



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

ZENAIDA O. DUHAY, JULIET PALOR EVARDO, MA. CIPRIANA GATCHALIAN, CATHERINE NUÑEZ, RAMONITA S. SALAYSAY, EDITHA M. TIAMZON, AND ERLYN I. UMPAD,  
Petitioners,

G.R. No. 211478

Present:

LEONEN, J., *Chairperson*,  
LAZARO-JAVIER,  
LOPEZ, M.,  
LOPEZ, J., and  
KHO, JR., *JJ.*

-versus-

HON. OFFICE OF THE  
OMBUDSMAN, MAJOR  
GENERAL ALFREDO CAYTON,  
JR., AND COLONEL MEDARDO  
GESLANI,  
Respondents.

Promulgated:  
OCT 12 2022

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DECISION

LEONEN, J.:

Absent a clear showing of grave abuse of discretion, this Court shall desist from interfering with the finding of the existence of probable cause of the Office of the Ombudsman.<sup>1</sup>

This resolves the Petition for Certiorari and Prohibition<sup>2</sup> filed by

<sup>1</sup> See *Republic v. Ombudsman*, G.R. No. 198366, June 26, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65315>> [Per J. Leonen, Third Division].  
<sup>2</sup> *Rollo*, pp. 3–47.

Zenaida O. Duhay, Juliet Palor Evardo, Ma. Cipriana Gatchalian, Catherine Nuñez, Ramonita S. Salaysay, Editha M. Tiamzon, and Erlyn I. Umpad (Duhay et al.), assailing the Joint Resolution<sup>3</sup> of the Office of the Ombudsman that dismissed the criminal and administrative complaints against Major General Alfredo Cayton, Jr. (Cayton) and Colonel Medardo Geslani<sup>4</sup> (Geslani) of the Philippine Army and its Joint Order<sup>5</sup> that denied their Motion for Reconsideration.

On January 19, 2010, Duhay et al., along with Ma. Reynafe M. Castillo, Glenna C. Legarta, Arlyn D. Lupogan, Mary Jean M. Merisco, Noemi E. Parcon, and Myrna P. Reblando (collectively referred as complainants) filed a Joint-Complaint Affidavit<sup>6</sup> before the Office of the Deputy Ombudsman for Mindanao against Cayton and Geslani.<sup>7</sup> The complaint was referred to the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices.<sup>8</sup>

Their relevant charges were docketed as follows:

OMB-P-C-10-0249-B

For: Violation of Sec. 3 (e) [and] (f), [Republic Act No.] 3019 [otherwise known as the Anti-Graft and Corrupt Practices Act] and Dereliction of Duty

OMB-P-A-10-0275-B

For: Violation of [Republic Act No.] 6713 [or the Code of Conduct and Ethical Standards for Pubic Officials and Employees], Misconduct and Gross Negligence<sup>9</sup>

Complainants are relatives of the journalists ambushed while on their way to cover the filing of the certificate of candidacy for governor of Maguindanao of then Buluan Vice Mayor Esmael Mangudadatu in 2009.<sup>10</sup> Cayton was then the Commanding General of the 6<sup>th</sup> Infantry Division that has jurisdiction over Maguindanao and the 601<sup>st</sup> Infantry Brigade, where Geslani was the brigade commander.<sup>11</sup>

<sup>3</sup> *Id.* at 48–80. The June 22, 2011 Joint Resolution in OMB-P-C-10-0249-B and OMB-P-A-10-0275-B was recommended by Graft Investigation and Prosecution Officer Rebecca A. Guillen-Ubaña, reviewed by Director Dennis L. Garcia of the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices, and concurred in by Assistant Ombudsman Eulogio S. Cecilio. It was approved by Ombudsman Conchita Carpio Morales pursuant to Overall Deputy Ombudsman Orlando C. Casimiro's recommendation.

<sup>4</sup> *See Id.* at 535. Geslani was already a brigadier general at the time he filed his Comment before this Court.

<sup>5</sup> *Id.* at 108–116. The October 4, 2012 Joint Order in OMB-P-C-10-0249-B and OMB-P-A-10-0275-B was recommended by Graft Investigation and Prosecution Officer Rebecca A. Guillen-Ubaña of the Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices. It was approved by Ombudsman Conchita Carpio Morales pursuant to Director Dennis L. Garcia's recommendation.

<sup>6</sup> *Id.* at 117–132.

<sup>7</sup> *See Id.* At 160–164, 242–247, 698.

<sup>8</sup> *Id.* at 698.

<sup>9</sup> *Id.* at 48.

<sup>10</sup> *Id.* at 124–125, 128–130.

<sup>11</sup> *Id.* at 122.

In their Joint-Complaint Affidavit, complainants alleged the following version of events:<sup>12</sup>

In the morning of November 19, 2009, a certain Police Inspector Mukamad, along with roughly 30 individuals from the 1507<sup>th</sup> Philippine National Police Regional Mobile Group, visited the Masalay Citizen Armed Force Geographical Unit detachment in Barangay Matagabong, Ampatuan, then commanded by Corporal Zaldy Raymundo. After introducing himself, Mukamad supposedly asked Raymundo if they can cook their food in the premises. Raymundo agreed.<sup>13</sup>

Three days later, First Lieutenant Rolly Stefen A. Gempesao (Gempesao) received a text message from his commanding officer, Lieutenant Colonel Rolando Nerona (Nerona), informing him that Vice Mayor Mangudadatu was planning to file his certificate of candidacy the next day at the local office of the Commission on Elections in Shariff Aguak, Maguindanao. Gempesao was an intelligence officer assigned at the 64<sup>th</sup> Infantry Battalion under the 6<sup>th</sup> Infantry Division of the Philippine Army in Datu Saudi Ampatuan, Maguindanao.<sup>14</sup>

Although the matter was a police concern, Nerona directed Gempesao to monitor the situation. Gempesao promptly called for a meeting to assign tasks to be carried out. The directive covered the areas of Isulan, Sultan Kudarat to Shariff Aguak, Maguindanao. Among those who responded to Gempesao was Staff Sergeant Jimmy Coronel (Coronel), an operative intelligence officer similarly assigned to the 64<sup>th</sup> Infantry Battalion.<sup>15</sup>

Coronel was assigned as the group leader to conduct military observation in Shariff Aguak. He was tasked not only to collect information on the Moro Islamic Liberation Front but also to monitor the movement of local politicians given an information on a possible ambush in the province. According to Coronel, it has long been rumored in Shariff Aguak that should the Mangudadatus push through with the filing of candidacy, they would be ambushed after they traverse Barangay Kauran, Ampatuan, Maguindanao from their bailiwick in Buluan, Maguindanao.<sup>16</sup>

Gempesao's personnel took their posts in their designated areas in the morning of November 23, 2009. The other military personnel of the battalion remained in the camp on red alert status while awaiting request for reinforcement from the police in case of any untoward circumstances between the Mangudadatus and the Ampatuans.<sup>17</sup>

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<sup>12</sup> *Id.* at 6–16.

<sup>13</sup> *Id.* at 118–119.

<sup>14</sup> *Id.* at 119.

<sup>15</sup> *Id.* at 119–120.

<sup>16</sup> *Id.* at 120.

<sup>17</sup> *Id.*

About the same time, Buka Sakilan Ali (Ali), a member of the Citizen Armed Force Geographical Unit Active Auxiliary in Sitio Masalay, Barangay Matagabong, Ampatuan, Maguindanao, observed police forces from the 1507<sup>th</sup> Regional Mobile Group. These forces were strictly guarding the two lanes of the road, one heading to Isulan, Sultan Kudarat and the other leading to Cotabato City.<sup>18</sup>

At around 7:30 a.m. to 8:00 a.m., Vice Mayor Mangudadatu called Geslani to request for security escorts. He allegedly explained the verified tip on the probable ambush against them by the Ampatuans whom he would be challenging for the position of Governor,<sup>19</sup> the hostile political atmosphere in Maguindanao, and the alleged overwhelming support of both the police and military to the Ampatuans. Despite repeated requests, Geslani declined. Even Police Chief Superintendent Faisal Ampao Umpa, the regional director of the Philippine National Police Autonomous Region in Muslim Mindanao, turned down the request of Vice Mayor Mangudadatu. It was then that Vice Mayor Mangudadatu allegedly realized that these officers had no intention of extending his team any security.<sup>20</sup>

Journalists from all over Mindanao were asked to join the convoy going to Shariff Aguak. Thirteen of the 30 journalists who joined are relatives of complainants.<sup>21</sup>

Joseph Jubelag (Jubelag), a correspondent for the Manila Standard Today, was one of the journalists who were supposed to join the Mangudadatu convoy. He claimed that Alejandro Reblando of Manila Bulletin told him and his peers that the reason why Geslani declined the request was because his troops had to join a send-off ceremony for the 46<sup>th</sup> Infantry Battalion.<sup>22</sup>

Not satisfied with the information, Aquiles Zonio of the Philippine Daily Inquirer called Cayton to inquire about the security situation in Shariff Aguak. He then conveyed to the members of the convoy that Cayton assured their safe travel due to the purported deployment of security officers in the area. Upon hearing this, Jubelag said they felt relieved, considering that Cayton was the top military commander in the area. He also assumed that based on such assurance, Cayton was in coordination with his subordinate, Geslani.<sup>23</sup>

Jubelag further claimed that he could hear Reblando and Zonio's

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<sup>18</sup> *Id.* at 120–121.

<sup>19</sup> *Id.* at 54.

<sup>20</sup> *Id.* at 121–122, 146.

<sup>21</sup> *Id.* at 124.

<sup>22</sup> *Id.* at 122.

<sup>23</sup> *Id.* at 122–123.



telephone conversation with Cayton since he was only an arms-length away from them. At that moment, Jubelag and the other journalists allegedly disagreed with Assembly Member Khadafeh Mangudadatu in requesting for police escorts from Buluan on the belief that bringing armed escorts might provoke the Ampatuans.<sup>24</sup>

During the trip, Jubelag and two other journalists decided to separate from the group since they had to get some belongings in the pension house where they were staying. Upon arriving in the pension house, they were told that two unidentified individuals were looking for them. Jubelag became suspicious and decided not to proceed to Shariff Aguak.<sup>25</sup>

Vice Mayor Mangudadatu also allegedly received a warning from the Ampatuans that they would chop him to pieces should he pursue his candidacy. To temper the tension and on the belief that women are valued in Muslim traditions, he opted to send his wife, aunt, two sisters, and two female lawyers to file his certificate of candidacy. Buluan Councilor Toy Khadafi Mangudadatu shared the same sentiment that the women might be spared from violence.<sup>26</sup>

At about 10:30 a.m, Gempesao received a call from a certain Corporal Emelio Ysita (Ysita), who stated that they were within the vicinity of Barangay Salman, Municipality of Ampatuan. Allegedly, there were individuals on board a vehicle marked with "PNP," all wearing police camouflage uniforms. Ysita also observed that there were vehicles, mostly vans, escorted by armed individuals on board a pick-up and sports utility vehicle going toward the hilly part of the area. Gempesao reported this information to Nerona.<sup>27</sup>

After 10 minutes, Coronel received a call from Gempesao, directing him, Ysita, and a certain Sergeant Rodriguez<sup>28</sup> to proceed to the Masalay detachment to verify if there were captured Mangudadatu supporters. Even before reaching the detachment, they were already blocked by around 500 armed individuals comprised of uniformed police forces, soldiers, civilian volunteer organizations, and special citizen armed force geographical unit active auxiliaries along the national highway.<sup>29</sup>

At this point, Coronel's group went back. They stopped from a distance of 100 meters and observed a heavy equipment carrier parked close to the road facing them or toward Shariff Aguak. From the carrier, a backhoe was unloaded and proceeded the crossing to Barangay Salman, Ampatuan,

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<sup>24</sup> *Id.* at 123.

