

Republic of the Philippines
SUPREME COURT
Manila

**EFREN M. MORILLO, MARIA
BELEN DAA, LYDIA GABO,
and MARILYN MALIMBAN**

Petitioners,

-versus-

G.R. No. **274271**

For: Petition for *Certiorari*
under Rule 65 of the Rules
of Court

**OFFICE OF THE
OMBUDSMAN, P/SINP. EMIL
DELOS SANTOS GARCIA, PO3
ALLAN ENCINA
FORMILLEZA, PO1 JAMES
DOMINGO AGGARAO, PO1
MELCHOR NATONIO
NAVISAGA, MARIA LORENA
B. BARCELONA, MA.
LEONILA
BARCELONA-TOLONES,
MARY JOY B. RALO,
RICHARD APURO RIÑON,
JOHN DOE alias "MANOK"
and PETER DOE alias "Willy"**

Respondents.

x-----x

**MOTION FOR RECONSIDERATION
WITH
MOTION TO ELEVATE THE CASE
TO THE SUPREME COURT EN BANC**

**PETITIONERS EFREN M. MORILLO, MARIA BELEN DAA,
LYDIA GABO, and MARILYN MALIMBAN, through counsel,
respectfully move for the reconsideration of the 30 June 2025
Resolution (*SC Resolution*) of this Honorable Court and state that:**

PREFATORY STATEMENT

“The Prosecutor puts forward as emblematic in this context the case of Efren Morillo.⁷⁷ According to the available information, on 21 August 2016 in Payatas (Quezon City), Efren Morillo, a 28-year-old fruit and vegetable vendor, was detained at a house by plainclothes police officers, along with four friends, during an alleged Tokhang operation.⁷⁸ The policemen pointed their guns at them, tied them up and later shot each of them, killing four.⁷⁹ Efren Morillo was wounded but survived playing dead, and later gave an account of the incident.⁸⁰ ...”

~ ICC Pre-Trial Chamber 1 “Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute”¹

SUMMARY

1. The dismissal of the instant petition by the Supreme Court will result in a potentially absurd situation wherein the indirect perpetrator or mastermind of the Philippine “war on drugs” is being held in custody and facing charges before the International Criminal Court (ICC) for crimes against humanity of murder, while the direct perpetrators who actually murdered the loved ones of the Petitioners – in the name of the “war on drugs” – cannot even be prosecuted domestically.

2. This case seriously risks becoming an emblematic example of Philippine State inaction—that the Philippines is not investigating or prosecuting the crimes against humanity of murder perpetrated during the Philippine “war on drugs” as even cases against low level perpetrators consisting of ordinary charges of murder and frustrated murder – such as those committed against the Petitioners’ loved ones – are dismissed summarily despite overwhelming evidence that support the police Respondents’ prosecution.

¹ International Criminal Court, Pre-Trial Chamber 1, Situation in the Republic of the Philippines, Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute, September 15, 2021, at para. 45. Available at https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_08044.PDF (December 2, 2025).

3. Aside from the ICC specifically considering Petitioner Efren Morillo's case as "**emblematic**" of the "war on drugs" as quoted in the Prefatory Statement above, if the Supreme Court sustains its order of dismissal, this case will become emblematic for a second ignominious reason - the lack of access to justice by "war on drugs" victims in the Philippine jurisdiction.

4. This case has an abundance of very strong pieces of evidence that fully satisfy the very modest threshold of probable cause. Consider the following:

- a. There is an eyewitness who testified how the police Respondents first immobilized him and his four friends by tying their hands, after which they were all shot execution-style.
- b. There's a trial court decision that found that there was no unlawful aggression committed by Petitioner Morillo, and there were blatant irregularities committed by the police Respondents that violated the Constitution, laws, and police regulations.
- c. There's a medical doctor who testified that the trajectory of the bullet that hit one of the petitioners was downward, confirming the execution-style account of the eyewitness.
- d. There are even Supreme Court and Court of Appeals decisions in favor of the Petitioners that should serve to bolster a finding of probable cause.

5. The instant case has the kind of very strong evidence that 99 percent² of the "war on drugs" victims sorely lack. If the Supreme Court finds that the Petitioners' pieces of evidence are not enough to support the prosecution of the Respondent police perpetrators, then virtually none of the thousands of killings during the "war on drugs" can ever be prosecuted domestically.

6. With the indulgence of the Court, Petitioners herein lay down a summary of the crucial basic facts that should be determinative of the outcome of this case.

² Philippine National Police submission of drug war deaths in the case of "Sr. Ma. Juanita Daño et al. vs. The Philippine National Police et al.," G.R. No. 234484, still pending in the Supreme Court.

7. This case involves the 21 August 2016 Tokhang Operation which resulted in the murder of four civilians—Jessie Cule, Anthony Comendo, Raffy Gabo, and Marcelo Daa Jr.—and the near-fatal shooting, amounting to frustrated murder, of Petitioner Efren Morillo.

8. Petitioner Morillo, the sole surviving eyewitness, stated under oath what he saw and heard that day—police officers stormed the house, bound their hands, ordered him and Marcelo Daa, Jr. to sit, and without warning shot them at close range—killing four and leaving him for dead as an officer was heard saying, “*Huwag na ‘yan at sabihing nanlaban. Iwanan ang ebidensya.*”³

9. In the 2017 Amparo case of *Efren Morillo, et al. v. PNP, et al.*, the Supreme Court *En Banc* granted the country’s first ever Writ of Amparo on the drug-war, along with a Temporary Protection Order which imposed a one-kilometer radius of protection around Morillo, et al. which herein Respondents police officers were prohibited from entering.⁴

10. The Court Appeals, upon remand of the Amparo case for reception of evidence and after a public hearing, later converted the protection order into a *permanent* one, suspended *Oplan Tokhang* as to Petitioners Morillo, et al., and permanently reassigned herein Respondent police officers—after the police themselves through the Office of the Solicitor General declared to the Appellate Court that they were no longer controverting the evidence attached to the Amparo petition - including the sworn statements describing in detail the 21 August 2016 Tokhang Operation—thereby conceding that substantial evidence exists that there is a grave threat to the life, liberty, and security of Morillo et al..⁵

11. Thus, it is undisputed that the 21 August 2016 Tokhang Operation conducted by herein Respondents police officers resulted in four (4) dead bodies and one (1) near-fatal shooting.

12. Consequently, the Philippines had the positive duty under international human rights law to investigate and prosecute

³Complaint-Affidavit of Efren Morillo dated 02 March 2017 (attached as Annex “C” to the Petition for Certiorari).

⁴ See Notice of Resolution, G.R. No. 229072 (attached as Annex “G” to Complaint-Affidavit).

⁵ See CA Resolution dated (attached as Annex “I” to Complaint-Affidavit).

persons, especially state personnel, who are responsible for the fatal shooting, frustrated murder and gruesome murders of the loved ones of Petitioners Morillo, et al. consistent with their rights, as victims, to justice and to the truth.

13. Thus, on March 2017, Petitioners Morillo et al. resorted to the Office of the Ombudsman (OMB) as domestic accountability mechanism for the gross human rights violations – of multiple murders and frustrated murder -- that they and their loved ones suffered under the “War on Drugs” of then President Rodrigo Roa Duterte.

14. The Metropolitan Trial Court of Quezon City, after a full criminal trial, held that Morillo was never proven to have owned nor fired a gun, that there was no unlawful aggression,⁶ that the police operation was riddled with irregularities, and that the medical evidence—including Dr. Oballo’s testimony⁷ on the downward, execution-type trajectories—squarely contradicted any claim of self-defense or lawful performance of duty.

15. The ICC Prosecutor⁸ even identified and the Pre-Trial Chamber⁹ noted the case of Morillo and the *21 August 2016 Tokhang Operation* as emblematic of the Philippine “war on drugs” demonstrating patterns of extrajudicial killings. The ICC Pre-Trial Chamber eventually concluded that there is a “reasonable basis” for the ICC “Prosecutor to proceed with an investigation, in the sense that the crime against humanity of murder appears to have been

⁶ See MeTC Decision dated 17 March 2023 (attached as Annex “A” to Motion to Admit Evidence).

⁷ Judicial Affidavit of Dr. Ian Paolo C. Oballo dated 18 November 2022 (attached as Annex “B” to Motion to Admit Evidence with Motion to Resolve).

⁸ International Criminal Court, Pre-Trial Chamber 1, Situation in the Republic of the Philippines, Public redacted version of “Request for authorisation of an investigation pursuant to article 15(3)”, June 14, 2021, at para. 33. Available at https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_05381.PDF (December 5, 2025). See also Prosecution’s request to resume the investigation into the situation in the Philippines pursuant to article 18(2), June 24, 2022, at para. 84. Available at https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_05101.PDF (December 2, 2025).

⁹ International Criminal Court, Pre-Trial Chamber 1, Situation in the Republic of the Philippines, Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute, September 15, 2021, at para. 45. Available at https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_08044.PDF (December 2, 2025).

committed.”¹⁰

16. This case exemplifies both the direct liability of the police shooters and the broader criminality now under ICC trial—yet the Respondent Ombudsman’s dismissal, and this High Court’s initial Resolution adopting it, would effectively exonerate these direct perpetrators. The result is a legal paradox: while an ICC proceeding exists for the masterminds behind the Philippine drug-war killings on the strength of emblematic cases such as this one, Philippine domestic processes risk “no prosecution” against the direct actors of the crime. This effectively signals impunity for low-level perpetrators of the Philippine “war on drugs” whose accountability is most vital to its immediate victims, thus, placing Petitioners and the other thousands of drug war victims in peril, and eventually undermining the Constitution’s guarantee of the right to life.

TIMELINESS and COMPLIANCE

17. On 20 November 2025, Petitioners, through counsel, received the *SC Resolution* dated 30 June 2025.

18. Under Section 1 of Rule 52 of the Rules of Court, Petitioners have fifteen (15) days or until 5 December 2025, to file this *Motion*. Thus, this *Motion* is filed on time.

THE ASSAILED RESOLUTION

19. The Petitioners respectfully move for the reconsideration of the *Resolution* of this Honorable Court, DISMISSING their Petition for Certiorari (*Petition*). The questioned minute Resolution of the Honorable Court reads:

**"G.R. No. 274271 (EFREN M. MORILLO,
MARIA BELEN DAA, LYDIA GABO and
MARILYN MALIMBAN, Petitioners v. OFFICE
OF THE OMBUDSMAN, P/SINSP. EMIL
DELOS SANTOS GARCIA, P03 ALLAN**

¹⁰ International Criminal Court, Pre-Trial Chamber 1, Situation in the Republic of the Philippines, Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute, September 15, 2021, at para. 113. Available at https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_08044.PDF (December 2, 2025).

ENCINA FORMILLEZA, P01 JAMES DOMINGO AGGARAO JR., P01 MELCHOR NATONIO NAVISAGA, MARIA LORENA B. BARCELONA alias "LEA BARCELONA,"* MA. LEONILA BARCELONA-TOLONES alias "LORIE BARCELONA,"* MARY JOY B. RALO, RICHARD APURO RIÑON, JOHN DOE alias "MANOK" and PETER DOE alias "WILLY," Respondents).— Considering the allegations, issues, and arguments adduced in the Petition for *Certiorari* assailing the Joint Resolution and Joint Order dated November 28, 2022 and March 22, 2024, respectively, of the Office of the Ombudsman in OMB-P-C-17-0135 and OMB-PA-17-0147, the Court resolved to **DISMISS** the petition for failure of petitioners to sufficiently show that any grave abuse of discretion was committed by the Office of the Ombudsman in rendering the challenged resolution and order which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence."

