

FACT-FINDING REPORT ON THE NORIYO OHARA CASE

CHAPTER 1 INTRODUCTION

The case of NORIYO OHARA, a.k.a. Marefe Laganas, was exposed by veteran journalist Ramon Tulfo when members of her foster family, the Marzans of Brgy. Gueset, Bugallon, Pangasinan, complained to him in his public service program, “*Isumbong mo kay Tulfo*,” on *Radyo Inquirer-dzIQ*.¹ Hence, on November 15, 2011, Ramon Tulfo talked with Atty. Magtanggol B. Gatdula, the Director of the National Bureau of Investigation (NBI), and brought to his attention the case of the Japanese woman who was allegedly in the custody of the Security Management Division (SMD) of the NBI.

Ramon Tulfo and Director Gatdula continued to communicate with each other through text messages about Ohara between November 17, 2011 and December 1, 2011. Mr. Tulfo kept reminding Director Gatdula that the Japanese woman in the custody of the SMD was kidnapped and that ransom was paid and more being demanded, and questioned why Ohara continued to be detained in the NBI and not turned over to the Bureau of Immigration (BI) if, indeed, she was an illegal alien. His concerns having been unacted upon, Mr. Tulfo informed Secretary Leila M. De Lima about Ohara’s case and sought an audience with her for her to meet with the Marzan family. On December 2, 2011, Mr. Tulfo and the Marzan family were able to meet with the Secretary. Apprised of the situation of Ohara, Secretary De Lima immediately

¹ See <http://newsinfo.inquirer.net/114097/nbi-director-going-on-leave> [last accessed January 1, 2012]

gave a verbal directive to Director Gatdula for the turnover of Ohara to the BI.

The case of Ohara caught national attention when, on December 3, 2011, Mr. Tulfo came out with his first article² in his Inquirer column “On Target” detailing the facts surrounding the alleged kidnapping-for-ransom committed by agents of the SMD, mentioning the names of Mario Garcia, Jose Odellon (should be Odelon) Cabillan, and a certain “Chona” and “Labsky”. He followed it up with another article³ in his column of December 6, 2011, and another one⁴ in his column of December 8, 2011. Other columns on the issue followed.

Cognizant of Mr. Tulfo’s exposes, the President ordered Secretary De Lima to conduct an investigation to determine the veracity of the very serious and disturbing allegations raised against some NBI agents and officials.

On December 6, 2011, Secretary De Lima issued a Memorandum⁵ to Director Gatdula for the turnover of the person of Noriyo Ohara from the NBI to BI. Said Memorandum also directed the submission of a complete incident report, including an explanation as to why there was no compliance by the NBI with her verbal directive on December 2, 2011 regarding the turnover, and required Director Gatdula to address some preliminary points⁶ identified therein.

² Annex A: Column of Ramon Tulfo dated December 3, 2011; see also <http://newsinfo.inquirer.net/104645/nbi-agents-in-kidnap-for-ransom-case> [last accessed January 1, 2012]

³ Annex B: Column of Ramon Tulfo dated December 6, 2011; see also <http://newsinfo.inquirer.net/105833/nbi-agents-in-hot-water> [last accessed January 1, 2012]

⁴ Annex C: Column of Ramon Tulfo dated December 8, 2011; see also <http://newsinfo.inquirer.net/106991/japanese-woman-needs-medical-test>

⁵ Annex D: Memorandum of Secretary De Lima dated December 6, 2011

⁶ The Secretary instructed the NBI to address the following:

On even date, Secretary De Lima issued Department Order (D.O.) No. 1007⁷ constituting a Fact-Finding Panel (“Panel”) to investigate the case of Ohara. The Secretary designated Undersecretary FRANCISCO F. BARAAN III as Chairman of the Panel, with Assistant Secretary ZABEDIN M. AZIS and City Prosecutor DONALD T. LEE as Vice-Chairman and Member, respectively.

Pursuant to D.O. No. 1007, s. 2011, the Fact-Finding Panel was tasked to investigate the reported involvement of certain officers and members of the SMD in the alleged “kidnap-for-ransom”: Special Investigator (SI) Mario Garcia, NBI-SMD Chief; Jose Odelon Cabillan, NBI-SMD Executive Officer; and two (2) other persons identified as “Chona” and “Labsky”. The Panel was likewise mandated to investigate the reported involvement of high-ranking NBI officials. The Secretary directed the Panel to submit a report of its findings and recommendations on the veracity of the allegations made against the NBI officials and employees, the report to include the possible filing of appropriate criminal and administrative charges against those who may be found to have been responsible and gave the Panel thirty (30) days to do so.

On December 8, 2011 and December 9, 2011, Secretary De Lima issued D.O. Nos. 1020 and 1025⁸, respectively, designating

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- a. Why did the SMD, a security office, involve itself in a police operation such as this?
 - b. Who authorized SMD to conduct said “rescue operation”?
 - c. Why has there been no action taken against Chief/SI Garcia for acting outside the scope of his authority?
 - d. Why was the alleged “rescued” victim, who was an undocumented foreign national, placed in the custody of the NBI instead of the Bureau of Immigration (BI)?
 - e. If the operation was indeed for the “rescue” of Ohara, why was there no arrests made against her alleged captors?

⁷ Annex E: Department Order No. 1007 dated December 6, 2011

⁸ Annexes F and F1: Department Order Nos. 1020 and 1025

the members of the Secretariat that will provide legal, technical and administrative assistance to the Fact-Finding Panel.

Methodology

The Panel had its first meeting on December 9, 2011 to map out the work schedule that will be followed to meet the 30-day deadline imposed by D.O. No. 1007. The members identified the initial list of personalities who will be invited in the hearing, and the corresponding invitations were sent to them. Other personalities mentioned in the testimonies of invited resource persons and who may have some information on the Ohara case were likewise requested to appear before the Panel to shed light on the case.

The Panel conducted marathon hearings from December 13, 2011 to December 28, 2011. For easy reference, hereunder is the list of resource persons who appeared before the Panel, as well as the documents received by the Secretariat:

A. Invited Resource Persons of the Panel

No.	RESOURCE PERSON	DATE APPEARED
1	Bureau of Immigration (BI) Commissioner Ricardo A. David, Jr. or his representative	Representative, Special Prosecutor Archimedes A. Aldaba, appeared on December 13, 2011 but was not called to testify. Representative submitted documents.
2	Ramon Tulfo	December 13, 2011
3	Marzan Family: a. Glenda Marzan b. Maria Krestina Vinluan c. Johnny Perez	December 13, 2011 – All three appeared. Glenda and Krestina were able to testify. Johnny Perez was not able to testify. December 27, 2011- All three appeared again to affirm their affidavits.
4	Mario Garcia, Chief, Security Management Division (SMD), NBI	December 14, 2011; December 16, 2011; December 19, 2011
5	Jose Odelon Cabillan, Ex-O, SMD-NBI	Appeared on December 14, 2011 but was not able to testify; December 22, 2011; December 27, 2011

6	Virgilio Gutierrez a.k.a. “Labsky”; Virgelito Andrade Gutierrez	Did not appear
7	Chona (Espina) Esplana	December 16, 2011; December 19, 2011
8	Claro C. De Castro, Chief, Foreign Liaison Division (FLD), NBI	Appeared on December 14, 2011 but was not able to testify. Testified on December 20, 2011 and January 3, 2012.
9	P/ Sr. Supt. Isagani Nerez, Chief, Police Anti-Crime Emergency Response (PACER)	December 15, 2011
10	SI Nelson S. Moreno, Counter- Terrorism Division (CTD), NBI	Did not appear.
11	SI Valiant B. Raganit, CTD-NBI	December 19, 2011
12	SI Edgar T. Digman, CTD-NBI	December 19, 2011
13	NBI Dep. Dir. Edmundo T. Arugay	December 20, 2011
14	NBI Dep. Dir. Ruel M. Lasala	December 21, 2011
15	NBI Dep. Dir. Rafael Z. Ragos	December 20, 2011
16	NBI Dep. Dir. Reynaldo O. Esmeralda	December 21, 2011
17	NBI Dep. Dir. Rickson L. Chiong	December 20, 2011
18	NBI Dep. Dir. Virgilio L. Mendez	December 20, 2011
19	Romulo Marzan	December 26, 2011
20	Noriyo Ohara	December 20, 2011; December 21, 2011; December 28, 2011
21	Johnard Malvar, Agent-In- Charge, NBI-Dagupan	December 26, 2011
22	Rudy Arenas, Jr.	December 22, 2011
23	NBI Asst. Dir. Medardo De Lemos	December 22, 2011
24	NBI Dir. Magtanggol Gattula	December 22, 2011
25	PCI Hilario Umayam Toledo, Chief of Police, Bugallon, Pangasinan	December 26, 2011
26	Jose Gabriel, Jr., FLD-NBI	December 19, 2011
27	Elizaldo Beltran	December 20, 2011
28	Fritz Gerald Argente	December 22, 2011
29	Katsuya Hiruta	December 27, 2011
30	Jacqueline Marzan Suzuki	December 28, 2011

B. Documents received by the Panel

No.	DATE	PARTICULARS
1		Colored xerox of passport of GUTIERREZ, VIRGELITO ANDRADE with number EBo474219
2		Original Civilian NBI Form No. 5 with bar code no. 12190781 (fingerprints of Noriyo Ohara at the back)
3		Photocopy of Land Transportation Office Official Receipts (857140115 and 857139570) and Driver's license of LAGANAS, MAREFE SALAZAR
4		Passport of LAGANAS, MAREFE SALAZAR with number XX4111305
5		Pictures of Noriyo Ohara showing some injuries (with signature of Mario Garcia at the dorsal portions thereof) and various other pictures
6		Photocopy of calling card of ABLEZER T. RIVERA (given to Glenda Marzan while at the SMD)
7		Photocopy of Official Receipts issued by Fharniza's Money Changer Co. (Nos. 0598; 0595; 0596; 0594)
8		Photocopy of NBI Security Access Pass issued to ARGENTE, FRITZ GERALD HERNANDEZ by SMD Chief Mario Garcia
9		NBI Security Access Pass of RUDY B. ARENAS, JR.
10	06/30/11	Photocopy of Letter dated June 30, 2011 of BI Comm. Ricardo A. David, Jr. addressed to Dir. Magtanggol Gatdula re: investigation and apprehension of foreigners for violation of immigration laws, rules and regulations
11	08/08/11	Letter of Noriyo Ohara to NBI Director Gatdula (written in Japanese characters and in English) – written on one long folder
12	10/29/11	Original Memorandum for the Director, Chief, SMD from Ex-O, SMD re: Ohara Noriyo (Turn-over) with attached copy of receipt of living body of Ohara Noriyo signed by Rudy B. Arenas, Jr. and Alvin V. Esguerra as witnesses
13	10/29/11	Original Memorandum for the Director, Chief, SMD from Ex-O, SMD re: Ohara Noriyo (Rescue)
14		NBI's Counselors' Duty Schedule from November 8-13, 2011 to March 1-4, 2012
15	10/31/11	NBI Special Order No. 004448 s. 2011 re: counsellors in the 45 th NBI Agents' Basic Training Course (SI Jose Odelon Cabillan)
16	11/11/11	NBI Special Order No. 004571 s. 2011 re: Instructor for Physical Fitness Activities (SI Jose Odelon Cabillan)
17	11/11/11	NBI Special Order No. 004573 s. 2011 re: Instructor for self-defense and arresting ethnics (SI Jose Odelon Cabillan)
18	11/17/11	Original Memorandum to DDAS Rickson L. Chiong of Dir. Gatdula re: report on alleged extortion
19	11/21/11	Sworn Statement of NORIYO OHARA given before Special Investigator III Ariel B. Nunez in the presence of Katsuya Hiruta subscribed by Atty. Claro C. De Castro, Jr., NBI Chief of FLD
20	11/21/11	Letter to Mr. Katsuya Hiruta from Atty. Claro C. De Castro, Jr.

		re: turn-over of living body of Noriyo Ohara
21	11/22/11	Memorandum to the Chief, SMD of DDAS Rickson L. Chiong re: security measure for NBI's Diamond Anniversary Celebration
22	11/23/11	Letter for the President of Noriyo Ohara
23	11/29/11	Memorandum to the Director thru DDAS of the Chief, SMD re: alleged extortion report
24	12/02/11	Memorandum for Sec. Leila M. De Lima of Dir. Gatdula re: case of Japanese National, Noriyo Ohara with attached memorandum of the Chief of FLD to the Director of even date
25	12/03/11	Marginal note of the Director to AD, DDAS, CIAO re: investigation on Ramon Tulfo's report
26	12/07/11	Bureau of Immigration Charge Sheet (with attachments) re: Deportation case against Noriyo Ohara signed by Special Prosecutor Archimedes A. Aldaba and approved by Arvin Cesar G. Santos, Chief of Law and Investigation Division
27	12/08/11	Letter to Ramon Tulfo of Dir. Gatdula re: response to series of columns
28	12/12/11	Two (2) separate Memoranda to Atty. Rickson L. Chiong, DDAS and Atty. Anthony L. Endrenal, COS, Office of the Director, of Atty. Elizaldo A. Beltran, Chief, IAD re: alleged kidnapping and extortion involving SMD personnel with copy of IAD Case No. 2011-135 Notice with requirement to submit explanation/comment to Mario Garcia and Jose Odelon Cabillan
29	12/12/11	Memorandum to Atty. Elizaldo A. Beltran, Chief, IAD of Atty. Anthony L. Endrenal, COS, OD re: alleged kidnapping and extortion involving SMD personnel
30	12/13/11	Letter to BI Commissioner Ricardo A. David, Jr. from Noriyo Ohara re; list of her belongings left at the SMD
31	12/14/11	Letter to Usec. Francisco F. Baraan III of Atty. Isagani R. Nerez, Chief, PACER re: complaint/information sheet dated November 26, 2011 and sworn statements of Glenda Marzan, Ma. Krestina Vinluan, Romulo Marzan and Johnny Marzan
32	12/15/11	Sinumpaang Salaysay of JOSE ODELON CABILLAN Y RAMENTO (handwritten and typewritten)
33	12/19/11	Handwritten letter to the Chairman of the DOJ Fact-Finding Panel of Jose Odelon Cabillan re: list of documents submitted
34	12/20/11	Results of cellphone examination conducted by the PNP-CIDG on the SIM Card of Glenda Marzan
35	12/20/11	Letter to Usec. Francisco F. Baraan III of Deputy Director Reynaldo Esmeralda re: NBI Clearance certificates/derogatory records of Chona Elen Esplana and Virgelito Andrade Gutierrez
36	12/20/11	Letter to Usec. Francisco F. Baraan III of Kenji Endo, Chief Consul and First Secretary, Japanese embassy re: details of the embassy's intervention on Ohara's custody
37	12/21/11	Stamped receipt on the letter of the Panel to Asst. Dir. Medardo De Lemos with attached copy of the position description form for the Assistant Director
38	12/22/11	Sinumpaang Salaysay ni RUDY B. ARENAS, JR. (handwritten and typewritten with attached contact information)

39	12/23/11	Certification of PCI Hilario Umayam Toledo re: police blotter series 2011 with Entry NR 768
40	12/26/11	Certified true copy of NBI coordination letter (certified by PCI Hilario U. Toledo)
41	12/26/11	Letter of LTO Director Dennis Singzon, OIC re: Registration records of the six (6) motor vehicles used in the operation (original)
42	12/27/11	Sinumpaang Salaysay ni JOHNNY MARZAN PEREZ
43	12/27/11	Sinumpaang Salaysay ni GLENDA CABURNAY MARZAN
44	12/27/11	Sinumpaang Salaysay ni MARIA KRESTINA MARZAN VINLUAN
45	12/27/11	List of NBI Confidential Agents submitted by Dep. Dir. Ruel Lasala (1,819 CAs)
46	12/28/11	Sinumpaang Salaysay ni JACQUELENE MARZAN SUZUKI
47	12/28/11	Affidavit of NORIYO OHARA
48	01/04/12	Results of cellphone examination conducted by the PNP-CIDG on the SIM Card of Maria Krestina Vinluan

DEFINITION OF TERMS

For purposes of this Report, the acronyms or abbreviations cited therein shall be taken to mean, as follows:

AD	-	Assistant Director
COPLAN	-	Case Operation Plan
CA	-	Confidential Agent
CRD	-	Complaints and Records Division
DDAS	-	Deputy Director for Administrative Services
Ex-O	-	Executive Officer
FLD	-	Foreign Liaison Division
HA	-	Head Agent
IAD	-	Internal Affairs Division
OD	-	Office of the Director
MO	-	Mission Order
SI	-	Special Investigator
SO	-	Special Order
SMD	-	Security Management Division

CHAPTER 2

PRELIMINARY FACTS

At the center of the fact-finding investigation are the Security Management Division of the NBI and a Japanese national, Noriyo Ohara. Below are their backgrounds for a better appreciation of the facts.

The Security Management Division, NBI

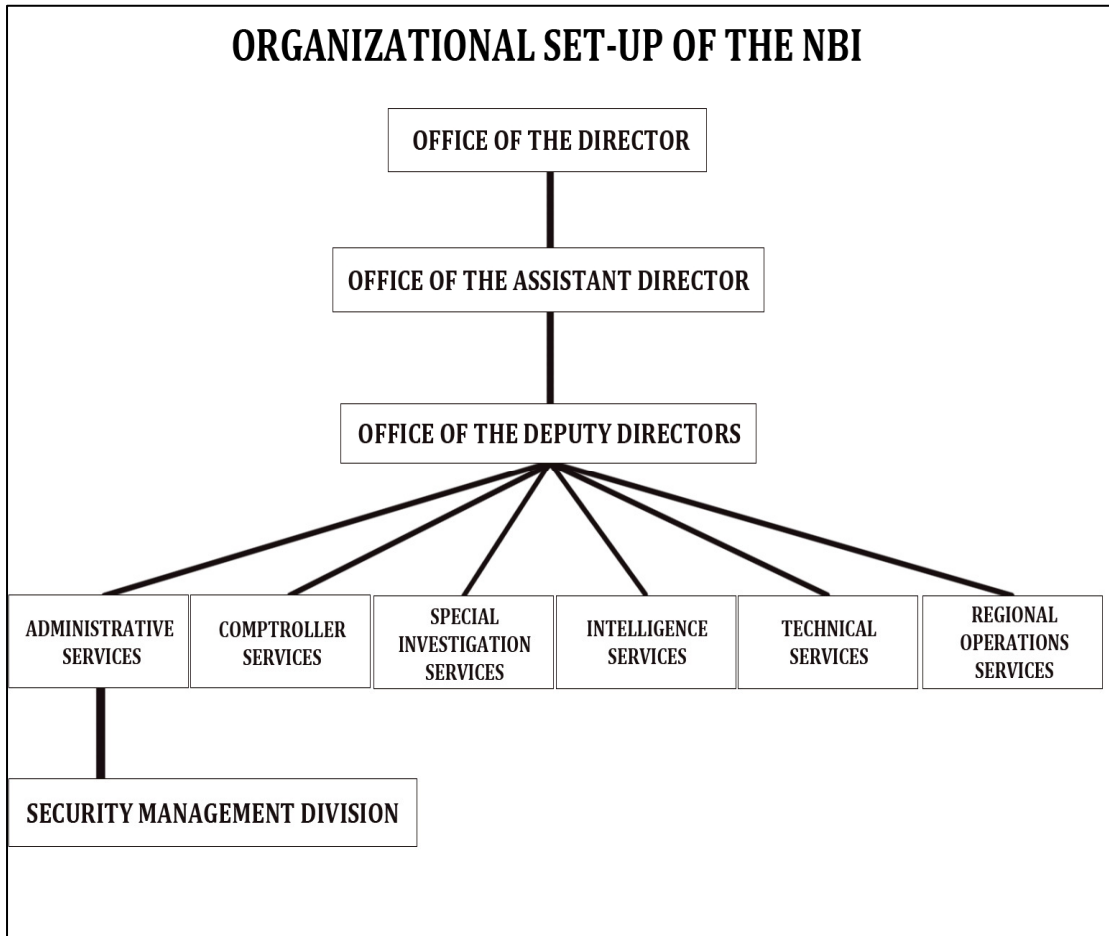
Under Republic Act No. 157, the National Bureau of Investigation is a government entity that is civilian in character and national in scope; it is under the Department of Justice. It is headed by a director and under him is an assistant director and six (6) deputy directors for Special Investigation Services (SIS), Regional Operations Services (ROS), Intelligence Services (IS), Technical Services (TS), Administrative Services (AS), and Comptroller Services (CS).⁹

In the second half of 2010, some changes were instituted. Director Gatdula reorganized the administrative structures of the Bureau to achieve greater coordination, more effective investigation, and more efficient management aimed at maximizing available manpower and resources without sacrificing the NBI's quality of service. Towards this end, the Security Management Division (SMD) was transferred from the Intelligence Service (IS) to the Administrative Service (AS).¹⁰

⁹ See <http://www.nbi.gov.ph/history.html> [last accessed January 1, 2012]

¹⁰ See <http://www.nbi.gov.ph/exsum/2010%20exec.%20summary.pdf> [last accessed January 1, 2012]; see also NBI Administrative Order No. 7, series of 2010

Insofar as pertinent to the present investigation, the following illustrates the setup in the NBI.



Under the NBI Manual of Operations,¹¹ the Security Management Division is headed by a Chief, whose Qualification Standards are as follows: (1) Investigation Agent VI; and five (5) years experience in a position involving management and supervision, and security functions.

The SMD has the following functions:

1. Formulates, devises and enforces security measures to protect the Bureau’s documents and information from unauthorized access;
2. Adopts measures to protect the Bureau's property from destruction and loss and its facilities from access by unauthorized persons;

¹¹ Annex G: NBI Manual of Operations, 1996 ed., pages 78-79.

3. Adopts and pursues measures designed to prevent the appointment, employment, or retention of employees of doubtful loyalty to this Bureau and, upon request, renders similar tasks to other government agencies;
4. Plans and programs the deployment of the guard force of the Bureau for the effective maintenance of order, traffic, and safety in the premises;
5. Plans and formulates recommendations to the Director a Bureau-wide VIP and counter-terrorist force and manages such force upon creation; and
6. Performs such other functions as may be assigned by the Director.

On the inclusive dates where Noriyo Ohara was allegedly in the custody of the SMD office, its Chief was **Special Investigator Mario A. Garcia** and his Executive Officer (Ex-O) was **Special Investigator Jose Odolon Cabillan**. The two (2) were relieved from their posts on December 5, 2011.

Who is NORIYO OHARA?

Japanese national **NORIYO OHARA** was born on December 11, 1978 in Shiga ken, Japan and a resident of No. 4-1 Nishiazabu Minato-Ku, Tokyo, Japan¹². Her parents are both deceased. In 2009, she left Japan for Guam where she stayed for a few days. On June 3, 2009, she arrived in the Philippines via Continental Airlines, Flight No. CO 933¹³, using her Japanese passport.¹⁴ She did not pass through the immigration arrival

¹² See, Ohara's Sworn Statement dated November 21, 2011 (Annex N) and her Booking Sheet and Arrest Report (Annex HHH).

¹³ See Annex H: *Passenger Manifest* of Continental Airlines, Flight No. CO933, dated June 3, 2009

¹⁴With Number TF 7199278

counter because an employee of the Bureau of Immigration met her planeside and escorted her.¹⁵ She was fetched from the airport by Rosemarie Marzan-Ogawa, whom she already met in Japan through a common friend, a certain Mr. Suzuki. On the same date, she entrusted her Japanese passport to Ogawa. She was brought to Tagaytay City and stayed in Taal Vista Hotel for three (3) days and thereafter she proceeded to a house¹⁶ that she bought in Las Pinas City but registered in the name of Rosemarie Marzan-Ogawa. Around one month thereafter, she was given a Philippine passport bearing her photo and the assumed identity of Marefe Salazar Laganas, born on September 1, 1981.¹⁷

The Panel was informed by Chief Consul Kenji Endo of the Japanese Embassy that Ohara's father left her a huge inheritance, and creditors of her father and the Japanese government (wanting to collect inheritance tax) were after her, thus, explaining her flight to the Philippines. (The Yakuza story appears to be not true.)

While in the Philippines, she was also able to acquire two vehicles¹⁸. Her house in Las Pinas City served as her residence until sometime in the early part of 2011, when she transferred to Brgy. Gueset, Bugallon, Pangasinan to live with the family of Romulo Marzan, the brother of Rosemarie Marzan-Ogawa. She was living a normal life in Bugallon, imbibing Filipino culture and assimilating with the Marzan family very well until that fateful day

¹⁵ See Annex I: Certification dated December 13, 2011 stating that Noriyo Ohara has no travel records appearing in the database of the Bureau of Immigration.

¹⁶ Located at Block 17, Lot 19, Agate corner Am Royal Streets, Las Pinas City

¹⁷ See Annex J: Resolution dated December 7, 2011 of Special Prosecutor Archimedes A. Aldaba and approved by Atty. Arvin Cesar G. Santos, Law and Investigation Division, Bureau of Immigration.

¹⁸ Upon inquiry with the LTO, the BMW with plate number YMS 07 is registered under the name of Rosemarie Ogawa and the Honda City sedan with plate number NOO 506 is registered under the name Maria Krestina Vinluan.

of October 29, 2011, when she was taken by a group of “operatives” from the NBI.

The events that transpired on October 29, 2011 onwards, and related circumstances prior to October 29, shall be the scope of this fact-finding investigation.

CHAPTER 3

FACT-FINDING PROPER

The goal of the fact-finding investigation is to ferret out the truth about the case of Noriyo Ohara vis-à-vis the conflicting versions of the Marzan family and the accounts of the NBI. Hence, the Panel labored to hear both sides in order to set the record straight, determine the criminal and administrative liabilities, if any, of those who may be found responsible for any misconduct or wrongdoing, whether administrative or criminal, and/or clear the names of agents and officials of the NBI who were dragged into the controversy .

Aside from the exposes of Mr. Tulfo printed in the *Philippine Daily Inquirer*, the Panel gathered information from several resource persons invited to shed light on Ohara's case.

For purposes of good order, the conflicting stories about the Ohara case will be presented according to the version of Noriyo Ohara and the Marzan family, and followed by the version of the NBI. The statements and testimonies of these resource persons, given under oath, are provided in the succeeding portion of this report.

I. VERSION OF OHARA

1. NORIYO OHARA

In her affidavit¹⁹ and her testimony²⁰ during the conduct of clarificatory hearing, Noriyo Ohara, detailed how the group of

¹⁹ Annex K: Affidavit of Noriyo Ohara dated December 28, 2011.

²⁰ See Annex L: TSNs dated December 20, 2011 and December 21, 2011 (Ohara); During her appearance before the Panel, Noriyo Ohara was assisted by her counsel, Atty. Aurora Romano.

Chief/SI Garcia forcibly took her from her foster family in Bugallon Pangasinan until she was finally freed from her captors.

In the early morning of October 29, 2009, she was suddenly awakened by Romulo Marzan. Totally surprised by what was going on, she was dragged with her head down by two individuals, whom she saw for the first time, from the second floor of their house to the first floor, one arm gripped tightly by a woman (Chona Esplana) and the other arm gripped by an unidentified man. Still wearing her pajamas, she was not allowed to change her clothes as she was immediately asked to board a sedan car. At that time, Ohara felt extreme fear being surrounded by a big group of armed men. She vividly narrated---

“ xxxx

I was so surprised and felt scared because I do not know what will happen to me. Outside there were many people. I felt panic in my head.

xxx

I did not know where I will go from now, I felt so scared.

xxx.”

Upon their arrival in Manila, she was immediately brought inside the office of Chief/SI Mario Garcia at NBI-SMD, Taft Avenue Manila. Chief Garcia and Chona demanded for the production of her Japanese passport and some important documents.

Thereafter, Director Gatdula went inside the office of SMD. Noriyo Ohara narrated—

“ xxx Director Gatdula came in the room and looked at me. He talked to Mario Garcia for a short time then he left. I recognize him because he has a picture in Mario Garcia’s room. xxxx”

In the evening of October 29, 2011, Jacqueline Marzan, Glenda Marzan and Johnny Perez arrived in the office of Chief/SI Mario Garcia at the NBI-SMD Taft, Avenue, Manila. Jacqueline told Ohara that they needed to give Chief/SI Garcia some amount of money in exchange for her liberty. Glenda and Johnny left the NBI Office. After a few hours, Glenda and Johnny came back to the NBI-SMD office. They handed the amount of Php 1M to Ex-O Cabillan.

From October 29, 2011 until November 2, 2011, Ohara stayed inside the NBI-SMD premises. She was previously entrusted by Chief/SI Garcia to Chona.

On November 2, 2011, the Marzans delivered again Php 4M at the Office of the NBI-SMD.

In the ensuing days, Ohara stayed inside the NBI-SMD Office, with Chona keeping watch on her. Her testimony shows her movements and actions were controlled by Chona.

On November 5, 2011, Ohara along with Chief/SI Garcia and Chona, went to her house in Las Pinas. Chona then took pictures of her house. Ohara got her two (2) suitcases from her house.

On November 6, 2011 (morning), Ohara was again inside the SMD Office.

On November 12, 2011, Ohara and Chona went to Tagaytay City and Laguna.

On November 14, 2011, Ohara saw Tina and Glenda talking to Chona inside Chief/SI Garcia's office.

On November 15, 2011, she was transferred to Garcia's safe house somewhere in Sta. Mesa, Manila. She was guarded by Chona Esplana, whom she extremely feared. When asked by the Panel why she feared Chona, Ohara recounted that she would often see Chona checking her gun or at times cleaning it right in front of her.