<sup>25</sup> *Id.* at 152-153.

<sup>26</sup> *Id.* 124.

<sup>27</sup> *Id.* at 54-55 and 126.

<sup>28</sup> The full name of this officer does not appear in any part of the *rollo*.

<sup>29</sup> *Rollo*, pp. 56, 140-141.

Maguindanao. After 20 minutes, his group was allowed to pass.<sup>30</sup>

At around 11:00 a.m., Ali observed that police personnel from the Autonomous Region in Muslim Mindanao Regional Mobile Group flagged down eight vehicles along the National Highway of Sitio Masalay, Barangay Matagabong, Ampatuan, Maguindanao. These vehicles, loaded with passengers, were signaled by two patrol police mobiles toward the mountainous part of Barangay Salman, Ampatuan, Maguindanao, about five kilometers from the national highway where the detachment was. After several minutes, Ali heard continuous gunshots, which he believed to be within their area of responsibility. Upon hearing the gun fires, their commanding officer sent a text message to the 38<sup>th</sup> Infantry Battalion Headquarters in Barangay Semba, Dos Shariff, Kabungsuan, Maguindanao.

Notably, Ysita earlier reported that he saw a trailer carrying a backhoe going toward the same direction where the vans were seen. Since the call was on loudspeaker mode, Nerona and two other officers of the armed forces overheard the exchanges. Nerona then contacted Geslani and explained the situation.<sup>31</sup>

Complainants later discovered from different media platforms that the Mangudadatu convoy was intercepted by more than a hundred armed individuals in Ampatuan, Maguindanao and that the passengers on board the vehicles were taken to a nearby killing field. Fifty-seven individuals were violently killed in the hilly area of Sitio Masalay, Barangay Salman, Ampatuan, Maguindanao.<sup>32</sup>

Complainants also learned from news reports that Cayton was relieved from his post as commander of the 6<sup>th</sup> Infantry Division. Then military spokesperson Romeo Brawner allegedly stated that the command stood down on these military officers for failing to provide security escorts to Mangudadatu despite the extreme danger of their trip to the election office.<sup>33</sup>

Correspondingly, complainants' administrative and criminal charges against Cayton and Geslani pivoted on the following allegations:

(51) Respondents . . . are public officers who caused undue injury to [complainants'] journalists-family members and to [them], through evident bad faith and gross inexcusable negligence, which is a clear violation of Section 3 (e) of Republic Act No. 3019 otherwise known as the Anti-Graft And Corrupt Practices Act.

(52) Respondents . . . are public officers who neglected or refused, after

<sup>30</sup> *Id.* at 127.

<sup>31</sup> *Id.* at 128.

<sup>32</sup> *Id.* at 58.

<sup>33</sup> *Id.* at 130.

due demand or request by [complainants'] deceased journalists-family members, without sufficient justification, to act within a reasonable time on the matter pending before them for the purpose of favoring their own interest or giving undue advantage discriminating against [complainants'] deceased journalists-family members and [them], which is a clear violation of Section 3 (f) of Republic Act No. 3019 otherwise known as the Anti-Graft And Corrupt Practices Act.

(53) Respondents . . . are public officials and employees who failed to extend prompt, courteous, and adequate service to the public, which is a clear violation of Section 4 (e) of Republic Act No. 6713 otherwise known as "Code of Conduct and Ethical Standards for Public Officials and Employees."

(54) Respondents . . . are public officials and/or public officers who are liable for gross negligence and dereliction of duty making them criminally and administratively liable.<sup>34</sup>

Cayton denied the accusations.<sup>35</sup>

He claimed that in the afternoon of November 19, 2009, he received a call from Geslani about Vice Mayor Mangudadatu's request for security escorts. Geslani allegedly suggested to Vice Mayor Mangudadatu that the request be referred to the Philippine National Police as the Armed Forces of the Philippines is barred from providing security escorts to election candidates pursuant to prevailing operational guidelines and directives. Geslani also explained to Vice Mayor Mangudadatu that the 601<sup>st</sup> Infantry Brigade was having serious personnel shortage as two of its infantry battalions were pulled out.<sup>36</sup>

Cayton claimed that he agreed that the request be referred to the Philippine National Police. He explained that the filing of a certificate of candidacy, as part of the electoral process, is an election-related activity, where the PNP plays a vital role pursuant to their mandated task on law enforcement. He then instructed Geslani to attend to the security needs of the locations vacated by the 46<sup>th</sup> and 54<sup>th</sup> Infantry Battalions as the Moro Islamic Liberation Front and other lawless forces might take advantage of the situation.<sup>37</sup>

In the morning of November 23, 2009, Cayton allegedly noticed text messages and missed calls from several persons and reporters asking about the security situation along the highway in view of Vice Mayor Mangudadatu's filing of candidacy. This prompted him to ask Major Ruben Matillano (Matillano), the commanding officer of the 6<sup>th</sup> Military Intelligence Battalion, about the security situation in Maguindanao, specifically along the

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<sup>34</sup> *Id.* at 131.

<sup>35</sup> *Id.* at 304. See also *Id.* at 263–266.

<sup>36</sup> *Id.* at 59–60.

<sup>37</sup> *Id.* at 305.

highway of Isulan, Sultan Kudarat to Shariff Aguak.<sup>38</sup>

Matillano responded that there was no report of hostile situation along that road stretch, nor any disruption in the usual flow of traffic. He also mentioned that there were checkpoints executing the Letter of Instruction 39/09 "*Kontra Boga*" from the Philippine National Police, indicating a safe travel.<sup>39</sup>

Later, Reblando called Cayton, informing him that they were part of the media convoy that would accompany the Mangudadatus in the filing of the certificate of candidacy. When asked about the security situation in Shariff Aguak, Cayton responded that there were checkpoints along the highway carrying out "*Oplan Kontra Boga*," which makes their trip practically safe. He likewise told Reblando about the lack of report on any threats or disruptions in the usual flow of traffic. When Reblando asked about Vice Mayor Mangudadatu's request for security escorts, Cayton told Reblando that the latter was advised by Geslani to refer his request to the Philippine National Police in view of the standing proscription against detailing military personnel to election candidates. He similarly explained to Reblando about their depleted forces due to the pull-out of troops, thus the need to realign their remaining personnel to the places vacated by the withdrawn military units.<sup>40</sup>

Around 10:50 a.m., Cayton allegedly began receiving vague reports that the Mangudadatus and the media were captured by armed individuals between Shariff Aguak and Ampatuan, Maguindanao. He directed Geslani to confirm the report and carry out search, pursuit, and rescue operations. To aid the 601<sup>st</sup> Infantry Brigade, he sent reinforcements from the 6<sup>th</sup> Infantry Division Headquarters and from other nearby brigades. From November 23 to November 27, 2009, he allegedly extended continuous support and supervision to the movements of the 601<sup>st</sup> Infantry Brigade and ensured that no further hostility would occur for the purpose of bringing back normalcy in the area. Among the notable results of his efforts included Mayor Andal Ampatuan, Jr.'s surrender and the seizure of a significant number of firearms.<sup>41</sup>

Cayton claimed that had he provided security escorts to the Mangudadatus, the other party would have charged him with the same offense, the act being unlawful and violative of pertinent rules and directives. He added that complainants purportedly failed to ascertain any criminal intent on his part.<sup>42</sup>

Cayton also justified the referral of the request for security escorts to the Philippine National Police on account of the following considerations:

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<sup>38</sup> *Id.* at 305–306.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 306–307.

<sup>41</sup> *Id.* at 307.

<sup>42</sup> *Id.* at 312–313.



- a. The filing of a [certificate of candidacy] by an individual intending to run for public office is deemed part of the electoral process.  
....
- b. [The] constitutional restraint imposed upon the [Armed Forces of the Philippines] and its Commanders is strictly observed in the light of existing operational guidelines in effect at the time of the incident based on the 2006 Memorandum of Agreement (MOA) forged between the Department of National Defense (DND) and the Commission of Elections (COMELEC) where the AFP as a line bureau of the DND is expressly prohibited from providing security personnel to candidates in any electoral exercise.  
....
- c. The provision of a security detail is generally a law enforcement function pursuant to the mandate of the [Philippine National Police][.]  
....
- d. [T]he AFP mission is anchored on its legal mandate to suppress insurgency.  
....
- e. Tactically and operationally, the predicament of respondent Col. Geslani's former unit occasioned by the attendant dearth of [military personnel] due to the pullout of two (2) of its battalions was also a major consideration for suggesting to Vice Mayor Mangudadatu to refer his request for security escorts to the [Philippine National Police].<sup>43</sup>

Contrary to Jubelag's claim that the referral of the request was due to the conduct of the send-off ceremony, Cayton made clear that it was due to the operational guidelines and directives from the headquarters and the Commission on Elections. He also disputed Jubelag's assertion that he overheard him and Zonio's telephone conversation pertinent to the deployment of soldiers to the area, claiming it was hearsay and highly unreliable since Jubelag was not even part of the conversation.<sup>44</sup> He denied texting Reblando and delivering a report on a "massing of [Philippine National Police] and [Citizen Armed Force Geographical Unit] along the highway triggered by the accompanying by [Philippine National Police] escorts of Toto Mangudadatu."<sup>45</sup>

Cayton also clarified that the reason why he was relieved from his post was to guarantee a fair investigation.<sup>46</sup> After serving as the commander of the

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<sup>43</sup> *Id.* at 317-321.

<sup>44</sup> *Id.* at 326-327.

<sup>45</sup> *Id.* at 64.

<sup>46</sup> *Id.*



6<sup>th</sup> Infantry Division, he was allegedly designated as the vice-commander of the Philippine Army before he retired from the military service on February 14, 2010.<sup>47</sup>

As to the administrative charges, Cayton countered that he committed neither grave misconduct nor neglect of duty in his review and resolution of the Mangudadatu's request for security escorts. His actions were allegedly in accordance with laws, policies, and standard operating procedures of the military in these kinds of matters.<sup>48</sup>

Geslani reiterated Cayton's arguments.<sup>49</sup>

He admitted receiving phone calls from Vice Mayor Mangudadatu requesting for army escorts. He allegedly suggested that the request be directed to the Philippine National Police as the military is not allowed to provide security escorts to candidates in any political or election-related activity pursuant to operational guidelines. He also mentioned to Vice Mayor Mangudadatu about the severe shortage of military personnel that they were experiencing due to the pull-out of two battalions.<sup>50</sup>

In the morning of November 23, 2009, Vice Mayor Mangudadatu allegedly called him again to request for army escorts. He reiterated his previous advice and inquired whether Vice Mayor Mangudadatu already referred his request to the Philippine National Police. Vice Mayor Mangudadatu did not answer his question and instead told him that they decided to cancel the travel to Shariff Aguak considering the lack of escorts from the army.<sup>51</sup>

At about noon time of the same day and more than an hour after the incident happened, Vice Mayor Mangudadatu allegedly contacted him again. At that moment, Geslani was already at his brigade headquarters in Kalandagan, Tacurong City, Sultan Kudarat. He allegedly explained to Vice Mayor Mangudadatu that their brigade originally had four maneuver battalions positioned in critical locations of the Southern portion of Maguindanao and Sultan Kudarat.<sup>52</sup> Their mission was to carry out "Internal Security Operations (ISO) to contain the threat groups belonging to the Lawless [Moro Islamic Liberation Front] Group (LMG) and [Moro Islamic Liberation Front] and suppress their hostile and violent actions, and to assist law enforcement agencies in the operation against terrorist groups and personalities[.]"<sup>53</sup> Unfortunately, the 54<sup>th</sup> and 46<sup>th</sup> Infantry Battalions were

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<sup>47</sup> *Id.* at 303.

