five days. The motion is required to describe the places to be inspected in particular detail. A production order for personal objects or documents, in tangible or electronic form, to enforce a party's right to seek evidence, may be granted by the court after due hearing.

The filing of the petition for the Writ of *Amparo* is not mutually exclusive with the filing of other reliefs, such as habeas corpus, as well as the filing of separate criminal, civil, or administrative actions.

CONCLUSION

In the study of life, as in the study of law, there is a most interesting phenomenon called *evolution*. The Supreme Court took bold steps in the promulgation of the Rule on the Writ of *Amparo*. As a Court, it has the primary duty to enforce rights legally demandable. How it can receive complaints, how it should go about its duty enforcing rights legally demandable are matters well-settled to be within the bounds of the Court's power to make rules. But given the postmodern interpretation of the Supreme Court of its own powers, especially in the promulgation of rules that protect constitutional rights, it becomes a process worthy of examination, it becomes a phenomenon subject to legal phenomenology.

The right to freedom from arbitrary deprivation of life has long been recognized internationally and domestically. For the victims of extra-legal, arbitrary, and summary executions, however, this right has now found judicial safeguards despite the absence of clear and positive legislation. As it is designed, the Writ of *Amparo* is a remedy for the protection of the right to life, liberty, and security of a person. These rights are broad enough to cover a whole gamut of constitutional rights and it remains to be seen how the Supreme Court shall evolve jurisprudence based on a Rule they promulgated.

In fine, it may be said that the true test of a rule is how well it stands the advent of the cases before the courts. But given that the Rule was enacted, in a manner that can be characterized as bold and decisive, there is nothing to prevent the Court from revising or even considering the promulgation of other rules pursuant to its rulemaking powers under the 1987 Constitution given a different set of circumstances and the vicissitudes and vindication of time.

In the Rule on the Writ of *Amparo*, we may be seeing a new paradigm in constitutional law and human rights — the interpreters of the law, who were once seen as passive observers, are now changing the observed behavior. Surely, interesting times lie ahead; and the question that will befuddle critical legal scholars, those who question the policy science behind legislation, even Remedial Law, would be the Hellenic query of "who watches the watchmen?"

Revisiting Jurisprudence on the Quantum of Restraint Required to Warrant the Issuance of a Writ of *Habeas Corpus*: A Proposal to Rethink the Rules of Court Formulation on the Availability of the Writ

Edzyl Josef G. Magante[*]

I. INTRODUCTION

The scope and flexibility of the writ of *habeas corpus* — its capacity to reach all manner of illegal detention and ability to cut through barriers of form and procedural mazes — have always been emphasized and jealously guarded by courts and lawmakers.[1] Indeed, the rules on *habeas corpus* are always to be liberally construed.[2]

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The familiar terrain on which the rules on *habeas corpus* operate is that of illegal confinement or detention wherein there is an actual physical restraint upon a person's liberty. This is largely due to the Rules of Court formulation on the availability of the writ, thus:

> Sec. 1. *To what habeas corpus extends.* – Except as otherwise expressly provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.[3]

The emphasis on "illegal confinement or detention" seems to suggest that such is a condition on the availability of *habeas corpus*, that is, that the petitioner or person in whose behalf the remedy is sought must be actually confined or detained. This is misleading.

This article shall revisit three cases wherein the Supreme Court held that *habeas corpus* is available notwithstanding the absence of an actual confinement or detention as long as there is an effective yet illegal restraint upon a person's liberty or freedom of action — *Villavicencio v. Lukban* (*Villavicencio Case*),[4] *Caunca v. Salazar* (*Caunca Case*),[5] and *Moncupa v. Enrile* (*Moncupa Case*).[6] This article shall then propound that a proper consideration of these cases warrants a rethinking of the Rules of Court formulation on the availability of the writ of *habeas corpus*.