In her affidavit, Ohara specifically detailed how she feared Chona-

“xxx

I know Chona's character, suddenly she's in a bad mood, when she does that, she never speaks to me, I always feel so scared of her. xxx”

During all these days, Chona continued to “brainwash” Ohara about her foster family. She narrated—

“ xxx But she always say to me about Marzan family. She always say bad things about them, she said 'You know Marzan family not come here. Why? I think they hate you. They don't want to help you anymore.' She always say ikaw kawawa. No one will help you now. NBI only help you. xxx ”

On November 16, 2011, Ohara and Chona stayed at Pearl Manila Hotel.

On November 17, 2011, Ohara and Chona first went back to Sta. Mesa to get her things. Later on, they stayed at the Manila

Pavillion since Chona told Ohara that she could no longer stay at SMD as the media were already aware of her case.

On November 18, 2011, Chona and Ohara went back to Sta. Mesa, Manila.

It was during her stay in Sta. Mesa that Ohara, completely under the spell of Chona, was asked by Chona to write, in Japanese characters and in English, a letter to the NBI Director where she would portray that she was being abused by the Marzans and that she needed help. She was ordered by Chona to put the date “August 8, 2011”²¹.

Ohara vividly narrated---

“ xxx When I was staying in Sta. Mesa, Chona told me ‘Marzan family will no longer help you’ so you must write a letter to Director and ask for his help. Chona told me to put the date ‘August 8, 2011.’ I wrote it in a folder because there is no paper, on the left side is Japanese and the right side is English. Chona told me what to write especially the English letter. xxx”

On November 19, 2011, Chona tagged Ohara to a salon somewhere in Tondo, Manila. That night, they again stayed at Sta. Mesa, Manila.

On November 20, 2011, Ohara, Chief/SI Garcia, Labsky and Chona were in Pangasinan to attend a wedding. On November 20, 2011, the group proceeded to Baguio City to meet with Ex-O Cabillan, since Chief Garcia needed some documents from Cabillan.

²¹ Annex M: Letter to Director Gatdula of Noriyo Ohara dated August 8, 2011

On November 21, 2011, Ohara was brought to the NBI-FLD (also known as the Interpol Office). Accompanied by Atty. Chiong and the FLD Chief, Atty. De Castro, Ohara was brought to the Office of Director Gatdula, where she was asked a few questions. She spent the night in Sta. Mesa together with Chona.

On November 23, 2011, Hiruta picked up Ohara at the SMD office and brought her back to the FLD. She was asked by Hiruta (a Japanese liaison officer) to sign the document (Q and A) previously prepared by the NBI-FLD last November 21, 2011.²²

On November 25, 2011, Chona persistently pressed Ohara to call her friend in Japan to ask for Php 500,000.00 to be deposited in Chief/SI Garcia's BDO bank account. The said money would allegedly answer for Ohara's documents and Japanese Passport being prepared by the group of Chief/SI Garcia.

On November 26, 2011, Ohara and Chona went back to the SMD Office. Later on, Chona (along with her children) and Ohara went to Rai Rai Ken Bluewave to eat dinner. They spent the night in Sta. Mesa, Manila.

On November 27, 2011, Garcia fetched Ohara and Chona from Sta. Mesa and they proceeded to Mall of Asia. Inside the SMD office, Ohara handed Php 100,000.00 to Chona. She was specifically instructed by Chona not to tell anyone about the money. Thereafter, Chona instructed Ohara to write a letter²³ to President Aquino asking for help informing him that the Marzan family is bad.

²² Annex N: Sworn Statement of Noriyo Ohara dated November 21, 2011

²³ Annex O: Letter to President Aquino of Noriyo Ohara dated November 23, 2011

On November 28, 2011, Hiruta fetched Ohara at the SMD Office. They first proceeded to the FLD Office and thereafter they went to Japanese Embassy. She stayed at the Embassy for about 40 minutes to make a call. She went back to the NBI-FLD on the same day and slept in the same Office.

On November 29, 2011, Ohara slept at the FLD Office.

On December 1, 2011, Hiruta brought Ohara to the Japanese Embassy in order for her to call a certain Yajima. At the waiting area, Hiruta told Ohara that she needed to go back to Japan; otherwise, if she opted to stay in the Philippines, she would be brought to Bicutan jail. Scared of being brought to jail, she readily agreed to go back to Japan.

On December 2, 2011, Ohara was brought by Machida and Hiruta in YWCA along Taft Avenue, Manila. She stayed in YWCA until December 5, 2011.

On December 5, 2011, Chona called Ohara and informed her that the Marzan family went to Ramon Tulfo and that a Japanese writer wanted to talk to her. When asked by the Japanese writer, Ohara informed the Japanese writer that she was rescued from Pangasinan since she wrote Director Gatdula a letter. She narrated—

“xxx

I told him, I wrote a letter to Director Gatdula so they can rescue me. I said this because during this time, I thought NBI will help me because that is what they told me. Chona told me if someone asks you why NBI go to Pangasinan; I must tell them I wrote a letter to Director Gatdula. He asked 'Where are you now?'

I told him YWCA. Why? Because someone is looking for me so I must hide. What will you do? I want to go back to SMD. I

said this because Chona told me she already spoke to Director that NBI will help me. That time, I believed them. xxx”

After talking to the Japanese writer, Ohara walked from YWCA to NBI-SMD to look for Chona. While inside the SMD office, he saw a Japanese man. She does not remember the man’s name, but Ohara knows that the man is from Mainichi Shinbun newspaper. Ohara noticed that the SMD staff were all panicking because of the Tulfo story. Suddenly, Hiruta and Machida entered the SMD office and asked her to go with them to the Interpol office. They all went to the Interpol office. Ohara heard Hiruta calling a Japanese friend saying: “Did you read newspaper I have Japanese already. I must hide her, please help me.”

Thereafter, they proceeded in front of Traders Hotel to meet up with Consul Hagiwara, who brought her to Diamond Hotel where Japanese Consul Endo was waiting for them.

On December 6, 2011, Hagiwara told Ohara that she would be endorsed to the Immigration to stay in Bicutan jail, but she was instructed to pass by the Japanese Embassy first. Therafter she met with Consul Endo at the Japanese Embassy, where she was told that she should go with him to the Immigration. Therafter, Hiruta, Hagiwara and Ohara proceeded to the NBI Interpol Office, and the NBI turned over Ohara to representatives from the Bureau of Immigration.

During the hearing, Ohara gave the Panel a detailed list of her belongings she left behind in the NBI SMD-Office. She also positively stated on record that the key to her house in Las Pinas was taken from her by Chona. She narrated---

“xxx I want to get all my things from NBI as soon as possible. I want NBI to return money if possible. I want NBI to leave me alone, especially Mario Garcia, Labsky and Chona. I want NBI to leave Marzan family alone too. I just want to say to Marzan family that I am sorry about my problem and all trouble I caused them. I hope Mario Garcia, Labsky and Chona will never do that again anymore. I hope they will pay for what they did to me and to Marzan family because they are bad people.”

When the Panel showed the pictures given by Mario Garcia to show that she was being maltreated, she could not believe that the NBI would take the camera from her belongings and have those pictures developed without her consent. She confirmed that those injuries were not inflicted by anyone and sheepishly admitted that it was a “beauty secret”, i.e., results of some cosmetic procedures.

II. VERSION OF THE MARZAN FAMILY

2. ROMULO MARZAN

Mr. Marzan testified²⁴ that: he is a Barangay Kagawad of Bugallon, Pangasinan; his sister Rosemarie Marzan-Ogawa requested him to allow Ohara, who was introduced to him simply as “Marife”, to live with his family in Bugallon, Pangasinan; that since then, Ohara lived with them in Bugallon, calling him “Tatay”, his wife “Nanay” and his mother “Lola”; that while staying in their house, Ohara helped in some household chores and seldom went out of the house. He added that Ohara has a BMW, and drove the car whenever Ohara traveled to Manila.

²⁴ See Annex P: TSN dated December 26, 2011 (Romulo Marzan)

He further testified that on 29 October 2011, a group of men who arrived in two (2) cars and four (4) vans, most of whom were wearing black shirts marked with “NBI” at the back and armed with long and short firearms, went to their house in Bugallon. At that time, he was in their “kubo-kubo” which was beside their house. The supposed NBI agents immediately entered their house, and when he inquired as to their purpose, a man, whom he later identified as Labsky, replied that they were from the NBI and that they had a warrant of arrest with them. Said warrant, however, was not shown to him.

Later, he saw Ohara going out of the house, her arms being held by a man on one side and a woman on the other side. The man was armed, while the woman, whom he later identified as Chona, was clad in NBI uniform. He observed that Ohara, still in her pajama, was clasping her hands when she was taken out of the house. He was told to come along and so he boarded a van, while Ohara was whisked inside a car. However, he was asked thrice to transfer from one vehicle to another during the trip and the NBI also took his cellular phone that he was then using to contact his children.

Upon reaching the NBI headquarters in Manila, he and Ohara were brought to the SMD Office. There, he saw a man visiting the office around 2-3 o’clock in the afternoon of 29 October 2011. When the man left, Chona told him that the man was no less than the NBI Director himself who had to go down from his office as Ohara’s case was a very important one.

Some members of the Marzan family, namely, Glenda and Jacqueline Marzan, and Johnny Marzan, daughters and nephew, respectively, of Romulo Marzan, later arrived at the SMD Office,

whereupon “negotiations” took place, presumably for the preparation of the necessary papers to legalize Ohara’s stay in the Philippines. Labsky initially asked for P100 million, but as the Marzans could not possibly produce the said amount, Jacqueline Marzan counter-offered P5 million, which was later increased to P10 million, then to P15 million, upon which the parties agreed. As per agreement, Glenda and Johnny delivered to the SMD Office P1 million around 10 o’clock in the evening of the same day.

He added that he was made to sign a document around 11 o’clock of 29 October 2011. Written in English (which was explained to him by Glenda), the document purportedly states that the NBI went to Bugallon because the Marzans wanted to surrender, and in fact surrendered, Ohara to the NBI. After the said document was signed, the Marzans left, leaving Ohara at the SMD Office.

The Marzans returned to the SMD Office in the late afternoon of 2 November 2011 to deliver P4 million, also bringing with them some clothes of Ohara. That was the last time that he joined his children in delivering money to the NBI. However, he was told by his children that another P1 million was delivered to the SMD Office at a later date.

He recalled that sometime in November, one of his nephews went to their house in Pangasinan as Chona allegedly called and gave instruction to get the suitcase of Ohara.

3. JACQUELENE MARZAN SUZUKI

As a member of the Marzan family who directly transacted with the NBI for the release of Ohara, Jacqueline Marzan Suzuki

stated in her *Sinumpaang Salaysay*²⁵ dated December 28, 2011 that she learned from her Auntie Marie (Rosemarie Marzan Ogawa), who called her up from Japan at around 9 o'clock in the morning of October 29, 2011, that Marefe (referring to Ohara) was taken by the NBI from their house in Pangasinan; that not long thereafter she received a text message from her father, Romulo Marzan, telling her that he was told to come along with Ohara to NBI Manila on board one of six (6) vehicles (2 cars and 4 vans); that when she and her sister Glenda texted their father to inform the latter that they already procured a lawyer to assist them, their father immediately called and transferred the phone to an NBI agent named "Labsky", who told them instead to go to the NBI Main Office in Taft Avenue, Manila to talk about the matter; that she (carrying her three-month old child), Glenda and Johnny Perez, a cousin, arrived at NBI Manila at about 6 o'clock in the evening of the same day; that they were later brought to the SMD Office where they met Mario Garcia, Ex-O Cabillan, Chona and Ohara; and that Chona, who identified herself as coming from DOJ-Human Rights, threatened them that they and their Auntie Marie may be charged as accessories to the crime of harboring or concealing a criminal, referring to Ohara, who was allegedly being sought by the Interpol and the Japanese Embassy, and who was arrested upon orders of the higher-ups/officials of the NBI.

She also stated that she saw NBI Director Gatdula, whom she identified through a picture on the wall, visiting the SMD office on October 29, 2011; that in the presence of the Director, Chona pointed at Ohara as the Japanese, and at them as the family keeping the latter, but the Director simply looked at them and ordered that Ohara be medically examined; and that when the Director left, Chona not only told them that the Director opted to

²⁵ Annex Q: *Sinumpaang Salaysay* of Jacqueline Marzan Suzuki dated December 28, 2011

personally meet them as their case is a very important one, but also falsely represented to them that the NBI Director is the third highest official in the government, next to the President and DOJ.

Jacqueline also vividly described how she “negotiated” with the NBI for the release of Ohara. She stated that Labsky initially demanded for the sum of P100 million to settle the matter, but she haggled and requested that it be reduced to P5million; that Labsky then said that the amount was still small as there were eight (8) officials who would be sharing in the loot (“*Maliit yan kasi sa taas pa lang 8 na ang gwapo.*”); thereupon she offered P10million, but the same was likewise rejected as there were allegedly three (3) officials in the SMD office and 300 subordinates (“*Yung 10M mo, sa taas lang yan eh. Paano naman kami dito sa baba, 3 kaming gwapo dito at meron pa kaming 300 na alipores dito.*”); that she made another offer in the amount of P13million, but Labsky still rejected the same, until the parties agreed to P15million, to be paid within seventy-two (72) hours; and that Chona represented to them that the money would be solely used for the processing of the papers of Ohara with the BI and the Japanese Embassy to legalize her stay in the country.

She further stated that after the parties agreed on the P15million amount for the release of Ohara, Glenda and Johnny immediately left to get some money for the initial payment, while she, her child, and her father were left at the SMD office; that Glenda and Johnny returned to the SMD office in the late evening of October 29, 2011, bringing with them P1million wrapped in two bundles and placed on the table of Ex-O; that they were then made to sign a document showing that the Marzans voluntarily surrendered Ohara to NBI, executed purportedly as a sort of protection of the Marzans, a copy of which, according to Ex-O

Cabillan, would be given them only upon full payment of P15million; and that when they were about to leave, Ohara apologized to them several times for everything that had happened because of her, while Chona, on the other hand, reminded them to pay the balance within 72 hours on the pretext that when the working days resume, it would be more difficult to hide Ohara.

Jacqueline recounted the other visits she and the other members of the Marzans made to the SMD office to deliver money and/or to see and talk to Ohara on how she was doing there. She stated that the second time she and her father went to the NBI-SMD office was on October 30, 2011, during which Ohara asked them to bring her suitcase containing her passport (presumably for the NBI to process her papers). The third time was on November 2, 2011, when Jacqueline, Glenda and their father went back to Manila from Pangasinan and delivered P4million to Ex-O and Chona at the NBI-SMD office. Glenda placed the money, wrapped in eight (8) bundles, on the sofa inside the office. Chona counted the bundles of the money so delivered, but the same was later taken by Ex-O Cabillan when he left the office. At that time, Jacqueline learned from Ohara that the latter was made to sleep only on the sofa in the SMD office.

Jacqueline, together with Glenda, went to the NBI-SMD office for the third and fourth time, on November 4 and 7, to check on how Ohara was doing and to request that they be given more time to get the necessary amount to pay the balance. On November 9, 2011, she and Glenda went again to the NBI-SMD office to deliver P1million, which was received by Chona. They also saw Mario Garcia, referred to as “hepe”, inside the office but they found no Ohara, who was allegedly upstairs, according to Chona.

Jacqueline further stated that when she, together with Glenda, tried to see Ohara for the last time at the NBI-SMD office on November 13, 2011, they were told by Chona that no visits were allowed on Sundays; that Chona kept on texting and calling her to constantly remind her of the payment of the balance; that on November 15, 2011, when she was desperately asking Chona and Labsky for more time within which to pay the balance, she was threatened by the latter and was told not to fool around with the NBI (“*Kung ano man ang pinaplano ninyo, babalik yan sa inyo. Sisiguraduhin ko na reresbakan naming kayo.*”); and that a document purporting to evidence the voluntary transfer by the Marzans of Ohara to the NBI would be executed presumably as a sort of protection of the Marzans; that the following day, November 16, 2011, Chona called her up, asking if she knew of the call made by Tina (Maria Krestina Vinluan) to Ramon Tulfo, but she denied any knowledge thereof.

To show proof of the negotiations for the payoffs, she submitted her cellphone showing the exchange²⁶ of text messages between her and Chona, as well as calls made to or received from Labsky.

4. GLENDA CABURNAY MARZAN

In her testimony²⁷ before the Panel last December 13, 2011 and in her *Sinumpaang Salaysay*²⁸ dated December 27, 2011, Glenda Caburnay Marzan gave a detailed account of the ordeal that the Marzans went through in the hands of some NBI agents: from the forcible taking of Ohara from their residence in Bugallon,

²⁶ Annex R: Printout of text messages between Jacqueline and Chona and call details of Jacqueline, Chona and Labsky

²⁷ Annex S: TSN dated December 13, 2011 (Glenda Marzan)

²⁸ Annex T: *Sinumpaang Salaysay* of Glenda Caburnay Marzan dated December 28, 2011

Pangasinan, to the deliveries of money in the NBI-SMD office, to the measures resorted to by them to desperately plead for more time within which to pay the balance of P9million in order to save Ohara from her captors and to prevent the filing of criminal charges against the Marzan family, by which they were threatened.

She stated that around 9 o'clock in the morning of October 29, 2011, her sister, Ate Jackie (Jacqueline Marzan Suzuki), received a call from their Auntie Rose (Rosemarie Marzan Ogawa), who told them that Marefe (the name by which Ohara was introduced to them) called informing that some men were looking for her (Ohara). Glenda immediately called her sister Josie, who was then living with Ohara in Bugallon, and learned from the latter that some armed men in black shirts marked "NBI", a woman who identified herself as coming from DOJ Human Rights, and a man who said he was from Immigration, were looking for Ohara. The group said they had a warrant of arrest, but they never showed the same. Said group took Ohara and instructed Glenda's father, Romulo Marzan, to come along.

Thereafter, Glenda received a text from her father saying that he and Ohara would be brought to NBI-Manila. When she asked about her father's exact location so a lawyer could follow, her father immediately called, but the phone was taken by an NBI agent, who told her that there was no need for a lawyer and they may settle the matter.

Thus, Glenda, Jackie (with her baby) and Johnny went to the NBI. A security guard led them to the SMD office and there, they found their father who was then talking to a barangay captain from Pangasinan, a woman ("*mataba, maitim, hanggang balik at ang buhok na layer-cut*") whom they later identified as Chona, and a

man (*“malaki ang tiyan, kalbo, medyo maputi, at mukhang seryoso”*) sitting behind the table with the name “Mario Garcia”, whom they later learned to be in fact Mario Garcia. It was the first time that Glenda learned that Marefe’s real name is Noriyo Ohara.

Chona started to threaten them saying: *“Alam nyo ba kung gaanong kalaking gulo yung pinasok nyo? Pwedeng makasuhan yung Tita Rose ninyo at hindi nyo ba alam na may kaso yang si Ohara at kayo at lahat ng pamilya ninyong may alam, pwedeng makasuhan, accessories kayo sa krimen dahil nagtatago kayo ng criminal. Lahat kayo makukulong. Ako, taga-DOJ Human Rights ako, xxx. Yung tita nyo at si Ohara, isang taon naming sinurveillance yan. May kaso si Ohara sa Japan kaya pinapahanap ng Japanese Embassy at Interpol. xxx”*

A man, referred to as director, and who Glenda later identified as NBI Director Magtanggol Gatdula through a picture she saw hanging on the wall inside Garcia’s office, arrived and Chona said: *“Sir, eto po yung Haponesa (tinuro si Ohara) at eto po yung pamilyang kumupkop sa kanya (tinuro naman kami).”* Director Gatdula simply stared at them and said: *“Sige, ipa-medical na yan.”*

When Director Gatdula left, Chona said: *“Bihirang-bihira bumaba yang director namin dito pero dahil sa bigat ng kaso nyo bumaba pa yung director para tingnan kung mukhang masasamang tao kayo. Ang NBI Director, pangatlo yan sa pinakamataas, next yan sa Presidente at DOJ, kaya wala na kayong malalapitan pang iba. Wag na kayo kumuha ng abogado, madudurog lang yang abogadong kukunin nyo at kayo lang ang kawawa.”* The man called Labsky, on the other hand, said: *“Pilipino kami, Pilipino din kayo, ayaw namin mapahamak*

kayo. Sino pa ba magtutulungan kundi tayo-tayo kaya eto pag-usapan na lang natin. Magbigay kayo ng presyo na makapagpapasiya sa amin.”

Then, the negotiation for ransom started. Glenda recounted the “offers” and “counter-offers” made by both sides. When Jackie asked about the preferable amount, Labsky casually said: *“Siyempre kung kami ang tatanungin nyo, gusto namin P100M.”* Surprised, the Marzans said that they did not have such an amount. Labsky then replied: *“Kaya nga kayo ang magpresyo.”*

Jackie initially offered P5million, but Labsky said: *“Wala, maliit yan kasi sa taas pa lang 8 na ang gwapo.”* Then Jackie offered P10million, to which Labsky replied: *“Yung P10M mo, sa taas lang yan eh. Paano naman kami dito sa baba, 3 kaming gwapo dito, meron pa kaming 300 na alipores.”* Jackie made another offer in the sum of P13million, but it was likewise rejected. Finally, when Jackie asked if P15million was enough, Labsky talked to the others and later told them, *“Ok na yun.”* Ex-O then said that they should produce the amount within seventy-two (72) hours, but Jackie retorted that she was not sure if they could do so within such a short period of time.

Chona also told them: *“Yung 15M na yan, dyan pa kukuhanin yung sa BI at sa Japanese Embassy, para sa mga papers ni Ohara para maging legal siya. Lahat yan mapupunta sa taas, walang mapupunta sa amin. Ako mismo aayos nyan. Pagkatapos nito kahit saan tumira si Ohara pwede na at hindi yan magagalaw ng iba dahil mataas na kami. Kahit mgkaroon kayo ng problema sa iba, pwede nyo pa kami tawagan para tumulong sa inyo. Ibibigay na namin yung number namin sa inyo mamaya. Gagawa kami ng kasulatan na tinurn-over nyo sa*

amin si Ohara ng voluntary. Para na rin sa proteksyon ninyo kasi magiging good citizen pa kayo.”

Thereupon, Glenda and Johnny left for their house in Las Piñas to get some Japanese yen, had the same changed to pesos from a money changer somewhere in Padre Faura and went back to the NBI-SMD office, bringing with them the money and also some clothes and other things for Ohara. In the presence of her father, Jackie, Ohara, Chona and Ex-O, Glenda placed the money in the amount of P1million on the table of Ex-O. It took sometime before Ex-O finally took the money.

Chona made them sign a document stating that the Marzans voluntarily gave the custody of Ohara to the NBI. Ex-O then said to them: *“Usapang tao ito. Pagkabigay nyo ng pera papakawalan namin si Ohara. Pagnakumpleto nyo yung pera, bibigyan namin kayo ng 1 kopya ng pinirmahan nyo pati yung legal papers ni Ohara.”*

When they were about to leave, Ohara apologized to the Marzans several times. Meanwhile, Chona again reminded them to pay the balance by saying: *“O sige po, ganun na lang po. Hanggang 72 hrs lang dahil kapag nagpasukan na mahirap ng itago ito kaya kausapin nyo si Rose na madaliin yung pera.”* The Marzans left the NBI-SMD office at past midnight, leaving Ohara behind.

The following day, they again visited Ohara, but only Johnny and Tatay (Romulo Marzan) went inside the NBI-SMD office.

On November 2, 2011, the Marzans again had some Japanese yen changed to pesos worth P4million. Glenda placed the money in

a shoebox, which she in turn put in a paper bag. With Jackie and her father, Glenda headed to the NBI-SMD office to deliver the paper bag containing P4million. Only Ex-O, Chona and Ohara were in the office at that time. Ex-O told them: “*Sige iwan nyo na lang dyan*”, to which they obliged. Said paper bag was taken by Ex-O when he left the office.

Chona said that Ex-O would be bringing the money upstairs. She also told them to tell Rose (Rosemarie Marzan Ogawa): “*Pakibilisan kasi habang tumatagal, maraming nakakakita. At ako ang nagbabantay kay Ohara, hindi ako makaalis dahil sa kanya xxx*”

Jackie was able to talk to Ohara and learned from the latter that she was made to sleep only on the sofa inside the SMD office.

They visited Ohara at the NBI-SMD office on several other occasions to check on her condition, to bring her food and to take out her used clothes. But there were times when they did not find Ohara in the SMD and they were told that she was brought upstairs.

On November 9, 2011, Glenda, together with Jackie (carrying her baby) and Johnny, went again to NBI-SMD office. Glenda handed to Chona and Mario Garcia the amount of P1million placed in a food container. When Chona learned that they were then delivering only P1million, she said to Mario: “*Pano ‘to isa lang ang dala?*” and the latter replied: “*Eh sa yun lang ang dala.*”

On November 11, 2011, Glenda and her cousin, Maria Krestina Vinluan a.k.a. Tina, went to NBI-SMD office at 11:30 in the late evening. There they found Ohara, Chona and another

woman. While Tina was talking with Ohara, Chona talked to Glenda about the money. Chona said that they need to give the balance of P9million the soonest possible time as it had become more difficult for them to stay and hide in the SMD as the same is a public office and the media might learn about Ohara.

On November 13, 2011 (Sunday), Glenda and Jackie (carrying her baby) went to NBI-SMD office between 6 and 7 o'clock in the evening, but they found no one in the office. When they texted Chona, the latter said that no visits were allowed on Sundays.

The next day, November 14, 2011, Glenda, this time with Tina, returned to the NBI-SMD office to visit and bring food to Ohara. Chona led them to the office of "Hepe" (Mario Garcia), where Ohara was likewise brought from the adjacent office of Ex-O. Tina and Ohara talked. Later a woman peeped into the office and said there were several people from the DOJ and media outside.

Chona and Labsky constantly called and texted the Marzans to inquire on the delivery of the balance of P9million. Labsky even told the Marzans to bring the BMW as he allegedly had a buyer who was willing to pay P2million for the vehicle.

On November 16, 2011, at 5 o'clock in the afternoon, Glenda and Tina went to see Labsky at NBI-Manila. Tina pleaded to Labsky that instead of paying the remaining balance of P9million, the Marzans be allowed to pay only P5million including the BMW. But Labsky told them: "*Malabo pa yan sa mata ko dahil kami na malilintikan kapag pinakawalan pa namin yan dahil alam na ito ng nasa itaas.*" When Tina continued to plead to Labsky, the latter

later said: *“Ipapaapprove ko pa yan sa director, antayin nyo ako dito.”* After Labsky left, a man, who identified himself as Ablezer T. Rivera, approached Glenda and Tina, kissed their hands and left a calling card.

They waited for Labsky until 10 o’clock in the evening. When Labsky returned, he was very furious and showed to them a text message of Tulfo, allegedly forwarded to him by the Director (NBI Director Magtanggol B. Gatdula). He then said: *“May nanggugulo, may nagsumbong kay Tulfo.”* And before they left, Labsky uttered the following words: *“Lilinisin ko muna ito, aalaman ko kung sino itong lintik na nagsumbong kay Tulfo.”* Tina and Glenda denied having contacted Tulfo.

The following day, November 17, 2011, Glenda and Tina went again to NBI-SMD office to talk to Chona or Labsky, but they were only made to wait until 8 o’clock in the evening in the receiving area and no one talked to them.

On November 18, 2011, Glenda and Tina went to NBI-SMD office to talk to “Hepe”/Mario Garcia. Garcia was very angry and said: *“May nagsumbong kay Tulfo”*. He showed to Glenda and Tina a handwritten letter of Marefe (Ohara) addressed to the director²⁹. In said letter, Ohara appeared to be requesting the director for help to recover her BMW and house, and she also stated therein that she was being maltreated by the Marzan family. Garcia also showed them the Nihongo translation of the said letter and a calling card of the Japanese police. Garcia then said: *“Maingay itong si Tulfo, hindi ito titigil. Kung sino man nagsumboong kay Tulfo, mamatay na.”*

²⁹ see footnote 21

Tina reiterated her request for the release of Ohara upon payment of the balance. But Garcia said: “*Hindi na pwede kasi me nagsumbong kay Tulfo.*” When they said they were not the ones who reported the case of Ohara to Tulfo, Garcia said: “*O sige, try nyong patahimikin si Tulfo.*”

Testifying before the Panel, Glenda Marzan clarified that even prior to the October 29, 2011 incident, the Marzan family and Ohara maintained good relationship with each other. It was their Tita Rose who introduced Ohara as Marefe to them and said that Ohara would be staying with the Marzans. Ohara used to live by herself in a house in Las Piñas, which she bought not long after she arrived in the Philippines. Later, Ohara transferred to Bugallon, Pangasinan and lived with her father and other members of the Marzan family.

As regards the P6million worth of money they gave to the NBI, Glenda said that as far as she knows, said money belonged to her Tita Rose and Ohara never contributed thereto. When asked what prompted the Marzans to give the P6million (whether they did it to save Ohara and/or to save themselves as they were threatened to face criminal charges in court for allegedly keeping a criminal in their custody), Glenda categorically stated that they gave the money to set Ohara free.

5. MARIA KRESTINA MARZAN VINLUAN

In her interview³⁰ by the Panel last December 13, 2011 and in her *Sinumpaang Salaysay*³¹ dated December 27, 2011, Maria Krestina Marzan Vinluan, more often called Tina, stated that

³⁰ Annex U: TSN dated December 13, 2011 (Krestina Vinluan)

³¹ Annex V: *Sinumpaang Salaysay* of Maria Krestina Marzan Vinluan dated December 27, 2011

between 8 and 9 o'clock in the morning of October 29, 2011, she received a text message from her older sister living in Laguna that Marefe (Ohara) was taken by the NBI on board four (4) vans and two (2) cars. When she arrived home from work, she saw Glenda (Glenda Caburnay Marzan) and Johnny (Johnny Marzan Perez) preparing money, and when she asked what the money was for, Glenda simply told her that there was something to be settled in the NBI.