<sup>48</sup> *Id.* at 332.

<sup>49</sup> *Id.* at 65.

<sup>50</sup> *Id.* at 65-66.

<sup>51</sup> *Id.* at 499.

<sup>52</sup> *Id.* at 498-499, 503.

<sup>53</sup> *Id.* at 504.

pulled out in 2009. This left the 601<sup>st</sup> Infantry Brigade with “a thin force necessitating realignment of forces to give priority to address the security requirements in the areas vacated by the two . . . pulled out battalions.”<sup>54</sup>

Geslani claimed that they were also carefully “monitoring and concerned with the critical developments of the reported build-up of the [Moro Islamic Liberation Front] forces under Umbra Kato with reinforcements from other base commands [that] were planning to conduct hostile actions.”<sup>55</sup> Allegedly, movements of these forces were also observed in other municipalities of Maguindanao, such as Datu Piang, Guindolungan, Talayan, Talitay, and Datu Midtimbang. These locations are more than 20 kilometers away from the Ampatuan Highway, where the crime allegedly happened. Months before the ambush, Geslani’s brigade allegedly had several violent confrontations with the threat groups in the said areas, where the military was able to inflict heavy casualties and retrieve heavy firearms from them. Resultantly, the priority of his unit as to deployment was inclined to these critical areas.<sup>56</sup>

As opposed to Vice Mayor Mangudadatu’s purported verified report, Geslani stressed that the state of security along the highway crossing the Municipality of Ampatuan was generally regarded safe, especially with the existence of the Philippine National Police forces. For a long time, there had been no military combat operation in that area and there were no reported threats prior to the incident.<sup>57</sup>

While it is true that there were reports on the ambush threat by the Ampatuans based on the affidavit of Gempesao, Geslani explained that the rumors were still raw and unvalidated and could not constitute as basis for departing from the proscription against extending security to election candidates, more so for the pulling out of troops deployed to fight threat groups. Given that the rumors were still then raw, Geslani claimed it was quite expected for the lower unit commander to not convey them to him. He said it is the task of the unit commander to initially confirm the raw information collected, “manage the situation, and initiate action at [their] level before relaying developments to [their] higher command.” Moreover, the presence of the Philippine National Police was not seen as a threat but assurance of the security in that area.<sup>58</sup>

From his viewpoint, Geslani saw no threats within the context of his unit’s mission that might interrupt the journey of the Mangudadatus, as reassured by the institution of checkpoints by the Philippine National Police. As far as he knew, there were neither reports nor a history of actual armed

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<sup>54</sup> *Id.* at 66.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 66–67.

<sup>57</sup> *Id.* at 67, 506.

<sup>58</sup> *Id.* at 68.

confrontations between the Mangudadatus and Ampatuans.<sup>59</sup> Contrary to Vice Mayor Mangudadatu's narration, Geslani claimed that what he only got was an informal request for security escorts, devoid of any elaborations on the possible ambush by the Ampatuans nor the brewing political atmosphere in the province.<sup>60</sup>

Geslani also rejected Vice Mayor Mangudadatu's assertion that there was an overwhelming military and police support to the Ampatuans. He claimed that the vice mayor might be alluding to the hundreds of police auxiliaries or members of the civilian volunteer organization deployed in locations where the Ampatuans are based. As these auxiliaries are all under the management and supervision of the Philippine National Police, the military holds no jurisdiction over these groups and they were already existing prior to his assumption as brigade commander.<sup>61</sup>

Geslani also explained that while the senior government officials of the Ampatuans may have been occasionally granted military personnel assistance in addition to their police escorts during land trips, these reinforcements were on a request basis usually made with the lower levels, and in light of the following considerations:

- a. The grant of security had been continuously carried out by the military for several years already because such security augmentation has a direct bearing on the military mission in their Internal Security Operation (ISO) against the [Lawless Moro Islamic Liberation Front Group /Moro Islamic Liberation Front] and other terrorist groups.
- b. The principal members of the Ampatuan family, being elected public officials who have control over the [Civilian Volunteer Organizations] assigned in their communities had served as force multiplier against the [Lawless Moro Islamic Liberation Front Group/ Moro Islamic Liberation Front] and other terrorist groups and in fact their [Civilian Volunteer Organizations] had engaged in actual combat against these threat groups in defensive operations.
- c. As a consequence, threats against the Ampatuans were actual and continuing. In fact, some of their family members and relatives were casualties from various attacks from the aforementioned threat groups, [e]specially in the form of ambushes and roadside bombing/[Improvised Explosive Device] detonations; and
- d. The granting of security augmentations [was] not for election-related or political activities of the Ampatuans. On the other hand, the request of Vice Mayor Mangudadatu was election-related, hence, they referred [it] to the PNP. Likewise, there were no reports or even perceived threats against the Mangudadatus from the [Lawless Moro Islamic Liberation Front Group /Moro Islamic Liberation Front] and other terrorist

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<sup>59</sup> *Id.* at 508.

<sup>60</sup> *Id.* at 509.

<sup>61</sup> *Id.* at 509-510.



groups.<sup>62</sup>

Furthermore, the following actions undertaken by Geslani were all allegedly in accord with the “professional conduct expected of a military officer and a gentleman.”<sup>63</sup>

1. Upon receipt of the initial reports on the incident, I immediately gave orders to conduct reconnaissance, search, pursuit and rescue operations. I had also promptly intensified intelligence operations to gather information on the incident to guide and assist said military operations. These actions led to the discovery of the crime scene, which thereafter was preserved and secured by their ground troops to pave the way for SOCO [Scene of the Crime Operations] investigation and to prevent any party from disrupting the SOCO function thereat.
2. I had deterred the LMG/MILF, MILF-SOG and JI from committing atrocities and from exploiting the volatile situation to their advantage in the whole area of 601<sup>st</sup> Brigade.
3. I had provided full cooperation and assistance within my unit’s full capability to all agencies and entities involved in the said investigation such as the designated PNP Investigating Team, [Criminal Investigation and Detection Group] and the [National Bureau of Investigation][.]
4. With the augmentation and reinforcement of troops from Higher Headquarters and pursuant to the imposition of the State of Emergency, guidance and instructions from the Crisis Committee and Higher Headquarters, I had further accomplished the following:
  - a. Prevented further violence and bloodshed between the families of the Mangudadatu and Ampatuan and among their respective supporters and followers;
  - b. Assisted in effecting the surrender of the principal suspect, Mayor Andal Ampatuan Jr. to Sec. Jesus Dureza, the Chairman of the Crisis Committee;
  - c. Assisted the designated PNP component in enforcing their control, restriction[,] and eventual custody of elements of the PNP and other suspects involved in the incident;
  - d. Effected military control, jointly with the tasked PNP units, of the physical structures/facilities of the Provincial Capitol of Maguindanao and the Municipal Halls of Shariff Aguak and Ampatuan municipalities; and
  - e. Recovered hundreds of firearms in Shariff Aguak and surrounding areas.<sup>64</sup>

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<sup>62</sup> *Id.* at 510–511.

<sup>63</sup> *Id.* 511.

<sup>64</sup> *Id.* at 512–513.

The Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices issued a Joint Resolution,<sup>65</sup> recommending the dismissal of the criminal and administrative complaints against Cayton and Geslani.<sup>66</sup> It explained that respondents are neither criminally nor administratively liable for failing to provide security escorts.<sup>67</sup>

Relevant to Section 3(e) of Republic Act No. 3019, it found that complainants failed to prove that Cayton and Geslani acted with manifest partiality, evident bad faith, or gross inexcusable neglect. On the other hand, Cayton and Geslani were able to explain that there was legal basis for their inability to grant the request for security escorts.<sup>68</sup>

The Office of the Deputy Ombudsman also found that complainants failed to establish the elements of Section 3(f) of Republic Act No. 3019. It added that the acts complained of do not fall under any specific provisions of dereliction of duty under the Revised Penal Code.

As to the administrative charge, the Office of the Deputy Ombudsman found no substantial proof to justify the imposition of any penalty against them.<sup>69</sup>

The dispositive portion of the Joint Resolution reads:

WHEREFORE, it is respectfully recommended that the criminal and administrative complaints against respondents M/GEN. ALFREDO CAYTON and COL. MEDARDO GESLANI be DISMISSED.

SO RESOLVED.<sup>70</sup>

In their Motion for Reconsideration,<sup>71</sup> complainants claimed that Geslani's admission that he used to extend security escorts to the Ampatuans given their role as "force multipliers" in the fight against the Moro Islamic Liberation Front demonstrated manifest partiality. They also cited the Certification<sup>72</sup> from Acting Adjutant First Lieutenant Nicoli Lizaso (Lizaso) that a certain Staff Sergeant Joselito A. Andrada (Andrada) was detailed as a security escort to Mayor Ampatuan, Jr. Complementing this was a Supplemental Affidavit<sup>73</sup> of Police Officer Rainer T. Ebus (Ebus), stating that Andrada was still a security escort of Mayor Ampatuan, Jr. during the Maguindanao massacre. They claimed that it was apparent from the affidavit

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<sup>65</sup> *Id.* at 48-80.

<sup>66</sup> *Id.* at 79.

<sup>67</sup> *Id.* at 73.

<sup>68</sup> *Id.* at 77.

<sup>69</sup> *Id.* at 77-78.

<sup>70</sup> *Id.* at 79.

<sup>71</sup> *Id.* at 81-107.

<sup>72</sup> *Id.* at 248.

<sup>73</sup> *Id.* at 249-251.

of Ebus that Andrada actively participated in the plot to murder the members of the Mangudadatu convoy.<sup>74</sup>

Complainants also asserted that there was allegedly manifest partiality on the part of Cayton when he allowed a subordinate military personnel to be a security detail of another candidate from September 16, 2009 to November 23, 2009, while failing to provide the same to the journalists.<sup>75</sup>

In their separate Oppositions,<sup>76</sup> Cayton and Geslani explained that the detail of Andrada was upon the permission of Colonel Godofredo B. Labitan (Labitan) in his capacity as then commanding officer of the 75<sup>th</sup> Infantry Battalion, 6<sup>th</sup> Infantry Division of the Philippine Army. As stated in Labitan's affidavit, the intent to continue the detail of Andrada "was made at his level of command and discretion as tactical ground commander and in accord with the unit's Internal Security Operations . . . mission against the lawless [groups] and other terrorist groups." They added that even before they assumed their individual posts, Andrada was already detailed to the Ampatuans.<sup>77</sup> Equally telling was that when Labitan assumed command in the 75<sup>th</sup> Infantry Battalion, Andrada's detail was already in effect.