II. THE CASES

A. Villavicencio Case

1. Facts of the Case

Then mayor of the city of Manila, Justo Lukban, ordered the closure of a segregated district for women of questionable reputation, which had been permitted for a number of years. Within a few days following the order, the police kept the women confined to their houses in the district. During this period, the city authorities subtly made arrangements with the Bureau of Labor to send the women to Davao in Mindanao as laborers, with some

1. Gumabon v. Director of Bureau of Prisons, 37 SCRA 420 (1971).
2. *See,* Ganaway v. Quilen, 42 Phil. 805 (1922).
3. 1997 RULES OF CIVIL PROCEDURE, rule 102, § 1.
4. Villavicencio v. Lukban, 39 Phil. 778 (1919).
5. Caunca v. Salazar, 82 Phil. 851 (1949) (unreported).
6. Moncupa v. Enrile, 141 SCRA 233 (1986).

government office using the coastguard cutters Corregidor and Negros, and with the Constabulary for a guard of soldiers.[7]

Acting upon the orders from the chief of police, Anton Hohmann, and Mayor Lukban, the police came down upon the houses one night, jostled some 197 inmates into patrol wagons, and placed them aboard the said cutters. No opportunity was given to the women to collect their belongings and in fact, they were given the impression that they were being taken to a police station for an investigation. They had not been asked if they wished to depart from that region; neither did they give their consent to the deportation, either directly or indirectly.[8]

The women were received on board the cutters by a representative of the Bureau of Labor and a detachment of Constabulary soldiers. When the vessels arrived in Davao, the women were brought ashore and accepted as laborers by Francisco Sales the provincial governor, Feliciano Yñigo, a *haciendero,* and one Rafael Castillo. Governor Sales and Mr. Yñigo were unaware of the fact that the women were prostitutes who had been ejected from Manila.[9]

Meanwhile, as the Corregidor and the Negros were nearing Davao, a lawyer representing the relatives and friends of a considerable number of the deportees made an application for *habeas corpus* to the Supreme Court. The application, through stipulation of the parties, was later made to include all of the women who were sent away from Manila to Davao. Such document alleged that the women were "illegally restrained of their liberty by Justo Lukban, mayor of the city of Manila, Anton Hohmann, chief of police of the city of Manila, and by certain unknown parties."[10]

The respondents interposed the defense that the women were free in Davao, and that the jurisdiction of the mayor and the chief of police did not extend beyond the city limits.[11]

The question was whether the writ of *habeas corpus* should issue.

2. Decision

The Supreme Court *en banc,* speaking through Justice Malcolm, held that the writ of *habeas corpus* should issue. It stressed that only one fact must necessarily be recalled: that these women were isolated from society in the middle of the night, without their consent or any opportunity to consult

7. *Villavicencio,* 39 Phil. at 781.
8. *Id.*
9. *Id.*
10. Villavicencio v. Lukban, 39 Phil. 778, 782 (1919).
11. *Id.* at 789.

with friends or to defend their rights.[12] They were forcibly manhandled on board vessels for transportation to an unknown place. The Court continued that despite the feeble attempt to prove that the women left voluntarily and gladly, a contrary circumstance is shown by the fact that the presence of the police and the constabulary was necessary and that these officials opted to act under the color of the night to cloak their secret and stealthy deeds.[13]

The next question resolved by the Court was, "by authority of what law did the mayor and the chief of police presume to act in deporting by duress these persons from Manila to another distant locality within the Philippine Islands?"[14]

It was held by the Court that:

> Alien prostitutes can be expelled from the Philippine Islands in conformity with an Act of Congress. The Governor-General can order the eviction of undesirable aliens after a hearing from the Islands. Act No. 519 of the Philippine Commission and section 733 of the Revised Ordinances of the city of Manila provide for the conviction and punishment by a court of justice of any person who is common prostitute. Act No. 899 authorizes the return of any citizen of the United States, who may have been convicted of vagrancy, to the homeland. New York and other States have statutes providing for the commitment to the House of Refuge of women convicted of being common prostitutes.[15]

The Court maintained that there must always be a law authorizing the deportation or commitment of prostitutes before either may be effected.