She also stated that before they left for Pangasinan on October 30, 2011, they passed by the NBI, and there she saw Ohara, Ate Jackie (Jacqueline Marzan Suzuki), Uncle Romy (Romulo Marzan) and a woman (whom she later learned as Chona) inside the SMD office. She only waited in their vehicle. Later, she received a call from her Auntie (Rosemarie Marzan Ogawa), whom she also calls as Mama. She then went to the SMD office to hand over the phone to Jackie, and the latter and Chona talked to her Auntie. The Marzans returned to Manila from Pangasinan on November 2, 2011, bringing with them Ohara's locked suitcase. The NBI then was asking for Ohara's passport.

Tina gave a detailed account of her subsequent "visits" to the NBI-SMD office. She said that she and Glenda paid a visit to Ohara at the NBI-SMD office around 11 o'clock in the evening of November 11, 2011. They found Ohara sleeping in the office of Ex-O with Chona and another woman. She talked to Ohara in Nihongo to ask if the latter was doing well and eating properly. Ohara simply replied that they need not ask her that as her physical appearance showed her miserable condition. When asked about the reddish swollen portion in her left eye, Ohara said that she was bitten by a cockroach. Tina then gave Ohara "bibinka" and then left.

Tina and Glenda went again to the NBI-SMD office at noontime of November 14, 2011 to bring food (Jollibee) to Ohara. They were brought inside the office of Mario Garcia, the Chief of SMD, and there they saw Garcia, Chona and Ohara. For several times, Chona asked and reminded them to bring money the soonest possible time, otherwise Ohara would be brought to the embassy (*“Kailan ba kayo makakapagbigay? Kasi siguraduhin nyo lang na magdadala kayo bukas dahil huling pakiusap nyo na iyan, dadalhin na ito sa embassy kawawa naman ito ibabalik sa Japan ito.”*). Tina pleaded for more time, saying that they were still waiting for the money that will be sent to them and that they were doing their best.

They later learned that Ohara was brought by Chona and company to Tagaytay on November 13, 2011. But according to Ohara, she was told to wear a sweater with a hood and a pair of sunglasses, and she was not allowed to leave the vehicle by the two men seated beside her. Ohara added that she was scared of Chona and that the latter was not nice and kind to her.

A woman later came and told Chona to keep quiet as there were people from the DOJ and media outside. Chona then said to them: *“Yan nga ba sinasabi ko sa inyo eh, sabi ko sa inyo eh pag nalaman ng media ito lagot kayo”* and *“Yan ang sinasabi ko sa inyo pag pinatagal ng pinatagal mami-media yan xxx”* Before they left, Chona further said: *“Kakampi niyo ako dito kaya kung ano pinangako nyo dito dalhin nyo bukas”*.

On November 15, 2011, Chona texted and called Jackie asking for money but they said they did not have money yet. At 10 o'clock in the evening of the same day, Labsky called Jackie and

threatened them that Labsky and company would go after the Marzans for whatever the latter were planning against the former.

At 4 to 5 o'clock in the afternoon of November 16, 2011, Tina and Glenda went to the NBI-SMD office to meet Labsky. They asked Labsky if Ohara would be released if they were able to raise money. However, Labsky replied: *“Malabo pa yan sa mata ko dahil kami na malilintikan kapag pinakawalan pa namin yan dahil alam na ito sa itaas. Legal na, nareport na at hindi na pwedeng pakawalan.”* When they continued to plead to Labsky, and even offered him P5million including a BMW 2010 Model X3, he seemed to somehow change his mind and said: *“Papa-approve ko pa yan sa director, antayin nyo ako dito.”* After Labsky left, a man approached them, identified himself as Ablezer T. Rivera and left a calling card to Glenda.

They waited long for Labsky. When he returned, he was very furious as there was allegedly someone who leaked the information about Ohara to Tulfo (Ramon Tulfo). He then showed them a text message of Tulfo, which was allegedly forwarded to him by the Director (NBI Director Magtanggol B. Gatdula). But Tina and Glenda denied having contacted Tulfo. When they left late that evening, Labsky said the following parting words: *“Lilinisin ko muna ito, aalamin ko kung sino itong lintik na nagsumbong kay Tulfo.”*

The following day, November 17, 2011, Tina and Glenda tried to see Ohara at the NBI-SMD office, but they were told that Chona had been absent for two (2) days. They called Chona and Labsky several times, but the latter kept on rejecting their calls. When the agents started to eat dinner, they left and headed to Robinsons to have dinner, but they got scared when they later noticed that an

agent, who was still eating when they left the NBI-SMD office, followed them to the mall.

On November 18, 2011, Tina called Labsky to ask if he was willing to accept her offer. Labsky countered that Ohara was already in the custody of the Japanese Interpol, and instead advised Tina to talk to Mario Garcia. Thus, Tina and Glenda went to NBI-SMD office that evening. There, they asked Garcia if he wanted to accept their offer. Garcia replied in the negative and showed them a letter addressed to the NBI Director, which stated in part: *“DEAR DIRECTOR PLEASE HELP ME.... I DON’T WANT TO SEE MARZAN FAMILY.”* Garcia also showed them text messages of Tulfo forwarded to him by the Director. They were the same messages formerly showed to them by Labsky. Garcia asked them angrily how Tulfo came to know of the P6million given by the Marzans, but they denied any knowledge thereof. They then heard Garcia uttering words like: *“Putang-inang Tulfo na ‘to eh. Pano nya nalaman kung hindi kayo nagsumbong sa kanya, pati si Director naririndi na kasi araw-araw tumatawag si Tulfo sa kanya.”* Before they left, Garcia instructed them: *“Try ninyong patigilin si Tulfo.”*

On November 20, 2011, Tina texted Chona to ask what happened to their offer to Labsky, but the latter said: *“Malay ko sa usapan nyo.”* The following day, Tina continued texting Labsky, but he did not make any reply.

On November 23, 2011, Tina called Chona, the latter telling Tina that Ohara would be brought to the Japanese Embassy, and sent to Japan. Tina pleaded with Chona, saying that the money the Marzans were expecting might arrive at 8 o’clock that evening. When Tina was able to talk to Ohara, she told the latter not to

believe to the NBI as they are “bad people” and to wait as the Marzans were doing their best to get money.

On November 25, 2011, Chona called up Tina to tell her to talk to Labsky as Ohara would be brought to the Japanese Embassy at 10 o'clock in the morning of the following day. Chona further told her that Ohara already gave her statement that morning and will again be brought to another office for “question and answer”. Chona also instructed her to tell her Auntie Rosemarie to send a machine copy of Ohara's passport. Later, Tina talked with Labsky, who said that he knew everything she said to Ohara last November 23, including her statement that the NBI were “bad people.” Tina was not allowed to talk to Ohara.

Finally, on November 26, 2011, Chona and Labsky told Tina over the phone that Ohara would soon be brought to the Japanese Embassy, then to the airport to leave for Japan. Tina once again pleaded for Ohara not to be turned over to the Japanese Embassy, but Chona simply told her to send a copy of Ohara's passport through email and again asked for money. Tina replied she already informed her Mama (Auntie Rosemarie) about Ohara's passport and that they still did not have money at that time.

6. JOHNNY MARZAN PEREZ

In his *Sinumpaang Salaysay*³² dated 27 December 2011, he stated that around 9 o'clock in the morning of October 29, 2011 he was informed by his cousins, Jacqueline and Glenda Marzan, that Marefe (Ohara), together with his uncle Romulo Marzan, was taken by armed men to the NBI; that he accompanied Jackie (Jacqueline), her baby and Glenda to the NBI, where they arrived

³² Annex W: *Sinumpaang Salaysay* of Johnny Marzan Perez dated December 27, 2011

around 4 o'clock in the afternoon of the same day, but he was not allowed to enter the NBI premises as he was wearing only shorts then; that at 8 o'clock in the evening, he and Glenda took some Japanese yen belonging to their Tita Rose (Rosemarie Marzan Ogawa), had the same changed to pesos at Fharniza's Money Changer in Ermita, Manila and later went back to the NBI-SMD office to deliver the amount of P1million, said amount having been given to a man called Ex-O; that the NBI demanded the payment of half of the P15 million agreed upon for the release of Ohara; and that they were told that full payment of the P15million should be made within seventy-two (72) hours or until Tuesday, i.e. November 1, 2011 as it would be allegedly difficult to hide Ohara for a long time.

He further stated that on October 30, 2011, he accompanied his Tiyo Romy (Romulo Marzan) to the NBI to deliver food to Ohara; that on November 2, 2011, he accompanied Jackie, her baby, Tiyo Romy and Glenda to Fharniza's, where they again had some yen changed to pesos, after which they returned to NBI-SMD office to deliver P4million; that Glenda handed over the money to Ex-O and Chona while he was instructed to get Ohara's suitcase from their vehicle and bring the same to the SMD office; that on November 9, 2011, he again accompanied Jackie, her baby and Glenda to Fharniza's Money Changer and thereafter they proceeded to NBI-SMD office to deliver P1million; and that after the third delivery of the money in the NBI-SMD office, they went back to the said office several times to talk regarding the payment of the balance.

7. RAMON TULFO

Given Mr. Ramon Tulfo's role in exposing to the public the case of Noriyo Ohara, the Panel invited him to appear on December 13, 2011. In his testimony³³, he stated that he first learned about the case of Ohara when Tina (Maria Krestina Vinluan) called him up around 3 o'clock in the afternoon of November 15, 2011. According to the information he got from Tina, some agents of the NBI took Ohara from the house of the Marzans in Bugallon, Pangasinan early morning of October 29, 2011, took her to the NBI Main Office in Taft Avenue, Manila and thereafter demanded P15million ransom money from the Marzans. He was further told that the Marzans had in fact delivered money at the NBI-SMD office on three different occasions in the sums of P1million, P4million and P1million, respectively. He said he personally met Maria Krestina Vinluan and Glenda Marzan only on November 20, 2011.

Upon learning of the incident from Tina, Tulfo said he immediately tried to reach NBI Director Gatdula to inquire about the matter. (Director Gatdula testified that he was able to talk to Tulfo about the matter on November 15, 2011, after Deputy Director Esmeralda informed him that Tulfo wanted to bring to the NBI's attention the case of Ohara.) On November 17, 2011 at 11:36AM, Director Gatdula sent the following message:

Mon this is Dir Gatdula. This is my smart phone which I carry always. On my way to nbi pa from the opening of the gunshow at Megamall as guest of Girme. Our budget hearing ended at around 9pm so I told my staff to prepare a memo for the conduct of investigation against SMD personnel who allegedly has in their custody the Japanese woman you mentioned.

³³ Annex X: TSN dated December 13, 2011 (Tulfo)

In the afternoon of the same day, Tulfo again texted Director Gatdula inquiring whether the Japanese woman had been released, and at the same time informing the Director that aside from overstaying, the woman had not committed any crime and is not wanted by Interpol. To this, Dir. Gatdula replied, thus:

Yes mon pinagexplain ko lahat ng smd pati deputy incharge of smd.

In a subsequent message, Dir. Gatdula said:

I made a formal inquiry.

Tulfo then informed Director Gatdula that the NBI captors of the Japanese might harm her, as the balance of P9million was still not paid. He then implored for the director's assistance on the matter.

On November 19, 2011, Tulfo texted Director Gatdula that a certain Mario Garcia had Ohara in his custody at that time, but Dir. Gatdula replied with the following message:

Copy. I heard she was surrendered to the Japanese police in the Interpol division yesterday.

In turn, Tulfo texted:

Your people are fooling you. The Japanese has not been turned over to the Japanese Embassy or Interpol. There is no reason to do that because she has not committed any crime except overstaying. That's kidnapping for ransom plain and simple. She's now at the NBI hqs.

However, Director Gatdula simply sent the following message in reply:

Sa Interpol division iniharap kanina ni dep Chiong kasama yung jap police

Later, Director Gatdula sent two (2) other messages to Tulfo, to wit:

Anyway dep Chiong will submit report with the statements

We need complainants

Tulfo testified that as the case of Ohara was not progressing, he brought the Marzans to the Office of the Police Anti-Crime and Emergency Response (PACER) in Camp Crame on November 26, 2011. There, the Marzans executed affidavits regarding the alleged kidnapping of Ohara and the extortion made on them by some agents of the NBI.

On December 1, 2011, Tulfo said that he once again sent a text message to Dir. Gatdula to tell the latter that the case of the Japanese woman “has become complicated.” To this, Dir. Gatdula replied:

Pacer wrote me a letter about it na. deputy chiong is investigating it.

Tulfo added that his sources at the NBI said **that the Japanese woman was being kept in a safehouse if she was not at the SMD office.** To this message, Dir. Gatdula replied in this manner:

What I know is she’s with FLD under custody of Atty de Castro prior to her repatriation to Japan. You can ask Atty Esmeralda to double check it.

As the NBI failed to release Ohara, Tulfo and the Marzans decided to see the Secretary of Justice to seek assistance.

Finally, on December 9, 2011, Tulfo said he personally met Dir. Gatdula and the latter gave him a letter dated December 8,

2011³⁴. In said letter, Dir. Gatdula categorically stated that insofar subject operation conducted by the NBI-SMD involving Ohara was not covered by a COPLAN, a requirement for all operations conducted by the NBI, and that on October 29, 2011, when he was said to have purposely gone to the SMD office to take a look at Ohara, he explained that he just happened to pass by the said office to conduct his regular ocular inspection of the NBI premises.

III. VERSION OF THOSE INVOLVED IN THE OPERATION

8. MARIO A. GARCIA NBI Special Investigator Former Chief, Security Management Division

Chief/SI Garcia Garcia appeared several times³⁵ before the Panel to give his side of the story.

The October 29, 2011 “Operation”

Garcia gave conflicting accounts of what prompted him and his men to conduct an “operation” involving Ohara in Bugallon, Pangasinan last October 29, 2011.

Theory # 1: Rescue Operation

Garcia testified that on the night of October 28, 2011, between 8 and 9 o’clock in the evening, a man who merely identified himself as Rolando or Orlando went to the NBI, bringing with him a supposed letter of Ohara dated August 8, 2011 and addressed to NBI Director Magtanggol B. Gatdula³⁶. Allegedly a member and a former driver of the Marzan family, the man sought

³⁴ Annex Y: Letter of Director Magtanggol B. Gatdula to Ramon Tulfo dated December 8, 2011

³⁵ Annex Z: TSNs dated December 14, 2011, December 16, 2011 and December 19, 2011

³⁶ see footnote 21

the help of the NBI to rescue Ohara from the Marzans, who were allegedly maltreating her. The man even said, “*Baka hindi nyo na maabutang buhay.*”

Usec. Baraan : Okay. So, Mr. Tulfo, in his column told us his account of the alleged rescue or abduction of this Japanese national on October 29, 2011 at Bugallon, Pangasinan, and the account was based on testimonies of persons he named in the column. Now, Mr. Garcia, to make it to complete the circle, tell us your side of the story?

Garcia : On October 28, about 8 or 9 in the evening, a guy came to the office ... A person of Rolly, Orlando or Rolando..... I forgot his name,

Your Honor. But this is the guy, I think that met my one of my staff ...

xxx xxx xxx

Garcia : He came to the office to ask for assistance.

That a certain Japanese national, Noriyo Ohara, is somewhere in Bugallon, Pangasinan.

xxx xxx xxx

Usec. Baraan : And what did he tell you?

Garcia : *“That I have here with me the written statement of Miss Ohara asking for assistance to the Director of the NBI”.*

xxx xxx xxx

Usec. Baraan : What exactly, the first time he went to your office, what exactly, please tell us, what exactly did this Rolando tell you?

Garcia : He was perspiring and he told us that in Tagalog, he said: *“SIR, KAILANGAN KUMILOS NA KAYO KASI BAKA HINDI NA NIYO ABUTAN PA”*, and he handed the

Usec. Baraan : Letter?
Garcia : folder, Your Honor.

Garcia said he relied on the statements of Rolando/Orlando, whose surname and background he and his men did not bother to ask or check, and whose statements were merely taken down by a certain Eduardo “Bong” Romero, who had it recorded in the logbook of SMD. Rolando/Orlando allegedly left after giving Ohara’s statement. However, in another statement of Garcia, he said Rolando/Orlando went with, and served as guide of, the team sent to Bugallon.

Usec. Baraan ; Okay. When your team left for Bugallon, Pangasinan, Rolando was still with you?

Garcia : I don’t know, Your Honor, if he’s with the group.

Usec. Baraan : When did Rolando leave your office?

Garcia : **After that brief conversation, Rolando is with a lady,** Your Honor.

Usec. Baraan : After that brief conversation and after giving you that piece of paper, which according to you, was a letter of Ohara, *Rolando immediately left your office?*

Garcia : Yes, Your Honor.

Usec. Baraan : Then you decided to send a team to Bugallon, Pangasinan?

Garcia : Yes, Your Honor.

Usec. Baraan : Now. Let me ask you, Mr. Garcia, since Rolando was the one who went to your office, and he would know the whereabouts of Ohara because he received a letter from Ohara, why did not Rolando join your team in going to

Bugallon, Pangasinan?

Garcia : **I think he's the guide of the team that went there.**

Usec. Baraan : What?

Garcia : I think, he's the.... probably, he's the guide that went to Bugallon.

Usec. Baraan : No. You said that he left immediately?

Garcia : **He left my office, Your Honor. But Ex-O and Rolando have conferred in his office for the launching of the operation.**

Usec. Baraan : But what I'm telling Rolando, from your story, did not join the team in going to Bugallon, is that correct?

Garcia : No, Your Honor. I think he was the guide in going to that place.

Usec. Baraan : He was the guide?

Garcia : Yes, Your Honor.

Garcia stated that he made what he called a "judgment call" as the case at hand appeared to him to be *of extreme urgency* ("a life and death situation") and as the SMD office was *the only* office in the NBI still open at that time.

Usec. Baraan : xxx why did you entertain this Rolando?

Garcia : **Well, it's a "*judgment call*" on my part, Your Honor.**

Usec. Baraan : So, aside from your duties, you were allowed to make a "*judgment call*"?

Garcia : **I believe so, Your Honor, because I'm a sworn investigator of the NBI.**

Usec. Baraan : In what matters are you allowed to make a "*judgment call*"?

Garcia : **In matters of emergency situation such as like this**, Your Honor. Xxx

xxx xxx xxx

Usec. Baraan : xxx why of all people, did he go to your office, not to any other office?

Garcia : Before you can enter to any office, especially during night time, you will pass-by the Security Management Division office, Your Honor.

Usec. Baraan : So, it was because that was the first office that he saw. That's what you're saying?

Garcia : **That's the only office that is opening (sic) during nighttime, Your Honor.**

Usec. Baraan : It was the only office that was open during nighttime?"

Garcia : **Yes, Your Honor, except for the Technical.**

(Emphasis supplied.)

In another portion of his testimony, Garcia said:

Usec. Baraan : Okay. What information were given by Rolando in that logbook that constrained you that night to make a "*judgment call*"?

Garcia : That is, that **Miss Ohara was maltreated.**

Usec. Baraan : Was maltreated. Okay. What else?

Garcia : **And according to Rolando, they have a Somebody has a plan, maybe to eliminate her, or what.**

Usec. Baraan : To eliminate her?

Garcia : Yes, Your Honor.

(Emphasis supplied.)

He immediately ordered his Executive Officer (Jose Odelon Cabillan) to gather enough men to go to Bugallon to conduct the necessary rescue operation. Included in the NBI team was Chona Esplana, a former witness of the NBI in a human-trafficking case.

When the Panel asked whether the SMD was authorized to conduct rescue and other similar operations, Garcia said that while the standard operating procedure is to refer a complainant to the Complaints and Records Division of the NBI, where he/she could lodge a formal complaint, the same could not be followed as it was already late in the evening of October 28, 2011 when the man named Rolando/Orlando came to the NBI to ask for help. Thus, he decided to act on the matter himself.

Usec. Baraan : Okay. What's your SOP in your office? Your protocol? A complainant goes to your office and you have a logbook showing that a complainant went to your office?

Garcia : **A walk-in complainant would come to the NBI through the Complaints and Records Division, Your Honor.**

Usec. Baraan : Are you in that Division?

Garcia : **No, Sir.**

Usec. Baraan : So, there is a Complaints Division. Why did you entertain Mr. Rolando?

Garcia : **Complainants are only entertained at our Complaints and Registration Division from 8 am to 5 in the afternoon.**

Usec. Baraan : So, what you said was, "*it was an emergency situation*", that's what you're saying?

Garcia : I believe, Your Honor.

Garcia added that the SMD is in charge not only of safeguarding the properties and securing the premises of the NBI, but also investigating matters of national security.

Usec. Baraan : xxx Mr. Garcia, what are the specific functions of your office?

Garcia : The function of the Security Management Division is to safeguard the property of the NBI. To secure the NBI premises. To protect **its people**.

Usec. Baraan : *Ano yon?*

Garcia : Its people. Its employees. Its people, Your **Honor**.

Usec. Baraan : To protect the people. So, it's internal security. That's what you are saying?

Garcia : **Yes, Your Honor**.

Usec. Baraan : Purely, purely internal security.

Garcia : **No. So, as added function to the NBI, is also to investigate matters on national security.**

Usec. Baraan : **Of national security?**

Garcia : **Yes, Your Honor. That was on the handbook of the NBI Manual.**

Usec. Baraan : Investigate matters of I mean, is that your function?

Garcia : **It is in the Manual**, Your Honor.

Usec. Baraan : No. I mean in your function as an SMD Chief, is that a function of your office? To investigate matters of national security?

Garcia : Yes, Your Honor, through intelligence report.

(Emphasis supplied.)

The Panel then asked Garcia why, if the matter was truly of extreme urgency as he said, instead of sending a team from Manila (who took five (5) hours to travel to Pangasinan to do the “rescue”), he did not seek assistance from the agents of NBI-Dagupan, who were in the better position to rescue the Japanese woman. But according to Garcia, he tried to communicate with Agent Johnard S. Malvar of NBI-Dagupan, but to no avail.

- Usec. Baraan : Did you attempt to get in touch with any of your agents in Pangasinan on the night of October 28, 2011 after this Rolando told you that the situation was critical? It was emergency? A matter of life and death for that Japanese woman?
- Garcia : I called-up the Chief of Dagupan, but I could not contact him, Your Honor.
- Usec. Baraan : Okay. You mean, you really ... you actually dialed the number of the chief?
- Garcia : Yes, Your Honor.
- Usec. Baraan : Using your cellphone?
- Garcia : Yes, Your Honor.
- Usec. Baraan : xxx What time did you call him?
- Garcia : I forgot the time, Your Honor, but
- Usec. Baraan : Okay. If you forgot the time, from the time that Rolando arrived, Okay, give us your estimate? How long from the time Rolando arrived to that How long did it take for you to call the NBI chief in Dagupan City from the time Rolando arrived?
- Garcia : We, Your Honor, since it's night time I
- Usec. Baraan : Okay. You do not know. But it was before you sent your team to Bugallon, or after you sent your team to Bugallon?

Garcia : Before they went to Bugallon. They passed-
by our office, Your Honor.

(Emphasis supplied.)

Garcia also clarified his intention in attempting to reach NBI
Dagupan:

Usec. Baraan : xxx when you contacted the NBI Chief of
Dagupan City, was it because you wanted
the Dagupan team instead to go to Bugallon,
and not your team? Please answer? You
called the NBI chief because your intention
was for that team to go instead, instead of
you sending your team from Manila
considering the emergency situation?

Garcia : I just told them, Your Honor, that they'll just
verify a Japanese national in that area **of
Bugallon.**

Usec. Baraan : So, exactly tell us now, we're not getting
your story right. Why then did you call or
dial the number of the NBI Chief of *Dagupan
City? Just tell us?*

Garcia : **To just inform him that there will be
presence of some NBI Manila.**

(Emphasis supplied.)

Regarding Chona's presence in the supposed "rescue
operation", Garcia initially stated that since the team would then
be rescuing a woman, the team needed to have a woman.

Garcia : I insured that a lady could assist her and I
think it was Miss Chona Espina or Esplana
accompanied the victim, Your Honor.

Later, however, Garcia said that Chona joined the team that went to Bugallon because she had Ohara's number, which was given by Rolando/Orlando to Chona, and, in fact, Chona had prior contact with Ohara.

Usec. Baraan : A former witness. But what a former witness. Now tell me, tell me, Mr. Garcia, what in the world is the business of Chona joining your team in going to Bugallon, Pangasinan?

Garcia : Considering that we will be getting a woman, we see to it that the one that will approach the subject would be also a **woman, Your Honor.**

Usec. Baraan : But she was just a former witness. She is *not connected to the NBI? What kind of operation is that, Mr. Garcia? You explain to us how in the world was a woman, she who completely has nothing to do with any kind a NBI project or operation, would be officially, in your team?*

Garcia : **This former witness had a previous contact already with Miss Ohara.**

Usec. Baraan : Ohara. How did you know that? That's a nice a Very revealing testimony here. So this Chona already had previous contact with Ohara, why? Why? Why?

Garcia : **Accordingly, she's getting some text From Miss Ohara, or rather gather information from Miss Ohara of what happen to her properties, Your Honor.**

(Emphasis supplied.)

When the Panel asked for the logbook where the report of Rolando/Orlando was allegedly recorded, Garcia said that the

same was in his house in Caloocan. Asked whether he was authorized to bring said logbook to his house, which is an official property of the NBI, Garcia initially said that whenever there is a change of command, the new Chief would have his own logbook for use at the SMD. However, Garcia later said that the subject logbook was inadvertently placed in the boxes containing his personal belongings when he was suddenly relieved as Chief of SMD.

Usec. Baraan : So, if we will take a recess now and ask you to get the logbook, you can bring the *logbook to the Panel today?*

Garcia : It's hard, Your Honor, because all the things in my office were placed in boxes, and it was **brought home, Your Honor.**

Usec. Baraan : xxx So why are you telling us that that logbook is not easy to find? Why?

Garcia : **It will take some time, Your Honor.**

Usec. Baraan : Why will it take some time to locate that logbook?

Garcia : Because I have to go home to locate it, Your Honor.

Usec. Baraan : You have to go home? You mean it's in your house?

Garcia : Yes, Your Honor.

Usec. Baraan : So, if I go to your office now and complain, let's say I go there tonight and complain, Mr. Garcia, tell you about an emergency case, you will not have a logbook in which to record my report? Is that what you're saying?

Garcia : That logbook is in the office, Your Honor.

This new logbook, but the logbook for
**The whole logbook during my time
are all put in the box and brought
home.**

Usec. Baraan : Brought to your house?

Garcia : Yes, Your Honor.

Usec. Baraan : Including the logbook where the report of
Rolando was recorded?

Garcia : Yes, Your Honor.

xxx xxx xxx

Garcia : No, Your Honor. **When there was a
change of command in the Bureau,
usually the one that is coming in will
have a new one.**

xxx xxx xxx

Usec. Baraan : But are you allowed, Mr. Garcia, to bring the
logbook to your house? Bring out the
logbook from your office and bring it to your
house? Are you allowed to do that?

Garcia : It was one of those things that were pick-up
by my people and put them in the box.

Garcia stated that the NBI team formed to “rescue” Ohara left Manila around 1 o’clock in the early morning of October 29, 2011. The team was headed by Ex-O Cabillan.

As to the specific instruction given by Garcia to the team, he gave different statements thereon:

Garcia : Yes, Sir. With that, I called-up the Ex-O to
arrange a team to conduct a verification in
the place, in Bugallon, Pangasinan.

xxx xxx xxx

Usec. Baraan : You instructed him to conduct an investigation in Pangasinan?

Garcia : **To conduct a verification, if indeed, the information that was relayed to us by Rolando is true.**

xxx xxx xxx

Garcia : After how many hours, around lunchtime or 12 or 1 in the afternoon, Ex-O made a call to me and inform me that there is a sighting that the Japanese lady or Japanese one is in that place in Bugallon, Pangasinan, Your Honor.

xxx xxx xxx

Garcia : And after that, Your Honor, I ordered them to And **when they said that the person is positive and I told them to bring her over to Manila for processing and investigation**, Your Honor.

(Emphasis supplied.)

However, in another portion of his testimony, he said:

Usec. Baraan : Okay. So you used a team to verify whether Ohara's life was in danger as reported to you allegedly by Rolando?

Garcia : **Yes, Your Honor.**

Usec. Baraan : Okay. So that's the purpose of the team, not to get Ohara, but to determine whether her life was in danger?

Garcia : Yes, Your Honor.

(Emphasis supplied.)

Theory # 2: The operation was conducted because a crime has just been committed.

When the Panel asked whether the team Garcia sent to Bugallon was armed with a warrant or had any authorization to barge into the house of the Marzans and to take Ohara with them, Garcia presented a different picture.

According to Garcia, the team barged into the house of the Marzans because a crime has just been committed.

Usec. Baraan : I'm asking you, what authority did they have in barging into the house of the Marzans?

Did you tell them, Mr. Garcia, that they can just barge into the house of the Marzans?

Garcia : **I told them that if they saw the victim, Then "INVITE HER TO COME WITH YOU AND BRING HER TO MANILA", Your Honor.**

xxx xxx xxx

Usec. Baraan : Right. And you are telling us that what your team did in barging into the house of the Marzans to take out Ohara was legal, Mr. Garcia? Is that your training in the NBI?

Garcia : **I believe, Your Honor, that that because we were accompanied Our agents are accompanied by the Immigration, we have the right to get into the house and**

xxx xxx xxx

Usec. Baraan : In that operation that you undertook, did you coordinate with any higher official in the NBI?

Garcia : No, Your Honor.