Geslani also explained that Andrada's detail was not politically inclined but was part of the internal security operation efforts to dissuade "actual threats of attacks from the insurgents, secessionist rebels[,] and terrorist[s][.]"<sup>78</sup> Conversely, Vice Mayor Mangudadatu's request was in connection with his filing of candidacy, which was within the ambit of the proscription imposed by the Constitution, relevant rules, and the memorandum of agreement between the Department of National Defense and the Commission on Elections.<sup>79</sup>

The Office of the Deputy Ombudsman recommended the denial of the Motion for Reconsideration. This was later approved by the Ombudsman on December 5, 2013.

It explained that the certification from Lizaso even confirmed that Geslani and Cayton had no intention to discriminate against the Mangudadatus given that they were not yet in position when Andrada's assignment was made. Besides, Geslani and Cayton sufficiently elaborated on the legal grounds substantiating their refusal to grant security detail to the Mangudadatus and that the provision of security escort to the Ampatuans was not politically motivated.<sup>80</sup>

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<sup>74</sup> *Id.* at 85.

<sup>75</sup> *Id.* at 84-86, 111-112.

<sup>76</sup> *Id.* at 446-471.

<sup>77</sup> *Id.* at 113.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 113-114.

<sup>80</sup> *Id.* at 114-115.

The dispositive portion of the Joint Order reads:

WHEREFORE, premises considered, it is respectfully recommended that the Motion for Reconsideration filed by complainant-movants in OMB-P-C-10-0249-B and OMB-P-A-10-0275-b be DENIED.

SO ORDERED.<sup>81</sup>

Aggrieved, Duhay et al.<sup>82</sup> filed this Petition for Certiorari and Prohibition,<sup>83</sup> claiming that the Office of the Ombudsman gravely abused its discretion in dismissing their complaints against Cayton and Geslani.<sup>84</sup>

Petitioners, as complainants in the criminal complaint docketed as OMB-P-C-10-0249-B,<sup>85</sup> maintain that there is probable cause to indict private respondents for violation of Section 3(e) of Republic Act No. 3019. They assert that the private respondents failed to protect the journalists who joined the Mangudadatu convoy and acted with manifest partiality, evident bad faith, or gross inexcusable neglect.<sup>86</sup>

Petitioners claim that apparent in Geslani's admission was his alleged partiality toward the Ampatuans since he had not refused to provide them with security escorts allegedly as part of the government's fight against threat groups. Cayton's manifest partiality showed when he extended military security escort to then candidate Mayor Ampatuan Jr. while refusing to do the same to the journalists. Andrada's detail to the Ampatuans was allegedly effective September 16, 2009, well within the time of Cayton's stint as the commanding officer of the 6<sup>th</sup> Infantry Division. Ultimately, they stress that the reason Cayton was relieved from his post was due to his failure to provide security escorts to the Mangudadatus.<sup>87</sup>

Petitioners added that there was also bad faith and gross inexcusable neglect on the part of private respondents. With the deployment of intelligence personnel to monitor the pertinent areas as early as November 22, 2009 and on account of the long history of political feud between the

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<sup>81</sup> *Id.* at 115.

<sup>82</sup> *Id.* at 15–16. Duhay is the wife of Jhoy Duhay (Goldstar Daily in Cagayan De Oro City); Evardo is the mother of Julito Evardo (UNTV in General Santos City); Gatchalian is the wife of Santos "Jun" P. Gatchalian, Jr. (Metro Gazette in Davao City); Salaysay is the wife of Napoleon Salaysay (Mindanao Gazette in Cotabato City); Umpad is the mother of the minor child of McDelbert Arriola (UNTV in General Santos City); Nuñez is the mother of Victor Nuñez (UNTV of General Santos City) and Tiamzon is the wife of Daniel Becollado Tiamzon (UNTV in General Santos City).

<sup>83</sup> *Id.* at 3–47. Petitioners explained the reasons why their other co-complainants were not able to join their action before the Court. Allegedly, Myrna Reblando and Ma. Reynafe Momay-Castillo were out of the country. Arlyn Lupogan, Noemi Parcon, Glenna Legarte, and Mary Jean Merisco experienced logistical difficulties in sending their verification (*See Id.* at 16).

<sup>84</sup> *Id.* at 18–19.

<sup>85</sup> *Id.* at 5.

<sup>86</sup> *Id.* at 20.

<sup>87</sup> *Id.* at 21–23.



Mangudadatus and Ampatuans, private respondents ought to have known the existence of the grave security threat against the Mangudadatus. Besides, Cayton was not new to the region, having held various posts in the 6<sup>th</sup> Infantry Division prior to his appointment as division commander. On the other hand, Geslani holds operational jurisdiction over Maguindanao as the commander of the 601<sup>st</sup> Brigade. Private respondents should have allegedly exercised a higher degree of caution during the filing of Vice Mayor Mangudadatu's certificate of candidacy.<sup>88</sup>

Petitioners also posit that private respondents had no valid reason to deprive the journalists of security escorts. Not only did they have access to important intelligence information in Shariff Aguak, they also personally received repeated requests from the journalists. Petitioners claim that private respondents should have accorded protection to these civilians pursuant to Article II, Section 3 of the Constitution and in accordance with the mission and function of their respective commands. Such omission, petitioners claim, is tantamount to misconduct and gross negligence.<sup>89</sup>

Petitioners also assail private respondents' assertions of the primacy of the Philippine National Police to provide security escorts. Considering the repeated requests made, they claim that private respondents should have at least made representations to their police counterparts in behalf of the convoy. This was allegedly expected from them because it is the military that takes over in case of the absence of the police based on COMELEC Resolution No. 8741 dated January 6, 2010. Cayton allegedly admitted this, and Geslani presumably knew the same.<sup>90</sup>

Petitioners also insist that since the journalists already extended requests to private respondents for security escorts, they should have already presumed the police's denial of their request for protection. Apparent from Reblando's text message to Jubelag is that Cayton was informed about the refusal of the police to secure the Mangudadatu convoy:

(fyi – cayton sent intel info bared that too will bring 200 cops to escort him to sharf aguak... dat triggers mre pnp n cagfu massing d hiway in shasf agk [sic].. i told him n[e]gative no arm[e]d escort w[il]l go as [the] sist[e]r will b[e] [the] one to file w[ith]out toto.<sup>91</sup> (Emphasis supplied)

Considering that Reblando forwarded the message to Jubelag around 9:38 a.m. of November 23, 2009, petitioners insist that there was still ample time for private respondents to establish "even a small Army contingent to go with the convoy, pursuant to [COMELEC] Resolution No. 8741,"<sup>92</sup> which

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<sup>88</sup> *Id.* at 23–24.

<sup>89</sup> *Id.* at 25.

<sup>90</sup> *Id.* at 26.

<sup>91</sup> *Id.* at 28.

<sup>92</sup> *Id.* at 29.

they failed to do. Cayton could also have at least told the members of the convoy “to wait until he could put together a suitable security contingent,”<sup>93</sup> which he did not.

Petitioners likewise wonder why private respondents admitted to contacting the Mangudadatus and the journalists prior to the incident but not their police counterparts. This omission, according to petitioners, constitutes gross inexcusable neglect.<sup>94</sup>

Petitioners also stress that with the knowledge of the police’s denial of the request,<sup>95</sup> “depleted resources would not be a convenient excuse for the armed forces to refuse to provide security escorts to the convoy”<sup>96</sup> as there were remaining battalion personnel under red alert status on standby for assistance to the police.

Moreover, there was gross inexcusable neglect when Cayton made false assurances to the journalists that it was safe to travel to Shariff Aguak based solely on Matillano’s report. With the brewing tension between the Ampatuans and Mangudadatus, it was incumbent upon Cayton to have at least inquired from Geslani about the situation on the ground, which he failed to do. Besides, Matillano’s report about the existence of established checkpoints was not current. There was no positive affirmation from Matillano that as of November 23, 2009, these checkpoints were still operational pursuant to the antiloose firearms drive of the Philippine National Police. All these constitute gross failure of intelligence for which Cayton is accountable under the principle of command responsibility.<sup>97</sup>

Petitioners claim that Cayton should be held responsible, at the very least, pursuant to command responsibility. Despite knowing about Geslani’s grave omission, he neither sent troops to protect the convoy nor placed his subordinate under disciplinary action.<sup>98</sup> All told, petitioners insist on probable cause to indict private respondents for violation of Section 3(f) of Republic Act No. 3019.<sup>99</sup>

Finally, petitioners allege that private respondents cannot invoke the filing of candidacy to justify their refusal to provide security escorts. They explain that it was not only Vice Mayor Mangudadatu who asked for protection but also the civilian journalists whom the military has the duty to defend pursuant to the Constitution and their mandated function. Besides, “there was as of yet no candidate at that time [since] Vice Mayor Mangudadatu

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 30

<sup>97</sup> *Id.* at 30–31.

<sup>98</sup> *Id.* at 32.

<sup>99</sup> *Id.* at 32–34.

has not even filed his [certificate of candidacy].”<sup>100</sup> Notably, he did not even join the convoy, only his family members did. Thus, even if private respondents provided security escorts to the convoy, they would not be involved in partisan politics since the individuals sought to be protected were journalists and nonelectoral candidates.<sup>101</sup>

With the intelligence reports submitted to private respondents, petitioners assert that they ought to know the impending grave threat to the members of the convoy. As such, it would be needless to heavily rely on the filing of the candidacy given the lives at stake. It is also the task of private respondents as peace officers to extend protection to the members of the convoy pursuant to paragraph 8 of the Armed Forces of the Philippines Amended Implementing Guidelines, Rules, and Regulations to the Memorandum of Agreement between the Department of National Defense and the Commission on Elections. Equally, part VI, paragraph B(7) of the Amended Guidelines insinuates that the military can still provide security escorts to individuals yet to file their certificates of candidacy since they are not yet considered candidates at that point.<sup>102</sup>

In his Comment,<sup>103</sup> Cayton calls for the dismissal of the petition. He explains that petitioners are raising questions of fact, which are not proper in an original action for certiorari and prohibition.<sup>104</sup> The purpose of this special civil action is not to correct mere errors of judgment on the part of the Office of the Ombudsman but to ascertain the existence of a whimsical and capricious exercise of judgment to which the records point to none.<sup>105</sup> Instead of providing specific allegations to substantiate their claim of grave abuse of discretion, petitioners merely mirrored the arguments already raised during prior proceedings.<sup>106</sup>

Cayton adds that the Office of the Ombudsman did not gravely abuse its discretion in issuing the assailed rulings since petitioners were given every opportunity to present their contentions during the investigative process. Case law recognizes that this Court does not review the investigatory and general prosecutorial authority of the Office of the Ombudsman. Hence, in the absence of an evident showing of grave abuse of discretion, the Office of the Ombudsman holds complete discretion whether to file a case pursuant to its finding of probable cause.<sup>107</sup>

While it is true that probable cause is founded on reasonable belief, its determination must be reinforced by facts and circumstances adequately

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<sup>100</sup> *Id.* at 35.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 36.

