

EN BANC

AILEEN ALMORA, ET AL.,

Petitioners,

-versus-

G.R. NO. 234359

**DIRECTOR GENERAL RONALD
DELA ROSA, ETC., ET AL.,**

Respondents.

X-----X

**SR. MA. JUANITA R. DAÑO, ETC.,
ET AL.,**

Petitioners,

- versus -

G.R. No. 234484

**THE PHILIPPINE NATIONAL
POLICE (PNP), ETC., ET AL.,**

Respondents.

X-----X

MOTION FOR RECONSIDERATION

The respondents, by counsel, respectfully state:

1. On December 5, 2017, the Honorable Court directed the OSG to submit within a period of sixty days information on, and documents pertaining to:

- a. list of persons killed in legitimate police operations from July 1, 2016 to November 30, 2017;
- b. list of deaths under investigation from July 1, 2016 to November 30, 2017;
- c. list of Chinese and Fil-Chinese drug lords who have been neutralized;

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d. list of drugs involved whether shabu, cocaine, marijuana, opioids, etc.;

e. comparative tables on index crimes; statistics of internal cleansing within the police force;

g. drug watchlist in the affected areas; reports and documents regarding Almora, Aparri and Soriano;

i. pre- and post-operation reports in all the Dano incidents;

j. number of buy-bust incidents in San Andres Bukid from July 1, 2016 to November 30, 2017;

k. list of warrants and warrantless arrests in HVT (High Valued Target) police operations; and

l. list of cases under investigation under Internal Affairs Service (IAS).

2. The Honorable Justices Maria Lourdes A. Sereno, Antonio T. Carpio, Samuel R. Martires, Marvic Mario Victor F. Leonen and Alfredo Benjamin S. Caguioa required the submission of the above documents. Although the OSG did not comment on the directive during the hearing on December 5, 2017, it was compelled to file the instant Motion for Reconsideration after reviewing the relevant laws and jurisprudence.

3. The Motion for Reconsideration is necessary because Honorable Court's Advisory dated November 17, 2017 limited the issues in the instant consolidated petitions to the following:

a. Whether PNP Command Memorandum Circular (CMC) 16-2016 and DILG Memorandum Circular (MC) 2017-112, are constitutional.

b. Whether the petitions, on their faces, show that the Writ of Amparo ought to issue.

c. Whether PNP CMC 16-2016 and DILG MC 2017-112 have legal basis for their issuance

1. Whether the PNP Chief and DILG Secretary are authorized to issue CMC 16-2016 and MC 2017-112, respectively

2. Whether CMC 16-2016 and DILG MC 2017-112 can be construed as

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directing the performance of any unlawful
act

d. Whether the acts authorized, or
conducted (as alleged in the petitions for Writ of
Amparo in G.R. Nos. 234359 and 234484), under the
authority of the PNP's CMC 16-2016, as well as the
DILG's MC. 2017-112, violate the following
constitutional, statutory, and administrative
provisions:

1. 1987 Constitution, Art. II,
Sec. 11 on the state policy on human
rights;
2. 1987 Constitution, Art. III,
Sec. 1 on the right to life and liberty;
3. 1987 Constitution, Art. III,
Sec. 2 on the right against unreasonable
searches and seizures;
4. 1987 Constitution, Art. III,
Sec. 12 on the rights of persons under
investigation or persons arrested;
5. 1987 Constitution, Art. III,
Secs. 14 and 17 on the rights of the
accused;
6. Republic Act No. 7438, or the
Act Defining Certain Rights of Persons
Arrested, Detained or Under Custodial
Investigation, as well as the Duties of the
Arresting, Detaining and Investigating
Officers, and providing penalties for
violations thereof;
7. The case law in *People v.
Doria* (G.R. No. 125299, 22 January
1999) and other cases which laid down
tests to determine whether a buy-bust
operation was properly conducted;
8. The case law on "stop and
frisk" as laid down in *Malacat v. CA* (G.R.
No. 123595, 12 December 1997) and
People v. Chua (G.R. Nos. 136066-7, 4
February 2003) and other cases adopting
Terry v. Ohio (392 US 1, 10 June 1968).
9. The Revised Penal Code, Art.
125 on inquest/delivery of detained
persons to the proper judicial authorities;
10. Revised Philippine National
Police Operational Procedures (PNP-OP),
Chapter 3, Rule 15.4 on the submission to
the prosecutor for inquest proceedings of

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incidents of armed confrontation wherein the suspect dies; and

11. Department of Justice (DOJ) Circular No. 61 (21 December 1993) on the duty of the inquest prosecutor to take the initiative of making a procedural investigation whenever a dead body is found and there might be foul play.

e. Whether the acts authorized, or conducted (as alleged in the petitions for Writ of Amparo in G.R. Nos. 234359 and 234484), under the authority of the PNP's CMC 16-2016, as well as the DILG's MC 2017-112, violate the Philippine's international legal obligations, such as those found in the International Covenant on Civil and Political Rights (ICCPR) as well as the Minnesota Protocol

f. Whether petitioners are entitled to the interim reliefs prayed for until the instant petitions are resolved

4. By requiring the respondents to submit the aforementioned information and documents, the Court has ventured into unwarranted factual inquiries. It cannot go beyond determining the textual commitment of PNP CMC No. 16-2016 and DILG MC No. 2017-112 to the Constitution. Besides, the Court is not a trier of facts. In resolving constitutional issues, it is not allowed to receive and weigh evidence, which it will necessarily perform upon receiving the information and documents required of the respondents. Tersely put, the petitions raise a facial challenge to the issuances that will not demand the production and evaluation of evidence.

