

Republic of the Philippines
National Capital Judicial Region
REGIONAL TRIAL COURT
Manila, Branch 46

**THE PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

- versus -

Criminal Case No. R-MNL-19-
01141-CR

**REYNALDO SANTOS JR., MARIA
ANGELITA RESSA, and
RAPPLER, INC.,**

Accused.

X ----- X

**MOTION OF THE UNITED NATIONS SPECIAL
RAPPORTEUR ON THE PROMOTION AND
PROTECTION OF THE RIGHT TO FREEDOM OF
OPINION AND EXPRESSION
FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

COMES NOW herein movant, David Kaye, thru undersigned counsel by way of special appearance, to this Honorable Court most respectfully moves for allowance to submit an *amicus curiae* brief in the instant case and further submits as follows:

1. Movant David Kaye has been appointed on August 2014 as the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and has served in such capacity up to the present. The mandate of this Office was defined under UN Human Right Council (UNHRC) Resolution 7/36 as follows¹:

“(a) To gather all relevant information, wherever it may occur, relating to violations of the right to freedom of opinion and expression, discrimination against, threats or use of violence, harassment, persecution or intimidation directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including, as a matter of high priority, against journalists or other professionals in the field of information;

(b) To seek, receive and respond to credible and reliable information from Governments, non-governmental organizations and any other parties who have knowledge of these cases;

(c) To make recommendations and provide suggestions on ways and means to better promote and protect the right to freedom of opinion and expression in all its manifestations;

¹ <https://www.ohchr.org/en/issues/freedomopinion/pages/opinionindex.aspx>

and

(d) To contribute to the provision of technical assistance or advisory services by the Office of the United Nations High Commissioner for Human Rights to better promote and protect the right to freedom of opinion and expression.

2. Movant David Kaye himself is preeminently qualified to provide opinions on issues relevant to the instant case in aid of this Honorable Court judicious resolution of the same as can be gleaned from his professional engagements as follows²:

“Mr Kaye is a clinical professor of law at the University of California, Irvine, School of Law. He teaches international human rights law and international humanitarian law and directs a clinic in international justice. His research and writing focus on accountability for serious human rights abuses and the law governing use of force. He has collaborated with local and national governments, major international NGOs as well as those at the grassroots, international organizations, and academic institutions around the world.

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<https://www.ohchr.org/en/issues/freedomopinion/pages/davidkaye.aspx#:~:text=David%20Kaye%20was%20appointed%20UN,and%20expression%20in%20August%202014.&text=He%20teaches%20international%20human%20rights,a%20clinic%20in%20international%20justice.>

He has also published numerous research essays and opinion pieces on international human rights law related issues in a wide range of specialised reviews and mainstream publications. His most recent publications include: Speech Police: The Global Struggle to Govern the Internet (2019); Archiving Justice: Conceptualizing the Archives of the ICTY, Journal of Archival Science (2014); Stealth Multilateralism: U.S. Foreign Policy Without Treaties - or the Senate, Foreign Affairs (2013); Human Rights Prosecutors? The United Nations High Commissioner for Human Rights, International Justice, and the Example of Syria (book chapter) (2013); State Execution of the International Covenant on Civil and Political Rights, 3 U.C. Irvine Law Reviews 95 (2013).

In addition to his teaching and research, he has lectured around the world, including at the United Nations and the International Criminal Court. He has taught courses in public international law, international humanitarian law and human rights at Georgetown University, Whittier Law School, and summer courses at the Universities of Toulouse and Amsterdam. He co-founded the International Human Rights Program of the University of California, Los Angeles, School of Law, and founded its International Justice Clinic, working on projects dealing with accountability for international crimes around the world. Mr Kaye began his legal career as a lawyer with the U.S. Department of State.

Mr Kaye has served on numerous local, national, and international boards over the course of career. He has been an active member

of the American Society of International Law, for which he served on its Executive Council and Executive Committee, and is a member of the Council on Foreign Relations. He earned his undergraduate and law degrees from the University of California, Berkeley.”

3. Since its creation in 1993, the office of the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has analyzed and made recommendations to the then UN Commission on Human Rights and now the UNHRC, providing suggestions on ways and means to better promote and protect the right to freedom of opinion and expression in all its manifestations. Among its focus in reports made to the UNHRC are issues on the protection of journalists and the regulation of the internet.
4. Herein movant recalls in its submission the relevant resolutions of the United Nations

General Assembly and its subsidiary body, the UNHRC, on the protection of journalists from intimidation and undue interference summed up as follows:”

“Journalistic expression, including expression about public and political issues, is especially protected by the right to freedom of expression as guaranteed by Article 19 of the ICCPR. In addition, under international law, defamation laws must be narrowly tailored in order to guarantee the rights to freedom of opinion and expression. Criminalizing defamation and using these laws in to deter journalists from acting as a “public watchdog” on government accountability and in providing forums for public debate on matters of public concern is contrary to the intent and purpose of Article 19. Online speech is an exercise of freedom of expression protected under Article 19(2), and restriction on online speech should not be more strict or limiting than offline speech.”

5. Given the relevance of the issues discussed in herein movant’s submission and the fact that the Republic of the Philippines is a Member State of the UNHCR and obligated to take steps to protect the right of journalists, it is

respectfully submitted that herein movant's brief will provide this Honorable Court with a greater understanding of the role of journalists and the special protection that all Member States must accord.

6. A copy of the Amicus Curiae Brief is hereto attached for reference by this Honorable Court.

7. As herein movant holds office in the State of California, United States, it is further requested that all notices and processes of this Honorable Court be directed to undersigned counsel at his address indicated herein below.

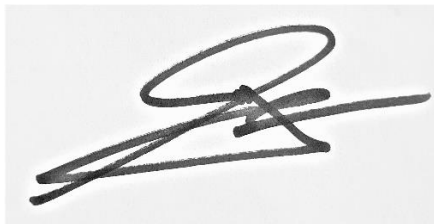
RESPECTFULLY SUBMITTED.

PRAYER

WHEREFORE, PREMISES CONSIDERED, it is respectfully prayed that this Honorable Court:

1. APPROVE undersigned counsel's special appearance as counsel for herein movant and request to be furnished copies of all notices and processes in the instant case;
2. GRANT leave of court AND thereafter, ADMIT, the submission of movant's Amicus Curiae Brief;
3. Other reliefs just and equitable under the premises are likewise prayed for.

Antipolo City for the City of Manila, June 9, 2020.

A handwritten signature in black ink, appearing to read 'F. Marinas Jr.', is centered on a light gray rectangular background.

FELIX J. MARINAS JR.
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NOTICE

The Clerk of Court
RTC- MANILA- Branch 46

Please submit to the Honorable Court herein motion for its due consideration and approval immediately upon receipt hereof.

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FELIX J. MARINAS JR.