<sup>103</sup> *Id.* at 259–300.

<sup>104</sup> *Id.* at 268.

<sup>105</sup> *Id.* at 274.

<sup>106</sup> *Id.* at 269.

<sup>107</sup> *Id.* at 273.

strong on their own to convince a cautious person that the accused is guilty of the charge. Here, the Office of the Ombudsman was allegedly correct that there was no proof of manifest partiality, evident bad faith, or gross inexcusable negligence on their part.<sup>108</sup>

Cayton claims that he regularly discharged his official duties as then commander of the 6<sup>th</sup> Infantry Division pursuant to their mandates under the Constitution, relevant laws, rules, and standard operating procedures. He assails petitioners' attempt to purportedly mislead this Court into believing that he allowed Andrada to be detailed as security personnel for Mayor Ampatuan, Jr. when in fact Labitan already admitted that he was the one who allowed such detail at his command level. Besides, as explained by Labitan in his affidavit, there exists actual and continuing perils against the Ampatuans due to their active involvement in the fight against the threat groups. In stark contrast to Vice Mayor Mangudadatu's request for security escorts, the detail of Andrada to the Ampatuans was not for any political considerations.<sup>109</sup>

Cayton also clarifies that his relief as division commander was not occasioned by his failure to provide security escorts to the Mangudadatus. With an intent to mislead, petitioners allegedly misquoted Lieutenant Colonel Romeo Brawner's press statement by reading it separately from the whole context of the news article to which the claim was taken. He quoted the third paragraph of the article, explaining that he was relieved from his post to pave way for an impartial investigation being conducted by the National Bureau of Investigation and other law enforcement agencies, and later handled by the Ombudsman:

"This is effective today, to pave the way for an impartial and transparent investigation into the issue following some complaints that they failed to provide security," Brawner said at a press briefing."<sup>110</sup>

In relation to Section 3(e) of Republic Act No. 3019, Cayton belies manifest partiality in his course of action. Referring the matter to the Philippine National Police, he explains, is not only in accord with the delineations of functions between the Armed Forces and the Philippine National Police, but is similarly in consensus with the military's constitutional mandate primarily geared toward insulation from partisan political activities. The request for security escorts during a filing of candidacy, Cayton points out, is deemed a political activity.<sup>111</sup>

Cayton adds that his disposition, founded on legal justification, negates bad faith. With no outright denial of Vice Mayor Mangudadatu's request, he allegedly provided an alternate course of referring the matter to the police,

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<sup>108</sup> *Id.* at 275-276.

<sup>109</sup> *Id.* at 268-279.

<sup>110</sup> *Id.* at 280.

<sup>111</sup> *Id.* at 281-282.



whose law enforcement roles encompass peace and order, as well as public safety. He also emphasizes the pressing operational considerations, such as the dearth of security forces in the area, which, if neglected, could be a grave procedural misstep with even more far-reaching consequences.<sup>112</sup>

Contrary to the allegation of gross negligence, his extraordinary care and prudence was manifest on record. He allegedly employed extreme caution in dealing with the queries about the security situation in the area as inferred from his directives to Geslani to address the security concerns of the locations vacated by some troops and his amassing of information from sources that there were police checkpoints along the highway to Shariff Aguak. The totality of the foregoing security measures, Cayton claims, was considered in his assessment that the highway was safe for travel. He was also not indifferent and tried to the best of his knowledge to respond to the queries reaching him.<sup>113</sup>

Cayton insists on the lack of probable cause for violation of Section 3(f) of Republic Act No. 3019 in the absence of neglect or refusal on the part of private respondents to act on Vice Mayor Mangudadatu's request.<sup>114</sup>

Contrary to petitioners' assertion that private respondents ought to have known the security threat to the Mangudadatus on account of the long been political feud between the two families, Cayton posits that these clans were known political allies under one party, bonded by family ties without any record of violent animosity against each other. Besides, it is not within the mandate of the military units to gather information on law enforcement agents and elected public officials who turned out to be the principal suspects here. At best, petitioners' line of reasoning as to this matter was speculative and not founded on facts.<sup>115</sup>

Cayton assails petitioners' assertion that he relied on Matillano's purported stale information as this was not the only consideration he pondered upon. Moreover, to regard the information as stale was allegedly erroneous because the checkpoints were already operative as early as November 19, 2009 up to the time the incident occurred.<sup>116</sup>

Cayton also explains the use of reports in the chain of command in this wise:

Reports obtained at the lower wrung of the chain of command such as that of the 64<sup>th</sup> [Infantry Battalion], particularly tactical level reports for threats gathered that had neither been validated nor elevated to the level of the

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<sup>112</sup> *Id.* at 282.

<sup>113</sup> *Id.* at 283.

<sup>114</sup> *Id.* at 284.

<sup>115</sup> *Id.* at 284-285.

<sup>116</sup> *Id.*

Division, not even reaching the Brigade level, cannot be utilized in the process. As consistently invoked by this respondent, the gathering of information through various intelligence units in the area is one distinct consideration, the decision of whether or not to give in to the request for security is another. Such a decision was factored not on the basis of raw information but on the existence of highly significant factors and conditions that impact on the mandate of the organization as well as operational guidelines applied to a given situation.<sup>117</sup>

Neither did Cayton allegedly commit inaction or delay since Vice Mayor Mangudadatu's request was seasonably acted upon. As division commander relying on Geslani's sound recommendation, he promptly concurred that the request be instead directed to the Philippine National Police. This, according to Cayton, was not an evasion of duty but laying things in their proper perspective. Besides, the Mangudadatus were not left devoid of any effective recourse since an alternate remedy was relayed to them beforehand, which they opted not to pursue.<sup>118</sup>

Cayton maintains that the filing of a certificate of candidacy is within the ambit of partisanship, thus covered by the legal and constitutional prohibition imposed upon the military not to participate in any partisan political activity. He elaborates on his justifications as to the referral of the request for security escorts to the police, stating:

First, the filing of candidacy is considered part of the electoral process. Save in cases where the Armed Forces of the Philippines or any of its units is deputized for the purpose of law enforcement, the limitation under the Constitution applies.

Second, the relevant memorandum of agreement and existing operational guidelines explicitly prohibit the armed forces, as a line bureau of the Department of National Defense, to give security detail to candidates in any election-related activity.<sup>119</sup>

Third, providing security detail is generally considered a law enforcement function and beyond the principal mandate of the Armed Forces of the Philippines. Under the organizational chart of the Philippine National Police, there exists the Police Security and Protection Group, which is the dedicated unit for these kinds of matters.<sup>120</sup>

Fourth, the Armed Forces of the Philippines is mandated to be on the lead in the suppression of insurgency. In citing the 6<sup>th</sup> Infantry Division's mission, petitioners are allegedly aware that the ground operation of this army unit is constrained and centered "on intensified ISO – that is to defeat the

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<sup>117</sup> *Id.* at 286.

<sup>118</sup> *Id.* at 288.

<sup>119</sup> *Id.* at 289–290.

<sup>120</sup> *Id.* at 290.

Local Communist Movement . . . , contain the Southern Philippines Separatist Groups . . . and destroy/neutralize the Kidnap-for-Ransom Groups . . . and the lawless elements in the area of responsibility.”<sup>121</sup> This mission cannot be expanded to include the provision of security to candidates or political groups undertaking election-related activities.

Lastly, the shortage in military personnel due to the pull-out of troops was a prime consideration in the referral of the request to the local police. Even with adequate personnel, this would still be contrary to the prohibition imposed upon under pertinent laws and rules.<sup>122</sup>

In addition, Cayton counters that petitioners’ reliance on COMELEC Resolution No. 8741 was erroneous since it was only promulgated on January 6, 2010, or a month after these incidents happened. While Section 2 thereof states that in the absence of the police, the Armed Forces of the Philippines shall provide security escorts to candidates, police forces were allegedly never absent in the locality. As stated by Jubelag, the Mangudadatus were even planning to tap their own local police from Buluan, which was objected upon by the journalists on the notion that this might provoke the Ampatuans. This only shows that there had been existing available local police, including those from three nearby municipalities in Maguindanao, where the Mangudadatus were the incumbent executives, as well as in the adjoining province of Sultan Kudarat, where the convoy passed and which was then under the jurisdiction of duly-elected public officials who were also Mangudadatus.<sup>123</sup>

Geslani reiterates in his Comment<sup>124</sup> the points he raised before the Office of the Ombudsman and restates Cayton’s arguments. He insists on adherence to the policy of noninterference with the Office of the Ombudsman. Other than baseless insistence, petitioners allegedly failed to show capricious exercise of judgment on the part of Office of the Ombudsman.<sup>125</sup>

Geslani also argues that there was no violation of Section 3(e) of Republic Act No. 3019.<sup>126</sup> Aside from the legal considerations raised by Cayton that justify the referral of the request to the police, he adds:

iii. No member of the AFP shall join, encourage or support any political activity. No military personnel shall allow [themselves] to be used or manipulated by any person or any group to further their political objectives. (*General Headquarters Cir[cular] on Conduct of Military Personnel dated 10 November 2000*)

iv. Partisan Politics – The AFP recognizes the sanctity of its insulation

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<sup>121</sup> *Id.* at 291.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 291–292.

<sup>124</sup> *Id.* at 535–571.

<sup>125</sup> *Id.* at 543–545.

<sup>126</sup> *Id.* at 546.

from partisan politics. Its involvement in politics shall be strictly limited to the exercise of its members' right of suffrage and in ensuring the security and delivery of ballots to the concerned government entities during election if and when deputized to do so. The AFP therefore pledges not to interfere nor be an instrument of any politically motivated activities[.]<sup>127</sup>

Instead of petitioners' misplaced interpretation of Article II, Section 3 of the Constitution on civilian supremacy, Geslani claims the same should be interpreted as another prohibition "against indiscriminate employment or commitment of military personnel, assets[,] and capability to purely civilian law enforcement and public safety concerns."<sup>128</sup> Save in exceptional cases, such as the presidential declaration of state of emergency or martial law, it is the Philippine National Police that is primary tasked to execute purely civilian public safety activity.<sup>129</sup>

Geslani furthers that the military's constitutional mandate to protect the people and the state should not be rigidly understood to mean as limiting the protection to a select group of people. Instead, it should be understood in the context of the state's defense against local and foreign aggression as reflected in the mission statement of their Brigade. He then justifies the propriety of his course of action, wherein he prioritized the deployment of his depleted forces to areas where there was a build-up of threat groups intending to spread atrocities.<sup>130</sup> Besides, aside from legal constraints, his course of action was also on account of mission and tactical considerations such as the "unit's personnel strength or available forces threat and security situation in the whole area of the 601<sup>st</sup> [Infantry Brigade] and other attendant circumstances."<sup>131</sup> Allegedly, "rules-based actions and mission-based decisions when faithfully followed and implemented do not generate partiality, bad faith[,] or even negligence on the part of the doer."<sup>132</sup>

Geslani adds that in the fulfilment of his duties, he never acted for the purpose of favoring himself or discriminating against the petitioners and their loved ones. He stresses that he received neither any request for security escorts from the journalists nor any information of threat against them at that moment.<sup>133</sup>

He also belies violating Section 3(f) of Republic Act No. 3019, arguing that he immediately and politely acted upon Vice Mayor Mangudadatu's request by recommending that it be referred to the Philippine National Police. He also advised Vice Mayor Mangudadatu about the legal, tactical, and operational constraints on the part of the military—an advice approved by

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<sup>127</sup> *Id.* at 547.