Usec. Baraan : It was just your own "*judgment call*"?

Garcia : Yes, Your Honor, because we have the After

Operation Report afterwards.

xxx xxx xxx

Garcia : **Well, I'm basing my judgment on the premise, Your Honor, that a crime has been committed, or is just being committed, and just been committed, then we can**

Usec. Baraan : Now, okay. Now, how did you know that a crime was being committed, or has been committed, or about to be committed? How did you know that?

Garcia : The agents should have a personal knowledge on the crime that has been, or is just committed, Your Honor.

Usec. Baraan : What crime was being committed? What crime? And who is committing the crime?

xxx So that was your basis in asking your team to barge into the house of the Marzans, right? That a crime was being committed, or was about to be committed?

Garcia : Yes, Your Honor.

Usec. Baraan : Okay. So tell us what did they tell you? As to what crime was being committed, or was about to be committed?

Garcia : **That Miss Ohara is being physically inflicted harm by the Marzan family, Your Honor.**

(Emphasis supplied.)

In another part of his testimony, however, Garcia stated that Romulo Marzan, one of those who supposedly maltreated Ohara, was merely invited for questioning.

Usec. Baraan : Okay. But if a crime, Mr. Garcia, was being committed, or has just been committed, when

your man swooped into the house of the Marzans, why did they not arrest instead the offenders of that crime that was being committed, or of the crime that has just been committed? Why did they focus on Miss Ohara. And not on the offenders?

Garcia : **I think, the agents invited one of the members of the Marzan family.**

Usec. Baraan : No. No. No. Not invited because a crime was being committed. So, you were justifying your entry because a crime was being committed? What do you do if a crime is being committed in your presence? You arrest the person, right?

Garcia : Yes, Your Honor.

Usec. Baraan : Even if you are a civilian, right?

Garcia : Yes, Your Honor.

Usec. Baraan : Now, whom did you arrest in the Marzan household?

Garcia : I think it was Mr. Romulo Marzan, the head of the family, Your Honor.

Usec. Baraan : **You arrested him?**

Garcia : **No. He was invited by our agents and brought to Manila.**

Usec. Baraan : You don't invite a person committing a crime, or about to commit a crime. You arrest him. Did you arrest him?

Garcia : **I don't know if my agents have booked Mr. Marzan**, Your Honor.

(Emphasis supplied.)

Garcia, however, later reverted to his previous statement that the operation they conducted last October 29, 2011 was to rescue Ohara, and not to arrest her alleged offenders.

Usec. Baraan : *Ang klaro dito*, so what you did despite the fact that your team saw that a crime was being committed, or has just been committed, or has just been committed, is that, instead of arresting the offenders, you rescued the one, who according to you, was the victim?

Garcia : **Yes, Your Honor.**

Usec. Baraan : Okay. **Now, so it's a rescue operation, *tama?***

Garcia : **It's about that.**

Usec. Baraan : Rescue from what?

Garcia : **Rescue from being harm (sic) further by the Marzan.**

(Emphasis supplied.)

Garcia said Ohara was the complainant. But when the team arrived at NBI-Manila on October 29, 2011, Ohara was fingerprinted.

When the Panel asked why it was Ohara who was fingerprinted (which should not have been the case if the NBI truly considered her as the complainant), Garcia reasoned that he and his team were then not yet sure if Ohara was really abused by the Marzans. It was also done to identify her as she was presented to them to have another name.

As to whether there was any communication made with the BI considering that the person subject of the operation is a foreign national, Garcia said that he considered the operation as a joint effort of the NBI and BI because a certain Mags, a confidential agent of BI, joined the team that went to Bugallon. Garcia said he thought that Mags was BI's official representative in the said

operation. He admitted though that he did not verify with Mags whether the latter made any report to his superiors in BI regarding the operation conducted last October 29, 2011.

Usec. Baraan : xxx Okay. She's a foreigner; was not committing any crime in the Philippines.

You had no business detaining her, or having her in your custody. Why did you not coordinate with the Bureau of Immigration immediately? Or, did you coordinate with the Bureau of Immigration?

Garcia : **It's because we have the CA of Immigration, Your Honor, and we feel that the coordination has been made already, Your Honor.**

Usec. Baraan : Who is that CA? CA is a casual employee in the Bureau of Immigration? He has no, no investigative, no arrest powers at all? Did you know that, Mr. Garcia?

Garcia : Yes, Your Honor.

Usec. Baraan : So why would you depend on that guy?

Garcia : He wanted to

Usec. Baraan : He's a casual employee of the Bureau?

Garcia : Yes, Your Honor.

Usec. Baraan : Now, I'm asking you now, did you coordinate with the officers of the Bureau of Immigration?

Garcia : No, Your Honor.

Usec. Baraan : No? Why? Why?

Garcia : **Because we wanted to take down her statement, Your Honor.**

(Emphasis supplied.)

Ohara's One-Month-Long Captivity at NBI-SMD Office

Asked why Ohara stayed for almost one month at NBI-SMD office, which seemed to be not consistent with her supposedly being rescued by the NBI from the clutches of the Marzans or with her being a complainant in a crime which was committed by the Marzans, Garcia stated that they wanted to get Ohara's statement but due to language barrier and also on account of the scheduled visit of the President at the NBI (which kept everyone busy and pre-occupied), it was only on November 18, 2011, or twenty-one (21) days after the NBI took custody of Ohara, that the latter's statement was taken.

Garcia further said that on account of language barrier which allegedly prevented them from immediately taking Ohara's statement, he later sought the assistance of the Japanese police (Mr. Katsuya Hiruta) stationed at the FLD office. However, when asked by the Panel if he could communicate with Ohara, Garcia admitted that Ohara could communicate in English and at times, even in Tagalog.

Usec. Baraan : Now, since you considered her a complainant, did you get her statement?

Garcia : That's when our real problem came in because we had a hard time to take down her statement, Your Honor.

Usec. Baraan : You had a hard time, what?

Garcia : Take down her statement, Your Honor.

Usec. Baraan : Why? Why did you have a hard time taking her statement?

Garcia : **There is some sort of language barrier, Your Honor.**

xxx xxx xxx

Usec. Baraan : When were you able to look for an interpreter?

Garcia : **The Japanese police took down her statement, not on my office already, Your Honor.**

(Emphasis supplied.)

Garcia also said that another reason for the delay in getting Ohara's statement was that she kept on crying and seemed to be traumatized.

Usec. Baraan : So, now, tell me, why did you not get her story then?

Garcia : It's because, Your Honor, as I've said earlier that there is a language barrier, and we cannot intelligently ...

Usec. Baraan : Yah. But a Japanese can come to me right now, I can easily get an interpreter, Mr. Garcia? It's not a barrier at all. It's not an obstacle at all. I mean, if you really wanted to help her, you should have gone out your way to look for an Interpreter. Mr. Garcia, please answer me, because I cannot understand why you had to cling to her, holding on to her for sometime, without really getting her story for a long time?

Garcia : **She is under some kind of a trauma, so we just**

Usec. Baraan : Okay. If she was under some kind of a trauma, did you, did you seek the assistance of a professional, like a psychiatrist, psychologist from the DOH?

Garcia : No, Sir.

- Usec. Baraan : Why? Why did you not do that? I mean, she was suffering from some ailment which you cannot cure? Now she was in your custody, supposed something happen to her while she was in your custody without you doing anything to give her the necessary help and assistance, you would have been the head responsible, right?
- Garcia : Yes, Sir.
- Usec. Baraan : Did you think of contacting the DOH so that the necessary assistance, professional help can be extended to her?
- Garcia : No, Sir
.
- Usec. Baraan : Why? Why?
- Garcia : I simply believe that the state of the recover from that state
- Usec. Baraan : But you are not a professional psychologist? You're not even a doctor, Mr. Garcia. We don't even know if your assessment is correct – that she was suffering from some mental or psychological condition, you don't even know that. Why do you say that she was suffering from that kind of condition by the way.
- Garcia : Because she is always crying all the time and she doesn't eat regularly.
- Usec. Baraan : She was crying all the time. Therefore she could not make a statement, she could not give her statement?
- Garcia : But she fears people also.

(Emphasis supplied.)

To bolster his claim that Ohara was being maltreated by the Marzans, for which reason he and his men “rescued” Ohara, Garcia

volunteered to present to the Panel some pictures of Ohara, where were allegedly downloaded from her camera.

- Usec. Baraan : So did you believe that? *Tinanong mo ba “PAANO NAMAN KITA PANINIWALAAN. SABI MO DITO SINULAT NI OHARA ITO: SAVE ME FROM THE MARZANS FAMILY”* and yet, *ang sabi niya sa yo “ITO BINIGAY SA AKIN NI MISS OHARA BAGO PUMUNTA SI MISS OHARA SA PANGASINAN”*, precisely to be with the Marzan family? *Paano yon?*
- Garcia : **Before, I, myself, I don’t believe it, Your Honor, but getting these pictures from Miss Ohara herself, I now believe that there was an intention to**
- Usec. Baraan : Okay now. Okay now. What you’re saying now is, that Rolando also brought pictures with him?
- Garcia : These pictures, Your Honor, were taken from the camera of Miss Ohara.
- Usec. Baraan : By? By the camera of Miss Ohara?
- Garcia : Yes, Your Honor.
- Usec. Baraan : Now, I’m asking you, you are telling us now that aside from the letter, Rolando also brought pictures with him?
- Garcia : No, Your Honor. **These pictures that I’m talking about, were the pictures that were down loaded from the camera of Miss Ohara.**
- Usec. Baraan : Downloaded from?
- Garcia : The camera of Miss Ohara, Your Honor.
- Usec. Baraan : From the camera of Miss Ohara?
- Garcia : Yes, Your Honor.
- Usec. Baraan : Did you come to know about those pictures before you sent your team to Bugallon?
- Garcia : Not yet, Your Honor.
- Usec. Baraan : So what is the relevance of those pictures?

Garcia submitted the pictures that show some injuries on Ohara's face (hematomas prevalent) and at the back of the ears (a wound appearing).³⁷ The pictures, he admitted later, were actually taken from a camera that he took out from the shoulder bag of Ohara **without the knowledge of Ohara.**

Garcia claimed he had no knowledge of the visits of Glenda Marzan at NBI-SMD office.

As regards Chona, Garcia said he completely trusted her. It was for this reason that he left Ohara to the care of Chona. He admitted that Chona brought Ohara several times to a safehouse somewhere in Tondo, Manila, but a group of NBI agents always followed them. (He did not mention the safehouse in Sta. Mesa.)

When asked by the Panel whether Garcia acted upon orders or in conspiracy with other person(s), he answered in this wise:

Usec. Baraan : *Hindi. Ah, may nagdictate sa yo? Sino? Kung di mo sinulo? Sino? Magsabi ka na mismo dahil pupunta rin tayo dyan, eh? Hindi mo sinulo yan, di ba? May ibang nagsabi sa yo, tama? Tell us, Mr. Garcia? May iba pang nakakaalam ng operasyon, Tama? Tama?*

(Long Pause: No response from Mario Garcia)

Usec. Baraan : Tell us? Because your silence is very revealing, but we'd rather that you verbalize what you are thinking right now,

Mr. Garcia, please? Hindi yan operation na solo mo lang, di ba?

³⁷ Addendum: Pictures of Noriyo Ohara showing some injuries (with signature of Mario Garcia at the dorsal portions thereof) and various other pictures

Garcia : **Yes, Your Honor.**

Usec. Baraan : So, *may mga iba pang involved, di ba? Na mas mataas sa iyo, di ba? Tama?* We can help you, Mr. Garcia, we can meet in a special session if you want. But now you told us that *hindi mo sinulo yan. May iba pang involved dyan, di ba? Tama? Please answer us? Mr. Garcia, wala tayong pupuntahan dito kung ganyan?*

Garcia : **Sir, I rather invoke my right to** remain silent, Sir.

Usec. Baraan : *Ano yon?*

Garcia : I will invoke my right to remain silent, Sir.

Usec. Baraan : But you already answered *kanina di ba, na may iba pang involved dito, tama? Tama, di ba? Para di naman ako magkamali sa narinig ko, tama yon, di ba?*

Garcia : **I only ordered the operation, Sir.**

(Emphasis supplied.)

When the Panel also asked Garcia how his bank details maintained in Banco de Oro (BDO), U.N. Avenue Branch (BDO Account. No. 003940593359) came to be known by the Marzans, Garcia testified as follows:

Usec. Baraan : Okay. Mayroon kang account sa United Nations Branch ng BDO, tama?

Garcia : Yes, Your Honor.

xxx xxx xxx

Usec. Baraan : But you do not know how your your account number is 003940593359. This

was emailed from Japan to the Philippines to the family of the Marzans. Di ba yan ang account number mo? Tama?

Garcia : Yes, Your Honor.

Usec. Baraan : Now, tell me, paano makakarating yong napakasekretoong bank account number mo sa Japan, pagtapos, eemail sa Japan to the Marzan family? Di ba nakakapagtaka? Parang magic ano? Explain mo sa amin kong paanong nakarating itong bank account number na ito? O gusto mong deretsahin kita? Na tumawag si Miss Ohara sa Japan at kanyang idinikta itong number na ito na kinuha sa iyo, tama?

Garcia : Yes, Your Honor.

Usec. Baraan : Tama. Bakit naman mo ibinigay yong iyong bank account kay Miss Ohara at kanyang itatawag yong bank account number na yan sa Japan?

Garcia : **Sabi niya, Your Honor, she needs money para daw sa mga papers niya.**

Usec. Baraan : She needed money to what?

Garcia : For the processing of her papers.

Usec. Baraan : **O bakit sa personal account number mo?**

Garcia : **I don't have an official account under the name of the NBI, Your Honor.**

Usec. Baraan : Oo nga. Bakit sa personal account number mo, di ba? Bakit naman sa number mo? Anyway, how much money was she needing at the time nang itinawag sa Japan?

Garcia : I don't know. It's only a minimal fee, maybe, Your Honor.

Usec. Baraan : Minimal amount?

Garcia : Yes, Your Honor.

- Usec. Baraan : Sinabi niya na, “dito niyo esend sa account number ni Mr. Garcia”, sabi niya? Ganoon ba yon?
- Garcia : May kausap siya noon na Japanese national siguro
- Usec. Baraan : Oo nga. Na sinabi niya na doon dapat sa account number mo ilagay, tama?
- Garcia : Yes, Your Honor.

Alleged Report Made to NBI Director Magtanggol Gatdula of the “October 29, 2011 Operation”

The Panel inquired from Garcia whether he informed NBI Director Magtanggol Gatdula of the alleged letter of Ohara addressed to the former seeking assistance, thus:

- Usec. Baraan : So the letter, having been addressed to Director Gatdula, what did you do with it? Did you bring it to his attention?
- Garcia : Sir, at that time because it is already nighttime, I have it record (sic) on the official logbook.
- xxx xxx xxx
- Usec. Baraan : Since the letter was addressed to Director Gatdula, *did you call him? Di ba dapat tinawagan mo, kasi ang sulat hindi naman sa iyo eh, addressed to Director Gatdula?*
- Garcia : No, Sir. I did not call the Director.
- Usec. Baraan : *Did you call anyone of your superiors?*
- Garcia : No, Sir.

As to where, when and how Garcia informed the Director of the supposed rescue of Ohara, he testified in this manner:

Garcia : Since it was nighttime, I will inform the Director maybe afterwards.

xxx xxx xxx

Usec. Baraan : *What did you mean afterwards? After what?*

Garcia : What I mean, Sir, is **the following day**. I know that the Director, because the following is a Saturday, I know that the Director usually does his rounds. That (sic) what I mean to say.

xxx xxx xxx

Usec. Baraan : *xxx where and when?*

Garcia : It is **either inside the SMD or near the SMD office**, Your Honor.

xxx xxx xxx

Garcia : **On the 29th**, Your Honor.

Usec. Baraan : At what time?

Garcia : **At around more or less 5 to 6 in the afternoon.**

xxx xxx xxx

Usec. Baraan : xxx what did you tell the Director when he went to your office?

Garcia : I told the Director that "**Sir, we rescued the Japanese woman named Noriyo Ohara.**"

xxx xxx xxx

Usec. Baraan : And what did he tell you?

Garcia : The Director said "Okay". "But there is another problem, Sir. I think she is using another name because we have a passport and a driver's license."

xxx xxx xxx

Usec. Baraan : xxx what did the Director tell you when you said that?

Garcia : He said "Okay." Xxx

xxx xxx xxx

Usec. Baraan : xxx when you informed him about the rescue on the night of October 29, 2011, what was his reaction? Was he happy? Was he elated?

Garcia : Yes, Your Honor. He even congratulate (sic) us and even said very good to us.

(Emphasis supplied.)

In another portion of his statement, Garcia testified in this wise:

Usec. Baraan: *Sino yon?*

Garcia : Dir. Gatdula, Your Honor.

xxx xxx xxx

Usec. Baraan : *Anong sinabi mo sa loob ng opisina? Sige? So, ibig sabihin pumasok si Dir. Gatdula sa loob ng opisina mo, di ba?*

Garcia : Yes, Sr.

Usec. Baraan : *Anong sinabi mo?*

Garcia : *"Sir, this is the Japanese woman that our men rescued".*

Usec. Baraan : *Ah, ibig sabihin, doon sa pagsasabi "THIS IS THE JAPANESE WOMAN", parang alam niya yong ginawa niyo, di ba? Alam niya yong ginawa niyo? Sabi mo "BOSS THIS IS THE JAPANESE WOMAN THAT WE RESCUED". Ang ibig sabihin*

- non, alam ni Dir. Gatdula na kayo'y magrerescue ng Japanese woman sa gabi na yon, o sa araw na yon, tama?*
- Garcia : *Hindi pa. No, Sir. That's the first time that sabi ko "May trabaho, Sir, may narescue na Japanese woman".*
- Usec. Baraan : *Ano talagang sinabi mo, "BOSS/SIR, ITO YONG JAPANESE WOMAN NA NIRESCUE NAMIN O SIR, MAY TRINABAHO KAMI NA NIRESCUE NA HAPONESA", ano?*
- Garcia : *"Ito yong trinabaho naming, na narescue", your Honor.*
- Usec. Baraan : *Anong sinabi mo, ang sabi mo "ITO YONG TRINABAHO NAMIN", anong sinabi ni Dir. Gatdula?*
- Garcia : *Sabi ko, Sir, "LUMALABAS PARANG COMPLAINANT ITONG BATANG ITO,PWEDE BANG MAG STAY SIYA DITO SA"*
- xxx xxx xxx
- Usec. Baraan: *So, ano nga, anong sagot ni Dir. Gatdula?*
- Garcia : *"O SIGE, TULUNGAN NIYO KUNG ANONG KAILANGAN".*
- xxx xxx xxx
- Usec. Baraan : *Hindi na siya nagtanong? Hindi siya nagtanong "O, BAKIT IKAW ANG KUWAN NIYAN, BA'T IKAW ANG TROMABAHO NIYAN, BA'T HINDI IBANG AGENTS NG NBI?", hindi ka tinanong?*
- Garcia : ***Alam na po kasi niya na yong pagka ganoon na walang duties, wala yong mga ano SMD ang nag-aact, Sir.... ang nag-reresponse.***
- Usec. Baraan : *Alam niya yon?*
- Garcia : *Yes, Sir.*

(Emphasis supplied.)

As to when and where he showed to Director Gatdula the supposed letter of Ohara, Garcia testified thus:

- Usec. Baraan : And you showed him, you showed the Director that letter?
- Garcia : I think not on that day but on the (sic) later day, Your Honor.
xxx xxx xxx
- Usec. Baraan : That is very clear, Mr. Garcia, that October 29, 2011, the Director already knew about the Japanese woman being in your custody, correct?
- Garcia : Yes, Your Honor.
- Usec. Baraan : And that the following day you handed to him, you showed merely to him the letter of that woman dated August 8, 2011 and that letter was read by Director Gatdula, correct?
- Garcia : Yes, Sir.
- Usec. Baraan : By the way, where did you show him the letter? In his office or in your office?
- Garcia : I think it is **in his office**, Your Honor.

(Emphasis supplied.)

However, when Garcia was made by the Panel to realize that the following day, October 30, 2011, was a Sunday, he retracted his previous statement and said it was on November 3 or 4, 2011, or four(4) or five (5) days after the “rescue operation” that he showed to Director Gatdula the letter of Ohara.

Director Gatdula forwarded to Garcia Tulfo’s text messages to the former – a revelation

Garcia also admitted that he learned that the case of Ohara had come to the knowledge of Ramon Tulfo from Director Gatdula himself, who forwarded Tulfo’s messages about Ohara to him.

- Usec. Baraan: *xxx hindi ba nalaman mo rin na ito’y dumating na nga sa atensiyon ni Mr. Ramon Tulfo, tama?*

Garcia : Yes, Your Honor.

Usec. Baraan: Then *mayroon kang text message na ifinorward sa iyo?*

Garcia : Yes, Your Honor.

Usec. Baraan: ***Sino yong nagforward ng text messages sa yo?***

Garcia : ***Finorward ni Dir. Gatdula, Sir.***

Usec. Baraan: *Sino? Si?*

Garcia : *Dir. Gatdula.*

Usec. Baraan: *Ah Dir. Gatdula. So, ibig sabihin, si Dir. Gatdula was exchanging text messages with Ramon Tulfo, tama?*

Garcia : *Opo.*

Usec. Baraan: ***At saka yong isesend ni Ramon Tulfo, binabato sa yo ni Dir. Gatdula, tama?***

Garcia : **Yes, Your Honor.**

9. CHONA ELEN ESPLANA

November 27, 1968

Bldg. 17, 124 E. Rodriguez, Balut, Tondo, Manila

During her testimony³⁸ before the Panel, Chona Esplana claimed to have the status of an “NBI Agent” giving the NBI sensitive information relative to some operations. Later on, she revealed that she had no official connection with the NBI and had only frequented the NBI-SMD office because of her close association with SI Mario Garcia, the Chief of the NBI SMD. Nonetheless, Chona had full access to the NBI premises at any time of the day and night.

*“CP LEE: Liwanagin ko nga lang ano, Chona, ikaw ba ay asset ng NBI or asset ni Chief Mario?
Chona: Asset po ni Chief Mario Garcia.*

³⁸ Annex AA: TSNs dated December 16, 2011 and December 19, 2011 (Esplana)

She claimed to have some catering and jewelry business and NBI-SMD personnel served as her customers.

In the early evening of October 28, 2011, she was present in the NBI-SMD manning the said office. A certain “Rolando” or “Orlando” approached her and handed to her a piece of white folder. Chona tried to impress the Panel that she attended to the concern of Rolando (or Orlando) since the said person arrived in the evening (7 pm), and there was nobody from the NBI Complaints and Records Section that time.

Following the account of Chona, Rolando told her that he was a concerned citizen and he had a letter of a woman needing immediate help. When she asked for an identification card, Rolando excused himself to get his ID in his motorcycle parked in front of the NBI. **However, Rolando never returned. She testified that Garcia did not see or meet this “Rolando” (or “Orlando”) that night.**

She said she gave the letter to Garcia. Some five hours later, she was asked by Garcia if he could join the rescue operation on a Japanese woman somewhere in Bugallon, Pangasinan.

Dressed in a blue shirt and denim pants, she readily agreed to join the operation since that the subject of the operation was a “woman.”

At around two o’clock in the morning of October 29, 2011, Chona and the rest of the NBI-SMD left the NBI premises. The group traveled then to Bugallon, Pangasinan. When the group reached an unidentified place in Pangasinan, they stopped at a sari-sari store to have their coffee. It was at this time that the

group met with “Labsky” and his two other companions. Two other male persons met with Labsky. They then proceeded to Brgy Gueset, Bugallon, Pangasinan and reached the target area around 8 o’clock in the morning.

Asked how they, without any guide, were able to locate their target in some barangay in Bugallon, Pangasinan, she testified in the following manner:

Usec. Baraan	So tanong, ah, sino ang nakakaalam nung lugar ni.. nung pupuntahan ninyo eh ni isa sa inyo wala namang nakakaalam kung taga-saan yung Ohara na iyon?
Chona	Uh...yun po ang di ko alam Your Honor. Basta dun na kami nagpangita sa Pangasinan ng Labsky na yan. xxx xxx xxx
Usec. Baraan	Hindi, tinatanong kita alam mo ba yung eksaktong lugar na pupuntahan nyo nong gabing iyon?
Chona	Bugallon lang po... ang kwan nila, Your Honor.
Usec. Baraan	Sino sa grupo mo ang nakakaalam ng eksaktong lugar na pupuntahan ninyo sa gabi na yon?
Chona	Uh, yun nag drive po ng van. Yun nag drive po ng van. Kinausap nya po yung Labsky na ang sabi, “Pare, uhh, magkita daw sila”... magkita daw sila doon. Nakasakay po ako don sa van...
Usec. Baraan	Aah okay...
Chona	Noong dumating po kami doon, andoon na po sila...
Usec. Baraan	Labsky?
Chona	Oho. Andoon na po sila Labsky, may kasama pong tatlo. Doon na po kami nagkita. xxx xxx xxx
Usec. Baraan	Tignan mong mabuti, nagkape kayo, pagkatapos

nasalubong nyo si Labsky doon at saka 3 kasama
nya...

Chona Yes yun isang kotse po.

Usec. Baraan Pagkatapos sumakay na kayo sa inyong kanya-
kayang sasakyan?

Chona Hindi po. Isinakay po nila ako sa kotse pagdating
sa Pangasinan.

Usec. Baraan Okay, so sumakay ka na sa kotse pagdating sa
Pangasinan. Anyway, doon sa apat na sasakyan,
ang nanguna yung?

Chona Yung revo.

Usec. Baraan Na ang driver ay taga?

Chona Manila po.

Usec. Baraan Manila. Okay, non-stop na kayo doon sa lugar na
pinagkapehan ninyo hangga't kayo'y humantong
doon sa lugar na pupuntahan ninyo, dire-diretso na
kayo doon di ba?

Chona Dire-diretso na po.

xxx xxx xxx

Usec. Baran Okay. So dumating kayo sa isang lugar sa
Pangasinan, alas-5:00, naghintay kayo ng mga 3
hours...

Chona Mga 2-3 hours po mga ganoon.

Usec. Baraan Umalis kayo between 7 and 8? Papunta doon sa?

Chona Mga 8:00 na po.

Usec. Baraan Mga 8:00 na. okay, bakit kayo matagal sa lugar na
yon?

Chona Nagpaikot-ikot po kami.

- Usec. Baraan Bakit kayo nagpaikot-ikot?
- Chona Ewan ko po. sumusunod lang naman po kami dun sa sasakyan.
- Usec. Baraan Anong ibig sabihin ng paikot-ikot? Saan kayo umikot-ikot?
- Chona Eh... hindi ko po masabi eksaktong lugar na tinigilan naming sa Pangasinan mula po doon malayo pa po ang binaybay naming, may paikot-ikot kami...
- Usec. Baraan When you say paikot-ikot, paikot-ikot, pahinto-hinto ganoon ba yon?
- Chona Opo.
- Usec. Baraan Dahil kayo ay naghahanap ng isang lugar, ganon ba yun?
- Chona Uhh ... ewan ko po di ko masabi kasi sumusunod lang naman kami sa command.
- Usec. Baraan Doon sa mga 2-3 oras na paikot-ikot nyo, kayo ba ay nagtatanong sa mga bahay-bahay?
- Chona Yun pong naunang sasakyan... kasi po di ko po maintindihan ang salita nila eh.
- Usec. Baraan At noong paikot-ikot kayo ika mo, kasama nyo na yung 2 naka.. anong tawag doon? Nakabalabal ng tuwalya sa ulo?
- Chona Di naman po, tuwalya, tuwalya po, di po kasabay po namin... ibang sasakyan.
- Usec. Baraan Ibig sabihin kasama nyo na sa grupo...?
- Chona Kasama na.
- Usec. Baraan Na kayo ay umikot-ikot na at huminto-hinto at nagtatanong-tanong sa mga bahay-bahay?
- Chona Yes Your Honor.
- Usec. Baraan So mga ilang bahay ang hinintuan ninyo?

Chona	Bale apat po.
Usec. Baraan	Bale apat na bahay?
Chona	Opo bahay po.
Usec. Baraan	At nagtatanong siguro kung saan yun pupuntahan ninyo tama?
Chona	Siguro po.
Usec. Baraan	So ganon pala, so kayo ay nakarating sa target na lugar na pupuntahan ninyo dahil.... sa pagtatanong siguro ng mga kasama mo, tama?
Chona	Opo, sa palagay ko po.

The group went inside the compound headed by Mags and Chona, followed by Ex-O Cabillan. Ex-O Cabillan asked the old man having coffee inside a “kiosk” where “Marife Laganas” was. The old man turned out to be Mr. Romulo Marzan, Sr. In a rather vague statement, Chona claimed that she was previously informed by Ex-O Cabillan that Noriyo Ohara and Marefe Laganas was one and the same person.

Ex-O Cabillan then requested Mr. Romulo Marzan if she could bring down the Japanese woman who was then sleeping at the second floor. After a few minutes, Noriyo Ohara went down the stairs and Chona uttered “*I am the one who received your rescue letter.*” Noriyo allegedly replied “*Wait ate*”. Noriyo, as claimed by Chona, hurriedly changed her clothes, and voluntarily went with their group bound to Manila but rode in another vehicle.

Noriyo, along with Labsky, Chona and Ex-O Cabillan and an unidentified driver, boarded a sedan car and proceeded to Manila.

Romulo Marzan Sr. also went with the group to Manila, but rode in another vehicle.