It was then observed by the Court that a search for any law, order, or regulation, which gives the mayor of the city of Manila or the chief of police thereof, to compel citizens of the Philippine Islands to change their domicile from Manila to another, shall only be made in vain.[16] It noted that, on the contrary, "Philippine penal law specifically punishes any public officer who, not being expressly authorized by law or regulation, compels any person to change his residence."[17] Citing the ponentia of Justice Miller of the U.S. Supreme Court in *United States v. Lee*,[18] the Court affirmed that "the law is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly

12. *Id.* at 785.
13. *Id.*
14. *Id.* at 785.
15. *Id.*
16. Villavicencio v. Lukban, 39 Phil. 778, 786 (1919).
17. *Id.*
18. United States v. Lee, 106 U.S. 196 (1882).

bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives."[19]

The remedies of victims of official oppression were then enumerated by the Court, to wit: (1) civil action, (2) criminal action, and (3) *habeas corpus*.[20]

The first remedy, according to the Court, is an optional albeit a little slow as a process by which the aggrieved party may recover damages.[21] "It may still rest with the parties in interest to pursue such an action, but it was never intended effectively and promptly to meet any such situation"[22] as that was presented before the Court at that time.

With regard to criminal responsibility, the Court cited the following provision in the old Penal Code:

> Any public officer not thereunto authorized by law or by regulations of a general character in force in the Philippines who shall banish any person to a place more than two hundred kilometers distant from his domicile, except it be by virtue of the judgment of a court, shall be punished by a fine of not less than three hundred and twenty-five and not more than three thousand two hundred and fifty pesetas.
>
> Any public officer not thereunto expressly authorized by law or by regulation of a general character in force in the Philippines who shall compel any person to change his domicile or residence shall suffer the penalty of destierro and a fine of not less than six hundred and twenty-five and not more than six thousand two hundred and fifty pesetas.[23]

It was conceded by the Court that if after due investigation, it is found that a public officer has violated this law, prosecutors will file a criminal prosecution just as vigorously as they have defended the same official in this action.[24] It was nevertheless stated by the Court that while the act may be considered a crime and the persons guilty thereof can be proceeded against, such fact is not a bar to *habeas corpus* proceedings.[25] Quoting Judge Cooley, the Court explained that, "it would be a monstrous anomaly in the law if to an application by one unlawfully confined, to be restored to his liberty, it could be a sufficient answer that the confinement was a crime, and therefore might be continued indefinitely until the guilty party was tried and punished

19. *Id.* at 220.
20. *Villavicencio*, 39 Phil. at 787.
21. *Id.*
22. *Id.*
23. *Id.* (citing the former PENAL CODE, art. 211).
24. *Id.* at 788.
25. *Id.*

therefore by the slow process of criminal procedure."[26] The writ of *habeas corpus* was recognized by the Court as a speedy and effectual remedy which was meant to relieve persons from unlawful restraint. It was likewise considered by the Court to be the best and only sufficient defense of personal freedom.[27]

In its decision, it was noted by the Court that one argument of respondents was particularly difficult to meet — that the women were free in Davao, and the jurisdiction of the mayor and the chief of police did not extend beyond the city limits. It observed that, at the first instance, this position is meritorious. When closely examined, however, the Court said that acceptance of such an argument is contrary to the first principles of the writ of *habeas corpus*.[28]

The critical object and purpose of the writ of *habeas corpus*, the Court elucidated, "is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal."[29] It stressed that anything that will preclude freedom of action is sufficient to qualify as restraint. The Court continued that the "forcible taking of these women from Manila by city officials, who handed them over to other parties, who deposited them in a distant region, deprived these women of freedom of locomotion just as effectively as if they had been imprisoned. Placed in Davao without either money or personal belongings, they were prevented from exercising the liberty of going when and where they pleased. The restraint of liberty which began in Manila continued until the aggrieved parties were returned to Manila and released or until they freely and truly waived this right."[30]

A momentary consideration of what an agreement with such a defense would mean was urged by the Court by elucidating that, "[t]he chief executive of any municipality in the Philippines could forcibly and illegally take a private citizen and place him beyond the boundaries of the municipality, and then, when called upon to defend his official action, could calmly fold his hands and claim that the person was under no restraint and that he, the official, had no jurisdiction over this other municipality."[31] The Court believed that, "the true principle should be that, if the respondent is within the jurisdiction of the court and has it in his power to obey the order of the court and thus to undo the wrong that he has inflicted, he should be

26. In the matter of Jackson, 15 Mich. 416, 434 (1867) *cited in* Villavicencio v. Lukban, 39 Phil. 778, 788 (1919).

27. Villavicencio v. Lukban, 39 Phil. 778, 788 (1919).

28. *Id.* at 790.