<sup>128</sup> *Id.* at 552.

<sup>129</sup> *Id.* at 553.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 549.

<sup>132</sup> *Id.* at 550.

<sup>133</sup> *Id.* at 552.



Cayton.<sup>134</sup>

Public respondent Office of the Ombudsman, for its part, denies grave abuse of discretion on its end,<sup>135</sup> primordially harping on this Court's policy of noninterference.<sup>136</sup>

Relevant to the purported violation of Section 3(e) of Republic Act No. 3019, the Office of the Ombudsman finds that the element of manifest partiality, evident bad faith, and gross inexcusable negligence was allegedly wanting. It holds that the inability to grant the request for security escorts was founded on legal grounds. As a line bureau of the Department of National Defense, the Armed Forces of the Philippines is not allowed to provide security detail to candidates in any electoral activity pursuant to the relevant memorandum of agreement. Even if there were occasions that the Ampatuans were given security escorts in the past, private respondents were able to justify that the provision was not meant for any election-related purpose. Besides, there exists no adequate proof to demonstrate that private respondents acted with partiality in so doing.<sup>137</sup>

In their Reply,<sup>138</sup> petitioners merely restate their arguments in their Petition. Allegedly, the crux of the controversy revolves around private respondents' failure to protect their journalists-family members that led to the massacre and their error in invoking the filing of a certificate of candidacy as justification.<sup>139</sup>

Petitioners only delve on the criminal aspect<sup>140</sup> of the Office of Ombudsman's assailed rulings, specifically arguing for private respondents' alleged violation of Section 3(e) and (f) of Republic Act No. 3019.

The sole issue for this Court's resolution is whether or not public respondent Office of the Ombudsman gravely abused its discretion in not finding probable cause to indict private respondents Major General Alfredo Cayton, Jr. and Colonel Medardo Geslani for violation of Section 3(e) and (f) of Republic Act No. 3019.

We dismiss the Petition.

The Office of the Ombudsman did not gravely abuse its discretion in

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<sup>134</sup> *Id.* at 559–560.

<sup>135</sup> *Id.* at 705.

<sup>136</sup> *Id.* at 707.

<sup>137</sup> *Id.* at 705–710.

<sup>138</sup> *Id.* at 734–754.

<sup>139</sup> *Id.* at 736.

<sup>140</sup> There are no specific arguments in the Petition or in petitioners' Consolidated Reply, contesting the Office of the Ombudsman's finding that the act complained of does not fall under any of the provisions for Dereliction of Duty under Section 1, Title VII of the Revised Penal Code.

not finding probable cause to charge private respondents for violation of Section 3(e) and (f) of Republic Act No. 3019.

Generally, this Court does not interfere with the Office of the Ombudsman's determination of probable cause. This is an executive function carried out pursuant to its powers under the Constitution.<sup>141</sup>

The Office of the Ombudsman holds the authority to investigate and prosecute a public officer's illegal or inefficient act or omission. As the true adjudicator of whether there is a case deserving of the filing of an information in court, it has the power to dismiss a complaint even without preliminary investigation. It has the discretion to ascertain, based on available facts and circumstances, whether a criminal charge should be filed since this is essentially its prerogative.<sup>142</sup>

Besides, "[t]he executive determination of probable cause is a highly factual matter."<sup>143</sup> The Office of the Ombudsman is in the best stance to evaluate the strength and weakness of available evidence necessary in its finding of probable cause. This Court, not being a trier of facts, submits to the Office of the Ombudsman's sound assessment.<sup>144</sup>

Aside from deference to the Office of the Ombudsman's constitutional mandate, this Court's noninterference is also grounded on practicality:

[T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.<sup>145</sup>

Still, the Office of the Ombudsman cannot evade judicial review when there exists grave abuse of discretion. Pursuant to this Court's constitutional duty, we ascertain whether a government branch or instrumentality gravely abused its direction amounting to lack or excess of jurisdiction.<sup>146</sup>

What constitutes grave abuse of discretion has already been established:

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<sup>141</sup> *Republic v. Ombudsman*, G.R. No. 198366, June 26, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65315>> [Per J. Leonen, Third Division].

<sup>142</sup> *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*, 579 Phil. 312 (2008) [Per J. Chico-Nazario, Third Division].

<sup>143</sup> *Dichaves v. Office of the Ombudsman*, 802 Phil. 564, 590 (2016) [Per J. Leonen, Second Division].

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 590-591.

<sup>146</sup> *Casing v. Ombudsman*, 687 Phil. 468 (2012) [Per J. Brion, Second Division].

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. *The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention[.]*<sup>147</sup> (Emphasis supplied)

A mere disagreement with the Office of the Ombudsman's findings does not comprise grave abuse of discretion. It must be shown that the preliminary investigation was carried out in such a way that there was a "virtual refusal to perform a duty under the law."<sup>148</sup>

In this case, petitioners fell short in showing that the Office of the Ombudsman gravely abused its discretion.

As noted by private respondents,<sup>149</sup> petitioners merely offered sweeping allegations *without* specifically stating their reasons for their conclusions.<sup>150</sup> An imputation of grave abuse of discretion is not only alleged but must also be proved.<sup>151</sup> Here, petitioners did not indicate any particular act or omission on the part of the Office of the Ombudsman reflective of a "capricious or whimsical exercise of judgment amounting to lack or excess of jurisdiction."<sup>152</sup> Their arguments primarily centered on their insistence of their own narrative, despite it already pondered upon by the Office of the Ombudsman in its rulings.

Judicial scrutiny entails that petitioners undoubtedly show that the Office of the Ombudsman gravely abused its discretion amounting to lack or excess of jurisdiction,<sup>153</sup> which they miserably failed to do. Petitioners failed to discharge the burden of proving the presence of grave abuse of discretion, in accord with the parameters and definition provided by law and jurisprudence:

Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. While the prosecutor, or in this case, the investigating officers of the Office of the Ombudsman, may err or even abuse the discretion lodged in them by law, such error or abuse alone does not render their act amenable to correction and annulment by the extraordinary remedy of certiorari.<sup>154</sup>

<sup>147</sup> *Id.* at 476.

<sup>148</sup> *Republic v. Ombudsman*, G.R. No. 198366, June 26, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65315>> [Per J. Leonen, Third Division].

<sup>149</sup> *Rollo*, pp. 269 and 545.

<sup>150</sup> *See id.* at 18–19, 32, 34 & 36.

<sup>151</sup> *Dichaves v. Office of the Ombudsman*, 802 Phil. 564 (2016) [Per J. Leonen, Second Division].

<sup>152</sup> *Republic v. Ombudsman*, G.R. No. 198366, June 26, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65315>> [Per J. Leonen, Third Division].

<sup>153</sup> *Joxon v. Office of the Ombudsman*, 784 Phil. 172 (2016) [Per J. Mendoza, Second Division].

<sup>154</sup> *Id.* at 188.

It is worth stressing that a preliminary investigation is only for ascertaining probable cause, which refers to the presence of facts and circumstances that would cause a cautious person to accommodate a strong suspicion that the accused is guilty of the charge.<sup>155</sup> The determination of probable cause is founded neither on clear and convincing proof of guilt, nor on evidence proving an absolute certainty of guilt. “A finding of probable cause merely binds over the suspect to stand trial.”<sup>156</sup> Whether probable cause exists rests on the elements of the charges.<sup>157</sup> It suffices that the elements of the offense are reasonably evident and need not be definitively determined.<sup>158</sup>

Here, we agree with the Office of the Ombudsman that petitioners failed to *prima facie* show the presence of the elements of Section 3(e) and (f) of Republic Act No. 3019.<sup>159</sup>

As amended, Section 3(e) of Republic Act No. 3019 reads:

Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

.....

- (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through *manifest partiality, evident bad faith or gross inexcusable negligence*. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.<sup>160</sup> (Emphasis supplied)

To constitute the offense, the following elements must concur:

- a) The accused is a public officer or a private person charged in conspiracy with the former;
- b) The public officer commits the prohibited acts during the performance of [their] official duties or in relation to [their] public functions;

<sup>155</sup> *Reyes v. Office of the Ombudsman*, 810 Phil. 106 (2017) [Per J. Leonen, Second Division].

<sup>156</sup> *Galario v. Office of the Ombudsman*, 554 Phil. 86, 101 (2007) [Per J. Chico-Nazario, Third Division].

<sup>157</sup> *Camp John Hay Development Corporation v. Office of the Ombudsman*, G.R. No. 225565, January 13, 2021, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67724>> [Per J. Leonen, Third Division].

<sup>158</sup> *Jalandoni v. Office of the Ombudsman*, G.R. No. 211751, May 10, 2021, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67538>> [Per J. Leonen, Third Division].

<sup>159</sup> *See Rollo*, pp. 77–78.

<sup>160</sup> Republic Act No. 3019 (1960), sec. 3(e).



- c) That [they cause] undue injury to any party, whether the government or a private party;
- d) Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
- e) *That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable neglect. Evidently, mere bad faith or partiality and negligence per se are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest, respectively, while the negligent deed should both be gross and inexcusable. It is further required that any or all of these modalities ought to result in undue injury to a specified party.*<sup>161</sup> (Emphasis supplied)

As the only contested element in this case, we delve on the modalities on how the offense is perpetrated:

*"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith" does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence" has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3 (e) should suffice to warrant conviction[.]*<sup>162</sup> (Emphasis supplied)

Petitioners' allegation of manifest partiality pivoted on Geslani's refusal to provide security escorts to the Mangudadatu convoy while allegedly admitting that he provided the same to the Ampuatuan for having been a force multiplier in the fight against the lawless groups. As for Cayton, he allegedly permitted a subordinate to be a military escort for Mayor Ampatuan, Jr.<sup>163</sup>

Meanwhile, their insistence on evident bad faith and gross inexcusable neglect primarily hinged on private respondents' failure to protect the convoy. This was despite allegedly knowing about the impending grave threat to it based on reports from their operatives and in consideration of the long-existing feud between the opposing camps.<sup>164</sup>

<sup>161</sup> *Galario v. Office of the Ombudsman*, 554 Phil. 86, 105 (2007) [Per J. Chico-Nazario, Third Division].

<sup>162</sup> *Camp John Hay Development Corporation v. Office of the Ombudsman*, G.R. No. 225565, January 13, 2021, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67724>> [Per J. Leonen, Third Division].

<sup>163</sup> *Rollo*, pp. 20–22.

<sup>164</sup> *Id.* at 23–24.

