

**In the matter of the petition for habeas corpus of  
CAPT. GARY ALEJANO, PN, et. al. v. GEN. PEDRO CABUAY, et al.  
GR 160792, August 25, 2005, En Banc (Carpio, J.)**

*Habeas corpus is not the proper mode to question conditions of confinement. The writ of habeas corpus will only lie if what is challenged is the fact or duration of confinement. Nonetheless, case law has expanded the writ's application to circumstances where there is deprivation of a person's constitutional rights. The writ is available where a person continues to be unlawfully denied of one or more of his constitutional freedoms, where there is denial of due process, where the restraints are not merely involuntary but are also unnecessary, and where a deprivation of freedom originally valid has later become arbitrary. However, a mere allegation of a violation of one's constitutional right is not sufficient. The violation of constitutional right must be sufficient to void the entire proceedings.*

Early morning of 27 July 2003, some 321 armed soldiers, led by the now detained junior officers, entered and took control of the Oakwood Premier Luxury Apartments (“Oakwood”), an upscale apartment complex, located in the business district of Makati City. The soldiers disarmed the security officers of Oakwood and planted explosive devices in its immediate surroundings. The junior officers publicly renounced their support for the administration and called for the resignation of President Gloria Macapagal-Arroyo and several cabinet members. Around 7:00 p.m. of the same date, the soldiers voluntarily surrendered to the authorities after several negotiations with government emissaries. The soldiers later defused the explosive devices they had earlier planted. The soldiers then returned to their barracks.

On 31 July 2003, Gen. Abaya, as the Chief of Staff of the AFP, issued a directive to all the Major Service Commanders to turn over custody of ten junior officers to the ISAFP Detention Center. On 1 August 2003, government prosecutors filed an Information for *comp d'etat* with the Regional Trial Court of Makati City, Branch 61, against the soldiers involved in the 27 July 2003 Oakwood incident. The trial court later issued the Commitment Orders giving custody of junior officers Lt. SG Antonio Trillanes IV and Capt. Gerardo Gambala to the Commanding Officers of ISAFP. On 2 August 2003, Gen. Abaya issued a directive to all Major Service Commanders to take into custody the military personnel under their command who took part in the Oakwood incident except the detained junior officers who were to remain under the custody of ISAFP. On August 11, 2003, petitioners filed a petition for habeas corpus with SC. The Supreme Court issued a resolution, which required respondents to make a return of the writ and to appear and produce the persons of the detainees before the CA. On the same date, the detainees and their other co-accused filed with the Regional Trial Court of Makati City a Motion for Preliminary Investigation, which the trial court granted.

The Court of appeals dismissed the petition. Nonetheless, the CA ordered Gen. Cabuay, who was in charge of implementing the regulations in the ISAFP Detention Center, to uphold faithfully the rights of the detainees in accordance with Standing Operations Procedure No. 0263-04. The appellate court pointed out that the detainees are already charged of *comp d'etat* before the Regional Trial Court of Makati. *Habeas corpus* is unavailing in this case as the detainees' confinement is under a valid indictment, the legality of which the detainees and petitioners do not even question. The Court of Appeals recognized that *habeas corpus* may also be the appropriate remedy to assail the legality of detention if there is a deprivation of a constitutional right. However, the appellate court held that the constitutional rights alleged to have been violated in this case do not directly affect the detainees' liberty. The appellate court

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ruled that the regulation of the detainees' right to confer with their counsels is reasonable under the circumstances. The appellate court declared that while the opening and reading of Trillanes' letter is an abhorrent violation of his right to privacy of communication, this does not justify the issuance of a writ of *habeas corpus*. The violation does not amount to illegal restraint, which is the proper subject of *habeas corpus* proceedings.

### ISSUES:

1. Whether or not the detainees in the case at bar can avail of the remedy under the petition *for issuance of the writ habeas corpus*
2. Whether or not the detainees have the regulations imposed in the ISAFP Detention Center is a violation of the right to privacy of the detainees

**HELD:** Petition is dismissed.

In a *habeas corpus* petition, the order to present an individual before the court is a preliminary step in the hearing of the petition. The respondent must produce the person and explain the cause of his detention. However, this order is not a ruling on the propriety of the remedy or on the substantive matters covered by the remedy. Thus, the Court's order to the Court of Appeals to conduct a factual hearing was not an affirmation of the propriety of the remedy of *habeas corpus*. The duty to hear the petition for *habeas corpus* necessarily includes the determination of the propriety of the remedy. The remedy of *habeas corpus* has one objective: to inquire into the cause of detention of a person. The purpose of the writ is to determine whether a person is being illegally deprived of his liberty. If the inquiry reveals that the detention is illegal, the court orders the release of the person. If, however, the detention is proven lawful, then the *habeas corpus* proceedings terminate. The use of *habeas corpus* is thus very limited. It is not a writ of error. Neither can it substitute for an appeal.

Nonetheless, case law has expanded the writ's application to circumstances where there is deprivation of a person's constitutional rights. The writ is available where a person continues to be unlawfully denied of one or more of his constitutional freedoms, where there is denial of due process, where the restraints are not merely involuntary but are also unnecessary, and where a deprivation of freedom originally valid has later become arbitrary. However, a mere allegation of a violation of one's constitutional right is not sufficient. The courts will extend the scope of the writ only if any of the following circumstances is present: (a) there is a deprivation of a constitutional right resulting in the unlawful restraint of a person; (b) the court had no jurisdiction to impose the sentence; or (c) an excessive penalty is imposed and such sentence is void as to the excess. Whatever situation the petitioner invokes, the threshold remains high. The violation of constitutional right must be sufficient to void the entire proceedings.