Upon their arrival in Manila, Ex-O Cabillan, Labsky, Romulo Marzan and Noriyo Ohara met with Chief/SI Garcia at the latter's office inside the NBI-SMD. As it turned out, Noriyo Ohara was never subjected to any medical examination. Later that same evening, she was instructed by Garcia to accompany Noriyo inside the SMD. After a few hours, Jacqueline Marzan and Glenda Marzan arrived at the NBI-SMD office and proceeded to Chief Garcia's office. Chona said she observed that one of the Marzans had a casual conversation with Noriyo in the Nihongo language.

She said she only heard later that Director Gatdula went down to visit the office of Chief Garcia. Upon instructions of SI Mario Garcia, Chona took care and kept Noriyo Ohara for almost a month. At times, Chona physically brought Noriyo outside of NBI premises, taking her to Tondo Manila, Tagaytay City, Los Banos Laguna, various places in Pangasinan and Baguio City. (Chona did not mention a Sta. Mesa safehouse.) Chona said she was allowed, if not specifically given instructions by Garcia, to bring Noriyo Ohara to the mentioned places. A number of pictures were shown by Chona evidencing Noriyo's presence in different locations at the time that she was supposedly in the "custody of the NBI-SMD."

Why Ohara was entrusted to her, she said:

*"Usec Baraan: Eh bakit ikaw eh marami naming guwardiya si NBI? Bakit ikaw? Bakit kailangang ikaw? **Di ba nakapagtataka yun? Kung ako yung hepe ng isang opisina, may mga tao naman ako, lalaki pa sila, bakit ikaw ang... na hindi kasama sa NBI, hindi konektado doon, wala kang trabaho doon, bakit ikaw ang magbabantay kay Ohara... sa lahat ng tao?***

*"Chona: **Ahh, ewan ko rin po Your Honor. Di ko pa rin alam.***

xxx”

“Usec Baraan: *Hindi naman, hindi-hindi, hindi mo sinasagot tanong ko eh, **ano ang special na kwalipikasyon mo at ikaw ay pinagbantay ni Chief Garcia kay Ohara?** Yun ang sagutin mo sa akin. Gusto naming malaman kasi dahil yan din siguro ang tanong ng kahit na sinong Pilipino, ano? Isang opisina na may opisyaes, o kaya’y mga empleyado roon, ay ang pinapagawa (ng trabaho) sa isang napakadelikadong trabaho ay isang taong di konektado sa opisina na iyon.*

“Chona: (Long pause) **Your honor, di ko rin po ano... di ko rin po ma-get yun...***basta di ko rin po ma-get yung point ni Hepe, ni Chief Mario Garcia, basta yun gabi pong yun, in-order-an lang po niya ako na... baka pwede ikaw muna ang magbantay dito...*”

On November 20, 2011, after Chona, Labsky, Garcia and Ohara attended a wedding at Pangasinan, the group proceeded to Baguio City to meet with Ex-O Cabillan. Chona narrated that Garcia needed to see Cabillan for the latter **to sign** some document.

“Usec Baraan: *Bakit kayo pumunta ng Baguio? At kasama si Ohara?*

“Chona: *Uhm... pagkakaalam ko po eh... may... documents na dapat papirmahan kay Ex-O Cabillan.*

“Usec Baraan: *Ah, so ibig sabihin meron dala-dala kayong dokumento na ipapipima kay Ex-O Cabillan?*

“Chona: *Opo kasi uhm... si...ano po... si Ex-O Cabillan, umakyat po ng Baguio. He was a counsellor sa PMA...uhh... yun mga documents na dapat niyang pirmahan since naandun si... Ohara sa SMD... ay yung iba dapat papirmahan kay Ex-O pero that time wala si Ex-O naandun siya sa Baguio at nagtuturo po...*

Later on, Ohara was transferred to the NBI-FLD. Chona claimed that before Ohara was transferred to FLD, the latter allegedly entrusted to her some personal belongings. She

promised to deliver Ohara's belongings to the Panel, but only one locked suitcase was delivered to the Panel by her, through Garcia.

She was asked to again appear before the Panel to bring Ohara's other belongings, but she no longer returned.

10. FRITZ GERALD HERNANDEZ ARGENTE
Security Volunteer, NBI-SMD
Security Access Pass Control No. 0009695

Mr. Argente, a law graduate, testified³⁹ that he started to work for the NBI sometime in March 2011 as security volunteer (SV) and a civilian agent. He initially worked at the Internal Affairs Division (IAD) of the NBI and was later transferred to the SMD. Although there was no document showing that he was duly accepted as employee of the NBI, he was nonetheless issued some sort of an Access Pass, similar to an ID, which allowed him unhampered access to the NBI premises. Said Access Pass is renewable every six (6) months and was issued by Mario Garcia.

As SV, he did not receive any compensation, but he admitted that he received allowances every now and then, either from Garcia or Cabillan, for food and/or for his cellular phone load.

On October 28, 2011, he and some other SVs at the NBI headquarters were told by Garcia that a "verification and rescue operation" will be conducted in Bugallon, Pangasinan. A team was then formed and on board four (4) cars (he remembers 1 *Vios*, L300, *Mitsubishi Adventure*, 1 *Nissan Patrol*), the team proceeded to Bugallon. However, only three (3) vehicles went to the place, while the fourth one allegedly coordinated with the local police.

³⁹ Annex BB: TSN dated December 22, 2011 (Argente)

The team was composed of more or less thirty (30) persons, which included the following: (1) Arman Alumisen; (2) Team Leader Ex-O Cabillan, (3) Marvin Del Prado; (4) Chona (Chona Elen Esplana), the only female in the group; (5) Master De la Cruz; (6) son of De la Cruz; (7) Master Bong Romero; (8) Raisi Marquez; (9) Raini Marquez; (10) Labsky (Virgelito Andrade Gutierrez); and (11) Carl Plantado, all of whom are either SVs or civilian agents of the NBI. Although more SVs than regular NBI agents made up the team, Argente added that the members thereof were in NBI uniform polo shirt either colored black or chocolate and each vehicle used in the “operation” carried at least one long service firearm.

11. RUDY B. ARENAS, Jr.
Security Volunteer, NBI-SMD
Security Access Pass Control No. 0062629

Mr. Rudy B. Arenas, Jr., the incumbent Barangay Captain of Bongato, East Bayambang, Pangasinan, alleged in his testimony⁴⁰ and in his Affidavit⁴¹ dated December 22, 2011, that he applied as a Volunteer Agent (VA) of NBI-SMD sometime in June 2011. As VA, he reported twice a month at the NBI headquarters, and as such he helped in giving out application forms for NBI Clearance at Sector 5. But for that he did not receive any salary or allowance. He spent for his transportation from Bongato, Bayambang (Pangasinan) to Manila and vice-versa whenever he reported for work.

Arenas revealed that he applied as VA at NBI-SMD despite full knowledge that he would not receive any salary in the hope of

⁴⁰ Annex CC: TSN dated December 22, 2011 (Arenas)

⁴¹ Annex DD: Affidavit of Rudy B. Arenas, Jr. dated December 22, 2011

becoming a regular employee of the NBI; he was issued an ID, signed by Mario Garcia at the dorsal portion thereof, and what he presumed was an authentic and official NBI badge (with the said ID, he could go in and out of the NBI premises to serve as jail guard at night and at times to assist in the gate); he believed in good faith that as VAs, they were duly authorized employees of NBI, connected with the SMD; he never had any occasion to report to the NBI Director himself; he did not know whether the NBI Director had any knowledge of the presence of VAs at the NBI headquarters.

When he started as VA at the NBI, there were only a handful of them, **but their number grew to more or less 300 VAs.** When asked how VAs are recruited, he stated that applicants simply fill up a form and submit the same to the Office of the SMD. Acceptance of the applicants is the sole discretion of Garcia.

As regards the October 28, 2011 incident, Arenas stated that it was Garcia who called him around 7 o'clock in the evening to go to Bugallon and join in an operation to capture/arrest a Japanese woman on the ground of being an "illegal alien". On board a motorcycle, he and his driver followed the convoy of the NBI team from Manila, which passed by the police station of Bugallon, on board five (5) vehicles. Among those whom he saw were Chona, Labsky and Fritz. He knew Chona and Labsky as he saw them every time he went to the SMD Office, while Fritz was his team leader as VA.

He admitted that he knew that the team had no warrant of arrest at that time, but nonetheless joined the team because it was under the direction of Garcia; that he stood as look-out at the gate of house of the Marzans in Bugallon during the so-called

“operation”; and that later, as instructed by Labsky, he talked to an old man (Romulo Marzan) in Pangasinan in their “kubo-kubo” to convince him to do as they were told so they would not be involved in the case.

Not long thereafter, he saw the Japanese woman go out of the house with an NBI female agent and boarded a vehicle. He was then told that the Japanese woman will be brought to the Bugallon Police Station, but the team headed instead to Manila.

According to Arenas, he believed in good faith that SMD could conduct operations, although he admitted he never joined one except that on October 29, 2011. He added that he heard stories from others that SMD was authorized to conduct similar operations.

On October 29, 2011, he was told by Ex-O Cabillan that per instruction of “Hepe” Mario Garcia, he should sign as a witness on a document evidencing the “turn-over” of the Japanese woman by the Marzans to the NBI-SMD. As he had completely trusted his “Hepe”, he signed the aforesaid document without reading the same and thereafter went back to his hometown in Pangasinan.

When confronted with the document dated October 29, 2011 showing him to be one of the witnesses, he categorically said that the statements therein are not true for he did not talk to the Marzans on October 27, 2011, that is, the day before the NBI team conducted the “operation” in Bugallon, and that he never called Cabillan regarding the “turn-over” of the Japanese woman. He further stated that he did not read the document when he signed the same on October 30 (Sunday) at noontime after arriving at the NBI headquarters in Manila; that he was the very first one to affix

his signature thereon; and that except for Jacqueline Suzuki Marzan, the other Marzans were not around when he affixed his signature.

On 12 November 2011, he saw Ohara in the office of Ex-O Cabillan with Chona, and heard that Ohara was sleeping there.

A few weeks passed and he heard from the other barangay captains that Garcia, the Chief of the NBI-SMD, was relieved from his position and it was then that he recalled signing a document as a witness relative to the “arrest” of the Japanese woman.

IV: VERSION OF THE TEAM LEADER OF THE OPERATION

12. JOSE ODELON CABILLAN NBI Special Investigator Former Executive-Officer, SMD

In the sworn statement⁴² of Jose Odelon Cabillan dated December 15, 2011 and in his testimony⁴³ before the Panel, he narrated in detail his personal knowledge of the facts and circumstances behind the Ohara story.

He was the Executive Officer (Ex-O) of SI Mario Garcia, Chief of the NBI Security Management Division (NBI SMD), from April 2011 until his transfer to the Office of the Deputy Director for Administrative Services on December 6, 2011.

⁴² Annex EE: Sworn Statement of Jose Odelon Cabillan dated December 15, 2011

⁴³ Annex FF: TSNs dated December 22, 2011 and December 27, 2011 (Cabillan)

In the first week of October 2011, Labsky (real name: Virgelito Gutierrez) relayed to him that an informant by the name of Jun Perez (“Rolando”), told him that a rich Japanese woman by the name of Noriyo Ohara (aka Marife Laganas) was living with the Marzans in Bugallon, Pangasinan. The informant allegedly revealed that if the NBI would be able to get the Japanese woman, the Marzans would cough up money to settle with them. Labsky told him that the information was also relayed to SI Mario Garcia and Director Gatdula. In fact, since both Labsky and Garcia could go directly to the Director, they immediately went up to the Director’s office to get his go signal for the operations to get Ohara (“*tatrabahuing Haponesa*”)

Labsky, who is not in any manner connected with the NBI, was described by Cabillan as a close lackey of Director Gatdula way back during the latter’s “QCPD days.”

After the lapse of two (2) days, Labsky informed Cabillan that Director Gatdula (sometimes referred to as “Lolo”) gave his “go signal” to the operation to get the Japanese woman.

On October 19, 2011, Cabillan, Chief/SI Garcia and Labsky proceeded to the NBI Dagupan District Office to coordinate with the office. There, Garcia, Labsky and SI GALLANG spoke with the Chief of Dagupan, JOHNARD MALVAR. He was not part of the meeting with Malvar as he stayed outside the office.

On even date, the group, that included the informant and a woman, proceeded to Brgy. Gueset, Bugallon Pangasinan with the objective of “getting” the Japanese woman. However, on their way to Brgy. Gueset on board two vehicles, Cabillan had second thoughts. He noticed that the informant – who was known to the

people keeping Ohara and to the town Mayor of Bugallon – appeared restless (“*alumpihit*”). He also took note that there was a Police Station at the barangay’s exit point. Thus, he feared that they might be compromised (“*baka sumabit*”), so he advised that the operations be aborted. He was able to convince his companions and they returned to Manila.

On or about October 26, 2011, Labsky approached Cabillan, and the latter insisted that they get Ohara as planned since Lolo (referring to Director Gatdula) already gave his go-signal. Labsky told him to get more people.

Around 10PM of October 28, 2011, some thirty (30) armed men, dressed in brown/black upper garment and tactical pants, arrived at the NBI-SMD premises, most of them “assets” of Chief/SI Garcia. Chief/SI Garcia instructed Cabillan to lead the team to Bugallon, Pangasinan.

At first, he tried to tell them that he could not go because he would be discussing with Director Gatdula the security measures for the upcoming national holiday on November (All Saints’ Day). Ultimately, he went along with the plan and even gave various inputs and advice, such as the need to inform the Foreign Liaison Division (Garcia said he would take care of it by speaking to his “batchmate,” the NBI-FLD Chief), and making an appropriate entry in the logbook of the Duty Agent so that everything would appear aboveboard (“*para maayos ang pag-alis at walang silip kasi ang dami natin*”). Garcia assured him that he had taken care of everything, and he had even seen to the “coordination” with the police. Inquiring of a representative of the Bureau of Immigration (BI) was joining them, he was told that a certain “**MAGS**” was with Labsky and was allegedly from BI.

Chona Esplana was given instructions by Chief/SI Garcia to be the one to enter the Marzan household with the BI Agent.

Around two o'clock in the morning of October 29, 2011, the group left the NBI premises for Bugallon, Pangasinan. On even date, around 8:00 in the morning, the group reached the house of the Marzans located in Brgy. Gueset, Bugallon, Pangasinan. Chona, Labsky, Mags, followed by Cabillan, entered the compound, while some seven to eight armed men followed them and circled the house of the Marzans. The rest of the armed group stayed outside the compound.

Romulo Marzan Sr. tried to stop the group in entering the house. Chona and the BI Agent simply proceeded to the second floor of the house and brought down Ohara, both arms held by Chona on one side and "Mags" on the other. Ohara was shocked and frightened; she could barely walk. Romulo Marzan and his wife were also shocked by what was going on. Cabillan narrated---

"xxxxx

Si Ohara ay gulat na gulat at takot na takot at hindi halos makalakad na inaakay na lang nina Chona at BI Mags;

Ang dalawang matandang Marzan habang napapalibutan ng mga kasamahan naming armado ay nakatunganga na lng at sa sobrang takot ay hindi makapagsalita; Sinabihan ni Labsky si G. Romulo Marzan, ang matandang lalaki na sumama na lang. Sa dami naming at sa mga matataas na kalibreng dala naming baril, wala ng nagawa si G. Marzan kundi sumunod ng walang kibo at namumutla sa takot.

xxx"

During their trip back to Manila, Ohara sat between Cabillan and Chona in the backseat of a car. In front were the driver and Labsky. Romulo Marzan, Sr. was in another vehicle. **Director Gatdula kept calling Labsky and appeared to be**

monitoring their return. Labsky kept reassuring his boss that they were okay, that they were just caught in traffic, and that they already had the subject with them.

The group reached NBI Taft around 2PM of October 29, 2011. Ohara was brought to the office of Chief/SI Garcia. Later on, Jacqueline Marzan-Suzuki (“Jacqueline”), Glenda Marzan (“Glenda”) and a male person arrived in the office of Chief Garcia. Cabillan proceeded to prepare his Incident Report relative to the operation. But he was instructed later by Chief/SI Garcia to set aside said report and instead prepare a “Turn Over Report” to make it appear that the Marzans voluntarily surrendered Ohara to the NBI SMD.

The Turn Over document was signed by Romulo Marzan Sr., Glenda Marzan and Jacqueline Marzan, Cabillan, Chief/SI Garcia and two (2) other witnesses, one of whom was Rudy Arenas.

After the Turn Over document was signed, the haggling for ransom, led by Labsky, began. The negotiation started at ₱100 Million, but was brought down to ₱30 Million and, finally, to ₱15 Million. Hence, it was agreed that the full amount will be paid as soon as possible, after which Ohara would be released by Garcia. Thereafter, Director Gatdula arrived inside the SMD Office and talked with Garcia and Labsky. Cabillan narrated---

“ xxx

Bumaba si Lolo o si Director Gatdula sa SMD at pumasok sa opisina ni Chief/SI Garcia at tinignan si Ohara na kung saan andun din ang mga Marzans. Kinausap siya ni Chief/SI Garcia at Labsky. Nakita kong tumatango tango ang ulo ni Lolo at sabi niya “Maganda yan.” Bago umalis si Lolo nagsabi, “Dokumentuhan na yan.”

xxxx”

After “Lolo” left, Chona bragged to the Marzans, saying: *“Nakita ninyo, hindi bumababa ang Director namin pag hindi magandang kaso kagaya nito.”* She kept telling them that they needed to produce the money as soon as possible.

On the same day, the Marzans brought P1M inside the office of Chief/SI Garcia. He was instructed by Chief/SI Garcia to keep the money for the meantime. Labsky informed him to separate half of the money as the same would be given to “Lolo.”

On October 30, 2011, Cabillan received a text message from **Raul Dimaano (Special Assistant of Director Gatdula) informing him that he would get the Php 500,000 as “Lolo” was bound for Vietnam. (Records show that Director Gatdula left for Vietnam on October 30, 2011).** Thus, Cabillan handed to Dimaano the Php 500,000 in the parking lot in front of SMD. After a few minutes, Labsky and Chief/SI Garcia got the remaining Php 500,000.00 from Cabillan and handed the latter Php 100,000.00.

From October 31 to Nov 1, 2011, Ohara and Chona stayed inside the NBI-SMD.

On November 2, 2011, Jacqueline brought Php4M inside the office of Chief/SI Garcia and placed the same on top of a sofa behind the table. Chona then instructed Jacqueline to call Rosemarie Ugawa and demanded for the remaining amount. Cabillan received instructions from Chief/SI Garcia to keep the 4M inside Cabillan’s Office.

On November 3, 2011, Chief/SI Garcia and Labsky got the money from Cabillan and the latter was given Php 200,000.00. Labsky said that he would take care of the **Director's and the informant's share** (*"Ako na bahala kay Boss at sa Alpha"*), while Chief/SI Garcia said he would take care of the share of someone he called "Bossing" (*"Ako na bahala kay Bossing ko"*). The latter even said, *"Sasabihan nanaman ako nito ni A.D. --- Mar, san galing 'to? Baka makulong na tayo."* (Cabillan says the reference was to Assistant Director de Lemos.)

On November 4, 2011, Cabillan decided to have his hands off from the operation. In the ensuing days, he would often see Chona and her children inside the NBI-SMD premises together with Ohara.

On November 20, 2011, while Cabillan was in the NBI Academy in Baguio City, he was visited by Chief/SI Garcia, Labsky, Chona and Ohara. Chief/SI Garcia was there to ask him **to sign the Incident Report on the concocted Ohara rescue**. Cabillan recounts—

"xxx

Mga November 20, 2011, pumunta sila Ohara, Chief/SI Garcia, Labsky at Chona sa NBI Academy Baguio City para papirmahan ang Incident Report ko dated October 29, 2011 re: Ohara rescue;

Doon din nila pinakita ang sulat ni Ohara na nakalagay sa mismong white folder na may Japanese characters at English translation na dated 8.8. 2011 addressed kay Director Gatdula;

Alam kong gawa-gawa na lang ang sulat ni Ohara kasi yuon ang unang pagkakataong na Makita ko yon;

Nagulat ako at kinutuban kung saan nila gagamitin ang mga dokumento. Nararamdaman ko na gumagawa ng paraan sina Chief/SI Garcia upang pagtakpan ang tunay na dahilan sa pagkuha kay Ohara.

xxx"

Chona also informed him about the arrangements they made with the Marzans regarding the balance: the house and car of Rosemari Marzan-Ugawa would be sold; ₱12 Million of the proceeds would be given to Ohara and, from that amount, Ohara would give them (Chief/SI Garcia, *et al.*) ₱6 Million. Chona even said that she would go to Japan with Ohara, and that such arrangements had been cleared with the Japanese Embassy.

Subsequently, on December 5, 2011, Cabillan and Garcia were relieved from their respective posts and were transferred to the Office of the Deputy Director for Administrative Services.

On December 6, 2011, Cabillan received a call from Director Gatdula for the first time. He was asked to report to his office along with Chief/SI Garcia. When he reported as ordered, he was asked by the Chief of Staff of the Director to answer some queries relevant to the Ohara case. (The queries are presumably those contained in the December 6 Memo of Secretary De Lima to Director Gatdula).

On December 8, 2011, Cabillan again received a call from Director Gatdula requiring him to report to the latter's office. During the meeting at the NBI Library, Atty. Endrenal, SI Boy Zamora, a certain Carbonel and Director Gatdula were present. Labsky and Chief/SI Garcia later joined them. Cabillan narrated—

“xxx

- *Nakaharap noon ang Chief of Staff (Atty. Anthony Endrenal) Spokesperson (SI Boy Zamora) at Hepe ng PIO ng NBI (Carbonel) ang magsabi si Director Gatdula sa akin, “Di ba Odie di ko naman tao si Labsky?” “Tsaka di ko alam yang operation na yan.”;*

- *Laking gulat ko na itinanggi niya si Labsky at mukhang naghuhugas kamay na. Dumating sila Chief/SI Garcia at Labsky at sa Library ay pinatawag ni Director Gatdula ang Hepe ng IAD (Atty. Beltran);*
- ***Dito na nagsabi si Director Gatdula na “Someone has to sacrifice.” “Dapat may umamin na” “Damage control na tayo para tumigil na to”;***
- *At sinabi naman ni Atty. Beltran, “Mario, damage control na ito, dapat dito na tumigil ito para di na tamaan si Director.”*
- *Tumayo si Chief/SI Garcia at nagsabi, “Sige Sir, I’ll take full responsibility.*

xxx”

On December 13, all four of them (along with Chona) met at the Treehouse Grill in Matalino Street in Quezon City. While they ate, Chona said that she had the key to the house in Las Piñas, Labsky said he had the key to the BMW and its OR/CR, and Chief/SI Garcia told them *“Kayo na ang mga bahala sa mga nasa inyo at ako bahala kung anoman ang nasa akin.”* Chona also said, *“Pagsalitain lang ako ng DOJ malalaman nila na di na nila makukuha ang loob ni Ohara kasi Mommy na n’ya ako bago pa s’ya i-turnover sa BI.... Humahalik at Masaya s’yang kasama ng mga anak ko.”*

On December 14, 2011, Cabillan and Chief/SI Garcia proceeded to the NBI Office after the latter testified in the hearing conducted by the Panel. Garcia briefed him how to answer the questions of the Panel.

“ xxx

- *Pagkatapos isalang sa panel si Chief/SI Garcia ay dumiretso kami sa NBI at dito hinabilinan niya akong pag aralan kong mabuti ang gawa gawang sulat ni Ohara. likot mo ang panel at hwag kang aamin na may pera. Dito ipinakita rin niya na may sulat si Ohara sa Presidente ng Pilipinas. Nagulat ulit ako dahil alam ko namang walang ganitong sulat si Ohara at hindi ko alam saan galing iyon.*

Mas lalo akong natakot at mukhang ginagawa lahat ni Chief/SI Garcia ang pag iimbento ng dokumento para mapagtakpan ang tunay na pangyayari;

- *Hanggang sa pag-uwi ay nag-iisip pa din ako sapagkat pilit akong sinabihan ni Chief/SI Garcia bago kami maghiwalay at umuwi, "Pag-aralan mo Ex-O laman ng sulat ni Ohara kasi siguradong gigisahin ka sa Panel*

xxx "

Instead of appearing before the Panel the next day, Cabillan prepared his statement on the Ohara incident, writing it in some secure location. He did not report to the NBI for a whole day. Director Gatdula kept on calling him but he did not answer the call anymore. Chief/SI Garcia was also texting and calling him, but Cabillan ignored Garcia. He kept on writing his statement, now firmly resolved to tell all to the Secretary of Justice and the President.

V. VERSION OF THE NBI

13. ATTY. MAGTANGGOL B. GATDULA NBI Director

Director Gatdula disclosed the following: that he spent 37 years in the police service and had been serving the NBI for 17 months; he learned about the Ohara case during the time that NBI's budget was being heard in a plenary session of the Senate of the Philippines on November 15, 2011. Deputy Director Esmeralda then informed him that Ramon Tulfo wanted to bring to his attention a very serious case involving a Japanese woman, and so (Director Gatdula) called up Ramon Tulfo. On November 17, 2011,

he issued a Memorandum⁴⁴ to Atty. Rickson L. Chiong, Deputy Director for Administrative Services (Attn: Chief, Security Management Division) directing the submission, **within 24 hours upon receipt thereof**, of a report on the reported extortion committed against a Japanese national who was allegedly in their custody. This was after he exchanged text messages with Ramon Tulfo. Considering that the NBI was in the thick of its preparations for its 75th Founding Anniversary celebration on November 23, 2011 where President Benigno S. Aquino III would be the Guest of Honor, **DD Chiong advised him that they would look into the matter after the said event⁴⁵. He was not able to follow up Garcia's compliance to his Memorandum.**

His knowledge of the Ohara case and Garcia's operation is amplified in his answers⁴⁶ to these questions of the Panel:

Usec. Baraan : So you were able to determine for yourself that Ohara was in the custody of Chief Garcia?

Dir. Gatdula : Yes, Your Honor

Usec. Baraan : So, did you ask him why Ohara was in his custody?

Dir. Gatdula : The usual, as mentioned in his report in December 1, rescue operation, because she is being kept in Pangasinan against her will

Usec. Baraan : So, as early as November 17, 2011, he was already telling you that he rescued Ohara from a certain family in

⁴⁴ Annex GG: Memorandum of Director Gatdula to DD Chiong and Mario Garcia dated November 17, 2011

⁴⁵ The celebration of NBI's diamond anniversary was held on November 23, 2011; See <http://www.nbi.gov.ph/pressreleases.html>

⁴⁶ Annex HH: TSN dated December 22, 2011 (Gatdula)

Pangasinan.

Dir. Gatdula : Yes, Your Honor.

Usec. Baraan : That is the reason why Ohara was in his custody?

Dir. Gatdula : Yes, Your Honor

Usec. Baraan : And were you not surprised that it was Chief Garcia who did the rescue and not any other unit in the NBI?

Dir. Gatdula : You know, Your Honor, by function of his division, he is not allowed to conduct operations without clearance from his Deputy Director nor the Assistant Director and the Director. Second, all operations of the NBI is covered by a case operation plan issued by the Director or if it is being requested by the Deputy Director concerned.

Usec. Baraan : That is right. But now he admitted to you as early as November 18, 2011, that he, the Chief of the Security Management Division (SMD) in-charge only with the internal security of the NBI, he and a team composed by him went to Bugallon, Pangasinan to rescue a Japanese woman. Did he not admit that to you that that was totally irregular, even illegal?

Dir. Gatdula : I do not think so, that is illegal, Your Honor, because according to him, somebody requested that the Japanese woman to be rescued. So, since it is a Japanese woman, I told him to check with the Foreign Liaison Division because we have a Japanese policeman to check on the background of that Japanese woman, if she really is wanted by the Yakuza or as alleged by Mon Tulfo.

He had several versions on the Ohara letter. At one time he said he learned about the supposed letter of Ohara dated August 8, 2011 which Chief/SI Garcia handed the same to him after the controversy already broke out. (He was referring to Tulfo's December 3 column.) He called the attention of Chief/SI Garcia reprimanding him **why the letter was given to him only during that time.** He also believed that Chief/SI Garcia may have received the letter maybe days prior to the operation and on the night before the operation was conducted.

Between November 18-20, 2011, Ohara was brought to his office and stayed there for about 10-20 minutes. He remembers that Katsuya Hiruta (Japanese Police Inspector and Liaison Officer assigned at the FLD), Atty. Claro De Castro, Jr. (Chief of FLD), and SI Mario Garcia (Chief of SMD) were there during the meeting, where he gave instruction to them to coordinate with the Japanese Consul and turn over the custody of Ohara to the FLD.

He continued to communicate with Ramon Tulfo **and informed him that they would need complainants to start the investigation.**

On December 1, 2011, his office belatedly received a Memorandum⁴⁷ dated November 29, 2011 from Chief/SI Mario A. Garcia, where he (Garcia) denied that he extorted money from Ohara and **reported that the latter was already under the temporary custody of the NBI-FLD, with the resident Japanese police Katsuya Hiruta handling her case, and that "Ms. Ohara was waiting for her papers and documents in order to legalize her stay to this country".**

⁴⁷ Annex II: Memorandum of Mario Garcia to Director Gatdula dated November 29, 2011

On December 2, 2011, he received a call from Secretary De Lima, who instructed the turnover of Ohara to the Bureau of Immigration (BI). He immediately called up Atty. De Castro who informed him that (1) Ohara cannot be turned over to the Bureau of Immigration since she was already in the custody of the Japanese Embassy as early as November 21, 2011 (found by the Panel to be a total falsehood), and (2) the Japanese Consul would talk to Ohara and would like to meet with the Secretary on Monday (December 5, 2011). He relayed these information to the Secretary.