Geslani admitted to receiving several phone calls from Vice Mayor Mangudadatu requesting for army escorts. In response, he suggested that the request be directed to the police given the relevant proscription to the Armed Forces of the Philippines imposed by extant policies and guidelines.<sup>165</sup> He claimed that he also explained to Vice Mayor Mangudadatu about the severe personnel shortage in his unit due to the pull-out of troops. Cayton concurred with Geslani's response to Vice Mayor Mangudadatu's request.<sup>166</sup>

The Office of the Ombudsman settled this matter in this wise:

*The fifth element is wanting in the case at bar. Complainants failed to adduce evidence which would show that respondents acted with manifest partiality, evident bad faith or gross inexcusable neglect. As respondents claim, they explained their inability to grant the request for security escorts on the basis of legal grounds. They were following the directives and the law. Providing security escorts is not respondents' primary responsibility as explained fully by them in their Counter-Affidavits. If respondents had on occasions extended security escorts to the Ampatuans, there is no appreciable showing that they were partial to them.*<sup>167</sup> (Emphasis supplied)

We uphold the findings of the Office of Ombudsman.

The provision of security escorts by the Armed Forces of the Philippines to candidates is explicitly prohibited in the relevant memorandum of agreement between the Department of National Defense and the Commission on Elections,<sup>168</sup> the existence of which is not shown to have been disputed by petitioners.<sup>169</sup>

The pertinent portions of the agreement read:

*WHEREAS, Article IX, C, Section 2(4) of the 1987 Constitution empowers the COMELEC to deputize the Armed Forces of the Philippines (AFP) with the concurrence of the President, for the exclusive purpose of ensuring free, orderly, honest, peaceful and credible elections;*

*WHEREAS, Article XVI, Section 5(3) of the 1987 Constitution*

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<sup>165</sup> *Id.* at 538–539.

<sup>166</sup> *Id.* at 263.

<sup>167</sup> *Id.* at 77.

<sup>168</sup> *Id.* at 340–343. The Memorandum of Agreement between the Department of National Defense and the Commission on Elections was executed on October 12, 2006 and was signed by then Secretary of National Defense Avelino J. Cruz, Jr. and Commission on Elections Chairperson Benjamin S. Abalos, Sr.

<sup>169</sup> *Id.* at 34–36. In the Petition filed before this Court, petitioners did not explicitly assail the existence of the Memorandum of Agreement between the Department of National Defense and the Commission on Elections. In fact, they provided arguments relevant to the Amended Implementing Guidelines, Rules, and Regulations, which, on the other hand, is issued in relation to such Memorandum of Agreement. See also *Id.* at 738–739.

*provides that the members of the AFP shall be insulated from partisan politics and prohibits all members thereof from engaging, directly or indirectly, in any partisan political activity, except to vote;*

....

WHEREAS, AFP's deputation however during elections has unnecessarily exposed its members to allegations of engaging in partisan political activities and the same has caused resentments among its offices and members;

*WHEREAS, the President of the Republic of the Philippines has approved the recommendation of the Secretary of National Defense that concurrence to COMELEC deputation of the AFP shall be given only in cases of serious armed threats to the electoral process, which the Philippine National Police and other law enforcement agencies cannot address, as jointly determined by the Chief of Staff, AFP and the COMELEC Chairman.*

WHEREAS, there is a need to clearly define the role of the AFP during national and local elections in assisting the COMELEC in protecting the electoral process while ensuring that its officers and personnel are insulated from partisan politics and protected from unwarranted accusations of engaging in partisan political activities.

NOW, THEREFORE, the COMELEC and DND have agreed as follows:

- 1) *During national and local elections, including special elections, plebiscites, initiatives, referenda and other electoral exercises, the COMELEC shall only deputize actual units or commands of the AFP in areas affected by serious armed threats to the electoral process as jointly identified by the COMELEC and the DND-AFP.*

The term "*serious armed threats*" shall refer to the presence of paramilitary forces, private armies or identifiable armed bands widely perceived to have committed or is committing terrorism, fraud or other election irregularities and threaten or tend to disrupt the holding of free, honest and orderly elections in any political subdivision or unit, or any part thereof.

- 2) In such areas covered by the serious armed threats where specific AFP units and commands will be deputized by the COMELEC, only the Commander and the officers and members actually assigned to said AFP units shall be deputized by the COMELEC.

....

- 4) The COMELEC deputation to the deputized AFP units in accordance with paragraphs 1 and 2 shall only include the following functions:
  - a. providing security to the area covered by the serious armed threat by deploying sufficient AFP military personnel to man, patrol and provide AFP visibility in the area;
  - b. manning checkpoints in locations jointly identified by the COMELEC and the AFP; and
  - c. enforcing the ban on carrying of firearms by persons who do not possess the necessary authorization from the COMELEC to carry,

possess and transport firearms.

5) *The COMELEC deputation shall not, in any case, include the performance of election duties such as the following:*

- a. counting or canvassing of votes;
- b. clustering of precincts;
- c. transporting of ballots, other election paraphernalia, and election results, provided, however, that AFP units may, subject to the approval of the Chief of Staff, be requested to provide air, land and naval vessel escorts to the transportation facilities used in transporting election paraphernalia when the security provided by the Philippine National Police, cannot address the threat, as determined by the Chief of Staff, AFP and the COMELEC Chairman.
- d. *acting as security escorts to candidates;*
- e. provide security to polling places and to members of the Board of Election inspectors;
- f. provide security to the personnel of the Commission and other employees of the Government performing election duties, including the accredited citizen's arm; and
- g. make available certain AFP facilities, such as land, sea and air transportation, communication systems, and other equipment in connection with the elections except as provided in Section 5 (c) hereof.

....

7) Notwithstanding the deputation of specific units or commands of the AFP in accordance with paragraphs 1 and 2, the AFP shall continue with the conduct of all Internal Security Operations or its own functions and responsibilities.<sup>170</sup> (Emphasis supplied)

The pertinent portions of the Amended Implementing Guidelines, Rules, and Regulations of the agreement<sup>171</sup> elaborated:

#### I. REFERENCES:

- A. [Memorandum of Agreement] entered into by the DND and the COMELEC dated 12 October 2006

....

II. PURPOSE: This Amended Implementing Guidelines, Rules and Regulations (AIGRR) sets forth the limitation (Constraints: What the AFP can do? and Restraints: What the AFP cannot do?) *when deputized by the COMELEC during elections* pursuant to the MOA between the DND and the COMELEC.

<sup>170</sup> *Id.* at 340–342.

<sup>171</sup> *Id.* at 344–348. The Amended Implementing Guidelines, Rules, and Regulations to the Memorandum of Agreement dated February 16, 2007 (Armed Forces of the Philippines General Headquarters-Office of the Deputy Chief of Staff for Operations, J3) was signed by Major General Jogy Leo L. Fojas and Commission on Elections Commissioner Resurreccion Z. Borra (in conforme). *With Note:* By Command of General Esperon, Jr.



## III. OBJECTIVES:

- A. To guide the commanders on their respective responsibility and authority when deputized by the COMELEC during elections.
- B. To guide the commanders and their units of the limitations (constraints and restraints) in performing their functions/tasks pursuant to the MOA between the DND and the COMELEC.

....

## V. GENERAL POLICY

- A. *Notwithstanding the deputation of specific units or commands of the AFP, the AFP shall continue with the conduct of ISO or its own functions and responsibilities.*
- B. The AFP's primary role of protecting the people, securing the sovereignty of the State and the integrity of the national territory shall remain.
- C. *The AFP shall be insulated from partisan politics. As such, it shall remain apolitical and impartial.*

....

- E. During national and local elections, including barangay and SK elections, special elections, plebiscites, initiatives, referenda, recall elections and other electoral exercises, the COMELEC shall only deputize actual units or commands of the AFP in areas affected by serious armed threats to the electoral process as jointly identified by the COMELEC and DND/AFP. Initially, the COMELEC and the DND/AFP will jointly evaluate and determine which among these election hotspot areas may be considered under "serious armed threats."

## VI. OPERATIONAL GUIDELINES

....

- B. AFP commanders of deputized AFP units shall be guided by these restraints:
  - 1. While the AFP supports the COMELEC in its effort to enhance the holding of free, orderly, honest, peaceful and credible election, it shall not be directly involved in the conduct of electoral processes inside the polling places.

....

- 3. AFP mobility assets shall not be used by any political candidate as conveyances of sympathizers, foodstuffs, leaflets streamers, etc.

....



7. *AFP commanders are prohibited from detailing any personnel as security escorts to any candidate. In case the security detail is assigned to an authorized person and when that person has filed his/her certificate of candidacy, that security escort shall be automatically pulled out.*
8. *The AFP shall not provide security to members of the Board of Election Inspectors, personnel of the COMELEC and other employees of the government performing election duties, including accredited citizens arm. If there exists an exigency, impending or actual threat to be averted, the deputized commander shall undertake immediate action by employing reasonable force to deter/defer the threat[.]* (Emphasis supplied)

Petitioners claim that private respondents cannot justify their refusal to provide security escorts on account of Vice Mayor Mangudadatu's filing of certificate of candidacy since there was allegedly no candidate yet to speak of. While there exists a prohibition in the deployment of security troops for candidates, the Amended Implementing Guidelines, Rules, and Regulations to the Memorandum of Agreement allegedly provides for an exception in cases of "exigency, impending[,], or actual threat to be averted."<sup>172</sup> Accordingly, far from being passive, the members of the armed forces are expected to aid those in need and if necessary, to use reasonable force to fight the lawless components of the threat.<sup>173</sup>

Petitioners erred in their reading.

From the words of the Amended Implementing Guidelines, Rules, and Regulations to the Memorandum of Agreement, the exemption is only in relation to the prohibition imposed upon the armed forces with regards the provision of security to "members of the Board of Election Inspectors, personnel of the COMELEC and other employees of the government performing election duties[.]"<sup>174</sup> Petitioners cannot simply isolate the second sentence of Part VI (B), Paragraph 8 from the sentence preceding it just to further their stance. Besides, before invoking such exemption, it is clear from the Amended Implementing Guidelines, Rules, and Regulations to the Memorandum of Agreement that the concerned military personnel must be first deputized by the Commission on Elections, which, in Cayton or Geslani's case, finds no application.

Neither is this Court persuaded that there exists an implication under Part VI (B), Paragraph 7 of the Amended Implementing Guidelines, Rules, and Regulations to the Memorandum of Agreement that the armed forces "can still provide security escorts to persons who are going to file their [certificates of candidacy] since they are not yet candidates at that point."<sup>175</sup>

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<sup>172</sup> *Id.* at 35.

<sup>173</sup> *Id.* at 35–36.

<sup>174</sup> *Id.* at 347.

<sup>175</sup> *Id.* at 36.

The words of the rules are clear and need no further interpretation.<sup>176</sup> As pointed out by Cayton, such provision envisions a situation where a prospective candidate, prior to filing a certificate of candidacy, was already permitted and authorized to have a military escort.<sup>177</sup> This was neither the case for Vice Mayor Mangudadatu nor for the members of the convoy.

Furthermore, not being within the province of this Court to review via certiorari,<sup>178</sup> we need not belabor on petitioners' argument that private respondents should have acceded to the request for security escorts because it was not only Vice Mayor Mangudadatu who asked for it but also the journalists whom the private respondents allegedly have the duty to protect.<sup>179</sup>

The foregoing is a question of fact, requiring the determination of whether the journalists really requested for security escorts.