29. *Id.*

30. *Id.*

31. *Id.* at 791.

compelled to do so. Even if the party to whom the writ is addressed has illegally parted with the custody of a person before the application for the writ, it is no reason why the writ should not issue."[32] The Court pointed out that if the mayor and the chief of police, without authority of law, could expel these women from the city of Manila to Davao, these same officials are necessarily equipped with the same means to return them from Davao to Manila. "The respondents, within the reach of process, may not be permitted to restrain a fellow citizen of her liberty by forcing her to change her domicile and to avow the act with impunity in the courts, while the person who has lost her birthright of liberty has no effective recourse."[33]

Considering the fact that a question on the writ of liberty has been posed and, as noted by the Court, a close examination of the authorities fails to reveal any analogous case that would shed light on the matter, the Court turned to foreign jurisprudence which it found very persuasive, referring in particular to a case that came before the Supreme Court of the State of Michigan. In the case of *In the matter of* Jackson,[34] the issue was whether or not a writ of *habeas corpus* would be issued by the Supreme Court to a person within the jurisdiction of the State to bring a minor child who has been and continues to be detained in another State, under the guardianship of such State. The Court quoted the following passages from the opinion of Justice Cooley:

> I have not yet seen sufficient reason to doubt the power of this court to issue the present writ on the petition which was laid before us ... .
>
> It would be strange indeed if, at this late day, after the eulogiums of six centuries and a half have been expended upon the Magna Charta, and rivers of blood shed for its establishment; after its many confirmations, until Coke could declare in his speech on the petition of right that 'Magna Charta was such a fellow that he will have no sovereign,' and after the extension of its benefits and securities by the petition of right, bill of rights and *habeas corpus* acts, it should now be discovered that evasion of that great clause for the protection of personal liberty, which is the life and soul of the whole instrument, is so easy as is claimed here. If it is so, it is important that it be determined without delay, that the legislature may apply the proper remedy, as I cannot doubt they would, on the subject being brought to their notice ... .
>
> The second proposition — that the statutory provisions are confined to the case of imprisonment within the state — seems to me to be based upon a misconception as to the source of our jurisdiction. It was never the case in

32. *Id.*

33. Villavicencio v. Lukban, 39 Phil. 778, 791 (1919).

34. In the matter of Jackson, 15 Mich. 416 (1867) *cited in* Villavicencio v. Lukban, 39 Phil. 778, 792-93 (1919).

> England that the court of king's bench derived its jurisdiction to issue and enforce this writ from the statute. Statutes were not passed to give the right, but to compel the observance of rights which existed ... .
>
> The important fact to be observed in regard to the mode of procedure upon this writ is, that it is directed to and served upon, not the person confined, but his jailor. It does not reach the former except through the latter. The officer or person who serves it does not unbar the prison doors, and set the prisoner free, but the court relieves him by compelling the oppressor to release his constraint. The whole force of the writ is spent upon the respondent, and if he fails to obey it, the means to be resorted to for the purposes of compulsion are fine and imprisonment. This is the ordinary mode of affording relief, and if any other means are resorted to, they are only auxiliary to those which are usual. The place of confinement is, therefore, not important to the relief, if the guilty party is within reach of process, so that by the power of the court he can be compelled to release his grasp. The difficulty of affording redress is not increased by the confinement being beyond the limits of the state, except as greater distance may affect it. The important question is, where is the power of control exercised? And I am aware of no other remedy.[35]

This opinion of Judge Cooley has since been accepted as authoritative by other courts.[36]