20. With all due respect, the Petitioners respectfully pray that this Honorable Court reconsider its *SC Resolution* based on the following grounds.

GROUND

- I. THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT BLATANTLY DISREGARDED MATERIAL, UNCONTROVERTED, AND JUDICIALLY ESTABLISHED FACTS THAT CLEARLY ESTABLISH PROBABLE CAUSE.
- II. THE OMBUDSMAN EGREGIOUSLY MISAPPLIED THE DOCTRINES ON BURDEN-SHIFTING, SELF-DEFENSE, AND FULFILLMENT OF DUTY, IGNORING CONSTITUTIONAL, STATUTORY, AND POLICE REGULATIONS VIOLATIONS THAT RENDER BOTH JUSTIFICATIONS LEGALLY IMPOSSIBLE.

- III. THE OMBUDSMAN GROSSLY MISAPPLIED THE DOCTRINE ON JUDICIAL NOTICE BY USING IT TO EXCLUDE EVIDENCE.
- IV. THE HONORABLE SUPREME COURT IS BESEECHED TO PROPERLY APPRECIATE THE VERY MERITORIOUS NATURE OF THIS CASE WHICH INVOLVES THE EXTRAORDINARY CIRCUMSTANCE OF ADMITTED KILLINGS BY STATE AGENTS, WHERE HEIGHTENED REVIEW OF THE OMBUDSMAN'S ACTIONS IS REQUIRED UNDER SECTION 1, ARTICLE VIII OF THE 1987 CONSTITUTION.
- V. RECONSIDERATION IS NECESSARY TO PREVENT A COMPLETE MISCARRIAGE OF JUSTICE.

DISCUSSIONS

I. THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT BLATANTLY DISREGARDED MATERIAL, UNCONTROVERTED, AND JUDICIALLY ESTABLISHED FACTS THAT CLEARLY ESTABLISH PROBABLE CAUSE.

21. The OMB gravely violated its mandate when it issued the OMB Resolution and OMB Order finding no probable cause against police Respondents **despite undisputed facts, binding judicial findings, and evidence that it was duty-bound to evaluate**—but never did.

22. The Petitioners demonstrated with unmistakable clarity in their *Petition for Certiorari* that the OMB Resolution and OMB Order were issued in a manner that falls squarely within this Court's review powers under *Section 1, Article VIII of the 1987 Constitution*—an act done in a capricious, whimsical, arbitrary, or despotic manner amounting to an **evasion of a positive duty** or a refusal to perform a duty enjoined by law.¹¹ This case presents precisely such a violation.

¹¹ Cambe vs. Office of the Ombudsman, G.R. Nos. 212014-15, December 06, 2016.

23. Jurisprudence has long held that grave abuse of discretion exists when a tribunal or public officer **disregards material facts, acts contrary to the evidence on record**, or reaches a conclusion that **no reasonable body would reach**, amounting to an evasion or refusal to perform a duty enjoined by law.

24. Likewise, the 1987 Constitution bestows on the OMB the following positive duties:

- a. **act promptly on complaints** filed in any form or manner as mentioned below:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.¹²

- b. **investigate illegal, unjust, improper, or inefficient acts of public officials** as discussed below:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

1. *Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.¹³*

xxx

- c. **uphold due process and equal protection** in the handling of criminal complaints as *"no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."¹⁴*

¹² Section 12, Article XI of the 1987 Constitution.

¹³ Section 13, Article XI of the 1987 Constitution.

¹⁴ Section 1, Article III of the 1987 Constitution.

- d. **protect and enforce the right to life** through effective, genuine investigation of killings by State agents as detailed below:

Section 5. The maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

25. The OMB's failure to conduct a full, genuine investigation and its disregard of judicial and forensic findings constitute **multiple constitutional violations**, cumulatively amounting to grave abuse of discretion of the highest order.

A. The killings of four civilians and the shooting of Petitioner Efren Morillo are undisputed facts that the Ombudsman was constitutionally required to investigate – but never did.

26. From the very beginning, the existence of **four dead bodies** and the **frustrated killing of Morillo** were never contested by the police Respondents. In fact, in the Joint Affidavit of Arrest¹⁵ and respective Counter-Affidavits,^{16,17,18} Respondents admitted that they:

- a. fired upon, "neutralized", and killed Jessie Cule, Anthony Comendo, Raffy Gabo and Marcelo Daa, Jr., and;
- b. shot Petitioner Efren Morillo, who only survived fatal injuries due to medical intervention.

¹⁵ see Joint Affidavit of Arrest executed by respondents Garcia, Formilleza, Aggarao, Jr., and Navisaga (attached as Annex "C-1" to Complaint-Affidavit)

¹⁶ A copy of the Joint Counter-Affidavit of Leonila and Lorena dated 10 June 2017 is attached as Annex "I"

¹⁷ A copy of the Counter-Affidavit of P/SI Garcia dated 25 September 2017 is attached as Annex "J"

¹⁸ A copy of the Joint Counter-Affidavit of Formilleza, Aggarao and Navisaga dated 26 September 2017 is attached as Annex "K"

27. These admissions alone triggered the duty of the OMB to scrutinize the lawfulness of the killings. Instead, the OMB evaded this constitutional duty by a mere finding of no probable cause.

B. Judicial findings by the SC, CA, and MeTC contradict the OMB's Order and Resolution.

28. The *Writ of Amparo* proceedings, initiated by Petitioners and acted upon by the Court of Appeals (CA) in a *Resolution*¹⁹ and made pursuant to the Supreme Court En Banc's *Resolution*,²⁰ produced **judicial findings** that directly **contradict** the OMB Order and OMB Resolution:

- a. The **Supreme Court En Banc** directed the Court of Appeals to conduct hearings after issuing a *Temporary Protection Order (TPO)* within a one-kilometer radius from Petitioners' residences and work addresses and a *Writ of Amparo* for the petitioners.
- b. After a full hearing, the **Court of Appeals** converted the TPO to a permanent one, expressly holding that Petitioners' allegations of unlawful police conduct were **supported by substantial evidence**.
- c. During the CA hearing, **Respondents** themselves, on record and through the Office of the Solicitor General, manifested and readily **agreed that there existed substantial evidence** to warrant the grant of the privilege of the *Writ of Amparo*.

29. Another huge contradiction to OMB's Order and Resolution that should alarm this Honorable Court is the *Decision*²¹ rendered by the Metropolitan Trial Court of Quezon City (MeTC) Branch 133 involving the **DISMISSED Direct Assault** covering the same incident subject of this case and filed by the police Respondents against Efren Morillo.

30. In acquitting Morillo, the MeTC categorically found, after a full-blown trial, that Petitioner Morillo **never assaulted the police**,

¹⁹ see CA Resolution dated (attached as Annex "I" to Complaint-Affidavit)

²⁰ See Notice of Resolution, G.R. No. 229072 (attached as Annex "G" to Complaint-Affidavit).

²¹ Attached as Annex "A" in the Motion to Admit Evidence with Motion to Resolve

never fired or used a gun, and that the police operation was riddled with multiple procedural irregularities as will be discussed in further details below.

31. The OMB's conclusions are irreconcilably inconsistent with the judicial findings in the MeTC and Amparo proceedings before the Supreme Court En Banc and the Court of Appeals. These tribunals, after thorough examination of evidence, rejected the version offered by the police Respondents.

32. These judicial findings are not merely persuasive—they are binding determinations of fact that directly contradict the OMB's reasoning in its questioned Order and Resolution. In fact, the OMB **never cited** the *Writ of Amparo* proceedings or the MeTC Decision, **never evaluated** the transcripts of stenographic notes, **never addressed** the findings of lack of unlawful aggression, **never reconciled** its conclusion with the MeTC's factual determinations. This wholesale disregard of judicial findings is the clearest manifestation of *grave abuse of discretion*. It constitutes the "*arbitrary and despotic exercise of judgment*" repeatedly condemned by this High Court in a line of decided cases.

C. Probable cause existed even merely with the initial evidence submitted by the Petitioners.

33. The Complaint-Affidavit and its annexes filed by the Petitioners before the OMB firmly established the existence of **probable cause**.

34. Under long-settled jurisprudence, probable cause requires only a **well-founded belief** that a crime has been committed and that the respondents are **probably guilty** thereof—not proof beyond reasonable doubt.²²

35. In *Galario v. Office of the Ombudsman*,²³ this Court held that "probable cause does **not require an inquiry into whether there is sufficient evidence to procure a conviction**" but rather, "probable cause **needs only to rest on evidence showing that more likely than**

²² Estrada v. Office of the Ombudsman, G.R. Nos. 212140-41, 21 January 2015

²³ G.R. No. 166797, 10 July 2007.

not a crime has been committed.”

36. Here, the OMB failed at the most basic level of its mandate: it rendered a finding of “no probable cause” without thoroughly evaluating the evidence that was actually submitted before it.

37. As demonstrated in the *Petition*, the 28 November 2022 OMB Resolution did not reflect the full evidentiary record before the OMB and was issued without proper evaluation of the material evidence already submitted with the Complaint.

38. Worse, when Petitioners later filed their Motion for Reconsideration (OMB MR) on 25 July 2023—submitting additional documents that *confirmed and reinforced* the probable cause already established from the outset—the OMB, in its 22 March 2024 OMB Order, **summarily affirmed its earlier Resolution without a thorough evaluation of the evidence on record.** This mechanical reaffirmation of the blatantly defective resolution, coupled with an utter lack of proper review of both the original and confirmatory evidence, constitutes a clear abdication of the OMB’s constitutional duty to conduct a genuine and thorough preliminary investigation.

39. The Complaint-Affidavit and its Annexes already **established probable cause** beyond the threshold required. The complaint included the following:

- a. the sworn statements of witnesses Efren, Marla, Rowena, and Maribeth describing the binding of hands, execution-style killings, and ransacking or robbery by police respondents;²⁴
- b. the *Supreme Court En Banc’s* Resolution²⁵ granting and issuing a *Temporary Protection Order* (TPO) and *Writ of Amparo* to herein petitioners;
- c. the Court of Appeals’²⁶ findings in the *Writ of Amparo* proceedings, where the TPO was converted to a permanent one²⁷ and where police respondents, during

²⁴ Attached as Annex “R-series” in the Complaint-Affidavit.

²⁵ Attached as Annex “G” in the Complaint-Affidavit.

²⁶ Attached as Annex “I” in the Complaint-Affidavit.

²⁷ see p. 4 of CA Resolution (attached as Annex “I” to Complaint-Affidavit)

the scheduled hearings, “manifested and readily agreed that there existed substantial evidence to warrant the grant of the privilege of the Writ of Amparo;”

- d. the proof of geographical falsification committed by police respondents by changing the barangay of the incident to hide their lack of jurisdiction to conduct a *Tokhang* Operation where the incident actually occurred;²⁸
- e. the medical certificates and radiologic findings proving pneumothorax and life-threatening injuries, showing downward and front-to-back bullet trajectories;^{29,30}
- f. the SOCO photographs and scene-processing documentation contradicting the police narrative of a shootout;^{31,32}
- g. the front-to-back direction of the gunshot wounds in a report issued by Dr. Nizam Peerwani including his forensic opinion which declared the paraffin test invalid;³³
- h. the statements evidencing planting of evidence, including the directive: “*Huwag na ‘yan at sabihing nanlaban. Iwanan ang ebidensya.*”³⁴; and
- i. the multiple violations negating presumption of regularity under the Revised Manual of PNP Operational Procedures (“*PNP Manual*”).