I. The information and documents required are not relevant to the issue on the constitutionality of CMC No. 16-2016 in the petition for prohibition.

5. The issue in the petition for prohibition is the constitutionality of CMC No. 16-2016. The suit seeks to

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prohibit the respondents from implementing or enforcing CMC No. 16-2016 and any similar circulars, as well as all orders or directives emanating from the circular.

6. The required facts, however, potentially relate to the mass of statistical information involving in some instances sensitive details of the drug war. The information sought even includes data from legitimate police operations that were not undertaken pursuant to the assailed CMC.

7. Assuming arguendo that the facts sought by this Court all relate to the alleged incidents involving Tokhang operations, still, the facts are not relevant to the issue of whether the CMC is constitutional. The text of the CMC is the sole basis to determine its constitutionality. Any perceived lapses in the implementation of the CMC should not affect its validity. Stated differently, the constitutionality of the CMC should not be made to depend on proof of alleged abuses in its implementation.

8. It is not as if this is case of first impression: the Court had resolved a similar legal controversy before. In *David v. Macapagal-Arroyo*,¹ it held that "courts are not at liberty to declare statutes invalid although they may be abused... and may afford an opportunity for abuse in the manner of application. The validity of a statute or ordinance is to be determined from its general purpose and its efficiency to accomplish the end desired, not from its effects in a particular case."

9. The same Court added: "May this Court adjudge a law or ordinance unconstitutional on the ground that its implementor committed illegal acts? The answer is no. The criterion by which the validity of the statute or ordinance is to be measured is the essential basis for the exercise of power, and not a mere incidental result arising from its exertion. This is logical. Just imagine the absurdity of situations when laws may be declared unconstitutional just because the officers implementing them have acted

¹ G.R. No. 171396, May 3, 2006

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arbitrarily. If this were so, judging from the blunders committed by policemen in the cases passed upon by the Court, majority of the provisions of the Revised Penal Code would have been declared unconstitutional a long time ago.”²

10. Inasmuch as there is no logical nexus between the required information and documents required and the issue of the constitutionality of the CMC, the Court should recall its order for the production of the patently irrelevant and unnecessary information and documents.

II. The Rule on the Writ of Amparo limits the production of documents to those that constitute or contain evidence relevant to the petition.

11. The Court order requiring the respondents to produce irrelevant evidence also violates Section 14 (c) of the Rule on the Writ of Amparo.

12. Section 14 (c) of the Rule on the Writ of Amparo provides:

SEC. 14. Interim Reliefs. — Upon filing of the petition or at any time before final judgment, the court, judge or judge may grant any of the following reliefs:

....
(c) Production Order. — The court, justice or judge, upon verified motion and after due hearing, may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

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The motion may be opposed on the ground of national security or of the privileged nature of the information, in which case the court, justice or judge may conduct a hearing in chambers to determine the merit of the opposition.

The court, justice or judge shall prescribe other conditions to protect the constitutional rights of all the parties.

13. This provision limits the production of documents to those that constitute or contain evidence relevant to the petition. Nevertheless, the bulk of the documents required by the Court is beyond the scope of Section 14(c).

14. The issues in the *amparo* petitions only pertain to whether petitioners' right to life, liberty or security was violated and whether they are entitled to the issuance of the privilege of the writ. The information and documents sought by the Court from the respondents, however, are not material to the resolution of issues set forth in the Advisory.

**III. The documents
required involve sensitive
information that have
national security
implications.**

15. Like all constitutional guarantees, the right to information, with its companion right of access to official records, is not absolute. While providing guaranty for that right, the Constitution also provides that the people's right to know is limited to "matters of public concern" and is further subject to such limitations as may be provided by law.³

16. Jurisprudence has prescribed the following limitations to that right: (1) **national security matters and intelligence information**; (2) trade secrets and banking transactions; (3) **criminal matters**; and (4) **other confidential information such as confidential or**

³A.M. No. 09-8-07-CA, June 13, 2012

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classified information officially known to public officers and employees by reason of their office and not made available to the public as well as diplomatic correspondence, closed door Cabinet meetings and executive sessions of either house of Congress, and the internal deliberations of the Supreme Court.⁴

17. **National security** is defined as “a state or condition wherein the people’s welfare, well-being, ways of life; government and its institutions; territorial integrity; sovereignty; and core values are enhanced and protected.”⁵

18. National security is anchored on three major pillars. The first pillar is safeguarding the Philippines’ national unity, its democracy and its social institutions. The second pillar is **ensuring the security of the State** and preserving and protecting its sovereignty, territorial integrity, and institutions, as clearly provided in the Constitution.⁶ The third pillar is the protection of properties, infrastructure, and **keeping the people safe from all forms of threats**, both here and abroad, and to the extent possible, creating jobs in order to bring home overseas Filipino workers where their physical safety can be fully guaranteed by our Government.⁷

19. The production of documents required in paragraph 1(g) and (k) of the court order, *i.e.*, drug watchlist and the list of HVT arrests, involve information and other sensitive matters that in the long run will have an undeniable effect on national security: it could spell the success or failure of follow-up operations of police and other law enforcement bodies, aside from endangering the lives of those on the list as well as those already in custody.