To further bolster its position, the Court then referred to *The Queen v. Barnardo,*[37] a case brought before English courts. A child was taken out of England by the respondent. A writ of *habeas corpus* was issued by the Queen's Bench Division as a result of the application made by the mother and her husband strongly instructing the defendant to produce the child. The judge ruling on the case gave the defendant a period by which the child must be produced, but he failed to do so. His return stated that the child before the issuance of the writ had been handed over by him to another; that such child was no longer in his custody or control. He likewise declared that it was impossible for him to obey the writ. Consequently, he was found to be guilty of contempt of court. The Court quoted the decision of Lord Esher, M. R. on appeal:

> A writ of *habeas corpus* was ordered to issue, and was issued on January 22. That writ commanded the defendant to have the body of the child before a judge in chambers at the Royal Courts of Justice immediately after the receipt of the writ, together with the cause of her being taken and detained. That is a command to bring the child before the judge and must be obeyed, unless some lawful reason can be shown to excuse the nonproduction of the child. If it could be shown that by reason of his having lawfully parted with the possession of the child before the issuing of the writ, the defendant had no longer power to produce the child, that might be an answer; but in the absence of any lawful reason he is bound to produce the child, and, if he does not, he is in contempt of the Court for not obeying the writ without lawful excuse. Many efforts have been made in argument to shift the question of contempt to some anterior period for the purpose of showing that what was done at some time prior to the writ cannot be a contempt. But the question is not as to what was done before the issue of the writ. The question is whether there has been a contempt in disobeying the writ after it was issued by not producing the child in obedience to its commands.[38]

35. *Id.*

36. Rivers v. Mitchell, 57 Iowa, 193 (1881); Breene v. People, Colo., 117 Pac. Rep., 1000 (1911); Ex parte Young, 50 Fed. 526 (1892).

37. The Queen v. Barnardo, 23 Q.B.D. 305 (1889).

The Court also referred to a decision coming from the Federal Courts entitled, *United States v. Davis.*[39] A writ of *habeas corpus* was directed to the defendant to have before the circuit court of the District of Columbia three colored persons, with the cause of their detention. Davis, in his return to the writ, stated on oath that he had purchased the negroes as slaves in the city of Washington; that, as he believed, they were removed beyond the District of Columbia before the service of the writ of *habeas corpus,* and that they were then beyond his control and out of his custody. The evidence tended to show that Davis had removed the negroes because he suspected they would apply for a writ of *habeas corpus.* The court held the return to be evasive and insufficient, and that Davis was bound to produce the negroes. Davis being present in court, and refusing to produce the supposed slaves, was ordered committed to the custody of the marshal until he should produce them, or be otherwise discharged in due course of law. The court afterwards ordered that Davis be released upon the production of two of the negroes, for one of them had run away and been lodged in jail in Maryland. Davis produced the two negroes on the last day of the term.[40]

Having said all these, it was then concluded by the Court that there is no obstacle to the issuance of the writ of *habeas corpus.* It expressed the hope that this decision may serve to bulwark the fortifications of an orderly government of laws and to protect individual liberty from illegal encroachment.

B. Caunca Case

1. Facts of the Case

38. *Id.* at 311. *See also,* In re Matthews, 12 Ir. Com. Law Rep. [N.S.], 233; The Queen v. Barnardo, Gossage's Case, 24 Q.B.D. 283 (1890).

39. United States v. Davis, 5 Cranch C.C. 622 (1839), Fed. Cas. No. 14926.

40. United States v. Davis, 5 Cranch C.C. 622 (1839), Fed. Cas. No. 14926; *See also,* Robb v. Connolly, 111 U. S., 624 (1883); Church on Habeas Corpus, 2nd ed., p. 170 *cited in* Villavicencio v. Lukban, 39 Phil. 778, 794-95 (1919).

Estrella Justo recruited Estelita Flores, a 21-year old illiterate woman, to work as a maid and brought the latter from her native town Buruanga, Capiz to Manila. In Manila, Estelita stayed in the house of Julia Salazar, where the latter was running the Far Eastern Employment Bureau.

When her cousin Bartolome Caunca went for a visit, Estelita manifested her desire to go along with him, but was prevented by Julia and Estrella. Julia and Estrella demanded the condition that the sum of Php 83.85 advanced for Estelita's fare and other transportation expenses from Buruanga to Manila be paid first. While there was no evidence that any physical force had been used to prevent Estelita from leaving the house, Estelita was nevertheless unable to depart.