40. It is worth emphasizing that the *PNP Manual* explicitly provides **that there is NO presumption of regularity when death occurs in police operations** and that when death occurs, police officers are **REQUIRED to submit to inquest proceedings** under Rule 15.4 thereof. The provision provides as follows:

²⁸ see par. 233 of the Petition for Certiorari dated 08 July 2024

²⁹ see par. 28 of Judicial Affidavit of Dr. Ian Paolo C. Oballo dated 18 November 2022 (attached as Annex “B” to Motion to Admit Evidence with Motion to Resolve)

³⁰ see par 37 of id.

³¹ Quezon City Police District, Batasan Police Station 6 Spot Report dated 21 August 2016 (attached as Annex “C-2” to Complaint-Affidavit).

³² Joint Affidavit of Arrest dated 24 August 2016. (attached as Annex “C-3” to Complaint-Affidavit)

³³ see Review of Death Investigations issued by Dr. Nizam Peerwani, M.D. (attached as Annex “F” to the Reply-Affidavit)

³⁴ par. 25 of Complaint-Affidavit of Efren Morillo dated 02 March 2017 (herein attached as Annex “C”)

“15.4 Inquest Proceeding Necessary When Suspect Dies.

In cases of armed confrontation wherein the suspect dies, the Team Leader of the operating unit shall submit the incident for inquest before the duty Inquest Prosecutor prior to the removal of the body from the scene, except in areas where there are no Inquest Prosecutors. In which case, the territorial police unit can proceed with the investigation.”³⁵

41. Herein police Respondents deliberately **did not** submit themselves to the mandatory inquest, a violation suggesting concealment rather than compliance. Worse, they also committed the following violations in the *PNP Manual*:

- a. there was **no pre-operation coordination with barangay and civic authorities;**
- b. they were **not wearing proper, police uniforms;**
- c. they **lacked pre-operation clearances, and;**
- d. they **falsified the barangay of the incident**

—all of which negate the presumption of regularity and the fulfillment of duty.^{36,37}

42. Moreover, the OMB had all the more reason to correct its erroneous Resolution of non-finding of probable cause when Petitioners filed the 17 April 2023 *Motion to Admit Evidence* as this included the following:

- a. the MeTC *Decision*³⁸ **acquitting petitioner Efren Morillo of Direct Assault, debunking the presumption of regularity of performance of duty, negating any findings that “Morillo assaulted, attacked and employed personal violence or intimidation on the police operatives,” but rather finding irregularities in**

³⁵ Chapter 3. Rule 15.4. of Revised PNP Operational Procedures

³⁶ see p. 17 of MeTC Decision (Attached as Annex “A” in the Motion to Admit Evidence with Motion to Resolve)

³⁷ 4. MISSION, 2) Coordination Stage, PNP CMC 16-2016

³⁸ Attached as Annex “A” in the Motion to Admit Evidence with Motion to Resolve

the police respondents' operation;

- b. the Transcripts of Stenographic Notes of Dr. Ian Paolo Oballo's, who testified that he **performed a closed tube thoracostomy (CTT) – a life-saving procedure in which a tube is inserted into the thorax to expel trapped air – to prevent Efren from dying of his gunshot wounds,**³⁹
- c. the Judicial Affidavit of Dr. Oballo⁴⁰ detailing the **downward trajectory of Efren's gunshot wound and the life-saving procedure that had to be done on his person.**

43. Clearly, the submitted pieces of evidence were more than sufficient to meet the modest **threshold of probable cause**, which requires only a reasonable belief – not absolute certainty – that the crime was committed by the police respondents.

44. Thus, even without the additional evidence later validly submitted, the OMB's finding of "no probable cause" was **already factually untenable**, unsupported by law, and contrary to reason.

45. The additionally submitted evidence – the MeTC Decision, TSN and Judicial Affidavit by Dr. Ian Paolo C. Oballo – only **confirmed** what the original evidence already proved. Yet, the OMB still refused to investigate this case properly – violating its mandated positive duties under the 1987 Constitution.

46. The OMB therefore **failed twice**: first, by ignoring and misappreciating the evidence attached to the Complaint-Affidavit establishing probable cause, and; second, by refusing to consider the confirmatory evidence submitted later.

47. Despite the materiality, relevance, and outcome-determinative nature of all the submitted evidence by Petitioners, the OMB never amended or reconsidered the OMB Resolution nor issued any new evaluation incorporating these pieces of evidence. It simply promulgated the OMB Order upholding a resolution that was factually obsolete and erroneous. Such conduct reflects not mere error, but the very "arbitrary and despotic exercise of discretion" struck down in *Duque v. Ombudsman and Fact-Finding*

³⁹ Attached as Annex "C" in the Motion to Admit Evidence with Motion to Resolve

⁴⁰ Attached as Annex "B" in the Motion to Admit Evidence with Motion to Resolve

Investigation Bureau,⁴¹ *Casing v. Ombudsman*,⁴² and similar cases.

48. As shown in detail in the *Petition*, the OMB did not address the witness accounts showing the victims with bound hands,⁴³ while seated and unarmed,⁴⁴ and the entry and exit wounds indicating the front-to-back, downward-angled trajectories of gunshot wounds⁴⁵ establishing execution-style killings rather than an alleged gun battle.

49. The SOCO's recovery of all spent cartridges in a single area was similarly disregarded, even though it contradicted the police's narrative of a firefight.^{46,47} The OMB also ignored the MeTC's judicial finding—made after full trial—that Petitioner Efren Morillo never fired a gun and that no unlawful aggression existed on his part.⁴⁸

50. These are not peripheral omissions but violations that strike at the heart of probable cause determination.

51. Even the testimonial inconsistencies among the police Respondents—for example, Respondent Formilleza's admission during his MeTC testimony that Respondent Garcia was not present at the scene, contrary to the police affidavits and media interviews the police gave — were left entirely unaddressed.⁴⁹

52. Rather than weighing and confronting these extensive deficiencies, the OMB blindly adopted the police's self-serving counter-affidavits, ignoring the contrary documentary, forensic, medical, testimonial, and judicial evidence already submitted. **This Court has repeatedly held that such blind adoption constitutes grave abuse of discretion**, particularly when—as here—the disregarded evidence is material and outcome-determinative.

⁴¹ G.R. No. 224648, 224806-07, 225188 and 225277, 28 August 2019

⁴² G.R. No. 192334, 13 June 2012

⁴³ see par. 5-6 of *Sinumpaang Salaysay* of Marla C. Daa dated 13 January 2017 (attached as Annex "R-3" to Complaint-Affidavit)

⁴⁴ par. 24 of Complaint-Affidavit of Efren Morillo dated 02 March 2017.

⁴⁵ Attached as Annex "C" in the Motion to Admit Evidence with Motion to Resolve

⁴⁶ Quezon City Police District, Batasan Police Station 6 Spot Report dated 21 August 2016 (attached as Annex "C-2" to Complaint-Affidavit).

⁴⁷ Joint Affidavit of Arrest dated 24 August 2016. (attached as Annex "C-3" to Complaint-Affidavit)

⁴⁸ see p. 14 to 16 of MeTC decision (Attached as Annex "A" in the Motion to Admit Evidence with Motion to Resolve)

⁴⁹ see TSN of PO3 Formilleza dated 08 November 2017 (attached as Annex "D" to Motion for Reconsideration)

53. This is ratiocinated in *Duque v. Ombudsman and Fact-Finding Investigation Bureau*,⁵⁰ when this Honorable Court held as follows:

“Nonetheless, the Court is not precluded from reviewing the action of the Office of the Ombudsman when it is shown to be tainted with grave abuse of discretion that amounts to lack or excess of jurisdiction, in which case its certiorari jurisdiction under Section 1, Article VIII of the Constitution may be exceptionally invoked. Indeed, when the outcome of the preliminary investigation by the Office of the Ombudsman is shown to have resulted from the exercise of discretion in an arbitrary, capricious, whimsical, or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law, the Court may step in, and may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice. Although judicial policy usually calls for the widest latitude of deference to the findings by the Office of the Ombudsman, the Court should never shirk from exercising its power of judicial review whenever the circumstances warrant in order to determine whether or not the findings are supported by the facts, and by the law. Surely, the Office of the Ombudsman's determination of probable cause is not unlimited. The Court ought always to be mindful of the primary objectives of preliminary investigation to secure the innocent against hasty, malicious and oppressive prosecution, and to protect the innocent from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, while at the same time saving the State from useless and expensive trials.”

⁵⁰ G.R. No. 224648, 224806-07, 225188 and 225277, 28 August 2019

54. From the foregoing, the circumstances demonstrate not mere error of judgment but a **systemic refusal by the OMB to perform its duty in accordance with law and evidence.** Under Rule 65 of the Rules of Court, such disregard of material evidence, reliance on a pre-existing resolution that does not reflect the actual record, misapplication of controlling jurisprudence, and the blind acceptance of self-serving affidavits to the exclusion of contradictory judicial and forensic evidence, all amount to grave abuse of discretion correctible by *certiorari*. The OMB's actions fall squarely within the constitutional parameters of grave abuse repeatedly recognized in this Court's precedents. A Resolution granting reconsideration of the subject orders is totally warranted.

II. THE OMBUDSMAN EGREGIOUSLY MISAPPLIED THE DOCTRINES ON BURDEN-SHIFTING, SELF-DEFENSE, AND FULFILLMENT OF DUTY, IGNORING CONSTITUTIONAL, STATUTORY, AND POLICE REGULATIONS VIOLATIONS THAT RENDER BOTH JUSTIFICATIONS LEGALLY IMPOSSIBLE.

55. The OMB completely misapplied the justifying circumstances of self-defense and fulfillment of duty. **The OMB never placed the burden of proving the elements of the justifying circumstances on the police respondents, even though they invoked self-defense and fulfillment of duty, and even if they explicitly admitted the killing of the four victims and the near fatal shooting of petitioner Efren Morillo who nonetheless survived to positively identify the police respondents as the murderers of his friends.**

56. Under *Medina v. People*,⁵¹ *Aguilar v. DOJ*,⁵² *Velasquez v. People*,⁵³ and *Ortega v. Sandiganbayan*,⁵⁴ **when an accused admits having killed the victim and claims a justifying circumstance, the burden of evidence shifts to the accused to clearly and convincingly prove *all* elements of the justification.**

⁵¹ *Medina v. People*, 724 Phil. 226, 237 (2014).

⁵² G.R. No. 197522, 11 September 2013

⁵³ G.R. No. 195021, 15 March 2017

⁵⁴ G.R. No. L-57664, 08 February 1989

57. Here, police Respondents admitted the killings in their Joint Affidavit of Arrest, claiming they “neutralized” the four deceased and that they also shot Morillo. This **admission triggered the burden-shifting rule**—yet the OMB disregarded this binding doctrine.

58. The OMB likewise **failed to specify which documents and their contents sufficiently establish all the elements** of the justifying circumstances of self-defense and fulfillment of duty.