After Ramon Tulfo came out with his article about Ohara, he instructed IAD Chief, Atty. Elizaldo Beltran, to liaise with him. When Atty. Beltran asked for guidance considering that no complainants had come forward, **he gave instruction to proceed with the investigation of Chief/SI Garcia and SI Cabillan for violation of policies, rules and regulations;** he was informed by IAD that investigation was continuing.

When the Panel informed him of the letter⁴⁸ of Chief Consul Kenji Endo stating that Ohara was brought to the Japanese Embassy only for a brief period (40 minutes) on November 28, 2011, and that Ohara was turned over to the Japanese Embassy after 9PM of December 5, 2011, he admitted that he was not aware of those facts and was made to understand that Ohara was already turned over to the Japanese Embassy on **November 18, 2011;** knowing that Ohara was already turned over to Katsuya Hiruta, he assumed that the turnover to Hiruta was tantamount to a turnover to the Japanese Embassy; he disclosed that it hurt him to learn from the Panel that the report submitted to him by Atty. Claro De Castro was false but could not say whether Atty. De Castro misled or lied to him.

⁴⁸ Annex JJ: Letter of First Secretary and Chief Consul Kenji Endo, Embassy of Japan, dated December 20, 2011

When he received the Memo of Secretary De Lima dated December 6, 2011, he instructed Garcia and Cabillan to answer said memo. (Garcia and Cabillan did not answer the Memo).

When asked about Chona and Labsky, he mentioned that he inquired about Chona and learned that she was a Confidential Agent (CA) of Chief/SI Garcia. He also admitted knowing Labsky and he knew that he was always with Chief/SI Garcia; however, he was informed that Labsky never appeared anymore at the NBI when the scandal broke out. He said he had Labsky's cellphone and called him after Tulfo came out with his expose but Labsky did not answer his calls.

He admitted that he visited the SMD office on October 29, 2011 as part of his routine inspection. **He does not remember meeting or even noticing Ohara during that visit;** he saw the Japanese woman only sometime November 18-20, 2011 when she was brought to his office. What he vividly recalled was the rice cooker lying on the floor, to which he remarked that the use thereof was not allowed in the office premises.

When asked about the exclusive jurisdiction of the BI on cases of foreign nationals who violate immigration laws, he admitted that he was aware of the June 30, 2011 letter of Commissioner David. However, he was briefed as well that under the NBI law, they could still take jurisdiction of the case of Ohara, specifically on how Ohara got a Philippine passport.

He admitted that one of the operational lapses was the turnover of Ohara to the Japanese police instead of directly to the Japanese Embassy. He is also aware of the protocol that where a foreign national is the subject of investigation or arrest, the law

enforcement agency only informs the embassy/consular office of the foreign national, but does not turnover said foreigner to the embassy while investigation is ongoing.

He revealed that SMD's functions did not allow Chief/SI Garcia to conduct the operation and his alleged operation was not covered by any Case Operation Plan (COPLAN) approved by the Director. There was no coordination made to his office and no papers were submitted regarding the operation. He also agreed with the observation that if it were a valid rescue operation, it should have been reported to the press as an accomplishment of the Bureau, and that coordination should have been immediately made by the NBI with the Japanese Embassy and the BI. He also agreed that it followed that the people from whom Ohara was "rescued" should have been investigated.

He admitted that he overturned the recommendation arrived at during the Directorial Staff Meeting of December 5, 2011 to transfer Chief/SI Garcia to Zamboanga City and SI Cabillan to Pagadian City, and instead assigned them to DDAS in order to make them readily available for investigation.

14. ATTY. MEDARDO G. DE LEMOS NBI Assistant Director

AD De Lemos testified⁴⁹ that he had been with the NBI for more or less 27 years since 1985; he was appointed as Assistant Director in September 2010 by Pres. Aquino; he has direct supervision over the six (6) Deputy Directors.

⁴⁹ Annex KK: TSN dated December 22, 2011 (De Lemos)

He only learned about the Ohara case when he received a directive to conduct a full-blown investigation coming from the Office of the Director. Prior to the directive of the Office of the Director, not a single person told him of the presence of Ohara within the NBI SMD premises. Thereafter, he directed Deputy Director Chiong and IAD Chief Beltran to conduct their investigation on the matter.

AD De Lemos admits knowing Chief/SI Garcia, who had been instrumental in keeping order among applicants for NBI clearance when they massed up in the main office. He denied having recommended him as Chief of SMD, but stated that any assignment is a collegial decision of the Directorial Staff.

When asked by the Panel why he did not conduct an investigation of his own given the serious accusations hurled against the NBI-SMD unit, he reasoned out that the SMD is under the Deputy Director for Administrative Services, and the Internal Affairs Division (IAD) is the proper office to conduct such investigation; and since the directive of the Office of the Director was already addressed to all 3 units, he did not issue his own written directive.

He scored the irregularity of the operation. In his opinion, the SMD cannot do any operation **even if there was an order since it is not an operating unit.**

When asked about command responsibility, he was firm in saying that the matter was under the direct supervision of Deputy Directors; that it would be unfair to attribute fault to the superior any malicious and intentional failure of the subordinate.

15. ATTY. RICKSON L. CHIONG
NBI Deputy Director, Administrative Services

DD Chiong testified⁵⁰ that he knew nothing about the operation conducted by the SMD upon orders of Chief/SI Mario Garcia. He confirmed that the SMD has no mandate to receive complaints since the same is lodged with either the CRD or the Duty Agents. When he received the Memorandum of the Director dated November 17, 2011, he conducted a search in the NBI building but did not find Ohara. He also asked Chief/SI Mario Garcia to explain, but Garcia denied everything about the extortion.

He is also of the position that Garcia's operation was highly irregular.

On November 18, 2011, he met the Japanese woman and he had the impression that she was there to complain since she had a letter addressed to the Director. He, together with SI Ariel Nunez, Katsuya Hiruta, brought Ohara to the office of Director Gatdula so that her statement may be taken. Atty. Claro De Castro, Jr. followed to the OD. Director Gatdula **had some questions on Ohara regarding her letter seeking the help of NBI to recover her properties in the Philippines.** Ohara was also asked about the extortion reports, but she allegedly said there was no truth to those allegations.

On December 3, 2011, he received a copy of the article in Tulfo's column with the marginal note of Director Gatdula to conduct a full-blown investigation. **He did not conduct his own investigation because there are no witnesses who came to his office and he later learned that they went to Ramon**

⁵⁰ Annex LL: TSN dated December 20, 2011 (Chiong)

Tulfo instead. He tried to get in touch with Ramon Tulfo, but he was unsuccessful. He left the matter of the investigation to the Internal Affairs Division since it was also given the directive to do the investigation.

He did not receive any written explanation from Chief/SI Mario Garcia or follow up with Chief/SI Garcia regarding the latter's compliance with the Memorandum to Explain dated November 17, 2011; he was told that Chief/SI Garcia submitted the explanation directly to the Office of the Director, giving the impression that he was bypassed by Garcia.

On December 5, 2011, he, together with Chief Consul Kenji Endo, Atty. Claro De Castro, Jr., and Japanese police Katsuya Hiruta met with the Secretary of Justice, where the Japanese consul allegedly tried to insist to have custody of Ohara to know the circumstances surrounding the Ohara incident.

He admitted that he had been hearing rumors about the Japanese woman even before November 17, 2011. **He did not act on those rumors since he, as a lawyer, banks only on hard evidence.**

He was aware of the Security Volunteers (SVs) being hired by the SMD. A few weeks after his assumption as DDAS, he in fact called the attention of Chief/SI Garcia over the same. He claims that in a Memorandum⁵¹ dated November 22, 2011, he ordered Chief/SI Garcia to get rid of those volunteers. The Memorandum, however, only instructed Garcia to keep the SVs away during the

⁵¹Annex MM: Memorandum of DD Chiong to SMD Chief Garcia dated November 22, 2011

75th Anniversary celebration of the NHI as the President was attending the occasion.

16. ATTY. REYNALDO O. ESMERALDA
NBI Deputy Director, Technical Services

DD Esmeralda narrated⁵² that he had no personal knowledge about the case of Ohara. He knew about it when Mr. Ramon Tulfo called him sometime November 15, 2011 asking for help to locate a certain Miss Ohara, who was supposedly detained in the NBI allegedly by Mario Garcia, the Chief of the SMD. He immediately called up DD Ruel Lasala, DD for Intelligence Services, to inquire if their men apprehended a certain Ohara. He was told by DD Lasala that they had not arrested any person by that name.

They were at the Senate for the plenary hearing of NBI's budget. He informed Director Gatdula about the call of Mr. Tulfo and that the latter had been trying to reach him. Director Gatdula replied that he never received any call from Mr. Tulfo. DD Esmeralda gave Mr. Tulfo's contact number to Director Gatdula and told him that it would be best that he touched base with Mr. Tulfo since the Chief of SMD was doing something fishy. He gathered that Director Gatdula and Ramon Tulfo were able to get in touch with each other.

When the budget hearing was deferred, he got back to his office and instructed his staff to call the NBI jail personnel to verify if they had custody of Ohara. His staff was able to talk to the duty guard, who said that there was no Japanese woman there. He then instructed that Mario Garcia be contacted, but the latter could not be reached through his cellphones. They were able to contact him

⁵² Annex NN: TSN dated December 21, 2011 (Esmeralda and Lasala)

at the office of Assistant Director De Lemos. When he was able to finally talk to Chief/SI Garcia and inquire if he had custody of Ohara, Chief/SI Garcia replied “*Sir, titingnan ko muna*”. He then requested for feedback after Garcia was done with his checking or verification. He called Mr. Tulfo to relay what he got from Chief/SI Garcia and told him that he suspected that Garcia, judging from his answer to him, indeed was keeping Ms. Ohara. Chief/SI Garcia ignored DD Esmeralda’s request for a feedback.

Considering that SMD is under DDAS, DD Esmeralda remembers advising DD Chiong sometime November 16, 2011 to conduct an investigation on Mario Garcia because of the derogatory report that he took custody of a Japanese woman. DD Chiong told him that he would have the matter investigated.

The next time that DD Esmeralda talked about the Ohara case with Director Gatdula was on December 8, 2011, when he was requested by the director to intercede since Mr. Tulfo was hitting him in his columns. While DD Esmeralda replied that he did not have control over what Mr. Tulfo would write, he still called Mr. Tulfo and requested that the Director’s side be heard. Thereupon, Director Gatdula and Ramon Tulfo had a breakfast meeting in the Peninsula Hotel and the next column of Ramon Tulfo reprinted portions of the letter of Director Gatdula.

DD Esmeralda confirmed that the SMD is not an operating unit and has no business engaging in a police or law enforcement operation.

When asked about the appointment of Chief/SI Garcia as SMD Chief, he stated that, on a personal note, he considered it unusual for a Special Investigator IV to occupy such position. The

qualification standard is that the holder thereof should be a regular agent (lawyer or CPA) with the rank of a Head Agent. SI IV position is two (2) grades lower than a Head Agent. He admitted that SI Mario Garcia was handpicked by the Director and the Assistant Director to become Chief of SMD.

DD Esmeralda disclosed that he was the one who moved during the December 5 Directorial Staff Meeting that Garcia and Cabillan be relieved from SMD and reassigned to their Mindanao units. He cited the policy of the Bureau to reassign people who are subjects of derogatory reports that tarnish the name of the NBI. Besides, Chief/SI Garcia was also involved in an indiscriminate firing incident last November 17, 2011. The Deputy Directors decided to recommend such course of action to the Director. He later learned from DD Chiong that Director Gatdula overturned the decision and instead assigned Garcia and Cabillan to the ODDAS.

17. ATTY. RUEL M. LASALA
NBI Deputy Director, Intelligence Services

In his testimony⁵³, DD Lasala confirmed the statement of DD Esmeralda that the latter inquired about the person of a Japanese woman named Ohara. When he received the call, he verified from his intel units and he was informed that they did not have custody of Ohara. He called up the people of DD Arugay, since they are also operating units, to inquire if they had custody of the Japanese woman. He also got negative results. His people also asked the NBI Jail and he was informed that there was no Japanese woman there by the name of Ohara.

⁵³ ibid

DD Lasala cited that the SMD was previously under the Intelligence Service (IS). He knows that the principal tasking of SMD is to secure the NBI premises, to receive detainees and bring them to the court where there are hearings. **Not being an operating unit, Chief Garcia and his men acted without authority, he said.**

When asked if SMD was using security volunteers when it was still under the IS, he replied in the negative since they only used security guards in the plantilla and the IS was sometimes augmented by regular agents. DD Lasala was not aware of security volunteers who were recruited by Chief/SI Garcia. He surmised that they might be CAs who augmented the workforce considering the limited manpower of the office. He also agreed that it was highly irregular for individuals like Chona, who is neither security volunteer nor CA, to join operations and be the custodian of a person who was supposedly under the custody of the NBI.

DD Lasala also denied being one of the “pogi” referred to in Tulfo’s columns.

18. ATTY. CLARO A. DE CASTRO, JR.
Chief, NBI Foreign Liaison Division

Chief De Castro informed⁵⁴ the Panel that he came to know about the case of Ohara only on November 18, 2011 when DD Chiong called him up. On said date, he met Ohara for the first time in the office of DD Chiong. Ohara was then interviewed with the help of Japanese Police Katsuya Hiruta, who is detailed at the FLD. Ohara allegedly said that she voluntarily appeared in the NBI. She also allegedly denied any form of extortion by the NBI against her.

⁵⁴ Annex OO: TSN dated December 20, 2011 (De Castro)

Thereafter, he, DD Chiong and Mr. Katsuya Hiruta brought Ohara to the Office of Director Gatdula. The specific instruction he received from the Director was to assist the Japanese woman. Hence, he instructed Mr. Katsuya Hiruta to inform the Japanese Embassy. Considering that those allegedly involved in the reported extortion were from SMD, the FLD took custody of Ohara. Besides, it is the FLD that liaises with foreign embassies in the Philippines.

On November 21, 2011, SI Ariel Nunez took the statement⁵⁵ of Ohara. On even date, the FLD supposedly turned over the custody of Ohara to the Japanese Embassy **through Katsuya Hiruta.**

Regarding the inquiry of Secretary De Lima about the whereabouts of Ohara, he informed the Director that he had already turned over Ohara to the Japanese Embassy as early as November 21, 2011. He stated that Katsuya Hiruta confirmed receipt of the letter⁵⁶ dated November 21, 2011 where the FLD referred Ohara **for possible assistance that may be extended by him or the Japanese Embassy.** (Note: “for possible assistance” by, not turnover to, the Japanese Embassy.) He also admitted that the FLD prepared a Memorandum⁵⁷ to the Director dated December 2, 2011, which was forwarded to the Secretary on the same day.

When confronted by the Panel about the information from Consul Endo of the Japanese Embassy that Ohara was brought there only twice, the first time on November 28, where Ohara stayed for about forty (40) minutes, he admitted that he did not

⁵⁵ see footnote 22

⁵⁶ Annex PP: Letter of Atty. Claro A. De Castro, Jr. to Katsuya Hiruta dated November 21, 2011

⁵⁷ Annex QQ: Memorandum to the Secretary of Director Magtanggol Gatdula dated December 2, 2011

verify if Katsuya Hiruta really turned over Ohara to the Japanese Embassy. He insisted that the information contained in his Memorandum dated December 2, 2011 was not false.

He also admitted that he failed to do the following: (1) to personally call the Japanese Embassy to inform the proper officials therein about Ohara; (2) to verify from the Japanese Embassy whether Mr. Katsuya Hiruta actually turned over Ohara to the Japanese Embassy; and (3) neither did he ask Hiruta about it. He likewise admitted that he received no document from the Japanese Embassy acknowledging its custody of Ohara.

He also stated that on November 18, 19 and 20, 2011, the days during which the FLD took custody of Ohara, the FLD did not actually exercise control over Ohara as he did not think that the FLD had any reason to stop her from going to the other offices of the NBI, such as the SMD.

19. ATTY. ELIZALDO A. BELTRAN
Chief, Internal Affairs Division

In his testimony⁵⁸, Chief Beltran learned about the Ohara case when he read the column of Ramon Tulfo on December 3, 2011. Immediately upon reading, he sent a text message to Director Gatdula and reported the “bad news” that certain NBI officials and agents are being accused of kidnapping for ransom. Director Gatdula replied and gave him instruction to investigate the matter.

On December 3, 2011, he received the clipping of Tulfo’s column with the marginal note of the Director of even date “to

⁵⁸ Annex RR: TSN dated December 20, 2011 (Beltran)

conduct a full-blown investigation”. Pursuant to the directive, he visited the FLD office at around 9AM-10AM of December 5, 2011 to get some information on Ohara. He was informed by the FLD that Ohara was with the Japanese Embassy and was advised by SI James Toso of FLD to talk to Atty. Aurora Romano, counsel of the Marzans, who had just left their office and who was also looking for Ohara. When he saw Atty. Romano, he was informed that the Marzans were afraid to talk to the NBI. He was able to talk to Katsuya Hiruta, but he got nothing from Hiruta, **who insisted that he was a police officer and not connected with the Japanese Embassy.**

He informed the Panel that his investigation was stalled because there were no complainants or witnesses to establish the criminal liability, if any, of those involved. Instead, he concentrated on the administrative aspect of the investigation to determine the liability of Chief/SI Garcia and SI Cabillan for their lack of authority to conduct the operation, based on the Memorandum⁵⁹ of Atty. Endrenal, Chief of Staff, Office of the Director. At the time he appeared before the Panel, his investigation had not progressed since Chief/SI Garcia and SI Cabillan had not submitted their answer to the Memorandum⁶⁰ he sent them.

⁵⁹ Annex SS: Memorandum of OD COS Atty. Anthony Endrenal to IAD Chief Elizaldo Beltran dated December 12, 2011

⁶⁰ Annex TT: Memorandum of Atty. Beltran to Chief/SI Garcia and SI Cabillan dated December 12, 2011

20. ATTY. JOHNNARD MALVAR
Agent-in-Charge, NBI Dagupan District Office

Atty. Malvar testified⁶¹ that he is the Agent-in-Charge of NBI Dagupan District Office since April 2011. He came to know about Ohara's case when he read the story online on the day it came out.

He confirmed before the Panel that Chief/SI Mario Garcia, his Executive Officer Jose Odelon Cabillan and some others arrived in their Office on October 19, 2011 on board two (2) vehicles. He vividly remembers the date because NBI Dagupan was also scheduled to have an operation in San Carlos, Pangasinan that day. Chief/SI Garcia informed him that they were there to serve a warrant of arrest on a female person in Bugallon, Pangasinan and mentioned a Filipina name. He gathered that one of the cars used by Chief/SI Garcia proceeded to conduct surveillance in Brgy. Gueset, while the other one remained in their office premises.

When he inquired if Chief/SI Garcia had a Special Order (SO), the latter replied in the negative and further stated that the activity was "order ng taas". Hearing that, he did not anymore ask for details. When asked to explain his understanding of "*order ng taas*", he stated that it could mean that the order was given either by the Director, or the Assistant Director or the Deputy Director in charge.

He did not receive any coordination, written or otherwise, at any time regarding the October 29 operation. He explained that coordination entails the giving of details of the operation and rendering possible assistance to the operating team, if requested.

⁶¹ Annex UU: TSN dated December 26, 2011 (Malvar)

When the news on Noriyo Ohara surfaced, he did not initially think that the case involved the same woman who was to be arrested by Chief/SI Garcia when he coordinated with his office on October 19, 2011.

21. VALIANT B. RAGANIT
NBI Special Investigator
Duty Agent on October 28, 2011

SI Raganit stated⁶² that he is assigned at the Counter Terrorism Division (CTD) and served as duty agent on October 28, 2011 pursuant to the schedule⁶³ issued by the Director. He was with Agent Digman and SI Moreno. His tour of duty started at 4PM of October 28 and ended 8AM of October 29 and they were stationed at the ground floor, near the office of Deputy Director Edmund T. Arugay.

He narrated that the responsibilities of duty agents include receiving complaints or requests for assistance from the public or from other government agencies, and memos from other NBI units. From 8Am to 4PM, complaints are filed in the Complaints and Records Division (CRD). When filed from 4PM to 8 AM, complaints are received by the agents on duty (duty agents). The complaints are docketed and given their NBI CCN number. He was not aware of any order authorizing another division to receive complaints during the time they were assigned as duty agents. Except for SI Moreno, who sought permission to leave early because he was not feeling well, he and SI Digman did not leave their post during the entire tour of duty. On the night of October 28, 2011, he did not receive any complaint regarding the Japanese

⁶² Annex VV: TSN dated December 2011 (Raganit, Digman and Gabriel)

⁶³ Annex WW: Schedule of Duty Agents for October 2011

woman. He did not know about the case of Ohara until it was reported in the newspapers.

He informed the Panel that there is an Alert Team in the NBI; it has no authority, however, to make judgment call whether to conduct operation. Further, it would need complete staff work before mobilizing a team, and any operation would need the consent of at least the Deputy Director in charge.

22. EDGAR T. DIGMAN
NBI Agent
Duty Agent on October 28, 2011

Agent Digman corroborated⁶⁴ the statements of SI Raganit and confirmed that he did not receive any communication, written or otherwise, from Chief/SI Mario Garcia regarding the alleged rescue operation.

23. JOSE GABRIEL, JR.
NBI Agent, Foreign Liaison Division

Agent Gabriel testified⁶⁵ that he has been with the FLD since June 2008 and testified that the NBI divisions are aware of the role of the BI on immigration-related cases as clarified in the June 30, 2011 letter of Commissioner Ricardo A. David, Jr. to Director Magtanggol Gatudula. As a member of the FLD, he is also aware of the protocol that the embassy or consular office of any arrested foreign national must be informed immediately.

He recalls that on November 18, 2011, SI Ariel Nunez of FLD took the statement of Ohara as a complainant. He did see Ohara

⁶⁴ *ibid*

⁶⁵ *Ibid*

because he was inside his office when Ohara was brought there. He knew that the Japanese police, Katsuya Hiruta, had custody of Ohara, but he had information that Ohara, on some occasions, would escape from Hiruta's custody and go to the SMD office. Katsuya Hiruta was sometimes joined by a certain Bong Machida, a Japanese national who is married to a Filipina and also serving as Confidential Agent of the NBI (Machida has an NBI badge). He agrees with the observation of the Panel that the taking of Ohara's statement on November 18, 2011, or 17 days after she was taken in NBI's custody, is highly irregular or unusual.

24. ATTY. VIRGILIO L. MENDEZ
NBI Deputy Director, Regional Operations Services

25. ATTY. EDMUNDO T. ARUGAY
NBI Deputy Director, Special Investigation Services

26. MR. RAFAEL Z. RAGOS
NBI Deputy Director, Comptroller Services

The three (3) Deputy Directors testified⁶⁶ that they learned about the Ohara case when it came out in the column of Ramon Tulfo on December 3, 2011. During the Directorial Staff Meeting on December 5, 2011, they arrived at a collegial decision to relieve Chief/SI Garcia and SI Cabillan from their posts as SMD Chief and Executive Officer, respectively, because the operation SMD conducted was irregular. They also resolved to assign Chief/SI Garcia and SI Cabillan to provincial stations. Said decision to transfer was countermanded by the Director, who instead assigned the two to the Office of DDAS. They noted that Chief/SI Garcia reportedly fired his gun inside the NBI premises a few weeks earlier.

⁶⁶ Annex XX: TSN dated December 20, 2011 (Mendez, Arugay and Ragos)

DD Mendez made some inquiries on this alleged operation and some agents confirmed the truthfulness of the story. According to the report of Atty. Johnard Malvar of NBI Dagupan District Office, he even asked Chief/SI Mario Garcia if he would need a Certificate of Appearance to explain his appearance in his office, but Chief/SI Garcia replied that there was no more need for that.

DD Ragos cited similar cases of agents who were immediately reassigned merely on the basis of rumors of involvement in any misconduct. He scored the need for a uniform application of rules in order that the management will not lose its moral ascendancy over the subordinates.

DD Arugay mentioned that he remembers some discussion in the past that the Chief of the SMD should be given to a regular agent since there are also many who are qualified for the post.

They all denied that they were the ones who were being referred to as “*walong gwapo sa itaas*.”

V. OTHER RESOURCE PERSONS

27. Atty. ISAGANI R. NEREZ Police Senior Superintendent Chief, PNP PACER

Police Senior Inspector Nerez confirmed the visit of Ramon Tulfo with four companions to the office of the Police Anti-Crime and Emergency Response (PACER) on November 26, 2011. He stated that his office took the sworn statements of Romulo Marzan, Glenda Marzan, Krestina Marzan Vinluan and Johnny Marzan

Perez. He submitted to the Panel the copies of these sworn statements.⁶⁷

He also informed the Panel that sometime before November 26, 2011, PNP Chief Nicanor Bartolome called to inform him that PACER's assistance may be sought in connection with the alleged kidnapping of a Japanese national. Citing the PNP protocol that the embassy of the foreign national be notified within 24 hours, he had a case conference with First Secretary and Chief Consul Kenji Endo, where they came up with an agreement that the Japanese Embassy would first conduct an investigation about the matter and coordinate with the PACER thereafter. He said that nothing happened with PACER's investigation because the Japanese Embassy did not communicate with PACER anymore.

28. PCI HILARIO U. TOLEDO
Police Chief Inspector
Chief of Police, Bugallon Police Station

PCI Toledo testified⁶⁸ that he has been Chief of Bugallon PNP since March 2011. On October 29, 2011, he was not in his office because he had a speaking engagement in a nearby town. Upon his return, however, Desk Officer PO2 Jonathan C. Rico informed him that around 815AM of October 29, 2011, their Office received a Coordination Letter⁶⁹ from the NBI stating that they will apprehend **a fugitive person** in Brgy. Gueset, Bugallon, Pangasinan. The desk officer logged the details of the coordination in their blotter⁷⁰. No member of the Bugallon Police Station joined

⁶⁷ Annex YY: Letter to Undersecretary Francisco Baraan of PACER Chief Isagani Nerez dated December 14, 2011, together with the Sworn Statements of Romulo Marzan, Maria Krestina Vinluan, Glenda Marzan and Johnny Perez.

⁶⁸ Annex ZZ: TSN dated December 26, 2011 (Toledo)

⁶⁹ Annex AAA: Coordination Letter with PNP Bugallon signed by SI Jose Odelon Cabillan

⁷⁰ Annex BBB: Certification on Blotter Details of the coordination made by NBI

the operation since the NBI agents did not ask for police assistance.

When asked if the Bugallon PNP had prior knowledge of the Japanese national in Brgy. Gueset, he answered that they had no such information.

He said that the standard operating procedure is that the Chief of Police is normally informed of the details of an operation for proper coordination with the barangay officials concerned.

He cited some irregularities in the operation conducted by the NBI since there was absence of proper coordination, *i.e.*, the PNP did not complement the operation and no Post-Operation Report was submitted to their Office.

29. KATSUYA HIRUTA
Police Inspector and Liaison Officer
National Police Agency of Japan

Mr. Hiruta testified⁷¹ that he is a Police Inspector and Liaison Officer of the National Police Agency of Japan. He has been assigned at the NBI-FLD for one (1) year and six months. While he could not remember that he submitted any appointment paper to the NBI containing the scope of his functions, he informed the Panel that his main tasks include looking for Japanese fugitives in the Philippines and gathering information on any involvement of Japanese nationals regarding cases related to drugs and firearms.

He met Noriyo Ohara at the SMD office on November 18, 2011 when he was called by Atty. Claro De Castro to render

⁷¹ Annex CCC: TSN dated December 27, 2011 (Hiruta)

assistance to a Japanese national who had problems and who might need to go back to Japan. When he arrived at the SMD office, he met SMD Chief Mario Garcia and SI Ariel Nunez of the FLD, **and Garcia showed him a photocopy of Ohara's letter⁷² dated August 8, 2011.** He asked Noriyo Ohara regarding the letter and he came to know also that Ohara had no passport or any identification documents. He went to his office at the FLD to call the Japanese Embassy (Consul Hagiwara) for the purpose of reporting the case of Ohara and the possibility of bringing her there to have a passport. When Consul Hagiwara agreed, he went back to the SMD office to inform Ohara, who told him that she would not want to go to the Japanese Embassy since she was feeling sick. Atty. De Castro told him that they would accompany Ohara first to the office of DD Chiong and, eventually, to the office of Director Gatdula. During those visits to the two offices, **he admitted that it was he who explained Ohara's problem based on her handwritten letter dated August 8, 2011.** After staying for a short time in the office of Director Gatdula, they went back to the SMD office.

On or before lunchtime of November 21, 2011, they went to the Embassy and met with Consul Hagiwara, who informed them that they would locate first Ohara's relatives in Japan. Thereafter, they went back to the FLD office. Since Ohara had no money or passport to stay in a hotel, Hiruta requested Atty. De Castro to allow Ohara to stay in the FLD office in the meantime while the Japanese Embassy was looking for Ohara's relatives in Japan. When Atty. De Castro agreed, Ohara stayed in the FLD office and slept on a sofa from November 21 until December 2, 2011.

⁷² See footnote 21

At around 9-10AM of December 2, 2011, he decided to bring Ohara to the YWCA, since it did not look good that she had been staying in the FLD office for sometime. He said he did not secure the permission of anyone, even the FLD Chief, when she transferred Ohara to YWCA, where she stayed until December 5, 2011. He mentioned that his friend named Machida joined him in transferring Ohara to the YWCA. Hiruta admitted that he paid personally the bill for Ohara's stay in YWCA.

When the case of Ohara was reported in the column of Ramon Tulfo, he looked for Ohara to ask her if the reports were true. On December 5, 2011, he learned that Ohara was at the SMD office so he followed her there. **Around nighttime of December 5, 2011, he called Consul Hagiwara to turn over the person of Ohara.** (It was only then that Ohara was actually turned over to the Japanese Embassy.) He was instructed to bring Ohara to Traders Hotel and Consul Hagiwara took custody of Ohara from there.