Bartolome filed a petition for *habeas corpus* with the Supreme Court and the only question was whether a writ of *habeas corpus* should issue.

2. Decision

The Supreme Court, sitting and speaking only through Justice Perfecto, issued the writ of *habeas corpus*.

At the outset, the Court stated that considering the crass ignorance of Estelita, her low mentality, her apparent undernourishment and weak vitality, her cowardly character — she was so timid that she hardly dared to speak during her testimony given in Hiligaynon, the only language she knew — there should be no doubt that by sheer mental and social superiority (Julia is an able and very intelligent businesswoman), respondents exerted moral compulsion strong enough to have effectively deprived Estelita of her personal liberty and of freedom to go along with her cousin Bartolome and was thus restrained. While no physical force had been exerted to keep her in Julia's house, that did not render the deprivation of Estelita's freedom — which includes the freedom of movement, the freedom to transfer from one place to another, the freedom to choose one's residence — any less real.

It was explained by the Court that any external moral compulsion — from founded or groundless fear, to erroneous belief in the existence of an imaginary power of an impostor to cause harm if not blindly obeyed, to any other psychological element that may curtail the mental faculty of choice or the unhampered exercise of the will, freedom may be lost. If the actual effect of such a psychological spell is to place a person at the mercy of another, the victim is entitled to the protection of courts of justice as an individual who is illegally deprived of his liberty by duress or physical coercion.

Furthermore, the Court stated that Estelita's indebtedness does not in any way subtract an iota from her fundamental right to have a free choice of abode. It continued by saying that an employment agency, regardless of the amount it may advance to a prospective employee or maid, has absolutely no power to curtail her freedom of movement. In the scale of values, there is no

acceptable equivalence between matters involving human dignity and those belonging to the domain of business. The Court characterized the latter as transient and precarious, while the former nearest to what are everlasting in humanity. It likewise believed that human dignity and human freedoms are essentially spiritual notwithstanding their material manifestations in the external world, and the universal concept of the spirit is inseparable from the idea of the eternal or unlimited by time and space. The petition was thus granted by the Court and it was declared that the decision was immediately executory upon its promulgation.

C. Moncupa Case

1. Facts of the Case

Efren C. Moncupa, along with other persons, was arrested and brought to MIG-15 Camp Bago Bantay, Quezon City where he was detained. An allegation that he was a National Democratic Front (NDF) staff member was made against him and on this basis a Presidential Commitment Order (PCO) was issued against him and eight other persons.[41]

Two separate investigations, conducted first, by Lieutenant Colonel Gerardo Lantoria, Jr., Chief of Task Force Makabansa Investigation Group and second, by Investigating Fiscal Amado Costales of Quezon City, was made and it was determined that the allegation that Efren was a member of a subversive organization was untrue. It was then the recommendation of both investigators that the prosecution of Efren be limited only for illegal possession of firearms and illegal possession of subversive documents under Presidential Decree No. 33 (P.D. 33).

Two separate informations were filed against Efren. One was for illegal possession of firearms before the Court of First Instance of Rizal, while the other was for a violation of P.D. 33 before the City Court of Quezon City. Significantly, Efren was excluded from the charge under the Revised Anti-Subversion Law and yet, Efren's motions for bail were denied by the lower court. Significantly, his arraignment and further proceedings failed to be pursued even as the petition subject of this case was being made.

Efren thus filed a petition for *habeas corpus* with the Supreme Court.

The respondents, in their return made in response to the petition, justified the validity of Efren's detention saying that the privilege of the writ had been suspended as to him. The respondents subsequently filed a motion to dismiss stating that Efren was being temporarily released from detention pursuant to the orders made by the Minister of National Defense with the

41 . Moncupa v. Enrile, 141 SCRA 233, 235 (1986).

approval of the President. Attached to Efren's release were the following restrictions:

1. He must get the approval of respondents for any travel outside Metro Manila.
2. Prior approval of respondents is also required in case he wants to change his place of residence.
3. He should not participate in any interview conducted by any local or foreign mass media representatives nor give any press release or information that is inimical to the interest of national security.
4. He is required to report regularly to respondents or their representatives.[42]

The respondents claimed that since Efren is free and no longer under their custody, the petition for *habeas corpus* may be deemed moot and academic as in similar cases. The issue to be resolved, therefore, was whether the petition for *habeas corpus* has become moot and academic in view of Efren's temporary release.