59. Petitioners urge the Honorable Court to take a hard look at the insufficient documents submitted by the police respondents. In their counter-affidavits, **the police Respondents merely attached copies of their awards and commendations, letters alleging that the victims were involved in illegal drugs or criminal activities, and instructions from the police commander to conduct a “discreet validation” at Group 9⁵⁵**—none of which establish nor satisfy the required elements for each of the justifying circumstances of self-defense and/or fulfillment of duty in order for the police respondents to evade criminal liability.

60. The OMB itself conceded that the police Respondents bore the burden of proving unlawful aggression, reasonable necessity of the means employed, and lack of sufficient provocation. Yet the OMB identified no evidentiary basis on record showing that any of these elements were sufficiently and convincingly proven by the Respondents.

A. The OMB failed to correctly recognize that the police respondents’ violations of their constitutional, statutory, and PNP operational rules, completely negate their claim of “lawful performance of duty.”

61. Fulfillment of duty requires proof of two indispensable elements, which are as follows:

⁵⁵ see Counter-Affidavit of Respondent Garcia and Joint Counter-Affidavit of Formilleza, Aggarao Jr., and Navisaga (attached as Annexes “J” and “K” to the Petition for Certiorari, respectively)

*“To successfully invoke this justifying circumstance, an **accused must prove** that:*

- (1) he acted in the **performance of a duty**; and*
- (2) the **injury inflicted** or offense committed is the **necessary consequence** of the due performance or lawful exercise of such duty.”⁵⁶*

62. Here, the respondents’ own acts completely negate the existence of the first element. Every layer of governing law – from the **1987 Constitution** to the **Revised Manual of PNP Operational Procedures, RA 9165, and RA 10591** – was violated.

63. These violations were not minor irregularities. They were **direct, categorical, and disqualifying breaches** that make a justification defense **legally impossible**.

On the 1987 Constitution

64. Respondents violated *Section 2, Article III of the 1987 Constitution*, which safeguards persons from **unreasonable searches and seizures**, when they:

- a. entered private premises without a warrant;
- b. conducted operations without legal authority or jurisdiction;
- c. performed an anti-illegal drug operation even though all guidelines require voluntary encounters, not armed ingress; and
- d. killed four civilians without any lawful basis or imminent threat.

65. A police operation that begins with a constitutional violation cannot amount to a “lawful performance of duty.”

On the Revised Manual of PNP Operational Procedures

66. Respondents violated almost every applicable rule governing police operations:

- a. *Section 12, Rule II* (Revised PNP Manual on Anti-Illegal Drugs Operations) for **failure to preserve and manage**

⁵⁶ PO2 Cruz v. People of the Philippines, G.R. No. 216642. September 08, 2020.

the crime scene;

- b. **Rule III** (Revised PNP Manual on Anti-Illegal Drugs Operations) for **failure to submit any pre-operation report;**
- c. **Rule 2**, PNP Operations Manual for **failure to wear proper uniforms**, a mandatory requirement to prevent abuse;
- d. **Rule 5.1**, PNP Operations Manual for **conducting operations outside their territorial jurisdiction;**
- e. **Rule 15.1**, PNP Operations Manual for **contaminating the crime scene by eating and drinking therein;**
- f. **Rule 15.4**, PNP Operations Manual for **failure to submit to inquest proceedings**, which are mandatory when suspects die, and;
- g. **Rule 37.2**, PNP Operations Manual for **failure to coordinate with the PDEA.**

67. These violations **categorically negate** the first element of fulfillment of duty. An operation that is **unauthorized, uncoordinated, improperly documented, conducted out of jurisdiction, and carried out by men out of uniform** can never be “lawful.”

68. This Court has held that acts done outside the lawful scope of authority cannot give rise to the justifying circumstance of fulfillment of duty. Where the initial act is unlawful, all subsequent acts—the shooting, the killing, the alleged ‘counter-assault’—are necessarily unlawful.⁵⁷

On Penal Statutes

69. Respondents likewise violated multiple criminal laws, which are as follows:

⁵⁷ People v. Oanis, G.R. No. 47722, July 27, 1943.

- a. *Article 171, Revised Penal Code* for **falsification of the municipal police blotter to alter the barangay of the incident;**
- b. *Section 21, R.A. 9165* for **failure to observe the chain of custody for alleged drugs and paraphernalia;**
- c. *Section 29 in relation to Section 3(cc), R.A. 9165* for **planting of dangerous drugs;** and
- d. *Article 38, R.A. 10591* for **planting of firearms or ammunition.**

70. These statutory violations **destroy any claim** that the respondents acted in the performance of a lawful duty. No fulfillment-of-duty defense can stand when the "operation" itself is a **criminal act.**

B. The MeTC's judicial findings already negate unlawful aggression and destroy self-defense at its foundation.

71. To properly invoke self-defense as a justifying circumstance, the following elements must be present:

- a. *unlawful aggression;*
- b. reasonable necessity of the means employed to prevent or repel it; and
- c. lack of sufficient provocation on the part of the person defending himself.⁵⁸

72. In *Guevarra v. People*, "the **most important** of all is the element of **unlawful aggression**. Unlawful aggression is an **actual physical assault, or at least a threat to inflict real imminent injury,** upon a person."⁵⁹ There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense.⁶⁰

73. Other than the bare, naked, hollow, and perfunctory claim in their counter-affidavits, the police respondents failed to establish

⁵⁸ Article 11, par. 2 of Revised Penal Code

⁵⁹ *Guevarra v. People*, G.R. No. 170462, 05 February 2014.

⁶⁰ *ibid.*

any other proof that Efren and his companions exhibited any acts of unlawful aggression toward them.

74. On the contrary, the complete and total absence of unlawful aggression was more than sufficiently established by the petitioners as judicially determined with finality in the MeTC decision on the Direct Assault case filed against Efren Morillo.

75. The MeTC categorically held after full trial that the police completely failed to prove that:

- a. Morillo **used, fired, or owned a gun,**
- b. Morillo **assaulted or intimidated** the police,
- c. There is **presumption of regularity in the performance of their duties;**
- d. the firearm allegedly recovered was **linked** to Morillo, and
- e. There was **unlawful aggression on the part of Morillo.**⁶¹

76. The first element of Direct Assault is “attack, use of force, or serious intimidation or resistance upon a person in authority”. This is similar to the element of unlawful aggression in self-defense. In this connection, the MeTC found as follows:

“The Prosecution **did not establish with moral certainty that accused MORILLO assaulted, attacked and employed personal violence or intimidation on the police operatives.**

[...]

Verily, accused MORILLO was not personally seen by the prosecution witnesses to be the person who fired a gun at the police operatives. [...] The **Prosecution was unable to put forward conclusive proof that the said recovered firearm was used by accused MORILLO. Neither** did the Prosecution establish that the said firearm was **owned** by accused MORILLO.”

77. These judicial findings **negate** the very first and the very indispensable element of self-defense: **unlawful aggression.** It is

⁶¹ Attached as Annex “A” in the Motion to Admit Evidence with Motion to Resolve

totally and completely **impossible to sustain a claim of self-defense where unlawful aggression is absent.**

78. Despite this, the OMB upheld its Resolution declaring the respondents to have acted in fulfillment of duty **without articulating any factual or legal basis for the said conclusion.**

79. Under Article 11(5) of the Revised Penal Code, **the injury inflicted must be the necessary consequence of the lawful performance of duty.**

80. Here, medical and SOCO findings show the reverse: **execution-style killings, downward gunshot trajectories, and a single cartridge concentration area inconsistent with any allegation of "gun battle."**

81. To reiterate and for emphasis, Respondent Formilleza **admitted** to being the author of the killings of Daa Jr., Cule, Commendo, and Gabo, and the author of the near-mortal injuries of Morillo. Formilleza claimed that this was done in the performance of his duty during a shoot-out initiated by the victims. However, in cases where the accused admits to be the author of the killing, **the burden of evidence shifts** from the petitioners to the respondents who will then have to prove clearly and sufficiently the existence of a justifying circumstance that necessitated the killing that they perpetrated.

82. As shown in the *Petition*, the **complete absence of any analysis of the elements** of self-defense or fulfillment of duty, and the **neglect** of binding jurisprudence on **burden-shifting**, that both characterize the OMB ruling, clearly show the **arbitrariness** of the OMB's findings.

83. There can be no other conclusion but this: **the OMB evaded its positive duty to decide the case according to law and evidence when it anchored its ruling on the police respondents' self-serving affidavits, while ignoring every judicial, medical, forensic, documentary, and testimonial fact that contradicted them. Such conduct is nothing but grave abuse of discretion.**

III. THE OMBUDSMAN GROSSLY MISAPPLIED THE DOCTRINE ON JUDICIAL NOTICE BY USING IT TO EXCLUDE EVIDENCE.

84. The OMB's conclusion that it could not "take judicial notice" of the MeTC Decision, Transcripts of Stenographic Notes (TSNs), medical and forensic findings, and affidavits because they allegedly "pertain to a different proceeding" constitutes a fundamental misapplication of the doctrine of judicial notice. **It is a mischaracterization of petitioners' submissions:** the evidence was not submitted for judicial notice, but as **substantial and relevant evidence** properly filed on record to **support the finding of probable cause** against respondents, in addition to the other evidence that had already been submitted.

85. Thus, the OMB's rejection of the said pieces of evidence on the basis of "non-applicability of judicial notice" is utterly untenable. The OMB did not merely apply the wrong rule; it applied an **irrelevant** rule to justify its refusal to examine evidence it was duty-bound to evaluate.

86. This Court has consistently held that during preliminary investigation, the OMB must consider **all evidence submitted by the parties**, including judgments, transcripts, medical reports, affidavits, and official documents—even when they arise from related or parallel proceedings. In *Ledesma v. CA*⁶² and *Duque v. Ombudsman*,⁶³ this Court emphasized that administrative and investigatory bodies must receive and evaluate relevant evidence presented before them, in line with the constitutional guarantees of due process.

87. In this case, Petitioners did not request that the OMB "take judicial notice" of trial findings. They **submitted** the MeTC Decision, TSNs and Judicial Affidavit of Dr. Oballo, and the OMB was duty-bound to examine each of those evidence as part of the preliminary investigation record.⁶⁴ The OMB, however, sidestepped this obligation by invoking an inapplicable doctrine—thereby refusing to consider highly relevant and pivotal evidence actually in its possession.

⁶² G.R. No. 113216, September 5, 1997.

⁶³ G.R. No. 224648, 224806-07, 225188 and 225277, 28 August 2019.

⁶⁴ *Arroyo v. Sandiganbayan*, G.R. No. 210488, 01 December 2021

88. Such a refusal lies at the heart of grave abuse of discretion. As this Court held in *Ledesma* and *Duque* cases, an agency commits grave abuse when it **deliberately ignores evidence crucial to its mandate** because administrative and investigatory bodies must not only allow parties to present evidence **but must also genuinely consider and evaluate that evidence**. The OMB's misapplication of judicial notice was not a mere error of judgment; it was a scheming mechanism to justify the exclusion of decisive, court-tested evidence contradicting the police respondents' self-serving narratives.

89. This error becomes even more egregious in light of the nature of the excluded evidence. The MeTC Decision and TSNs were not extraneous documents—they were judicially vetted findings arising from the same incident, involving the same actors, based on testimonial and forensic evidence that directly contradict the police respondents' version of events. The exclusion of the medical findings of Dr. Oballo likewise stripped the OMB's determination of factual grounding.

