly challenged perhaps with greater vigor from the communist rebels. ***What is important is that every arrest without warrant be tested as to its legality via habeas corpus proceeding****. This Court will promptly look into —* ***and all other appropriate courts are enjoined to do the same — the legality of the arrest without warrant so that if the conditions under Sec. 5 of Rule 113, Rules of Court, as elucidated in this Resolution, are not met, then the detainee shall forthwith be ordered released****; but if such conditions are met, then the detainee shall not be made to languish in his detention but must be promptly tried to the end that he may be either acquitted or convicted, with the least delay, as warranted by the evidence."*

105. It is therefore imperative that this Honorable Court tackle head on the issues presented in this petition and not simply adopt the "moot and academic" principle which the respondents repeatedly insist to this Court. Considering the grave violations of the constitutional rights of the petitioners, which violations continue up to this time, it is in the highest interest of justice that this Honorable Court determine whether the search warrant issued and the arrests that were subsequently made on the persons of petitioner after military authorities raided the compound where petitioners were then having a health seminar were legal. Too, the Court must likewise inquire into the legality of the continued detention of herein petitioners;

106. In the case of **SPO2 Geronimo Manalo, et.al. vs. Calderon, et.al., G.R. No. 178920, 15 October 2007,** the Supreme Court refused to dismiss the

petition for habeas corpus filed by petitioners on the sole ground of mootness advanced by the Office of the Solicitor General. In the said case, the Court ruled:

> "Notwithstanding the mootness of the issues on restrictive custody and monitoring of movements of petitioners, We opt to resolve them given (a) the paramount public interest involved, (b) their susceptibility of recurring yet evading review and (c) the imperative need to educate the police community on the matter."

107. Likewise, in **David, et.al. vs. Arroyo,** supra, the exceptions to the "moot and academic" principle were further expounded. In said case, one of the reasons why the Supreme Court went on to decide the case was to educate "the military and the police, on the extent of protection given by constitutional guarantees." Said the Court in the said case:

> "The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first,* **there is a grave violation of the Constitution**; *second*, **the exceptional character of the situation and the paramount public interest is involved**; *third,* when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth,* the case is capable of repetition yet evading review. (Underscoring and emphasis supplied)
>
> All the foregoing exceptions are present here and justify this Court's assumption of jurisdiction over the instant petitions. Petitioners alleged that the issuance of PP 1017 and G.O. No. 5 violates the Constitution. There is no question that the issues being raised affect the public's interest, involving as they do the people's basic rights to freedom of expression, of assembly and of the press. Moreover, the Court has the duty to formulate guiding and controlling constitutional precepts, doctrines or rules. It has the symbolic function of educating the bench and the bar, and in the present petitions, **the military and the police**, on the extent of the protection given by constitutional guarantees. And lastly, respondents' contested actions are capable of repetition. Certainly, the petitions are subject to judicial review. (underscoring supplied)

108. Thus, the court where habeas corpus proceeding was instituted should scrutinize not only every aspect of detention but must likewise look into the legality of an arrest without warrant. Further, should the principle of mootness be raised in the course of the proceedings, the court should proceed to inquire into the merits of the petition where there is an allegation of grave violations of the constitution and where compelling reasons, such as those enumerated above, exist;

109. In the instant petition, all the above exceptions are present. Petitioners' rights under the constitution were blatantly disregarded. As extensively discussed, the search warrant that the military agents used as a justification for intrusion into the compound where the petitioners were then having their health training was constitutionally infirm. Moreover, the warrantless arrests made on petitioners do not fall under the circumstances contemplated under Section 5 of Rule 113 of the Revised Rules on Criminal Procedure. The affidavits of the petitioners clearly reflect this. In fact, one of the petitioners, Dr. Alexis Montes, was only having his coffee when the military authorities barged in the premises and immediately placed him under arrest;

110. Worse, after they were placed under arrest, petitioners were not accorded their constitutional rights. Petitioners were blindfolded for almost a day, held incommunicado, subjected to torture and denied access to counsel and visitation from their family and friends. This hapless condition under which petitioners were subjected to and the brazen disregard of their constitutional

rights provide compelling justification for this Honorable Court not to yield to the "moot and academic" principle being adamantly espoused by respondents;

111. Violations of the constitutional rights of the petitioners are surely impressed with public interest which should be squarely addressed by this Honorable Court in this petition. Considering the blatant disregard of petitioners' rights and respondents contumacious and deliberate refusal to obey the directive of the Supreme Court to produce the bodies of the petitioners before this Honorable Court on the date stated in the writ issued by the Supreme Court, this Court can formulate guiding principles for the military and the police on the extent of protection given by constitutional guarantees.. Lastly, the unlawful actions of the military authorities are capable of repetition in the future;

112. The above circumstances necessitate inquiry into the merits of the petition, even if information has been subsequently filed against petitioners. Even if such information be considered as a supervening event, this Court should not be dissuaded from resolving the case. In **Public Interest Law Center, Inc., et.al. vs. Magdangal Elma and Ronaldo Zamora, June 30, 2006**, the Supreme Court held, to wit:

> "Supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution. Even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar, and public."