Pre-trial detainees do not forfeit their constitutional rights upon confinement. However, the fact that the detainees are confined makes their rights more limited than those of the public. RA 7438, which specifies the rights of detainees and the duties of detention officers, expressly recognizes the power of the detention officer to adopt and implement reasonable measures to secure the safety of the detainee and prevent his escape. True, Section 4(b) of RA 7438 makes it an offense to prohibit a lawyer from visiting a detainee client "at any hour of the day or, in urgent cases, of the night." However, the last paragraph of the same Section 4(b) makes the express qualification that "**notwithstanding**" the provisions of Section 4(b), the detention officer has the power to undertake such reasonable measures as may be necessary to secure the safety of the detainee and prevent his escape.

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The schedule of visiting hours does not render void the detainees' indictment for criminal and military offenses to warrant the detainees' release from detention. The ISAFP officials did not deny, but merely regulated, the detainees' right to counsel. The purpose of the regulation is not to render ineffective the right to counsel, but to secure the safety and security of all detainees. In *Bell v. Wolfish*, the U.S. Supreme Court held that regulations must be reasonably related to maintaining security and must not be excessive in achieving that purpose. In the present case, the visiting hours accorded to the lawyers of the detainees are reasonably connected to the legitimate purpose of securing the safety and preventing the escape of all detainees. While petitioners may not visit the detainees any time they want, the fact that the detainees still have face-to-face meetings with their lawyers on a **daily basis** clearly shows that there is no impairment of detainees' right to counsel. Petitioners as counsels could visit their clients between 8:00 a.m. and 5:00 p.m. with a lunch break at 12:00 p.m. The visiting hours are regular business hours, the same hours when lawyers normally entertain clients in their law offices. Clearly, the visiting hours pass the standard of reasonableness. Moreover, in urgent cases, petitioners could always seek permission from the ISAFP officials to confer with their clients beyond the visiting hours.

The fact that the restrictions inherent in detention intrude into the detainees' desire to live comfortably does not convert those restrictions into punishment. It is when the restrictions are arbitrary and purposeless that courts will infer intent to punish. Jail officials are thus not required to use the least restrictive security measure. They must only refrain from implementing a restriction that appears excessive to the purpose it serves. In *Bell vs. Wolfish*, the court ruled that restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomfiting and are restrictions that the detainee would not have experienced had he been released while awaiting trial. We need not here attempt to detail the precise extent of the legitimate governmental interests that may justify conditions or restrictions of pretrial detention. It is enough simply to recognize that in addition to ensuring the detainees' presence at trial, the effective management of the detention facility once the individual is confined is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment. An action constitutes a punishment when (1) that action causes the inmate to suffer some harm or "disability," and (2) the purpose of the action is to punish the inmate.

In the present case, we cannot infer punishment from the separation of the detainees from their visitors by iron bars, which is merely a limitation on contact visits. The iron bars separating the detainees from their visitors prevent direct physical contact but still allow the detainees to have visual, verbal, non-verbal and limited physical contact with their visitors. The arrangement is not unduly restrictive. The limitation on the detainees' physical contacts with visitors is a reasonable, non-punitive response to valid security concerns. The conditions in the ISAFP Detention Center are not inhuman, degrading and cruel.

American jurisprudence initially made a distinction between the privacy rights enjoyed by convicted inmates and pre-trial detainees. The case of *Palmigiano v. Travisono* recognized that pre-trial detainees, unlike convicted prisoners, enjoy a limited right of privacy in communication. Censorship of pre-trial detainees' mail addressed to public officials, courts and counsel was held impermissible. While incoming mail may be inspected for contraband and read in certain instances, outgoing mail of pre-trial detainees could not be inspected or read at all. In the subsequent case of *Wolff v. McDonnell*, involving convicted prisoners, the U.S. Supreme

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Court held that prison officials could open in the presence of the inmates incoming mail from attorneys to inmates. However, prison officials could not read such mail from attorneys.

In *Hudson v. Palmer*, the U.S. Supreme Court ruled that an inmate has no reasonable expectation of privacy inside his cell. The U.S. Supreme Court explained that prisoners necessarily lose many protections of the Constitution. The curtailment of certain rights is necessary, as a practical matter, to accommodate a myriad of “institutional needs and objectives” of prison facilities, chief among which is internal security. The later case of *State v. Dunn*, citing *Hudson v. Palmer*, abandoned *Palmigiano v. Travisono* and made no distinction as to the detainees’ limited right to privacy. *State v. Dunn* noted the considerable jurisprudence in the United States holding that inmate mail may be censored for the furtherance of a substantial government interest such as security or discipline. *State v. Dunn* declared that if complete censorship is permissible, then the lesser act of opening the mail and reading it is also permissible.

The letters alleged to have been read by the ISAFP authorities were not confidential letters between the detainees and their lawyers. The petitioner who received the letters from detainees Trillanes and Maestrecampo was merely acting as the detainees’ personal courier and not as their counsel when he received the letters for mailing. In the present case, since the letters were not confidential communication between the detainees and their lawyers, the officials of the ISAFP Detention Center could read the letters. If the letters are marked confidential communication between the detainees and their lawyers, the detention officials should not read the letters but only open the envelopes for inspection in the presence of the detainees. That a law is required before an executive officer could intrude on a citizen’s privacy rights<sup>1</sup> is a guarantee that is available only to the public at large but not to persons who are detained or imprisoned. The right to privacy of those detained is subject to Section 4 of RA 7438, as well as to the limitations inherent in lawful detention or imprisonment. By the very fact of their detention, pre-trial detainees and convicted prisoners have a diminished expectation of privacy rights.