90. These are precisely the kinds of evidence that the OMB should have weighed in determining whether probable cause exists, especially in cases involving admitted killings. **By invoking an irrelevant doctrine to reject properly submitted and materially relevant evidence, the OMB abdicated its investigatory function and thus acted with grave abuse of discretion.**

91. Worse, the OMB's approach effectively nullified petitioners' statutory right to present evidence. Preliminary investigation is not a game of technicalities; it is the constitutional mechanism to determine whether criminal charges should be pursued. *Estrada v. Ombudsman*⁶⁵ underscores that the OMB cannot insulate itself from judicial review when it commits patent errors that deprive parties of due process.

92. By disregarding the MeTC's findings—findings that negated unlawful aggression, discredited the police narrative, established the absence of a firefight, and documented the execution-style nature of the killings—the OMB selectively insulated the respondents' version while silencing the wealth of contradictory evidence.

⁶⁵ G.R. Nos. 212140-41, January 21, 2015.

93. Finally, the OMB's **refusal to consider the Amparo findings** of the Court of Appeals—wherein respondents themselves acknowledged that the Writ of Amparo **was supported by substantial evidence**—unreasonably compartmentalizes judicial determinations that bear directly on the credibility of the parties and the factual nature of the incident. The OMB's insistence that these cannot be considered is not supported by any jurisprudential authority. To the contrary, this Court is consistent in holding that administrative and investigatory bodies may—and indeed must—**consider relevant findings from other proceedings when these bear directly on material facts, for failure to do so constitutes grave abuse of discretion and denial of due process.**⁶⁶

94. In sum, the Ombudsman's misapplication of judicial notice was not only legally baseless; it was a **deliberate mechanism for excluding evidence it was duty-bound to evaluate**. This constitutes grave abuse of discretion correctible only by this Court.

IV. THIS HONORABLE COURT IS BESEECHED TO PROPERLY APPRECIATE THE VERY MERITORIOUS NATURE OF THIS CASE WHICH INVOLVES THE EXTRAORDINARY CIRCUMSTANCE OF ADMITTED KILLINGS BY STATE AGENTS, WHERE HEIGHTENED REVIEW OF THE OMBUDSMAN'S ACTIONS IS REQUIRED UNDER SECTION 1, ARTICLE VIII OF THE 1987 CONSTITUTION.

95. This Honorable Court should reconsider its Resolution because the instant case does not involve ordinary factual disputes or routine errors in evidence appreciation. It concerns admitted killings by police officers at the height of a period in which thousands of Filipinos were killed under official "Tokhang" and "Double Barrel" campaigns.

96. Within this context, the OMB's refusal to indict despite overwhelming evidence merits strict and heightened judicial review, as consistently mandated in jurisprudence addressing abuses by State agents.

⁶⁶ Reyes v. Ombudsman, G.R. Nos. 212593-94, March 15, 2016.

A. The Honorable Supreme Court must impose strict review when State agents admit to killings.

97. In *People v. Oanis*,⁶⁷ *Medina v. People*,⁶⁸ *People v. Genosa*,⁶⁹ and *Aguilar v. DOJ*,⁷⁰ this Court held that **when the accused admits the killing**, courts:

- a. **must ensure that the burden is upon the accused to prove clearly and sufficiently the elements or requisites of the justifying circumstances** the accused invokes, and;
- b. **must subject any claims of self-defense or fulfillment of duty to strict review**, requiring clear and convincing proof of the justifying circumstance.

Mere claims or self-serving affidavits do not suffice.

98. This principle is even more compelling where the accused are **State actors** such as herein police Respondents, whose acts carry the presumption of coercive power of the State.

99. Here, police Respondents admitted to “neutralizing” the four victims and shooting Petitioner Efren Morillo. These admissions alone required the OMB to rigorously evaluate each element of self-defense or fulfillment of duty under Article 11, RPC. Yet, the OMB exonerated the Respondents without examining a single element—a failure magnified, not diminished, by the gravity of the killings.

B. The killings occurred within a period recognized for widespread extrajudicial killings by police.

100. This case does not arise in an ordinary factual environment. The killings of the four victims and the shooting of Efren Morillo took place during a period recognized in multiple domestic judicial records—and in repeated international findings—as one characterized by widespread, systematic police killings under the

⁶⁷ G.R. No. 47722, July 27, 1943.

⁶⁸ G.R. No. 161308, January 15, 2014.

⁶⁹ G.R. No. 135981, January 15, 2004.

⁷⁰ G.R. No. 197522, September 11, 2013.

so-called “war on drugs.” In this context, the State’s obligation to exercise **extraordinary diligence** in the investigation of unlawful killings is at its highest.

101. The MeTC *Decision* and SC or CA *Resolutions* already **judicially acknowledged the irregularities of the police operation, the absence of unlawful aggression, and the falsification of location** of the illegal operation. These findings dovetail with national data: PNP operational statistics showing thousands of “*nanlaban*” killings; Senate records documenting falsified police reports and planted evidence; and CHR and DOJ findings that many “*nanlaban*” cases involved unarmed victims, post-mortem firing, and altered crime scenes.

102. In their Motion for Reconsideration before the OMB, Petitioners specifically informed the OMB that the victims here match the same *modus operandi*: **police operations without jurisdiction, without warrants, victims restrained and unarmed, and uniformly reported as “*nanlaban*.”**

103. These are not merely “contextual evidence.” They directly affect the Court’s standard of review. In cases involving killings attributable to State actors, this Court has adopted doctrines of **heightened review and strict accountability.**

104. As established in *Tabian, et al. v. Gonzales (Tabian)*,⁷¹ **police killings during anti-drug operations form part of a documented pattern of extrajudicial violence** requiring heightened judicial protection. In that case, the Court held as follows:

“The failure of the petitioners to duly investigate is a **violation of the respondent's right to life and security.**”

105. Citing *Secretary of National Defense v. Manalo (Manalo)*,⁷² the Court in *Tabian* reiterated that the right to security includes the State’s **positive duty** to conduct a **serious, effective, and truth-seeking investigation** into killings attributed to State agents:

“Protection includes **conducting effective investigations, organization of the government**

⁷¹ G.R. No. 247211, August 01, 2022.

⁷² G.R. No. 180906, October 7, 2008, 568 SCRA 1, 57-58.

apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice. The Inter-American Court of Human Rights stressed the importance of investigation in the Velasquez Rodriguez Case, viz:

(The duty to investigate) must be undertaken in a **serious manner** and **not as a mere formality preordained to be ineffective**. An investigation must have an **objective** and be **assumed by the State as its own legal duty**, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. [Emphasis supplied]"

106. In *Tabian*, the police similarly invoked **self-defense** to justify the killing of a suspected drug offender during a supposed buy-bust operation. Yet this Court rejected the investigation conducted by the police as **superficial, one-sided, perfunctory, and reliant solely on the accounts of the police operatives themselves**, holding that such omissions violate the constitutional rights of victims and their families. The Court further ruled that:

"Their omission in failing to further investigate Joselito's case despite directives **violated respondent's right to security and makes them accountable for the death of Joselito."**

107. The *Tabian* case also reaffirmed the dual concepts of **responsibility** and **accountability** under *Roxas v. Macapagal-Arroyo*⁷³ and *Razon v. Tagitis (Tagitis)*,⁷⁴ stressing that even when substantial evidence does not directly establish participation in the killing, public officers are still **accountable** if they **fail to discharge the duty of extraordinary diligence** in investigating extrajudicial killings. Significantly, the Court emphasized that **prior criminal records, drug**

⁷³ 644 Phil. 480 (2010).

⁷⁴ 621 Phil. 536 (2009),

involvement, or allegations of criminality are irrelevant to the State's constitutional obligations:

"The fact that respondent and Joselito were previously arrested for selling illegal drugs is beside the point. As stated earlier, even if the respondent committed a crime, the petitioners, as law enforcement agents, are not at liberty to disregard the respondent's constitutionally guaranteed rights to life, liberty and security."⁷⁵

108. After reviewing the record in *Tabian*, this Court concluded that the police team's killing during an anti-drug operation constituted an **extrajudicial killing**, and it expressly recommended the filing of **criminal, civil, and administrative cases** against the operatives.

109. These cases underscore that in instances of alleged extrajudicial killings such as in this case, **courts must ensure that investigatory bodies discharge their duties according to law**, and certiorari lies where they do not.

C. The Ombudsman's inaction entrenches impunity.

110. The *SC Resolution* risks the impression that this Court accedes to the OMB and that the OMB may refuse to fully investigate and indict despite:

- a. Undisputed and judicially admitted killings,
- b. downward-trajectory bullet wounds,
- c. TSNs showing absence of unlawful aggression,
- d. SOCO evidence negating a shootout,
- e. police falsification of location,
- f. testimony of hand-binding, robbery, and post-shooting gunfire,
- g. medical findings establishing execution-style injuries, and
- h. judicial findings rejecting the "*nanlaban*" narrative.

111. Allowing the OMB's refusal to indict to be affirmed would establish a **precedent where police may kill, claim self-defense or fulfillment of duty, and evade criminal**

⁷⁵ G.R. No. 247211, August 01, 2022..

accountability without proving each element of justification. This is irreconcilable with constitutional and jurisprudential mandates requiring State accountability for lethal force, particularly during periods of systemic abuse.

D. Strict judicial review is constitutionally mandated when State agents use lethal force.

112. Section 11, Article II of the 1987 Constitution mandates that **“the State values the dignity of every human person and guarantees full respect for human rights.”**

113. The spirit and intent of this provision demand that when State agents take life, the judicial system must impose **the highest level of review**, not the lowest. This follows the jurisprudence in *Manalo*,⁷⁶ *Tagitis*,⁷⁷ and *Tabian*,⁷⁸ where the Court emphasized that **judicial review cannot remain passive when life and liberty are threatened by State action.**

114. The SC *Resolution* dismissing the *Petition for Certiorari* even where the OMB abandoned its legal duty to conduct a full investigation and to indict police respondents, risks to lower the standard of review applicable in cases of State-perpetrated killings. This is incompatible with constitutional norms and firmly established Court doctrine.

E. Reconsideration is imperative to prevent doctrinal inconsistency and systemic harm.

115. To maintain consistency with the constitutional structure, established jurisprudence, and the realities acknowledged by the judiciary, the Court must treat this case not as routine litigation but as one involving:

- a. **admitted killings,**
- b. **undisputed evidence of execution,**
- c. **State actors as perpetrators, and**
- d. **systemic context of widespread extrajudicial killings.**

⁷⁶ G.R. No. 180906, October 7, 2008, 568 SCRA 1, 57-58.

⁷⁷ 621 Phil. 536 (2009),

⁷⁸ G.R. No. 247211, August 01, 2022.

116. These circumstances require strict review, heightened vigilance, and a refusal to tolerate superficial or defective findings by investigatory bodies like the OMB.

117. **Thus, reconsideration is necessary to restore doctrinal coherence and prevent the reinforcement of impunity for State agents involved in unlawful killings.**

118. All preceding arguments converge on one constitutional truth: the OMB's refusal to conduct a genuine investigation—despite overwhelming evidence—produces not merely legal error, but a miscarriage of justice of constitutional magnitude.

V. RECONSIDERATION IS NECESSARY TO PREVENT A COMPLETE MISCARRIAGE OF JUSTICE.

119. This Honorable Court must reconsider its Resolution because allowing the OMB's *Resolution* and *Order* to stand would result in nothing less than a **complete miscarriage of justice**—one that is both immediate for the petitioners and systemic for the rule of law.