113. Admittedly, after the present petition for habeas corpus has been filed, informations were filed against petitioners. Respondents, in their return, asserted that the filing of charges made the writ unavailing to petitioners, citing section 4 of Rule 102 of the Rules of Court. The ruling in the Umil cases cited above however is clear: *"in all petitions* for habeas corpus the court must inquire into every phase and aspect of petitioner's detention from the moment petitioner *was taken into custody up to the moment the court passes upon the merits of the petition" and the court should "promptly looked into* ***the legality of the arrest without warrant so that if the conditions under Sec. 5 of Rule 113, Rules of Court, as elucidated in this Resolution, are not met, then the detainee shall forthwith be ordered released."***

114. It bears stressing that at the time said ruling was made, the provisions of Section 4, Rule 102 already existed. Yet the Court never made any qualification that the writ is immediately unavailable upon the filing of the information or that the habeas corpus court should refrain from making an inquiry as to the merits of the petition. Further, equally worth mentioning is the fact that the Supreme Court in the Umil cases emphasize the need for the habeas corpus court to satisfy itself whether due process has in fact been satisfied. It can therefore be asserted that, to such extent, the provisions of Section 4 of Rule 102 had been modified by the Umil ruling, such that the mere subsequent filing of information will not prevent the habeas corpus court from proceeding into the merits of the petition where there are violations of the right to due process. In the said case, the petition was dismissed primarily because the Court was satisfied

that the arrests of the petitioners were lawful and not because an information was subsequently filed;

115. This is precisely what petitioners are asking from this Honorable Court. Even if informations had been filed obviously to obviate the instant petition for habeas corpus, this Honorable Court should satisfy itself whether due process had been accorded petitioners.

116. Another reason why the subsequent filing of information against petitioners should not prevent this Honorable Court from proceeding into the merits of the case is the fact that the trial court where the information was filed never acquired jurisdiction over the case since the information filed was null and void. The gross violations of the constitutional rights of the petitioners rendered all actions and proceedings supposedly conducted by the state that led to the filing of the information against petitioners legally infirm. Further, the informations against the petitioners were filed without the requisite preliminary investigation. Said informations can not be considered as filed under Section 7, Rule 112 of the Rules of Court authorizing the filing of information in warrantless arrests since petitioners, as herein discussed, were not in the first place lawfully arrested without warrant.

117. In **Santiago vs. Alikpala, et.al., September 28, 1968**, it was held:

> "The due process concept rightfully referred to as "a vital and living force in our jurisprudence" calls for respect and deference, otherwise the governmental action taken suffers

> from a fatal infirmity. As was so aptly expressed by the then Justice, now Chief Justice, Concepcion: "... **acts of Congress, as well as those of the Executive, can deny due process only under pain of nullity, and judicial proceedings suffering from the same flaw are subject to the same sanction**, any statutory provision to the contrary notwithstanding."

118. Lastly, the military and police authorities may have been motivated by service to country against its perceived enemies but such must not be rendered at the expense of innocent and well-meaning citizens such as herein petitioners. The appeal of the late Pope John Paul II, cited in the dissenting opinion of the late Justice Teehankee in the case of Ilagan vs. Enrile, is worth-quoting, to wit"

> "Even in exceptional situations that may at times arise, one can never justify any violation of the fundamental dignity of the human person or of the basic rights that safeguard this dignity Legitimate concern for the security of a nation, as demanded by the common good, could lead to the temptation of subjugating to the State the human being and his or her dignity and rights. Any apparent conflict between the exigencies of security and of the citizens' basic rights must be resolved according to the fundamental principle upheld always by the Church that social organization exists only for the service of man and for the protection of his dignity, and that it cannot claim to serve the common good when human rights are not safeguarded."

119. In the present petition, violation of the due process rights of the petitioners was so evident that by merely looking into the records of the case, this Honorable Court could easily conclude that petitioners' allegations were not merely concocted or imagined. This being the case, it is incumbent upon this Honorable Court to follow the directive in the Umil case cited above so that justice be dispensed to herein petitioners: order their immediate release from detention.

PRAYER

WHEREFORE, in view of the foregoing, it is most respectfully prayed of the Honorable Court that this Petition for Habeas Corpus BE GRANTED; and that respondents Gen. Victor S. Ibrado, Lt. Gen. Delfin N. Bangit, Brig. Gen. Jorge Segovia, Col. Aurelio Baladad, PNP Director General Jesus A. Verzosa and P/Supt. Marion Balonglong, BE ORDERED to IMMEDIATELY RELEASE from custody the 43 health workers in whose behalf this petition is being filed.

Other forms of relief and remedies that are just and equitable under the premises are likewise prayed for.

Makati City for Manila City. February 17, 2010.