2. Decision

The Supreme Court *en banc,* speaking through Justice Gutierrez, granted the petition for *habeas corpus* and held that Efren's temporary release did not render the petition moot and academic. It stated that as early as 1919, the *Villavicencio Case* held that the object and purpose of the writ of *habeas corpus* is to inquire into all manners of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient. The Court noted that the latitudinarian scope of the writ of *habeas corpus* has, in law, remained undiminished.

While Efren may have been released from his detention cell, the Court noted that the restraints attached to his temporary release precluded freedom of action. Thus, it concluded that under the *Villavicencio* rule, the circumstances warrant the Court's inquiry into the nature of Efren's involuntary restraint and its relieving him of such restraints as may be illegal.

The following statements on the restrictions attached to Efren's temporary release were made by the Court:

1. His freedom of movement is curtailed by the condition that petitioner gets the approval of respondents for any travel outside Metro Manila.
2. His liberty of abode is restricted because prior approval of respondents is also required in case petitioner wants to change his place of residence.

42. *Id.* at 236.

3. His freedom of speech is muffled by the prohibition that he should not 'participate in any interview conducted by any local or foreign mass media representatives nor give any press release or information that is inimical to the interest of national security.'
4. He is required to report regularly to respondents or their representatives.[43]

The Court agreed with Efren that his temporary release did not render the petition for *habeas corpus* moot and academic but "merely shifted the inquiry from the legality of his actual detention to the legality of the conditions imposed by the respondents."[44] It stated that the reservation of the military in the form of restrictions attached to the temporary release of Efren is deemed a restraint on his liberty. Such restrictions circumscribe Efren's freedom of movement. The Court emphasized that "it is not physical restraint alone which is inquired into by the writ of *habeas corpus.*"[45]

Comparing the situation of Efren to that of the women who had been illegally seized and transported against their will to Davao in the *Villavicencio Case,* the Court observed that unlike Efren, they were free to change their domicile without obtaining official permission and in fact, some of the women even returned to Manila. This notwithstanding, the *Villavicencio* Court "condemned the involuntary restraints caused by the official action, fined the mayor of Manila and expressed the hope that its 'decision may serve to bulwark the fortifications of an orderly government of laws and to protect individual liberty from illegal encroachment.'"[46]

From the *Caunca Case,* the following was quoted by the Court, to wit:

> An employment agency, regardless of the amount it may advance to a prospective employee or maid, has absolutely no power to curtail her freedom of movement. The fact that no physical force has been exerted to keep her in the house of the respondent does not make less real the deprivation of her personal freedom of movement, freedom to transfer from one place to another, freedom to choose one's residence. Freedom may be lost due to external moral compulsion, to founded or groundless fear, to erroneous belief in the existence of the will. If the actual effect of such psychological spell is to place a person at the mercy of another, the victim is entitled to the protection of courts of justice as much as the individual who is illegally deprived of liberty by duress or physical coercion.[47]

43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.* at 237 (citing Villavicencio v. Lukban, 39 Phil. 778, 800 (1919)).
47. Moncupa v. Enrile, 141 SCRA 233, 237 (1986) (citing Caunca v. Salazar, 82 Phil. 851 (1949) (unreported)).

It likewise quoted *Tibo v. The Provincial Commander*:[48]

> Although the release in the custody of the Deputy Minister did not signify that petitioners could once again enjoy their full freedom, the application could have been dismissed, as it could be withdrawn by the parties themselves. That is a purely voluntary act. When the hearing was held on September 7, 1978, it turned out that counsel for petitioner Bonifacio V. Tupaz could have acted in a hasty manner when he set forth the above allegations in his manifestation of August 30, 1978, for Attorney Jose C. Espinas, who appeared for petitioners, while conceding that there was such a release from confinement, also alleged that it was conditioned on their restricting their activities as labor union leaders to the premises of the Trade Unions of the Philippines and Allied Services, presumably in Manila, as well as the Ministry of Labor. As the voting was to take place in the business firm in Bataan, the limits set would nullify whatever efforts they could have exerted. To that extent, and with the prohibition against their going to Bataan, the restraint on liberty was undeniable. If so, the moot and academic character of the petition was far from clear.[49]