A. The OMB's inaction denies Petitioners the only constitutionally mandated remedy: prosecution.

120. Petitioners have no other adequate, speedy, or plain remedy except the correction of the OMB's grave abuse of discretion through a *certiorari*. As this Court held in *Duque v. Office of the Ombudsman*,⁷⁹ **judicial review becomes necessary where the OMB's actions are patently arbitrary, unsupported by evidence, or amount to a virtual refusal to perform its duty.**

121. Here, the OMB's dismissal of the Complaint-Affidavit and subsequent refusal to evaluate additional material evidence deprive Petitioners of the sole constitutionally mandated avenue to seek redress against unlawful killings by State agents. Allowing such

⁷⁹ G.R. No. 224648, 224806-07, 225188 and 225277, 28 August 2019

an outcome to stand would signal that even in cases of admitted killings, the law may be circumvented by procedural formalities and selective evidence appreciation.

122. The OMB's finding of no probable cause issued without fully examining the case record is not an error—it is a **void determination**, legally infirm and constitutionally unsustainable.

B. This Honorable Court overlooked evidence that clearly exceeded the modest threshold of probable cause.

123. Probable cause does not require absolute certainty. It requires only a reasonable belief that a crime has been committed and that the accused are probably guilty thereof. As held in *Galario v. Office of the Ombudsman*.⁸⁰

“[A] finding of **probable cause needs only to rest on evidence showing that more likely than not a crime has been committed** and there is **enough reason to believe** that it was committed by the accused. It **need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt**. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is **merely based on opinion and reasonable belief**. Probable cause does **not require an inquiry into whether there is sufficient evidence to procure a conviction**”
(*Emphasis supplied*)

124. The Honorable Court's DISMISSAL is a dangerous precedent risking the view that the OMB may conclude a finding of “no probable cause” despite:

- a. multiple gunshot wounds with downward trajectories,
- b. unarmed victims with bound hands,

⁸⁰ G.R. No. 166797, 10 July 2007

- c. admitted killings by the police,
- d. falsified location to conceal lack of jurisdiction, and
- e. judicial findings negating unlawful aggression

which is **not only unreasonable, but also legally impossible.**

125. No reasonable court or tribunal, applying the correct legal standards and reviewing the actual record, could have concluded that these killings were justified.

C. Failure to indict irreparably forecloses accountability.

126. In ordinary criminal cases, a wrongful dismissal at preliminary investigation may be corrected by re-filing or supplemental complaints. But in cases involving State agents—especially police officers—failure to indict during preliminary investigation effectively forecloses future prosecution because of the following:

- a. Evidence deteriorates;
- b. Witnesses face heightened threats or are forced to relocate;
- c. Records become more difficult to secure;
- d. Police respondents benefit from internal institutional protection;
- e. The window for holding perpetrators accountable closes permanently.

127. In the context of admitted killings by policemen, such a denial of prosecution is **final and irreparable**. Its consequences extend not only to petitioners but to the credibility of the justice system itself.

D. Without reconsideration, the SC Resolution inadvertently risks a flawed investigative process and weakens judicial oversight over the OMB.

128. This Court's dismissal—if left uncorrected—creates and risks the dangerous impression that:

- a. the OMB may ignore sworn statements, TSNs, medical records, SOCO reports, and judicial findings;
- b. the OMB may rely on a pre-existing drafted resolution even after new, material evidence is submitted;
- c. self-serving police affidavits may be adopted wholesale without heightened review;
- d. the burden of evidence may be inverted in cases of admitted killings, and;
- e. courts will abstain from review even when the OMB's actions fall squarely within the definition of grave abuse of discretion.

129. Such precedent would weaken the constitutional architecture of accountability. As this Court warned in *Tabian, Manalo*, and *Tagitis*, abdication of review in cases involving State-inflicted harm risks entrenching impunity and undermining public faith in the justice system.

E. The Court, as the final guardian of rights, must intervene where institutional failure threatens life, liberty, and the integrity of the justice system.

130. The 1987 Constitution vests this Honorable Court with both the **power and the duty**—under Section 1, Article VIII—to determine whether any branch or instrumentality of government has committed **grave abuse of discretion amounting to lack or excess of jurisdiction**. This expanded judicial power was crafted precisely to prevent institutional failures from extinguishing rights, insulating official misconduct, or rendering constitutional guarantees hollow.

131. The OMB's refusal to consider material evidence, its reliance on a pre-existing and outdated *Resolution*, its disregard of judicial findings, and its misapplication of settled doctrines constitute exactly the type of governmental misconduct that this constitutional provision was designed to check. Here:

- a. lives were admittedly exterminated by State agents;

- b. critical judicial, forensic, medical, and testimonial pieces of evidence were ignored;
- c. the official duty to conduct a genuine, effective, and truth-seeking investigation was abandoned, and;
- d. petitioners have no other recourse except a *Petition for Certiorari*.

132. In such circumstances, judicial intervention is not a matter of discretion—it is a **constitutional imperative**. To decline review where grave abuse is manifest, where rights to life and security have been violated, and where the State’s investigatory apparatus has effectively collapsed, would be to abdicate the very function entrusted to this Honorable Court as the final guardian of constitutional rights and liberties.

F. Only reconsideration can prevent the miscarriage of justice that will result from the unchecked absolution of State agents who admitted the killings.

133. As explicitly detailed in the *Petition*, herein **petitioners’ only remaining remedy** is a *Petition for Certiorari*. If this Honorable Court’s Resolution of dismissal stands, the consequences are grave, irreversible, and wholly incompatible with the 1987 Constitution. More specifically:

- a. **No one will be held accountable** for the summary execution of four unarmed civilians.
- b. **A survivor—shot, gravely wounded, and left for dead—will be denied even the chance** to seek prosecution.
- c. **Judicial findings**—including the MeTC’s categorical ruling of no unlawful aggression and the *Writ of Amparo* directives—**will be rendered meaningless**.
- d. **Medical, forensic, SOCO, and testimonial evidence** will be effectively erased from consideration.
- e. **The OMB’s fatally flawed investigatory process will be insulated** from any form of judicial review.
- f. **The entrenched pattern of “nanlaban” killings** will be further normalized and legitimized.

134. This is the precise definition of a complete miscarriage of justice—one that the Constitution, jurisprudence, and the moral mandate of the judiciary oblige this Court to correct.

135. For these reasons, reconsideration is not merely warranted; **it is indispensable** to preserve the rule of law, safeguard the integrity of the justice system, and protect the constitutionally guaranteed right to life.

**MOTION TO ELEVATE THE CASE
TO THE SUPREME COURT EN BANC**

136. Petitioners respectfully move that this case be referred to and resolved by the Supreme Court *En Banc* pursuant to *Section 3, Rule 2 of the Internal Rules of the Supreme Court (IRSC)*, on the ground that the present Petition squarely falls within several categories expressly mandating *En Banc* action and involves issues of such systemic, constitutional, and doctrinal consequence as to require the attention of the Court sitting *En Banc*.

137. Section 3, Rule 2 of the IRSC provides as follows:

SEC. 3. *Court En Banc matters and cases.* – The Court *En Banc* shall act on the following matters and cases:

(a) cases in which the constitutionality of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;

(b) cases raising novel questions of law;

(c) cases affecting ambassadors, other public ministers, and consuls;

(d) cases involving decisions, resolutions, and orders of the Commission on Elections and the Commission on Audit;

(e) cases where the penalty recommended or to be imposed is the dismissal of a judge, official or

personnel of the Judiciary, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos;

(f) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;

(g) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate courts;

(h) cases where a doctrine or principle laid down by the Court En Banc or by a Division may be modified or reversed;

(i) cases involving conflicting decisions of two or more divisions;

(j) cases where three votes in a Division cannot be obtained;

(k) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;

(l) subject to Section 12(b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court En Banc, provided that before a decision is rendered, any member of the Division may request the Court En Banc to take cognizance of cases that fall under paragraph (m);

(m) cases that the Court En Banc deems of sufficient importance to merit its attention; and

(n) all matters involving policy decisions in the administrative supervision of all courts and their personnel.

138. The *Petition for Certiorari* by petitioners implicates not merely one but all five of the aforementioned categories requiring *En Banc* review.

I. The case squarely involves constitutional questions requiring *En Banc* review.

139. **Section 3(a), Rule 2 of the IRSC** mandates *En Banc* action in cases in which the “**constitutionality of any order is in question.**” The present *Petition* falls exactly within this category.

140. Petitioners **challenge the constitutionality of the OMB’s actions and omissions**—such as its (a) refusal to conduct a full, proper investigation or observing extraordinary diligence in the conduct thereof, (b) refusal to shift the burden of evidence on the police when they admitted the killings and invoked justifying circumstances, (c) exclusion of judicial findings by the SC, CA, and MeTC as well as submitted sworn statements, (d) misapplication of the judicial notice doctrine, and (e) misappreciation of self-defense and fulfillment of duty—involving the herein killings, frustrated killing, robbery, planting of evidence and planting of firearms and ammunition by the police respondents, which violated multiple provisions of the 1987 Constitution, including:

- a. the **right to life and due process** under Article III, Section 1;
- b. the State’s duty under Section 11, Article II to **value human dignity and guarantee full respect for human rights**; and
- c. the judiciary’s **expanded power of judicial review** under Section 1, Article VIII.

141. The constitutional question presented is unprecedented: Whether this Honorable Court and the OMB may lawfully disregard judicial findings, ignore medical, forensic, and testimonial evidence

of summary execution, and rely solely on self-serving police affidavits—thereby insulating admitted killings and shooting by State agents from prosecution—without violating the 1987 Constitution? This question goes to the core of the OMB and this Court’s constitutional duty to investigate killings and protect the State-guaranteed **right to life enshrined in the 1987 Constitution**.

142. This Court must be reminded by its expanded power of judicial review, that is to “*determine if any branch or instrumentality of the government has acted beyond the scope of its powers*,”⁸¹ and be guided by the definition of grave abuse of discretion, which is the “sole standard of review in petitions for *certiorari*:

[T]he sole office of a writ of certiorari is the **correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction**. A court or tribunal is said to have acted with grave abuse of discretion when it **capriciously acts or whimsically exercises judgment to be "equivalent to lack of jurisdiction."** Furthermore, the **abuse of discretion must be so flagrant to amount to a refusal to perform a duty or to act as provided by law.**⁸²

143. Moreover, jurisprudence dictates that when a case raises systemic **constitutional** violations, the Supreme Court *En Banc* must resolve it. In *Araullo v. Aquino*,⁸³ it was held that constitutional issues involving acts of legislative and executive officials are deemed proper for the Supreme Court *En Banc*’s action and review.

144. The *Petition* likewise demands clarification of the constitutional boundaries of prosecutorial discretion, especially where the OMB’s actions effectively **immunized** State agents who judicially and undisputedly killed four unarmed civilians and fatally shot one. Only the Court *En Banc* may interpret and apply these constitutional provisions to the novel, complex, and unprecedented factual circumstances presented herein.

145. Jurisprudence reiterates that matters of extraordinary circumstances, cases involving questions of exceptional national impact, and cases requiring doctrinal clarification must be decided by

⁸¹ *Syjuco v. Abaya et al.*, G.R. No. 215650, March 28, 2023.

⁸² *Smartmatic Tim Corp. v. Commission on Elections En Banc*, G.R. No. 270564, (16 April 2024), 953 Phil 654-708.