In this case, Cayton explicitly contests this allegation. He claims there was neither any member from the media nor any civilian, for that matter, who asked for military escorts.<sup>180</sup>

"This Court is not a trier of facts, more so in the extraordinary writ of certiorari where neither questions of fact nor even of law are entertained, but only questions of lack of jurisdiction or grave abuse of discretion can be raised."<sup>181</sup> Hence, we delve on the core of the controversy that emanated from Vice Mayor Mangudadatu's request for security escorts, an account undisputed by both parties<sup>182</sup> and to which the assailed rulings of the Office of the Ombudsman were based.<sup>183</sup>

Petitioners make much of the certification from Lizaso as an alleged display of Cayton's manifest partiality toward the Ampatuans, the pertinent portions of which provide:

THIS IS TO CERTIFY that SSg Joselito A. Andrada 762153 (MS) PA former member of this unit [75<sup>th</sup> Infantry (Marauder) Battalion] was detailed as Security/Escort of Hon. Mayor Andal Ampatuan, Jr., the Municipal Mayor of Datu Unsay, Maguindanao effective 16 September 2009 as per verbal order of the former Commanding Officer of the unit.<sup>184</sup>

<sup>176</sup> See *De Guzman v. Fernando*, 90 Phil. 251, 253 (1951) [Per J. Angelo-Bautista, En Banc].

<sup>177</sup> *Rollo*, p. 294.

<sup>178</sup> See *Joson v. Office of the Ombudsman*, 784 Phil. 172 (2016) [Per J. Mendoza, Second Division].

<sup>179</sup> *Rollo*, p. 35.

<sup>180</sup> *Id.* at 296.

<sup>181</sup> *Vergara v. Ombudsman*, 600 Phil. 26, 43–44 (2009) [Per J. Carpio, En Banc].

<sup>182</sup> *Rollo*, pp. 9, 263, 538

<sup>183</sup> *Id.* at 73, 77, 706–707.

<sup>184</sup> *Id.* at 248. The Certification was issued on October 10, 2010 by Acting Battalion Adjutant First Lieutenant Nicoli Lizaso of the 75<sup>th</sup> Infantry (Marauder) Battalion, 6<sup>th</sup> Infantry (Kampilan) Division, Philippine Army.

They also invoke Ebu's Supplemental Affidavit,<sup>185</sup> which provides that Andrada was still a security escort of Mayor Ampatuan, Jr. during the time of the incident and even purportedly took part in the plot to kill the members of the Mangudadatu convoy. They concluded that having assumed his post as commanding general of the 6<sup>th</sup> Infantry Division on January 28, 2009, there was manifest partiality on the part of Cayton when he permitted a subordinate to be deployed for Mayor Ampatuan, Jr. while, at the same time, refusing to give protection to the members of the Mangudadatu convoy.<sup>186</sup>

The Office of the Ombudsman found that petitioners fell short in proving manifest partiality based on such certification:

*Complainants-movants failed to provide the alleged manifest partiality of respondents on the basis of the certification of Lizaso. The Certification of Lizaso even bolsters the fact that there was no deliberate intention on the part of respondents to discriminate against the Mangudadatu in their refusal to provide security detail since respondents had not yet assumed their respective positions when the security detail was made by Col. Labitan. Respondents also amply explained their inability to grant the request for escorts on the basis of legal grounds. They were able to justify that the provision of security detail on the Ampatuans was not election-related as opposed to the request of Mangudadatu which the law and rules proscribe.<sup>187</sup> (Emphasis supplied)*

From its finding, the Office of the Ombudsman clearly weighed the evidence of the parties in determining probable cause.

Apart from Lizaso's certification, it also considered<sup>188</sup> Labitan's Affidavit, which provides:

1. That I am executing this affidavit relative to the certification issued on 10 October 2010 by 1LT NICOLI L. LIZASO, Acting Battalion Adjutant of [the] 75<sup>th</sup> Infantry Battalion, 6<sup>th</sup> Infantry Division, Philippine Army that under my verbal instruction, SSg Joselito A. Andrada 762153 (MS) PA was detailed as Security/Escort of Hon. Mayor Andal Ampatuan, Jr., the Municipal Mayor of Datu Unsay, Maguindanao effective 16 September 2009 . . .
2. *That when I assumed command of the 75<sup>th</sup> Infantry Battalion, 6<sup>th</sup> Infantry Division, Philippine Army on 01 June 2008 up to 10 November 2009[,] the detail of SSg Andrada was already in effect even before I became Battalion Commander;*

<sup>185</sup> *Id.* at 249–251. Based on his "Dagdag Sinumpaang Salaysay," Police Officer I Rainer Ebus is one of Mayor Andal Ampatuan's back-up security (par.4). When he executed his Sworn Statement on January 19, 2011, he was detained at the Camp Crame.

<sup>186</sup> *Id.* at 22.

<sup>187</sup> *Id.* at 114–115.

<sup>188</sup> *See Id.* at 113.



3. *That sometime on September 2009, SSg Andrada reported to my Battalion after his long hospitalization and asked to be detailed to his previous assignment which I permitted;*
4. *That such detail has a direct bearing on the military mission in our Internal Security Operation (ISO) against the lawless MILF Groups (LMG), MILF, Jemiihah Islamia (JI) and other terrorist groups and never for political or election related considerations;*
5. *That Mayor Andal Ampatuan, Jr. and as well as other elected Ampatuan local officials were active in security operations against the LMG, MILF, Jemiihah Islamia (JI) and other terrorist groups;*
6. *That because of their actual involvement in the fight against the LMG, MILF, Jemiihah Islamia (JI) and other terrorist groups, there were threats against their family which were actual and continuing at that time from said threat groups. In fact, some of their family members and relatives were casualties from various attacks from the aforementioned threat groups, especially in the form of attacks, ambushes, roadside bombings through IED detonations;*
7. *That based on the above circumstances, my decision to continue the detail of SSg Andrada was made at my level of command and discretion as tactical ground commander of the 75<sup>th</sup> Infantry Battalion (75<sup>th</sup> IB) and in accord with the unit's Internal Security Operations (ISO) mission against the lawless MILF Group (LMG), MILF, Jemiihah Islamia (JI) and other terrorist groups.<sup>189</sup> (Emphasis supplied)*

From Labitan's Affidavit, it is evident that Andrada's detail to Mayor Ampatuan, Jr. was in light of their unit's mission and not due to any politically motivated reasons. Andrada's detail was also already in existence even before Labitan assumed his post as battalion commander of the 75<sup>th</sup> Infantry Battalion and long before Cayton assumed command of the 6<sup>th</sup> Infantry Division. It was also on Labitan's own instance, at the level of his command, that he decided to continue Andrada's assignment.

Therefore, the Office of the Ombudsman's conclusion are well-taken. As long as its findings are reinforced by substantial evidence, as in this case, there is no reason to reverse its ruling.<sup>190</sup>

Moreover, it is within the Office of the Ombudsman's discretion to evaluate the evidence submitted before it during preliminary investigation. Here, no grave abuse of discretion can be attributed to it since it pondered upon all available evidence of the parties before concluding that no probable cause exists against private respondents.<sup>191</sup> Both parties were also given the opportunity to express their arguments and controvert opposing claims.

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<sup>189</sup> *Id.* at 439.

<sup>190</sup> *See Vergara v. Ombudsman*, 600 Phil. 26 (2009) [Per J. Carpio, En Banc].

<sup>191</sup> *See Beltran v. Sandiganbayan*, G.R. No. 201117, January 22, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66068>> [Per J. Leonen, Second Division].

As to the other charge, Section 3(f) of Republic Act No. 3019 reads:

Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

....

- (f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.<sup>192</sup>

To constitute the offense, the following elements must concur:

- [a] The offender is a public officer;
- [b] The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on [them];
- [c] Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before [them]; and
- [d] *Such failure to so act is for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another.*<sup>193</sup> (Emphasis supplied)

Apart from general averments that there is probable cause against private respondents for violation of Section 3(f), petitioners merely raise similar and abbreviated contentions relative to the charge on Section 3(e) without specific regard to the differing elements of the two offenses.

They assert that Cayton “clearly discriminated” against their family members when he allowed Andrada’s detail to Mayor Ampatuan, Jr. The same goes for Geslani when he allegedly admitted that he never hesitated to provide security escorts to the Ampatuans.<sup>194</sup> As these arguments were already touched upon in the earlier discussions, we concur with the Office of the Ombudsman that there was failure to *prima facie* show that the elements of

<sup>192</sup> Republic Act No. 3019 (1960), sec. 3(f).

<sup>193</sup> *Camp John Hay Development Corporation v. Office of the Ombudsman*, G.R. No. 225565, January 13, 2021, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67724>> [Per J. Leonen, Third Division].

<sup>194</sup> *Rollo*, pp. 33–34, 751.

Section 3(f) exist.<sup>195</sup>

All told, we refuse to deviate from the long-standing rule on noninterference with the Office of the Ombudsman's determination of probable cause.

This Court's review power over its ruling is limited to ascertaining the existence of grave abuse of discretion, in that, whether a "capricious or whimsical exercise of judgment"<sup>196</sup> has been done. This Court cannot just simply rectify every error imputed against this "constitutionally independent government agency."<sup>197</sup>

Bereft of any showing of grave abuse of discretion, we uphold its finding as to the nonexistence of probable cause.<sup>198</sup>

**ACCORDINGLY**, this Petition for Certiorari and Prohibition is **DISMISSED**. The Office of the Ombudsman's June 22, 2011 Joint Resolution and October 4, 2012 Joint Order in relation to OMB-P-C-10-0249-B are **AFFIRMED**.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice

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<sup>195</sup> See *Id.* at 78.

<sup>196</sup> See *Villanueva v. Ople*, 512 Phil. 187, 191 (2005) [Per J. Panganiban, Third Division].

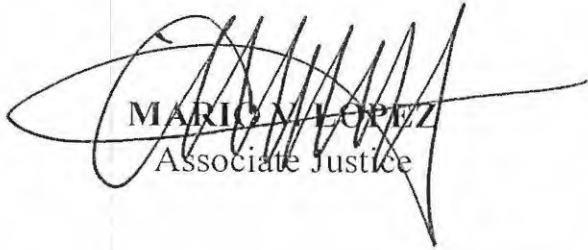
<sup>197</sup> *Id.*

<sup>198</sup> *Id.*


WE CONCUR:




**AMY C. LAZARO-JAVIER**  
Associate Justice



**MARIA M. LOPEZ**  
Associate Justice



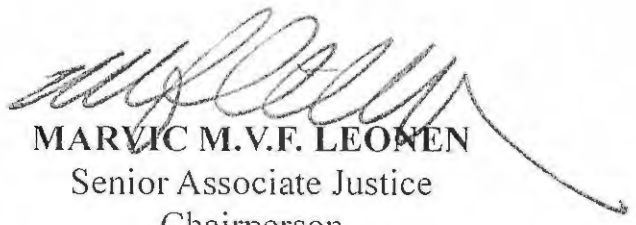
**JHOSEP V. LOPEZ**  
Associate Justice



**ANTONIO T. KHO, JR.**  
Associate Justice

#### ATTESTATION

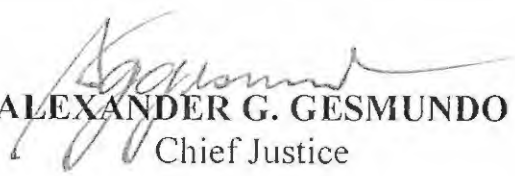
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice  
Chairperson

#### CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALEXANDER G. GESMUNDO**  
Chief Justice