As a manner of reiteration, the Court then recounted the case of *Toyoto v. Hon. Fidel Ramos*.[50] Here, the petitioners in *Toyoto* were temporarily released from detention. Arguing that since the petitioners had been temporarily released and thus their case had become moot and academic, the respondents filed a motion to dismiss the petition for *habeas corpus*. The petitioners maintained, however, that their case may be considered moot and academic only if their release would be permanent. In ruling for the petitioners, the *Toyoto* Court said:

> Ordinarily, a petition for *habeas corpus* becomes moot and academic when the restraint on the liberty of the petitioners is lifted either temporarily or permanently. We have so held in a number of cases. But the instant case presents a different situation. The question to be resolved is whether the State can reserve the power to re-arrest a person for an offense after a court of competent jurisdiction has absolved him of the offense. An affirmative answer is the one suggested by the respondents because the release of the petitioners being merely 'temporary' it follows that they can be re-arrested at anytime despite their acquittal by a court of competent jurisdiction. We hold that such a reservation is repugnant to the government of laws and not of men principle. Under this principle, the moment a person is acquitted on a criminal charge he can no longer be detained or re-arrested for the same offense. This concept is so basic and elementary that it needs no elaboration.[51]

48. Tibo v. The Provincial Commander, 85 SCRA 564 (1978).

49. *Id.* at 563-64.

50. Toyoto v. Hon. Fidel Ramos, 139 SCRA 316 (1985).

51. *Id.* at 319.

The Court summarized the rules on how a release renders a petition for a writ of *habeas corpus* moot and academic:

> A release that renders a petition for a writ of *habeas corpus* moot and academic must be one which is free from involuntary restraints. Where a person continues to be unlawfully denied one or more of his constitutional freedoms, where there is present a denial of due process, where the restraints are not merely involuntary but appear to be unnecessary, and where a deprivation of freedom originally valid has, in the light of subsequent developments, become arbitrary, the person concerned or those applying in his behalf may still avail themselves of the privilege of the writ.[52]

Having failed to show why the writ may not issue and why the restraints on Efren's freedom of movement should not be lifted, the Court declared the conditions attached to the temporary release of Efren null and void, and his temporary release absolute.

III. ANALYSIS AND RECOMMENDATION

The celebrated *Villavicencio Case* introduced into Philippine jurisprudence the idea that a person may be restrained in his freedom of action even without an actual confinement or detention. Thus, it held that any restraint which precludes freedom of action is sufficient to warrant the issuance of the writ of *habeas corpus*. It is unfortunate, however, that almost a century after the highly exalted ponentia of Justice Malcolm in the *Villavicencio Case*, there is still a scarcity of cases that illustrate the *Villavicencio* standard (that is, cases wherein there is no actual confinement or detention but the petitioner's liberty is nevertheless restrained because his freedom of action is precluded). Many cases would cite the *Villavicencio Case* tangentially or by way of *obiter dictum*, but the *Villavicencio* standard has largely remained undeveloped in the realm of restraint on freedom of action short of actual confinement or detention.

The unreported *Caunca Case*, on the other hand, seems to have taken *Villavicencio* to the next level when it ruled that freedom may be lost due to an erroneous belief in the existence of an imaginary power of an impostor to cause harm if not blindly obeyed, and if the actual effect of such psychological spell is to place a person at the mercy of another, the victim is entitled to the protection of courts of justice. But one will search in vain for a later case with facts analogous to *Caunca* espousing the same doctrine and find nothing. The *Moncupa Case* is more a return to *Villavicencio* than an affirmation of the *Caunca* standard that loss of liberty due to an erroneous belief or "psychological spell" may warrant the issuance of the writ of *habeas corpus*. The restraints in *Moncupa* were not imaginary or psychological in

52. *Moncupa*, 141 at, 238.