⁸³ G.R. No. 209287, July 01, 2014.

the Court sitting *En Banc*. The present *Petition* presents precisely the kind of constitutional, doctrinal, and systemic issues—issues whose resolution will shape the contours of accountability for State-sponsored killings and determine the standards governing the OMB’s constitutional role.

II. The case raises novel and substantial questions of law.

146. Additionally, this case presents questions never before ruled upon by the Court, directly falling under **Section 3(b), Rule 2 of the IRSC**.

147. **First, this is the first *Petition for Certiorari* involving admitted killings by State agents who invoked self-defense and fulfillment of duty without the OMB applying the required burden-shifting doctrine.**

148. Under *Medina v. People*,⁸⁴ *Aguilar v. DOJ*,⁸⁵ *Velasquez v. People*,⁸⁶ and *Ortega v. Sandiganbayan*,⁸⁷ the moment State agents admit having killed the victims, they bear the burden of proving all elements of the justifying circumstance by clear and convincing evidence. Yet the Ombudsman did not require any such showing and instead relied on bare allegations of “*nanlaban*.” This unprecedented deviation from controlling doctrine constitutes a novel question of law warranting *En Banc* review.

149. **Second, this is the first case where judicial findings of no unlawful aggression—issued after a full trial by a MeTC—were disregarded by the OMB without explanation.** The MeTC categorically held that no unlawful aggression existed and that petitioner Efren Morillo never fired a gun. The OMB’s refusal to consider or even address these judicial findings give rise to a novel constitutional question about the scope of OMB’s prosecutorial discretion vis-à-vis judicially established facts.

150. **Third, this is the first *Petition* involving four “neutralized” deceased persons and a survivor of a frustrated**

⁸⁴ *Medina v. People*, 724 Phil. 226, 237 (2014).

⁸⁵ G.R. No. 197522, 11 September 2013

⁸⁶ G.R. No. 195021, 15 March 2017

⁸⁷ G.R. No. L-57664, 08 February 1989

summary execution, where medical records, surgical findings, ballistic trajectory analysis, and SOCO documentation—all material, scientific, and uncontested—were flagrantly ignored by the OMB. The issue of whether the OMB may legally disregard material forensic evidence in favor of self-serving police narratives has never been directly resolved by the Court.

151. Fourth, this is the first case where the OMB found “no probable cause” despite the existence of affirmative judicial findings—by the MeTC, the CA, and the SC itself—recognizing the sufficiency of the very same evidence to establish probable cause and support the prosecution of respondents through a *Writ of Amparo* proceedings. The MeTC, after a full criminal trial, categorically held that there was **no unlawful aggression** and that petitioner-survivor Efren Morillo never fired a gun thereby acquitting him of the charge of Direct Assault filed by herein police respondents; the CA affirmed the propriety of prosecution; and the SC granted petitioners a *Writ of Amparo* and a *Temporary Protection Order*, later made permanent by the CA, precisely because the evidence on record warranted the filing of criminal charges. Yet the OMB, acting on the identical evidentiary corpus, arrived at the diametrically opposite conclusion that no probable cause existed—without addressing, distinguishing, or even acknowledging these binding judicial determinations.

152. This unprecedented departure from judicially established findings of probable cause raises a novel constitutional question regarding the limits of prosecutorial discretion, the due process obligations of the OMB when confronted with existing judicial findings, and the proper standards for evaluating evidence in cases involving admitted killings by State agents.

153. These unprecedented circumstances not only raise novel questions of law but also expose substantial doctrinal gaps concerning the standards governing police killings, the evidentiary obligations of State agents who admit to taking life, and the constitutional limits of prosecutorial discretion by the OMB. **Never before has the Court been asked to determine whether the OMB may have its own standard in determination of probable cause, ignore judicial findings after full trial, and disregard factual, scientific evidence of gunshot trajectories and medical intervention, overriding the 1987 Constitution, criminal laws, and**

jurisprudence. These questions require doctrinal clarification touching on **due process, the right to life, the OMB's constitutional mandate, and the judiciary's role in providing effective remedies for grave human rights violations** – all matters of first impression.

III. The case necessarily implicates doctrinal modification or clarification.

154. *En Banc* review is further necessary under **Section 3(h), Rule 2 of the IRSC**, as the challenged OMB *Order* and *Resolution* **departs from** and effectively undermines **well-settled doctrines** established by both the Supreme Court *En Banc* and its Divisions.

155. The OMB's **refusal to apply the burden-shifting** framework contradicts the holdings in *Oanis*,⁸⁸ *Medina*,⁸⁹ *Velasquez*,⁹⁰ *Aguilar*,⁹¹ *Genosa*,⁹² and related jurisprudence, all of which require strict review and proof of every element of self-defense or fulfillment of duty when the accused admit the killing. Allowing the challenged OMB *Order*, OMB *Resolution*, and SC *Resolution* to stand would **materially weaken these doctrines and create a dangerous precedent whereby State agents may escape criminal liability and accountability** upon one-sided affidavits and the mere invocation of "*nanlaban*" or alleged shootout. Under the IRSC, **only the Court *En Banc* may modify, clarify, or reconcile doctrines at risk of erosion.**

IV. Conflicting doctrines on judicial review of OMB rulings require *En Banc* harmonization.

156. **Section 3(i), Rule 2 of the IRSC** mandates *En Banc* review of "cases involving conflicting decisions of two or more Divisions." This case falls squarely under this category because **two irreconcilable doctrinal lines exist** on the scope and limits of judicial

⁸⁸ G.R. No. 47722, July 27, 1943.

⁸⁹ *Medina v. People*, 724 Phil. 226, 237 (2014).

⁹⁰ G.R. No. 195021, 15 March 2017.

⁹¹ G.R. No. 197522, September 11, 2013.

⁹² G.R. No. 135981, January 15, 2004.

review over the OMB's findings of probable cause.

157. A number of **Division decisions** have emphasized restraint—sometimes absolute restraint—when the OMB dismisses criminal complaints or finds no probable cause. In *Arroyo v. Sandiganbayan*,⁹³ the Court Division declared that:

“Absent any clear showing of grave abuse of discretion, this Court will not interfere with the Office of the Ombudsman's finding of probable cause in its investigation of criminal complaints.”

158. Likewise, in *Dela Cruz v. Office of the Ombudsman*,⁹⁴ the Court Division stressed that:

“Considering that the present case does not fall under any of the exceptions recognized under jurisprudence when courts may interfere with the investigatory powers of the Ombudsman, the Court upholds the policy of noninterference in the Ombudsman's exercise of its constitutionally mandated powers including its power to motu proprio initiate a reinvestigation or reconsideration of a case within its jurisdiction. The Court indeed recognizes the right of the Ombudsman to reinvestigate cases or reconsider its earlier rulings but such power, as with all constitutionally mandated powers, must be wielded cautiously as to not frustrate the ends of justice.”

159. These **Division precedents** promote a highly deferential standard, treating the OMB's findings as *virtually unreviewable* except in extremely narrow circumstances.

160. In contrast, the **Court En Banc** has repeatedly applied a **substantive and searching review** when the OMB's findings are alleged to violate constitutional rights or rest on misapprehension of facts.

161. In *Non, et al. v. Office of the Ombudsman*,⁹⁵ the Court En Banc ruled as follows:

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⁹³ G.R. No. 210488, January 27, 2020.

⁹⁴ G.R. No. 256337, February 13, 2023.

⁹⁵ G.R. No. 239168, September 15, 2020.

Occasionally, however, there are rare cases when, for various reasons there has been a misapprehension of facts, we step in with our review power. This is one such case.

This was reiterated in *Sistoza v. Desierto*⁹⁶ where the Court categorically held that we can direct the Sandiganbayan to dismiss the criminal case filed against petitioner after finding that the Ombudsman wrongfully found probable cause against him. For want of a well-founded and reasonable ground to believe that petitioner violated Section 3(e), of R.A. No. 3019 or for want of probable cause, the Court ordered the Sandiganbayan to dismiss the criminal case against petitioner.

Indeed, in the few occasions when there is evident misapprehension of facts, we set aside the policy of non-interference and step in armed with our power of review. When at the outset the evidence cannot sustain a prima facie case or that the existence of probable cause to form a sufficient belief as to the guilt of the accused cannot be ascertained, the prosecution must desist from inflicting on any person the trauma of going through a trial.

While it is the function of the Ombudsman to determine whether petitioners should be subjected to the expense, rigors and embarrassment of trial, the Ombudsman cannot do so arbitrarily. The seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution.

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162. This ruling recognizes that when **constitutional rights, liberty interests, or factual misapprehensions** are implicated, the Court *En Banc* may fully exercise its expanded judicial review powers under Section 1, Article VIII of the 1987 Constitution. The cited case

⁹⁶ G.R. No. 144784, September 03, 2002.

of *Siztoza v. Desierto*⁹⁷ underscores that the OMB's authority is not absolute, and the Court *En Banc* may intervene when the OMB acts arbitrarily, misapprehends material facts, or imposes prosecution without factual basis.

163. The Court *En Banc* has held consistently that OMB's broad investigatory powers must be exercised within constitutional limits, with respect for due process, and cannot be used for persecution or to immunize State agents from accountability.

164. These two doctrinal lines—Division rulings mandating extreme deference, and *En Banc* rulings mandating strict review—cannot be reconciled when, as here, the OMB wrongfully found no probable cause to indict police respondents, disregarded judicial findings, failed to apply the burden-shifting doctrine arising from respondents' admission of the killings, misapplied self-defense and fulfillment of duty, and refused to conduct a genuine investigation into acknowledged State-perpetrated killings. Only the Court *En Banc* may harmonize these conflicting doctrines and clarify the proper standard of judicial review when constitutional rights and the State's duty to protect life are at stake.

V. The case presents issues of extraordinary national and institutional importance.

165. *En Banc* action is also justified under **Section 3(m), Rule 2 of the IRSC**, as the case is of sufficient importance to merit the Court *En Banc*'s attention.

166. The present *Petition* arises from acknowledged patterns of police killings during the so-called "war on drugs," a period that has drawn the attention of domestic and international bodies, including the Commission on Human Rights, the UN Human Rights Council, and the International Criminal Court.

167. The Court's ruling will have far-reaching implications for the State's **constitutional obligation to protect Filipinos' right to life**, ensure accountability for extrajudicial killings, and guarantee meaningful remedies for victims. The issues herein **transcend the**

⁹⁷ Id.

parties and involve the institutional competence of the OMB and this Court, the integrity of criminal processes, and public confidence in the justice system. These considerations elevate the case to one of **national significance**, rendering *En Banc* review not merely appropriate but imperative.

168. For all these reasons, Petitioners respectfully submit that the instant case falls unmistakably within the categories reserved for the Supreme Court *En Banc*, and that ***En Banc* review is indispensable** to ensure doctrinal integrity, constitutional fidelity, and the administration of justice. Petitioners thus pray that this case be elevated and referred to the Supreme Court *En Banc* for its resolution.