On December 6, 2011, Hiruta got Ohara from the Japanese Embassy and brought her to the FLD. The NBI eventually transferred Ohara's custody to representatives of the BI.

Ocular inspection of the SMD Office

In addition to the hearings, the Panel also conducted an ocular inspection of the SMD office on December 19, 2011. The Panel members interviewed HA Arnold Lazaro, Acting Chief of SMD, as well as the guards/employees on duty. The Panel was informed that the SMD keeps four (4) logbooks as follows: (1)

Jail/Detention logbook⁷³, (2) Visitors' logbook⁷⁴, (3) Gate logbook⁷⁵, and (4) Lobby logbook⁷⁶. In none of these logbooks is there is an entry concerning Noriyo Ohara during her stay at the SMD. The employees at the SMD office likewise stated that there is no logbook maintained in the office of the SMD itself since they already have the biometrics system in monitoring their attendance.

Preliminary Medical Attention given to Ohara

At this juncture, it is well to cite as well that, on December 16, 2011, a team of doctors⁷⁷ from the National Center for Mental Health (NCMH) came to the DOJ in response to the Panel's request⁷⁸ to conduct medical examination on Noriyo Ohara based on initial reports that she may be in a state of shock. After the doctors were briefed with the factual circumstances of Ohara's case by City Prosecutor Donald T. Lee, they were accompanied to the detention center of the Bureau of Immigration in Bicutan, Taguig City. The doctors were able to do preliminary examination on Ohara in the presence of representatives⁷⁹ from the Japanese Embassy, and suggested to schedule the conduct of more extensive clinical examinations on Ohara in their hospital facilities.

⁷³ It contains entries of the facts relating to detention prisoners whenever they are taken out of their cells for court hearings.

⁷⁴ It is intended for outsiders who are coming to the NBI using the main gate at Taft Avenue.

⁷⁵ It contains entries of vehicles coming in and out of the NBI gate.

⁷⁶ It is situated in the lobby of the main building and records the coming in and out of high officials of the NBI.

⁷⁷ The composite team from NCMH is composed of Dr. Edison Galindes, Dr. Hyacinth Manoon and Dr. Mary Anne Lim.

⁷⁸ Annex DDD: Letter of Undersecretary Francisco Baraan to Secretary Enrique Ona

⁷⁹ Consul Hiroyuku Hagiwara and another Japanese national

Non-Appearance of Virgelito A. Gutierrez (DOB: May 11, 1964), a.k.a. “Labsky”

The Panel invited⁸⁰ Virgelito A. Gutierrez, a.k.a. “Labsky” to attend the hearing to give him the opportunity to air his side, but he did not appear before the Panel. According to SI Cabillan, Labsky was already advised by the group of Chief/SI Garcia not to appear before the DOJ.

⁸⁰ See Annex EEE: Invitation to Virgilio Gutierrez, aka Labsky; When Mario Garcia testified on December 14, 2011, the Panel requested him to inform Virgelito A. Gutierrez to attend the hearing and Chief/SI Garcia endeavored to bring him during the next hearing.

CHAPTER 4
FINDINGS

After painstakingly and thoroughly going over the statements of the resource persons and all available pieces of documentary evidence, the Panel now presents its findings:

FACTUAL FINDING NO. 1.

It is established that a group of more or less 30 armed operatives, on board six (6) vehicles⁸¹ and representing themselves as agents of NBI, stormed the residence of Romulo Marzan in Brgy. Gueset, Bugallon, Pangasinan around 8AM of October 29, 2011 to forcibly take a Japanese woman in the person of NORIYO OHARA, a.k.a. Marefe Laganas. The group was formed by, and acted under the direct orders of, Mario A. Garcia, Chief of SMD and was led by SI Jose Odelon Cabillan.

⁸¹ Per coordination letter with Bugallon PNP and verification with the LTO, the following are the details of the vehicles used in the operation:

Plate No.	Make	Registered Owner	Address
WPR-682	Mitsubishi L300 van	Jean P. Dela Cruz	30 Cadaratan, Bacarra, Ilocos Norte
PXI-488	Isuzu wagon	Rogelio T. Namó	Farconville 3, San Cristobal, Calamba, Laguna
ZPH-395	Toyota Corolla	Candido S. Domado	B3 L22 Carnation St., Garden Royale Vil., Pinagbuhatan, Pasig City
ZSA-673	Toyota Vios	Grazelle P. Jocson	B10 L10 Promenade Lane, Ridgemont, Cainta, Rizal
WHL-951	Mitsubishi Adventure	Government vehicle	
XZX-393	Nissan Patrol	Not in the LTO database	

1.1. These facts were established based on the statements and testimonies of different resource persons:

1.1.1. SI Cabillan gave a first hand account⁸² of the planning, the kidnapping, the demands and negotiations for ransom and the actual payment thereof, the resort to falsification of documents, among others, to cover-up the commission of the crime.

1.1.2. Chona Esplana detailed, among others, how the group reached the Marzan residence located at Brgy. Gueset, Bugallon, Pangasinan.

1.1.3. Security Volunteer Rudy Arenas, Jr. confirmed that, while on board his motorcycle, he followed the team which was in a convoy of not less than five (5) vehicles.⁸³

1.1.4. Security Volunteer Fritz Gerald Argente testified that the team that conducted the operation was composed of more or less thirty (30) people.⁸⁴

1.1.5. Romulo Marzan narrated in his statement that a group of men and a woman, on board two (2) cars and four (4) vans, most of whom were wearing black shirts marked with “NBI” at the back and armed with long and short firearms, barged into their house in Bugallon.⁸⁵

⁸² See, Cabillan’s testimony, pp. 88-97; see also Annex FF: TSN (Cabillan)

⁸³ See Arenas’ testimony, pp. 85-88

⁸⁴ See Argente’s testimony, pp. 84-85

⁸⁵ See Romulo Marzan’s testimony, pp. 22-24

1.2. From all indications, the SMD conducted **a highly irregular and criminal operation.**

1.2.1. The SMD is not an authorized unit to conduct such operation since it is not an operating arm⁸⁶ of the Bureau. The functions of SMD are limited to internal security, *i.e.*, in securing the premises/ perimeter of the NBI Taft Avenue Manila; in the jail management inside NBI; in the safety of detainees during their travel to attend to hearings; and securing the life and limb of NBI personnel including the general public who enter the NBI compound.⁸⁷ It bears stressing that all the NBI officials and personnel who appeared before the Panel (except Director Gatdula) agreed that SMD's operation was highly irregular and Chief/SI Garcia, as SMD Chief, had no power or authority to send a team to respond to the alleged emergency situation in Bugallon, Pangasinan.

1.2.2. As a matter of procedure, any information received by the SMD relevant to any complaint must be endorsed/forwarded to the Complaints and Records Division (during daytime) or to the Duty Agents (during nighttime). Thus, it was highly improper for any SMD personnel to entertain or act on the alleged complaint of one "Rolando" or "Orlando".

Duty agent Valiant Raganit testified⁸⁸ that they were the duty agents from 4PM of October 28, 2011 until 8AM

⁸⁶ According to the NBI Manual of Operations, the **Regional Operations Services** and the **Special Investigations Services**, together with all the field commands and the Divisions respectively under them constitute the operating arms of the Bureau.

⁸⁷ See pp. 10-11, Report of the Fact-Finding Panel

⁸⁸ See Raganit's testimony, pp. 115-116

of October 29, 2011, but the case of Ohara was not endorsed or forwarded to them.

- 1.2.3. Except for SI Cabillan, the other operatives sent to Pangasinan were all security volunteers (in other words, civilians) personally hired by Chief/SI Garcia and used firearms owned by the NBI.⁸⁹ These security volunteers had no official connection or accountability to the NBI.
- 1.2.4. The team that conducted the operation used, among others, a private vehicle (Nissan Patrol XZX393) with a fake or bogus plate number.⁹⁰

FACTUAL FINDING NO. 2.

Noriyo Ohara was a victim of kidnapping and the Marzan family, in order to secure the release of Ohara, paid P6M of the total P15M (initially P100M) ransom demanded by her captors.

- 2.1. The kidnap-for-ransom operation of the SMD is **corroborated** by several witnesses.

- 2.1.1. Noriyo Ohara, Romulo Marzan and Ex-O Cabillan testified that some 30 NBI “agents”, in a surprise raid, forcibly took Ohara in Brgy. Gueset, Bugallon, Pangasinan for being an undocumented alien. This big group of heavily armed NBI-uniformed persons made sure the

⁸⁹ See, Cabillan’s testimony, pp. 88-97; Arenas’ testimony, pp.86-89; Argente’s testimony, pp. 85-86

⁹⁰ See Annex FFF: Letter from the Land Transportation Office stating that plate number XZX393 is not yet manufactured as December 29, 2011.

impossibility of resistance.

2.1.2. The Marzans positively testified that Chief/SI Garcia, SI Cabillan, Labsky and Chona Esplana demanded money in exchange for the liberty of Noriyo Ohara. The Marzans were made to believe by the group of Chief/SI Mario Garcia that Noriyo Ohara would face serious charges for being an undocumented alien, and as such, the Marzan family would be equally criminally liable for keeping her.

2.1.3. A total of **SIX MILLION PESOS** (P6M) was paid and delivered to the office of NBI-SMD, as follows:

October 29, 2011— One Million pesos (P1M) received by Ex-O/SI Cabillan;

November 2, 2011—Four Million pesos (P4M) placed inside the office of Ex-O Cabillan at SMD in his presence; and

November 3, 2011— One Million pesos (P1M) was delivered in the Office of the NBI-SMD.

2.1.4. All the foregoing deliveries of money to the group of Chief/SI Garcia were testified on by Jacqueline Marzan Suzuki, Glenda Marzan, Johnny Perez.

2.1.5. Romulo Marzan and SI Cabillan confirmed in their statements the delivery inside the SMD office of P1M and P4M payoffs on the above-mentioned dates.

2.1.6. The Marzan family submitted the photocopies of the receipts⁹¹ from Fharniza's Money Changer Co. as proof

⁹¹ Annex GGG: Receipts from Fharniza's Money Changer Co.

that they exchanged Japanese yen to Philippine pesos in order to effect the ransom payments demanded by Garcia, et al..

FACTUAL FINDING NO. 3.

To cover up their criminal operation, Garcia and his group were found to have presented spurious documents, as follows:

- a. a document making it appear that Ohara was seeking the assistance of the NBI to rescue her from the Marzan family, who was allegedly maltreating her and wanting to deprive her of her properties in the Philippines;
- b. a document showing that Ohara wrote a letter to the President supposedly to be given at the time the President would be at the NBI for the 75th anniversary celebration;
- c. a document making it appear that the Marzan family voluntarily surrendered Ohara to the office of Chief/SI Garcia;
- d. a document purporting to show that the group of Garcia rescued Ohara from the Marzan family.
- e. a document showing that the NBI went to Bugallon, Pangasinan on October 29, 2011 to arrest a “fugitive person”; and
- f. a document showing that the request to rescue Ohara was

faithfully reflected in a logbook of the SMD.

3.1. As regards item (a), Noriyo Ohara positively stated that she was coerced by Chona Esplana and Chief/SI Mario Garcia to write a letter to Director Gatdula. There was no available writing paper and so the letter was written on a white folder. This said handwritten letter of Ohara in Japanese characters (with English translation) made it appear that Ohara asked the NBI for help, prompting the NBI SMD to rescue her on October 29, 2011. **The coerced letter** dated August 8, 2011 was written by Ohara, as dictated by, sometime in the middle of November 2011 in a safehouse in Sta. Mesa, Manila.

3.2. As regards item (b), Ohara testified that she was again coerced to write a letter of similar import by Chona and Garcia, this time addressed to President Aquino.⁹²

3.2.1. If it were true that Ohara was rescued because she was being harmed and maltreated, the SMD operatives did not show proof that they arrested or, at least, invited for investigation, those responsible for harming or maltreating Ohara. They did not also take the statement of Ohara in this regard. Ohara was also not medically examined, which should have been done as a matter of course to determine if Ohara was indeed a victim of maltreatment.

3.2.2 On the contrary, it was Ohara who was processed in the SMD, her fingerprints⁹³ and mug shot⁹⁴ taken. According to Ohara, Chona warned her that that mug shot will be used to find her in case she escaped from SMD.

⁹² See Ohara's statement, pp. 14-22

⁹³ Annex HHH: Booking Sheet and Arrest Report of Noriyo Ohara

⁹⁴ Annex III: Mugshot of Noriyo Ohara

- 3.3. As regards item (c), SI Cabillan stated that he was instructed by Garcia to prepare a **“Turn Over Report”** to make it appear that the Marzans voluntarily turned over Noriyo Ohara to the custody of the NBI-SMD. Due to threats of prosecution, the Marzans were lured into signing the said paper. Brgy. Capt. Rudy Arenas, Jr., admitted that he was just directed to sign as a witness, but he had no idea about the truthfulness of the contents of said paper.⁹⁵
- 3.4. As regards item (d), SI Cabillan, who was then in Baguio City, was asked to sign on November 20, 2011 an **Incident Report** (pre-dated October 29, 2011 and addressed to Director Gatdula) by Mario Garcia, who went to the NBI Academy in Baguio City after attending a wedding reception in San Manuel, Pangasinan. Incidentally, Chona Esplana, Labsky and Ohara were with Garcia in Pangasinan and Baguio City. Cabillan, Esplana and Garcia, as well as Ohara, all testified on this. The Incident report (which supports the rescue theory) became an alternative option for Garcia, et al.
- 3.5. As regards item (d), the team that conducted the operation made it appear in the coordination letter with the Bugallon Police Station that it would arrest a “fugitive person”.⁹⁶ The letter did not say that the operation was conducted to rescue a beleaguered foreign national who sought NBI’s help.
- 3.6. As regards item (e), Mario Garcia presented an apparently falsified logbook where the operation conducted at Bugallon, Pangasinan was allegedly “entered” or recorded. During the

⁹⁵ See, statements of Cabillan (pp.88-97); Romulo Marzan (pp.22-24); Glenda Marzan (pp.28-36); and Jacqueline Marzan Suzuki (pp.24-28).

⁹⁶ See Annex AAA: Coordination Letter to PNP Bugallon

hearing, the Panel asked Mario Garcia if there was any documentation on the request for rescue and his dispatch of a team to conduct the operation. He then submitted this manufactured logbook during the next hearing.

- 3.6.1. During the Panel's ocular inspection of the SMD office, it was found out that there are only four (4) kinds of logbooks that SMD maintains. **The logbook submitted by Chief/SI Garcia is not one of them.** Besides, the logbook he submitted looked very new and clean compared to the two (2) very much oldish-looking logbooks for visitors and jail/detention, which were inspected by the Panel.
- 3.6.2. During the Panel's hearing, a number of NBI resource agents clarified that the complaints of walk-in complainants are entertained exclusively by the duty agents during nighttime and the same would be forwarded to the Complaints and Records Division the following day. In no case would any complaint be entered or logged in any SMD Logbook, or for that matter, entertained by the SMD.

FACTUAL FINDING NO. 4.

Noriyo Ohara was held captive in the office of Mario Garcia and some safehouses, and later transferred to the FLD office. Ohara's length of stay in an NBI-controlled environment lasted from October 29, 2011 to December 5, 2011, or a total of 38 days.

- 4.1. Chief/SI Garcia admitted that Noriyo Ohara stayed in the SMD office from October 29, 2011 until November 18, 2011 and he appointed his “asset” Chona Esplana to look after her.⁹⁷ He then said in his Memorandum of November 29 to Director Gatdula that Ohara’s custody was transferred to the FLD, as in fact Ohara was in the FLD as of the date of his Memo.
- 4.2. Director Gatdula stated that he had been informed by DD Esmeralda and Ramon Tulfo himself as early as November 15, 2011 that Mario Garcia and his men was having custody of Noriyo Ohara, whom they allegedly rescued because she was being kept in Pangasinan against her will.⁹⁸ When Ohara was briefly (for 5 minutes or so) presented to her two or three days after November 17, 2011, he instructed FLD to coordinate with the Japanese consul.

Usec. Baraan xxx when did you first learn about the case of Noriyo Ohara?

Director Gatdula It was during our Senate Budget hearing, when Mon Tulfo contacted me that a certain Japanese is being held in captivity in the NBI by some NBI agents.

Usec. Baraan Ramon Tulfo called you up?

Director Gatdula Yes, I was informed by Deputy Esmeralda that Mon Tulfo is trying to call me. So, I looked at my cellphone, no missed calls. What I did is I asked Atty. Esmeralda, “Please give me the number of Mon Tulfo”. Then, I called him up, and that was during our plenary in the Budget in the Senate.

⁹⁷ See Garcia’s testimony, pp. 46-76

⁹⁸ See Gatdula’s testimony, pp.97-103; also, p. 7, TSN dated December 22, 2011 (Gatdula)

Then, I told him, “Yes, I will act on this tomorrow because we had a budget hearing at the Senate Plenary.”

Usec. Baraan But you were able to talk to Ramon Tulfo that day?

Director Garcia Yes, Sir, that night.

Usec. Baraan What exactly did he tell you?

Director Gatdula Ang sabi niya, “Sir, merong Hapon na kinuha ang mga bata mo diyan at tinatago,” in captivity daw, itinatago at nanghihingi ng pera. Sabi ko naman, “Mon I wil check on that tomorrow, pero kung puwepuwede ba magpunta ditto ang complainant, at saka i-complain kasi meron naman kaming Internal Affairs dito,” I told him that, Your Honor.

4.3. Noriyo Ohara gave a detailed account of her stay in the NBI premises and in other places controlled by Garcia, through Chona, and her transfer to the custody the Japanese police (Hiruta), who made her stay in the FLD premises and, subsequently, in YWCA near the NBI office, all these during the period from October 29, 2011 to until about 9PM of December 5, 2011.

4.3.1. Ohara stated that she was at the SMD office from October 29, 2011 until November 21, 2011. During those times, she either slept in the office of Mario Garcia or in a safehouse in Sta. Mesa or some other place.

4.3.2. She was transferred to the FLD office on November 21, 2011 until December 1, 2011. During those times, she

either slept in the FLD or in places outside the NBI in the company of Chona. On December 2, 2011, Hiruta transferred her to YWCA.

- 4.3.3. Katsuya Hiruta admitted that Noriyo Ohara was taken to the FLD office on November 18, 2011 and then returned to the SMD. On November 21, Hiruta took Ohara to the FLD, then transferred her to YWCA in Ermita on December 2, 2011 until she was indorsed to a Japanese consul on the night of December 5, 2011. But even while she was staying at the YWCA, she visited the SMD office upon orders of Chona.

FACTUAL FINDING NO. 5

There is evidence, both direct and circumstantial, showing that Director Gatdula participated in the planning and cover up of the said criminal operation, and had knowledge of the execution thereof that was carried out by Chief/SI Mario Garcia and his group.

- 5.1. SI Cabillan testified that it is a known fact in the SMD that Labsky is a lackey of the Director. In fact, instructions from the Director were normally coursed through him. It was Labsky who informed them that “Lolo” gave the “go signal” early October 2011 to proceed with the operation. On their way back after their operation, he saw and heard Labsky calling and updating his boss. On October 29, 2011, while at the SMD office, the Director spoke to Labsky, and Cabillan saw the Director nodding his head and heard him say, “*Maganda yan.*” Before he left, he said “*Dokumentuhan na*

yan.”

5.2. SI Cabillan recalls that Director Gatdula stated during their meeting on December 8, 2011 that **“Someone has to sacrifice.... Dapat may umamin na.... Damage control na tayo para tumigil na ‘to.’**” This statement bolsters the fact that he had obvious knowledge that Mario Garcia and Jose Odelon Cabillan were principal participants in the illegal operation, of which he also had prior knowledge.

5.3. Director Gatdula admitted visiting the SMD office on October 29, 2011 allegedly as part of his routine inspection of offices. While he denied having seen or noticed Ohara,⁹⁹ the same is contradicted by the positive statements of different resource persons, including Garcia and Cabillan.

5.3.1. Romulo Marzan stated that he saw Director Gatdula visit the SMD Office on October 29, 2011.¹⁰⁰

5.3.2. Jacqueline Marzan Suzuki stated that she saw Director Gatdula, whom she identified through a picture hanging on the wall inside Chief Garcia’s office, go to the SMD office on October 29, 2011. In the presence of the Director, Chona pointed to Ohara as the Japanese, and at them as the family keeping the latter, but the Director simply looked at them and ordered that Ohara be medically examined.¹⁰¹

5.3.3. Glenda Caburnay Marzan stated that a man, referred as

⁹⁹ See Gatdula’s testimony, pp. 97-103

¹⁰⁰ See Romulo Marzan’s testimony, pp. 22-24

¹⁰¹ See Suzuki’s statement, pp. 24-28

director, and who Glenda later identified as NBI Director Magtanggol Gatdula through a picture she saw on the wall inside Garcia's office, arrived. At that juncture, Chona said: "*Sir, eto po yung Haponesa (tinuro si Ohara) at eto po yung pamilyang kumupkop sa kanya (tinuro naman kami).*" Director Gatdula simply stared at them and said: "*Sige, ipa-medical na yan.*"¹⁰²

5.3.4. Noriyo Ohara stated that a man, who was later identified as Director Gatdula, came in the room and looked at her. He talked to Mario Garcia for a short time, then he left.¹⁰³

5.3.5. Chief/SI Mario Garcia stated that Director Gatdula passed by the SMD office purportedly in the course of his routine inspection of the NBI offices. He showed Ohara to the Director and **specifically referred Ohara as the woman they rescued**, whereupon Director Gatdula directed that the necessary documentation be made about her.¹⁰⁴ **Garcia said the Director even congratulated him and his companions.**

5.3.6. Ex-O /SI Jose Odelon Cabillan stated that he was there in the SMD office when Director Gatdula arrived and talked to Chief/SI Mario Garcia and Labsky. Director Gatdula allegedly remarked "*Maganda yan*" and before he left, he further stated "*Dokumentuhan na yan.*"¹⁰⁵

5.4. Director Gatdula's explanation on the rescue operation appears conflicting.

¹⁰² See Glenda Marzan's statement, pp. 28-36

¹⁰³ See Ohara's statement, pp. 14-22

¹⁰⁴ See Garcia's statement, pp. 46-76

¹⁰⁵ See Cabillan's statement, pp. 88-97

- 5.4.1. He admitted that, going by the functions of the SMD, Mario Garcia is not allowed to conduct operations **without clearance** from his Deputy Director or the Assistant Director and the Director.
- 5.4.2. He admitted that all operations of the NBI must be covered by a COPLAN issued or approved by the Director, or requested by the Deputy Director concerned. In the case of SMD's operation in Bugallon, Pangasinan, it was not covered by a COPLAN. Implied from his answer is that Garcia's group conducted an illegal, or at the very least irregular, operation.
- 5.4.3. Despite the foregoing, he expressed the belief that the rescue operation conducted by the SMD was not illegal.¹⁰⁶ What was not lost on the Panel is that Director Gatdula was alone in his position. All other senior NBI officers --- Assistant Director De Lemos and all the Deputy Directors --- declared without any hesitation that Garcia's operation was unauthorized and illegal because the SMD is **NOT** an operation unit. Of course this is not about an unauthorized operation. This is about a criminal operation hatched in the hallowed premises of the NBI itself and one perpetrated in the most heinous and brazen manner. Also, the Panel cannot understand why he readily accepted Garcia's claim that what Garcia's group did was a rescue operation. But even on the rescue story of Garcia, Director Gatdula gave preposterously conflicting and incredible claims.

¹⁰⁶ See, Gatdula's testimony, pp. 97-103; also, TSN dated December 22, 2011 (Gatdula), p. 8

Claiming that on November 17, 2011, Garcia already told him that Ohara was in his custody, the Panel asked him:

- | | |
|------------------|--|
| Usec. Baraan | So, did you ask him why Ohara was in his custody? |
| Director Gatdula | The usual, as mention in his report in December 1, rescue operation, because she is being kept in Pangasinan against her will. |
| Usec. Baraan | So, as early as November 17, 2011, he was already telling you that he rescued Ohara from a certain family in Pangasinan? |
| Director Gatdula | Yes, Your Honor. |
| Usec. Baraan | That is the reason why Ohara was in his custody? |
| Director Gatdula | Yes, Your Honor. |

5.4.4 It appeared very clear to the Panel that Director Gatdula invented an answer because the November 29 report of Chief Garcia, which was received by his office on December 1, 2011, **did not mention anything about a rescue operation.** In that report, Garcia merely said that he did not extort money from Ohara; that somebody gave Ohara a falsified passport and an assumed Filipino name; that Ohara was not missing; and that Ohara was under the temporary custody of NBI-FLD, where Ohara was “waiting for her papers and documents in order to legalize her stay” in the country.

5.4.5 At the center of the rescue story of Garcia is an alleged **rescue letter** coming from Ohara that was allegedly delivered by a certain Rolando/Orlando to Garcia (Garcia’s

version) or Chona (Chona's version) on the night of October 28, 2011. The letter was supposedly addressed to Director Gatdula. When Director Gatdula was asked if he was shown the letter, he said that he saw it and that it was written in Japanese.

5.4.6 When confronted if he asked Garcia what the Ohara letter **was about**, he said that the report of Chief/SI Garcia included a letter allegedly by a Japanese woman. When he was informed by the Panel that the explanation letter (report) of Garcia dated December 29, 2011, which was received by his office on December 1, 2011, did not mention Ohara's letter. Gatdula changed his answer, saying that it was in fact on November 18, 2011 that Garcia mentioned to him about the Ohara letter.

5.4.7 Asked if Garcia **handed to him** the Ohara letter, he said that Garcia merely showed him a copy thereof, and this was "already after the scandal". He was obviously referring to the expose of Ramon Tulfo that came out of December 3, 2011. He was then asked to clarify if he was shown said copy of the Ohara letter **after December 3, 2011**. He answered in the affirmative and even informed the Panel that he asked Garcia why the latter did not furnish his office "a copy of the letter". And yet, when pressed about the letter of Ohara, he said he saw the letter when Ohara was presented to him, and that in fact the Japanese policeman, Hiruta, explained to him the contents of the letter. He even said that the letter was in a yellow folder and in Japanese character. (According to Ohara, DD Chiong and Hiruta, Ohara was brought to the office of Director Chiong on November 18, 2011. According to Gatdula, Ohara was brought to his office 2 or 3 days after

November 18, 2011.)

Here are his varying accounts:

(I)

Usec. Baraan	So, did you ask him why Ohara was in his custody?
Director Gatdula	The usual, as mentioned in his report in December 1 , rescue operation, because she is being kept in Pangasinan against her will.
	xxx xxx xxx

(II)

Usec. Baraan	So, did you ask him what that letter was?
Director Gatdula	Your Honor, basically, the report of SI Mario Garcia included a letter , allegedly by the Japanese woman. xxx
	xxx xxx xxx

(III)

Usec. Baraan	So, this was the letter that was handed to you by Chief Garcia, Sir?
Director Gatdula	Yes, Your Honor. xxx xxx xxx
Usec. Baraan	About the letter, was that during that visit of Ohara and company to your office?
Director Gatdula	Yes, Your Honor, when she was presented to me.

Usec. Baraan	I mean, that was the time that Hirota explained to you the contents of the letter because it was in Japanese character?
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Director Gatdula Yes, Your Honor, it was in a folder, yellow folder.

Usec. Baraan But, as you said, you did not ask her any question, is that correct?

Director Gatdula No more, Your Honor.

Xxx xxx xxx

(IV)

Usec. Baraan So, did you ask him what that letter was?

Director Gatdula Yes, Your Honor.

Usec. Baraan Now, did you ask him to produce that letter?

Director Gatdula I told the one in-charge . . . I think, I directed it with the Foreign Liaison Division to check on that letter request, because they said, it is written in Japanese.

Usec. Baraan In Japanese not in English?

Director Gatdula Not in English.

Usec. Baraan Is that so. Were you able at any time to see that letter?

Director Gatdula I was shown a . . . during already of that controversy, I was shown a Xerox copy of the letter.

Usec. Baraan Do you have a copy of that letter?

Director Gatdula Yes, Your Honor.

Usec. Baraan So, this was the letter that was handed to you by Chief Garcia, Sir?

Director Gatdula Yes, Your Honor.

Usec. Baraan When did he do it? When did he hand over the letter to you?

Director Gatdula I cannot remember the date, but it is already after this scandal . . .

Usec. Baraan So, I think, the expose of Ramon Tulfo first came out December 3, 2011?

Director Gatdula I think so, Your Honor.

Usec. Baraan **So, this was shown to you after December 3.**

Director Gatdula **Yes, Sir, I even asked him, why did you**

did not furnish my office.

Usec. Baraan And it looks like it is addressed to you, Sir.

Director Gatdula Yes, Sir.

Usec. Baraan So, did you ask him why?

Director Gatdula I ask him why he just took it upon himself to act on that, Your Honor.

Usec. Baraan But as early as November 18, 2011, did he ever tell you that that letter was addressed to you?

Director Gatdula **He just told me right after the controversy, Your Honor.**

Usec. Baraan **That indeed there was a letter.**

Director Gatdula **Yes, Your Honor.**

Usec. Baraan And it is quite unusual or even surprising that there was no mention of this letter in his explanation of November 29.

Director Gatdula Yes, Your Honor. That is why I told him, ***“you are telling me there was a letter, just now”.***

5.4.8 Asked how Chief/SI Garcia could have deciphered the Ohara letter that was in Japanese character and pursuant to which he sent a team to Pangasinan, Director Gatdula claimed that Garcia told him that the letter was given by someone, and he speculated that the letter was given to Garcia **before** October 28, 2011.