20. Moreover, their submission would not only compromise ongoing police anti-drug operations but likewise put at risk the lives of informants who provide such information. This risk is more pronounced in cases of

⁴ A.M. No. 09-8-07-CA. June 13, 2012; Chavez v. PCCGG, G.R. No. 130716. December 9, 1998; Emphasis supplied.

⁵ <http://www.nsc.gov.ph/attachments/article/NSP/NSP-2017-2022.pdf>, pp. 2-3

⁶ 1987 Constitution, Art. I, Art. II, Secs. 2, 3, 5, 7 and 8; Art. III, and Art. XVI

⁷ <http://www.nsc.gov.ph/attachments/article/NSP/NSP-2017-2022.pdf>, pp. 2-3

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unsuspecting high value targets who, when alerted of their inclusion in the drug watchlist, would be more capable of identifying the persons responsible for their inclusion in the list.

IV. The petitioners failed to comply with Section 5 of the Rule on the Writ of Amparo.

21. The petitioners did not allege the facts required by Section 5 of the Rule on the Writ of Amparo.

22. Section 5 of the Rule on the Writ of Amparo provides:

Sec. 5. Contents of Petition. — The petition **shall** be signed and verified and shall allege the following:

- (a) The personal circumstances of the petitioner;
- (b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;
- (c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;
- (d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;
- (e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

(f) The relief prayed for.

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The petition may include a general prayer for other just and equitable reliefs.

23. Section 5 of the Rule on Amparo is mandatory. As a general rule, the use of the word "shall" in a statute implies that the statute is mandatory, and imposes a duty which may be enforced, particularly if public policy is in favor of this meaning or where public interest is involved.⁸

24. The petitioners failed to comply with the aforestated provision. This constitutes a fatal defect that warrants outright dismissal of the *amparo* petitions. Non-compliance with said provision should not entitle petitioners to the information and documents in sub-paragraphs 1(h), (i) and (j).

25. The submission of the required information and documents grants partial relief to the instant consolidated petitions despite the petitioners' failure to comply with the requirements of the above-stated section of the Rule on the Writ of Amparo. The grant of due course to *amparo* petitions that are devoid of the required information will only serve to countenance fishing expeditions and harassment suits. These kinds of petitions only distract law enforcement agencies from their principal duties, and worse, dampen their zeal in pursuing criminal elements.

**V. The Honorable Court's
December 5, 2017 Order
might set a dangerous
precedent for pending and
future amparo petitions.**

26. The Honorable Court's December 5, 2017 Order might send an unrealistic expectation to present and prospective *amparo* petitioners that sensitive government documents will always be available to them even if they fail to comply with the *amparo* rule. This will set a dangerous

⁸Pilar v. Commission on Elections, G.R. No. 115245, July 11, 1995.

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precedent for the lower courts hearing *amparo* cases. It would open the floodgates for the filing of groundless petitions that aim at nothing other than engaging in fishing expeditions. Moreover, *amparo* petitions may be utilized and manipulated by drug syndicates themselves to discover the amount of confidential information that the government has against them.

27. Not only are the documents required by the Honorable Court beyond the scope and contemplation of the Rule on the Writ of Amparo, their submission would require significant utilization of man-hours and other scarce resources by the PNP. With the return of the anti-drug program to the PNP, its current authorized personnel would be hard pressed in performing its mandate of enforcing law and order.

28. At bottom, the respondents have no intention of disregarding or defying the Honorable Court's order by filing this motion for reconsideration. On the contrary, they filed the motion to strengthen the rule of law and prevent an abuse of judicial processes. By recalling the Order, the Court will not have to evaluate the evidence to presented by the respondents; it will not be unduly forced to sift through facts that are not even relevant to the resolution of the constitutionality of the assailed issuances.

PRAYER

WHEREFORE, the respondents respectfully pray that the Honorable Court **SET ASIDE** its Order dated December 5, 2017 and **RECALL** its directive for the OSG from submitting the information and documents mentioned in said Order.

Makati City, for Manila, December 18, 2017.

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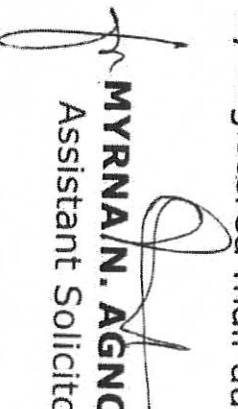
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EXPLANATION

(Pursuant to Section 11, Rule 13 of the Revised Rules of
Court)

This **MOTION FOR RECONSIDERATION** is being
filed/served by registered mail due to lack of personnel.


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