PRAYER

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

1. **RECONSIDER and SET ASIDE its 30 June 2025 Resolution** dismissing the Petition for *Certiorari*;
2. **DECLARE** that the Office of the Ombudsman **committed grave abuse of discretion amounting to lack or excess of jurisdiction** in issuing the **Joint Resolution dated 28 November 2022** and **Joint Order dated 22 March 2024** in OMB-P-C-17-0135 and OMB-PA-17-0147, respectively;
3. **NULLIFY** the said Joint Resolution and Joint Order for having been issued:
 - a. in blatant disregard of material, uncontroverted, and judicially established evidence;
 - b. in misapplication of controlling law and jurisprudence on self-defense, fulfillment of duty, and burden-shifting; and
 - c. in violation of the State's positive obligation – under the Constitution, the Revised Penal Code, and the Rule on the Writ of Amparo – to conduct a genuine, effective investigation into killings committed by State agents;
4. **DIRECT** the Office of the Ombudsman to **find probable cause** against respondents **P/SINSP. Emil Delos Santos**

Garcia, PO3 Allan Encina Formilleza, PO1 James Domingo Aggarao, Jr., PO1 Melchor Natonio Navisaga, Maria Lorena "Lea" Barcelona, Ma. Leonila Barcelona-Tolones, Mary Joy Ralo, Richard Riñon, and the unidentified John Doe ("Manok") and Peter Doe ("Willy"), for the following offenses:

- a. **Four counts of Murder** (Article 248, Revised Penal Code);
- b. **Frustrated Murder** (Article 248 in relation to Article 6, Revised Penal Code);
- c. **Robbery** (Article 293, Revised Penal Code);
- d. **Violation of Section 29, in relation to Sections 3 and 21 of R.A. 9165** (planting of evidence); and
- e. **Violation of Section 38 of R.A. 10591** (planting of firearms and ammunition);

and thereafter, **ORDER** the filing of the appropriate Informations before the proper trial courts;

5. In the *alternative*, should this Honorable Court deem further factual reception necessary, **ORDER** the Ombudsman to conduct a **new preliminary investigation** with explicit instructions:
 - a. to evaluate **all** evidence submitted by petitioners;
 - b. to apply the **proper burden-shifting** rule;
 - c. to consider the **judicial findings** in the MeTC and the **Writ of Amparo proceedings**; and
 - d. to discharge the State's duty of **extraordinary diligence** in investigating killings by State agents;
6. **ELEVATE** this case to the Supreme Court *En Banc* for its resolution and review.

Other relief, just and equitable under the premises, are likewise prayed for.

Makati City for Manila, 05 December 2025.

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By:



JOEL RUIZ BUTUYAN

Roll No. 36911

PTR No. 10471984 | Jan 07, 2025 | Makati

IBP No. 01742 | Lifetime

MCLE Compliance No. VIII-0034955 | May
20, 2025



ROGER R. RAYEL

Roll No. 44106

PTR No. 10471983 | Jan 07, 2025 | Makati

IBP No. 02159 | Lifetime

MCLE Compliance No. VIII-0026888 | April
10, 2025



GILBERT TERUEL ANDRES

Roll No. 56911

PTR No. 10471985 | Jan 07, 2025 | Makati

IBP No. 541972 | Mar 01, 2025 | Negros Occ.

MCLE Compliance No. VIII-0037444 | June 04,
2025



IRENE CLAIRE R. PAJARITO

Roll No. 90447

PTR No. 10471988 | Jan 07, 2025 | Makati

IBP No. 490747 | Jan 01, 2025 | Makati

MCLE Compliance No. VIII-0038209 | June 12,
2025




ERNELYN JOY C. SANTOS

Roll No. 87366

PTR No. 10471981 | Jan 07, 2025 | Makati

IBP No. 503311 | Jan 09, 2025 | Manila IV
MCLE Compliance No. VIII-0038864 | June 20,
2025


MARYFE D. TOYOKAN
Roll No. 92715
PTR No. 3937552 | Feb 3, 2025 | Bontoc,
Mountain Province
IBP No. 524042 | Feb 1, 2025 | Mountain
Province
MCLE Compliance No. N/A
(Admitted to the Philippine Bar in 2025)

Copy furnished:

OFFICE OF THE OMBUDSMAN

Public respondent

Office of the Ombudsman, Agham Road,
Diliman, Quezon City

PSINSP. EMIL DELOS SANTOS GARCIA

Public respondent

QCPD Police Station 6
or #98 Nieves St., Freedom Park 6,
1126 Batasan Hills, Quezon City

PO3 ALLAN ENCINA FORMILLEZA

Public respondent

QCPD Police Station 6
or 215-B Sitio 1, Kaliwa, Filinvest 2,
1126 Batasan Hills, Quezon City

PO1 JAMES DOMINGO AGGARAO, JR.

Public respondent

QCPD Police Station 6
or 175 Peter St.,
1127 Brgy. Holy Spirit, Quezon City

PO1 MELCHOR NATONIO NAVISAGA

Public respondent

QCPD Police Station 6
or 30 Valiant St.,
1118 Fairview Park Subd., Quezon City

MARIA LORENA B. BARCELONA
Private respondent
Group 9, 1119 Payatas-B, Quezon City

MA. LEONILA BARCELONA-TOLONES
Private respondent
#49 Everlasting St.,
1119 Payatas-A, Quezon City

MARY JOY B. RALO
RICHARD APURA RIÑON
Private respondents
c/o PO3 Allan Encina Formilleza
#215-B Sitio 1 Kaliwa, Filinvest 2.
1126 Batasan Hills, Quezon City

JOHN DOE alias "MANOK"
PETER DOE alias "WILLY"
Private respondent
c/o QCPD Police Station 6,
1126 Batasan Hills, Quezon City
or QCPD District Headquarters Service Unit,
Camp Karingal 1101 Sikatuna Village,
Quezon City

EXPLANATION

A copy of the foregoing *Motion for Reconsideration with Motion to Elevate the case to the Supreme Court En Banc* was served to the other parties by registered mail due to distance constraints and lack of office personnel to effect personal service.


MARYFE D. TOYOKAN

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Letter/Package No. _____
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1200 MAKATI CITY, PHILIPPINES

AFFIDAVIT OF SERVICE

I, **WILLIAM D. DUCOS**, Filipino, of legal age, a Liaison Officer and Clerk of the law firm of **BUTUYAN & RAYEL LAW OFFICES**, with address at Unit 901 Vicente Madrigal Building, 6793 Ayala Avenue, Makati City 1227, after being duly sworn to in accordance with law, depose and state that:

On December 5, 2025, I mailed/filed a copy of the **“MOTION FOR RECONSIDERATION WITH MOTION TO ELEVATE THE CASE TO THE SUPREME COURT EN BANC”** in the case entitled **“EFREN M. MORILLO, MARIA BELEN DAA, LYDIA GABO, and MARILYN MALIMBAN vs. OFFICE OF THE OMBUDSMAN, P/SINP. EMIL DELOS SANTOS GARCIA, PO3 ALLAN ENCINA FORMILLEZA, PO1 JAMES DOMINGO AGGARAO, PO1 MELCHOR NATONIO NAVISAGA, MARIA LORENA B. BARCELONA, MA. LEONILA BARCELONA-TOLONES, MARY JOY B. RALO, RICHARD APURO RIÑON, JOHN DOE alias “MANOK” and PETER DOE alias “Willy””** docketed as **G.R. No. 274271** pursuant to Rule 13, Sec. 3, 4, 5, 9, 16 and 17 of the 2019 Amendments to the 1997 Rules of Civil Procedure (A.M.No. 19-10-20-SC) in the following manner:

By Personal Filing to: SUPREME COURT Manila	By delivering a copy to the Court/Tribunal/Office on December 5, 2025 as shown on p1
By Registered mail to: OFFICE OF THE OMBUDSMAN Public respondent Office of the Ombudsman, Agham Road, Diliman, Quezon City PSINSP. EMIL DELOS SANTOS GARCIA Public respondent QCPD Police Station 6 or #98 Nieves St., Freedom Park 6, 1126 Batasan Hills, Quezon City PO3 ALLAN ENCINA FORMILLEZA Public respondent QCPD Police Station 6 or 215-B Sitio 1, Kaliwa, Filinvest 2, 1126 Batasan Hills, Quezon City PO1 JAMES DOMINGO AGGARAO, JR. Public respondent QCPD Police Station 6 or 175 Peter St., 1127 Brgy. Holy Spirit, Quezon City PO1 MELCHOR NATONIO NAVISAGA Public respondent QCPD Police Station 6 or 30 Valiant St., 1118 Fairview Park Subd., Quezon City MARIA LORENA B. BARCELONA Private respondent Group 9, 1119 Payatas-B, Quezon City MA. LEONILA BARCELONA-TOLONES Private respondent	By depositing a copy on December 5, 2025 in the Post Office in a sealed envelope plainly addressed to the addressee/s, with postage fully prepaid, as evidenced by Registry Receipt/s No/s. indicated, and with instruction to the postmaster to return the mail to the sender after ten (10) days if undelivered.

#49 Everlasting St.,
1119 Payatas-A, Quezon City

MARY JOY B. RALO
RICHARD APURA RIÑON
Private respondents
c/o PO3 Allan Encina Formilleza
#215-B Sitio 1 Kaliwa, Filinvest 2.
1126 Batasan Hills, Quezon City

JOHN DOE alias "MANOK"
PETER DOE alias "WILLY"
Private respondent
c/o QCPD Police Station 6,
1126 Batasan Hills, Quezon City
or QCPD District Headquarters Service Unit,
Camp Karingal 1101 Sikatuna Village,
Quezon City

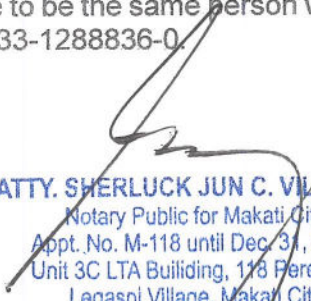
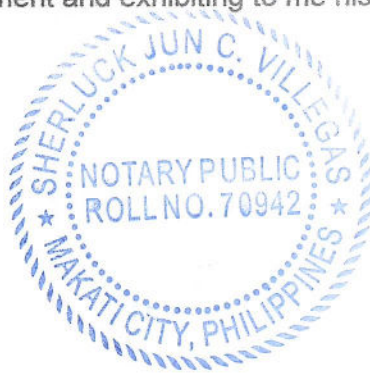
To the truth of the foregoing, I have signed this Affidavit of Service this December 5, 2025, in Makati City.



WILLIAM D. DUCOS
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, in Makati City, on December 5, 2025, affiant personally appearing to and personally known to me to be the same person who executed the foregoing instrument and exhibiting to me his SS NO. 33-1288836-0.

Doc. No. 467 ;
Page No. 95 ;
Book No. 52 ;
Series of 2025.



ATTY. SHERLUCK JUN C. VILLEGAS
Notary Public for Makati City
Appt. No. M-118 until Dec 31, 2026
Unit 3C LTA Building, 118 Perea St.
Legaspi Village, Makati City
Roll No. 70942
IBP No. 470006 / 10-02-2024 / Pasig City
PTR No. 10465768 / 01-02-2025 / Makati City
MCLE Compliance No. VIII-002492017-0111 14, 2020

VERIFIED DECLARATION

I, **WILLIAM D. DUCOS**, hereby declare that the document hereto submitted electronically in accordance with the efficient use of Paper Rule is a complete and true copy of the **MOTION FOR RECONSIDERATION WITH MOTION TO ELEVATE THE CASE TO THE SUPREME COURT EN BANC** filed personal service with the Supreme Court.

IN TRUTH WHEREOF, I hereby affix my signature this December 5, 2025, at Makati City.



WILLIAM D. DUCOS

Paralegal

December 5, 2025

SUBSCRIBED AND SWORN TO before me on December 5, 2025 at Makati City, affiant exhibiting his competent evidence of identity, to wit: SS NO. 33-1288836-0.

NOTARY PUBLIC

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