Usec. Baraan It seems to me a little outlandish that Chief Garcia on the basis of a letter in Japanese characters would be able to decipher the contents of the letter and send a team to Bugallon, Pangasinan pursuant to that letter.

Director Gatdula Yes, Your Honor. And when I checked, Mario Garcia used to be assigned with the Foreign Liaison Division at the Interpol.

Usec. Baraan Are you saying that he understands
(interrupted).

- Director Gatdula No, maybe he has some friends that can interpret the
- Usec. Baraan Did you ask him when did he receive this letter?
- Director Gatdula During my inquiry, Your Honor, he told me that, that it was just given to him by someone.
- Usec. Baraan It was given to him by someone before he composed a team to go to Pangasinan?
- Director Gatdula Yes, Your Honor.
- Usec. Baraan So, on the very night that he sent a team to Pangasinan, that was the time that he received this letter from that someone.
- Director Gatdula **I think, before that, Your Honor.**
- Usec. Baraan Before?
- Director Gatdula **Maybe, before that, because you cannot act on it immediately upon receipt of the letter.**
- Usec. Baraan But that is what he told us, Sir. That he received it on the night of October 28, 2011. And on the basis of this letter, he sent a team to Pangasinan because the informant allegedly told him, ***“kung hindi kayo aalis, baka hindi na siya madatnan na buhay”***.
- Director Gatdula I was never told about that statement, Your Honor.
- Usec. Baraan Because according to him, it was received by him on October 28, 2011, immediately before he sent a team to Pangasinan. We are just

wondering how he was able to understand the contents of the letter.

Director Gatdula I was also surprised, Your Honor. We are using cellphone, he can contact his Deputy Director.

5.4.9 By Garcia's own admission, as early as November 17, 2011 Director Gatdula forwarded to him Tulfo's messages about Ohara. This is another damaging revelation of Garcia insofar as Director Gatdula's involvement is concerned. Anyone's guess is as good as the Panel's as to why Director Gatdula had to forward to Garcia Tulfo's messages to him (Gatdula). According to the Marzans, Director Gatdula also forwarded Tulfo's text messages about the Ohara case to Labsky.

Usec. Baraan: *xxx hindi ba nalaman mo rin na ito'y dumating na nga sa atensiyon ni Mr. Ramon Tulfo, tama?*

Garcia : Yes, Your Honor.

Usec. Baraan: Then *mayroon kang text message na ifinorward sa iyo?*

Garcia : Yes, Your Honor.

Usec. Baraan: ***Sino yong nagforward ng text messages sa yo?***

Garcia : ***Finorward ni Dir. Gatdula, Sir.***

FACTUAL FINDING NO. 6.

Evidence shows that some officials of the NBI, despite positive information received by or relayed to them regarding Noriyo Ohara, failed to act swiftly and decisively on her case and made no serious effort to get to the bottom of the controversy, exhibiting instead a cavalier attitude in the face of a very disturbing and serious charge affecting the very name and honor of the NBI as an institution.

- 6.1. Insofar as his testimony is concerned, Director Gatdula learned about the case of Ohara on November 15, 2011 when DD Reynaldo Esmeralda relayed Ramon Tulfo's report to him about a certain Japanese woman (Ohara). It was then that the Director called Ramon Tulfo, who told him that a Japanese woman was allegedly kidnapped and being held by Chief/SI Mario Garcia and his men inside the SMD Office, where some ransom money was paid. He also admitted that on November 17, 2011, Mario Garcia told him that what was undertaken by his men was a rescue operation, and this claim, he said, he believed. Inconsistently, however, he told the Panel and Tulfo (in a letter) that *“(i)n the case of the Security Management Division (SMD) which is the subject of your series of columns, no COPLAN was prepared and submitted to my end. In this regard, my office had no knowledge of such operation. Neither approval nor sanction was sought from me in this particular case.”*

6.1.1. Given this information, Director Gatdula did not summon Garcia or Cabillan to his office on November 16, or at the very least, call them up on the night of November 15, 2011. He had the whole day of November 16, 2011, but he did not order that the detained Japanese woman be brought to him *pronto*. Or, as someone who would routinely visit the NBI office even on a Saturday (October 29, 2011 was a Saturday), he did not visit the SMD office to look personally for the Japanese woman. Tulfo's information to him on November 15, 2011 (assuming this was his first time to know about the case) naturally called upon the Director to exhibit the kind of rage and attention that necessarily provoked immediate action. Tulfo's report that a serious crime was committed and continuing to be committed by his own men in the SMD --- **continuing because, if the report to him was true, Ohara was still being detained and ransom was still being demanded** --- called upon him to immediately stop the bleeding, nay the continuing crime, and rescue Ohara from his wayward men. His response to the information given to him by Tulfo was: "Mon, I will check on that tomorrow, pero kung pupuwede ba magpunta ditto ang complainant, at saka i-complain kasi meron naman kaming Internal Affairs dito."

It was an answer that revealed some kind of indifference or detachment. Even then, he did nothing the following day. It was only on November 17, 2011 that he issued a softly worded Memorandum to DD Chiong and Chief Garcia.

Director Gatdula's seeming lack of concern only bolsters the accounts of several witnesses --- from Cabillan and Garcia, no less --- that he had prior knowledge of the operation, and approved it.

- 6.1.2. It also follows that as early as November 15, 2011, if the Panel is to assume that Director Gatdula only came to know about the case of Ohara on said day, that Gatdula must have already gathered that Garcia and his men conducted an irregular operation, that is, one without a COPLAN. Yet, he did not immediately sanction Garcia and Cabillan. But why would he when he readily took the position that his "boys" did nothing wrong.
- 6.1.3. There was his Memorandum to DD Chiong and Chief Garcia dated November 17, 2011, but he only asked Garcia to explain (within 24 hours) his side on the extortion report. He did not bother to ask about the details of Garcia's operation, like, who authorized them, who were his companions, and what was the purpose thereof. In fact, he did not even bother to ask Garcia in his Memorandum where Ohara was at the time.
- 6.1.4. Garcia was asked to explain the "extortion" issue within 24 hours. Yet, no such explanation was submitted by Garcia, not until December 1, 2011 (after the lapse of 15 days). It would be Director Gatdula himself who would proffer a justification for Garcia's delay: he said Garcia was busy making preparations for the President's visit on November 23, 2011 and there was Ray Aquino's trial to attend to. Apparently, Director Gatdula already contented himself with the explanation he himself offered

to the Panel to excuse Garcia's insubordination, that he did not require Garcia anymore to explain.

- 6.2. Director Gatdula gave the pretext that he could not conduct an honest-to-goodness investigation on the allegations of kidnapping and extortion against Garcia, et al. because the NBI had no complainant. But he could have easily started with Ohara, who, based on Ramon Tulfo's information, was a possible victim --- not of the Marzans, but of Garcia, et al.. But, as the Panel observed, he gave Ohara only 5 minutes or so of his time when Ohara was brought to his office two or three days after November 17, 2011.

This is what Director Gatdula told the Panel:

Usec Baraan	By the way, you did not investigate Chief Garcia, Cabillan or anyone under Chief Garcia regarding that alleged extortion that was mentioned by Mon Tulfo in his phone call to you?
Director Gatdula	As an investigator, Your Honor, we need the complainant, that was what I was asking Mon Tulfo.
Usec. Baraan	You need complainants?
Director Gatdula	How can we investigate the alleged extortion? Somebody has to file a complaint so we can start the investigation. We are lawyers and investigators, we cannot start if it is still a hearsay, Your Honor.

If Ohara was not the complainant that he was looking for, and there were no other complainants, why did Director Gatdula stop there? Or why did he content himself with asking for an explanation from Garcia, the very person

supposedly in the center of the controversy, and not investigate beyond him and get credible information or intelligence elsewhere.

It would not have been difficult for Director Gatdula to have conducted a different kind of investigation, like sending investigators to Bugallon, Pangasinan, where Ohara was taken. He could have asked Cabillan to also explain, or required Garcia to produce to him Chona or “Labsky”. Yet, he gave the impression that without a complainant, the NBI was helpless in looking into the allegations of kidnapping and extortion, like the matter was no big deal. In other words, he failed to exercise the kind of sound judgment actually expected of the head of the premiere civilian intelligence and law enforcement agency of the land.

6.3 In a Memorandum dated December 6, 2011, Secretary De Lima asked Director Gatdula for the submission of an incident report on the Ohara case. Until now, no such report was submitted, which only goes to show that Director Gatdula did not genuinely lift a finger to ferret out the truth, aside from exhibiting some kind of defiance of the Secretary’s directive.

6.4 Director’s Gatdula’s testimony on the supposed letter of Ohara to him raised more questions about the genuineness or due execution of said letter.

6.4.1 Director Gatdula apparently believed that the supposed letter of Ohara to him (written on a white folder) expressed the true situation of Ohara. He said the Japanese police

(Hiruta) explained to him the contents of the letter (which was in Japanese characters) and Ohara seemed to be complaining about another matter re: her properties in the Philippines. As head of the highest civilian intelligence agency, Director Gatdula gave the impression to the Panel that he so easily believed that the case of Ohara involved a different matter completely alien to the reported kidnapping and extortion.

6.4.2 Even his instruction to IAD Chief Beltran after Tulfo's article first came out left much to be desired: he merely told Beltran to proceed with the investigation of Chief/SI Garcia and Cabillan for "violation of policies, rules and regulations." The violation by them of NBI rules and procedure was so obvious, one wonders why he had to order such investigation.

Chief De Castro, even Director Gatdula, said they assumed that Ohara was already turned over to the Japanese Embassy when she was handed to Hiruta. Don't blame us, blame Hiruta: that seemed to be what the NBI, particularly Chief De Castro and Director Gatdula are saying. A most convenient excuse, but the FLD (the NBI, for that matter) should not have given Ohara to the care of Hiruta in the first place. They --- De Castro and Director Gatdula --- knew that Ohara was the central figure in a reported kidnap-for-ransom allegedly perpetrated by Chief/SI Garcia and his men in the NBI's SMD, and the one thing that the NBI could not afford was to lose Ohara, or make her beyond the reach of our criminal jurisdiction by having her repatriated to Japan.

Chief Beltran of the IAD had this curious little account about the Japanese police, Hiruta, relative to NBI's oft-repeated claim that Hiruta had custody of Ohara. He said that about 9AM to 10AM of December 5, 2011, he was able to talk to Hiruta, but he got no details from him about Ohara, **Hiruta saying he was a Japanese police officer and not connected with the Japanese Embassy.** Of course, he knew where Ohara was because he checked her in in the nearby YWCA, and even paid the lodging bills. To the Panel, everyone in the NBI was fooling everyone and everyone was playing around with Ohara, who was transferred from one place to another depending on the situation in the NBI.

Finally, Ohara's almost day-to-day account of her ordeal belies the claim of the FLD that she was turned over to the Japanese Embassy on November 21, 2011. The FLD continued to keep her, through Hiruta, **whose line to her was that she needed to leave immediately for Japan., or be jailed in the Philippines.** While with the FLD, **Chona had complete access to her.**

6.5. Deputy Director Rickson L. Chiong admitted that he had already heard rumors about the case of the Japanese national being kept by the SMD even before November 17, 2011. DD Esmeralda testified that he informed DD Chiong on November 16, 2011 to investigate Mario Garcia because of the derogatory report that he was illegally keeping in his custody a Japanese woman. Despite the foregoing knowledge, he did not initiate an investigation, discreet or otherwise. Like Director Gatdula, he excused himself by absurdly saying that the NBI had no complainants. The SMD is directly under his supervision, and

he should have done more than merely waiting for complainants.

Moreover, DD Chiong had knowledge of the existence of Security Volunteers inside the SMD when he assumed as Deputy Director for Administrative Services. Yet, he did not put an end to such pernicious practice. While he stated that he issued a written directive dated November 22, 2011, it is very clear in the language of his Memorandum that he was not terminating the hiring of Security Volunteers: their presence was merely discouraged during NBI's Diamond Anniversary celebration, where the President was to be the Guest of Honor. He appears to have no firm grasp and control of the offices under his direct administrative supervision.

FACTUAL FINDING NO. 7.

The Foreign Liaison Division (FLD) was utilized to cover up, wittingly or unwittingly, the crime committed by Garcia, *et al.*

7.1. When it came to the knowledge of Director Gatdula and Garcia, *et al.* that Mr. Tulfo was already approached by the Marzan family and was told about the kidnapping and the payment of ransom, Director Gatdula gave instruction to the Chief of the FLD on November 18, 2011 (or thereabouts) to coordinate with the Japanese Consul for her repatriation to Japan.

7.1.1. The intent to contain the problem within the NBI became clearer when the FLD did not turn over Ohara to the BI,

the one most obvious and logical thing to do under the circumstances because FLD was already proceeding on the assumption that Ohara was an undocumented alien and so her case was within the exclusive jurisdiction of the BI.

7.1.2. According to Atty. De Castro, who perceived Ohara as a simple walk-in complainant having problems regarding her properties in the Philippines, the FLD just wanted to help Ohara in her problems such that it referred her case to Katsuya Hiruta for repatriation to Japan. Hence, Katsuya Hiruta contacted the Embassy.¹⁰⁷ Facilitating the immediate repatriation of Ohara to Japan is inconsistent with their theory of helping Ohara to pursue her alleged desire to recover her properties in the Philippines.

7.1.3 Chief De Castro of the FLD submitted a false report by stating that the physical person of Ohara was turned over to the Japanese Embassy on November 21, 2011. This was belied officially by Chief Consul Endo in his letter to the Panel dated December 20, 2011, where he stated that Ohara was turned over to the Japanese Embassy in the evening of December 5, 2011. De Castro himself admitted that Ohara was in the premises of the FLD from November 21, 2011 to December 2, 2011.

Hiruta also admitted that Ohara remained in the NBI's FLD from November 21 to December 2, 2011, and then checked in Ohara at YWCA on December 2, 2011 up to December 5, 2011.

¹⁰⁷ See Hiruta's testimony, pp. 120-122

Ohara testified that she was always in an NBI-controlled environment until the night of December 5, 2011.

And Chief Garcia, in his Memorandum of November 29, 2011 to Director Gatdula, stated that “currently (i.e., November 29) Ms. Ohara is under the temporary custody of NBI-FLD wherein the resident Japanese police Katsuya Hiruta is the one handling her case. As of this date, Ms. Ohara is waiting for her papers and documents in order to legalize her stay to (sic) this country.”

CHAPTER 5

RECOMMENDATIONS

Based from all the testimonial and documentary evidence appreciated by the Fact-Finding Panel, the following recommendations are put forward considering that crimes under the Revised Penal Code and other special laws may have been committed by the identified personalities herein, and that appropriate administrative charges may be filed against them under existing laws.

A. CRIMINAL CHARGES

1. From the evidence gathered, it appears that there was a conspiracy to commit the crime of **Kidnapping and Serious Illegal Detention** defined and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659. The following are recommended for preliminary investigation for their complicity in the said conspiracy:

- 1.1. **Mario A. Garcia**, Special Investigator and former Chief of the NBI SMD, for giving direct orders to the SMD team whom he illegally sent to Brgy. Gueset, Bugallon, Pangasinan to unlawfully and feloniously take, kidnap, detain and keep under their guard one Noriyo Ohara a.k.a. Marife Laganas; for demanding and accepting ransom in exchange for the liberty of the said Japanese woman.
- 1.2. **Chona Elen Esplana**, Garcia's asset, for conniving with Garcia as she was one of those who kidnapped Noriyo Ohara inside the Marzan residence in Bugallon, Pangasinan; for

keeping Ohara in her custody for almost a month inside the SMD Office and at other times at other places within and outside Metro Manila; for actually participating in the negotiation and demand for ransom and accepting the ransom money.

- 1.3. **Virgelito Gutierrez, alias “Labsky”**, Garcia’s asset and a supposed lackey of Director Gatdula, for conniving with Garcia as he was one of those who kidnapped Noriyo Ohara inside the Marzan residence in Bugallon, Pangasinan; and for participating in the negotiation and demand for ransom and accepting and distributing the ransom money.
- 1.4. **NBI Director Magtanggol B. Gatdula**, who, based on Ex-O/SI Jose Odelon Cabillan’s testimony, appears to have prior knowledge of the criminal operation carried out by Chief/SI Mario Garcia and his group, monitored the conduct of the same, and received from Cabillan, through his Special Assistant (Raul Dimaano), part of the initial proceeds of the ransom money; and who, from other direct and several pieces of circumstantial evidence, is shown to have knowledge and participation in the operation and in its cover-up.
- 1.5. Other Security Volunteers who conspired and participated in the criminal operation, namely:
 - a. Eduardo “Bong” Romero;
 - b. Arman Alumisen;
 - c. Fritz Gerald Argente;
 - d. Marvin Del Prado;
 - e. Former Master Sergeant Dela Cruz;
 - f. Donald Dela Cruz;

- g. Ricee Marquez;
- h. Rinee Marquez;
- i. Carl Plantado;
- j. A certain “Mags”;
- k. Jay Ducusin (Labsky’s driver); and
- l. Other John Does and Jane Does.

1.6. **Raul Dimaano**, Special Assistant of Director Gatdula, for conniving with the group of Garcia and Gatdula, manifested by his act of collecting the amount of P500,000 (from the initial payment of P1M ransom) from SI Cabillan allegedly intended for Director Gatdula.

1.7. **Jose Odelon Cabillan**, Special Investigator and former Executive Officer of the NBI-SMD, for carrying out the order of Mario Garcia to unlawfully and feloniously take, kidnap, detain and keep under their guard one Noriyo Ohara a.k.a. Marefe Laganas; and for accepting and distributing the ransom money in exchange for the liberty of Noriyo Ohara.

2. For covering up to hide their **illegal and criminal operation**, the following persons, as co-conspirators, are recommended for preliminary investigation for **Grave Coercion defined under Art. 286 of the Revised Penal Code--**

2.1. **Chief/SI Mario A. Garcia**—for giving Chona Esplana direct orders and instructing her to coerce Noriyo Ohara to write a letter to the NBI Director and President Aquino purportedly asking for their help.

2.2. **Chona E. Esplana**—for coercing Noriyo Ohara to write the letters to the NBI Director and President Aquino.

3. Still in relation to the cover up, **Mario A. Garcia**, is recommended for preliminary investigation for **Falsification** defined under Articles 171, in relation to Article 172 of the Revised Penal Code, for falsifying and presenting to the Panel a falsified Logbook and for directing Ex-O Cabillan to falsify a “Turn Over Report”, where it was made to appear that the Marzans voluntarily turned over Noriyo Ohara to the NBI SMD, are falsifying the Incident Report.

4. Preliminary Investigation for **Falsification** as defined under Article 171, in relation to Article 172, is also recommended against **Jose Odelon Cabillan** for the falsifying of the Turn-over Report and the Incident Report.

5. The following persons, as co-conspirators, are recommended for preliminary investigation for **Robbery defined under Art. 293 in relation to Art 294 of the Revised Penal Code**, for forcibly taking the bulk of Noriyo Ohara’s personal properties which were with her during her detention at the NBI SMD—

5.1 **Mario A. Garcia--** for taking several personal properties of Ohara consisting of items which are listed in the letter of Ohara dated December 13, 2011 to Commissioner Ricardo A. David, Jr.¹⁰⁸

5.2 **Chona E. Esplana**—for conniving with Mario A. Garcia in illegally taking from Noriyo Ohara the keys to her house in Las Pinas City and other personal items of Noriyo Ohara;

¹⁰⁸ Annex JJJ: Letter of Noriyo Ohara to Commissioner Ricardo A. David, Jr. dated December 13, 2011; also includes the Philippine passport and Driver’s license of a certain Marefe Laganas.

and

- 5.3 **Virgelito A. Gutierrez, alias “Labsky”**— for conniving with Mario A. Garcia and Chona Esplana for illegally taking from Noriyo Ohara the keys and documents to Noriyo Ohara’s BMW car.

B. ADMINISTRATIVE CHARGES

The Panel recommends the filing of administrative charges against the following individuals:

1. **Chief/SI Mario A. Garcia**—for his principal participation in the kidnapping-for-ransom of Noriyo Ohara, and for his other illegal acts while Ohara was held captive and under his control.

On the basis of the foregoing, Chief/SI Garcia is recommended to be charged with Grave Misconduct, Serious Dishonesty, Being Notoriously Undesirable; and Conduct Prejudicial to the Best Interest of the Service.

2. **Director Magtanggol B. Gatdula**- (1) for his principal participation in the kidnapping-for-ransom of Noriyo Ohara; (2) for failing to comply with the directive of the Secretary given on December 2, 2011 to turn over the custody of Noriyo Ohara to the Bureau of Immigration, and making it appear that Ohara was already turned over to the Japanese Embassy, when in fact Ohara was still in the NBI in the custody of the FLD; (3) for failing to comply with the Memorandum of the Secretary dated December 6, 2011 to submit a complete incident report re: Ohara and address the points identified

therein, and submitting only a letter¹⁰⁹ on December 29, 2011 containing an explanation why the NBI did not turn over Ohara to the BI; and (4) for failing to act swiftly and decisively and treating the very serious allegations against Mario Garcia, *et al.* without any sense of urgency and importance.

On the basis of the foregoing, Director Gatdula is recommended to be charged with **Grave Misconduct, Gross Neglect of Duty, Gross Insubordination and Conduct Prejudicial to the Best Interest of the Service.**

3. **Ex-O/SI Jose Odelon Cabillan** - for his principal participation in the kidnapping-for-ransom of Noriyo Ohara, and for his other illegal acts while Ohara was held captive and under his control.

On the basis of the foregoing, SI Cabillan is recommended to be charged with **Grave Misconduct, Serious Dishonesty, Being Notoriously Undesirable; and Conduct Prejudicial to the Best Interest of the Service.**

4. **Deputy Director Rickson L. Chiong**— for failing to act decisively and treating the very serious allegations against Mario Garcia, *et al.* without any sense of urgency and importance, despite being the immediate superior of Mario Garcia as Deputy Director for Administrative Services.

On the basis of the foregoing, Deputy Director Chiong is recommended to be charged with **Inefficiency and Incompetence in the Performance of Official Duties.**

¹⁰⁹ Annex KKK: Letter of Director Gatdula to Secretary Leila M. De Lima dated December 28, 2011

5. Atty. Claro A. De Castro, Jr. – for submitting a false report regarding the actual whereabouts of Ohara, stating that Ohara was physically turned over to the Japanese Embassy on November 21, 2011, a declaration clearly already belied by the official accounts of the Japanese Embassy and several witnesses, including his own, and for using the false report to justify the NBI's non-compliance with the verbal directive of the Secretary of Justice on December 2, 2011 for the immediate turnover of Ohara to the Bureau of Immigration. His own excuse that he believed in good faith that Hiruta, to whom he endorsed Ohara, already turned over the physical person of Ohara to the Japanese is belied by his own testimony that Ohara continued to stay in the FLD and was physically in the custody of the NBI until December 5, 2011.

On the basis of the foregoing, Atty. De Castro is recommended to be charged with **Serious Dishonesty and Insubordination.**

6. Raul Dimaano, Executive Assistant III to the NBI Director, for actually receiving from Ex-O/ SI Cabillan the amount of P500,000 from the initial proceeds of the ransom money allegedly intended for NBI Director Magtanggol Gatdula.

On the basis of the foregoing, **Raul Dimaano** is recommended to be charged with **Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.**

C. LEGAL BASIS OF LIABILITY

In the prosecution of those who participated in the kidnapping of Noriyo Ohara, the following legal provisions of the Revised Penal Code may be taken into consideration:

“Art. 267. Kidnapping and serious illegal detention - .Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than five days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.”

“Art. 286. Grave coercions - The penalty of *arresto mayor* and a fine not exceeding 500 pesos shall be imposed upon any person who, without authority of law, shall, by means of violence, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.

If the coercion be committed for the purpose of compelling another to perform any religious act or to prevent him from so doing, the penalty next higher in degree shall be imposed.”

“Art. 171. Falsification by public officer, employee or notary or ecclesiastic minister - The penalty of *prision mayor* and a fine not to exceed P5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of

the following acts:

xxx xxx xxx

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;
xxx xxx xxx”

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.”

“Art. 293. Robbery - Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence or intimidation of any person, or using force upon anything shall be guilty of robbery.

“Art. 294. Robbery with violence against or intimidation of persons; Penalties - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

xxx xxx xxx

The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases. (As amended by R. A. 18).”

JURISPRUDENCE

In ***People vs. Po1 Froilan Trestiza***, et al. (G.R. No. 193833, November 16, 2011), the Supreme Court ruled:

XXX

XXX

XXX

Article 267 of the Revised Penal Code specifically stated that the crime should be committed by a private individual. The trial court settled the matter by citing our ruling in *People v. Santiano* (359 Phil 928, 943 [1998]), thus:

The fact alone that appellant Pilueta is an organic member of the NARCOM and appellant Sandigan a member of the PNP would not exempt them from the criminal liability of kidnapping. It is quite clear that in abducting and taking away the victim appellants **did so neither in furtherance of official functions nor in the pursuit of authority vested in them. It is not, in fine, in relation to their office,** but in purely private capacity that they have acted in concert with their co-appellant Santiano and Chanco.

XXX

XXX

XXX

As regards the attendant administrative liability, the **Revised Rules on Administrative Cases in the Civil Service**¹¹⁰ provide for the grave offenses for which the individuals enumerated above may be held administratively liable.

“PENALTIES

Rule 10

SCHEDULE OF PENALTIES

“Section 46. **Classification of Offenses.** – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

¹¹⁰ See Civil Service Commission Resolution No. 1101502 dated November 18, 2011

A. The following are **grave offenses** shall be punishable by dismissal from service:

- 1. Serious Dishonesty
- 2. Gross Neglect of Duty
- 3. Grave Misconduct

xxx xxx xxx

6. Falsification of official document

xxx xxx xxx

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense.

xxx xxx xxx

4. Inefficiency and incompetence in the performance of official duties

xxx xxx xxx

- 18. Refusal to perform official duty
- 19. Gross insubordination
- 20. Conduct prejudicial to the best interest of the service

xxx xxx xxx”

CHAPTER 6

OBSERVATIONS AND OTHER RECOMMENDATIONS

The following are the observations and concerns of the Panel which came about during the fact-finding investigation:

I. OBSERVATIONS

1. Put an end to the unauthorized recruitment of security volunteers.

In the guise of augmenting its personnel, the NBI has resorted to and justified the recruitment of security volunteers (SVs), who are completely without any official connection with the NBI, and in some reported cases, have turned out to be instruments in the commission of illegal activities where they are allowed to wear NBI uniforms and carry firearms belonging to the NBI. The practice should be stopped completely in order to ensure professionalism and accountability within the ranks.

Sadly, unscrupulous and irresponsible officers in the Bureau have exploited this “*tsapa*” mentality prevalent among Filipinos, who are willing to volunteer services for free to be able to put up some façade or trappings of power and authority, no matter how fleeting, fanciful and artificial the feeling. This is another manifestation of what President Aquino describes as “*utak wangwang*”, where one delights in the appearance or pretense of power. Typical of said mindset is the case of Brgy. Capt. Rudy Arenas, Jr., who was more than willing to serve as security

volunteer without any compensation and abandon his responsibilities as a barangay captain whenever he travelled all the way from Bayambang, Pangasinan to NBI-Manila, just so he could flash his NBI badge and access pass and get a “high” for being “one of the boys.” But Garcia may have actually established a private army, a criminal organization conducting an underworld operation using the NBI as a front to shortcut or violate the law, commit criminality or other wrongdoing and avoid detection and punishment.

In this connection, to put an end to this anomaly, all IDs/Access Pass issued by Chief/SI Mario Garcia are recommended to be revoked immediately and an appropriate notice be posted conspicuously in all NBI offices nationwide that all such IDs issued by Chief/SI Garcia and any other unauthorized personnel are not to be honored for any purpose.

2. Review the policies with respect to the screening of Confidential Agents (CAs)

It has come to the attention of the Panel that the number of confidential agents has so ballooned that it has now outnumbered the existing NBI personnel complement of the NBI, as per report given to the Panel: CAs now number 1,819¹¹¹. Worse, some CAs have pending criminal cases as reflected in the NBI’s own database, or are known criminal or undesirable characters¹¹² in their areas of operation, and this has tainted the image of the NBI

¹¹¹ Annex LLL: List of Confidential Agents

¹¹² Annex MMM: Derogatory Records of Virgilito Gutierrez and Chona Esplana

or given rise to the perception that the NBI is somehow engaged in some shady activities.

It is therefore recommended that there should be more stringent screening procedures in the recruitment of CAs.

3. In connection with Nos. 1 and 2 above, the passage of the pending bills before the House and the Senate on the Reorganization of the NBI should now be given priority by Congress to address NBI's lingering problem of lack of manpower.

4. Re-training of NBI officials and personnel with focus on values formation and professionalism

The case of Ohara highlights the declining values and distorted sense of duty among some agents and officials of the NBI.

Therefore, the **re-training** of the ranks and officers of the country's supposed premiere investigative agency has become imperative.

Said training should focus on developing not only the skills of NBI agents in the conduct of their duties, but instilling in them a sense of professionalism and commitment to public service.

5. Review the existing arrangement of the NBI with the Japanese government regarding the detail of a Japanese police liaison officer

The questionable involvement of Mr. Katsuya Hiruta in the case of Ohara, who is not accountable either to the NBI or to the Japanese Embassy, brings to the fore the need to review our government's arrangement with the Japanese government. As a first step, it is recommended that Hiruta be sent back to Japan.

6. Reshuffle/Revamp of Key Officials

To set a new direction and to infuse fresh leadership and effective management in the entire institution of the NBI, the Panel recommends the revamp, re-shuffle or transfer of key officials, taking into consideration the qualifications, competence, integrity and the track record of those that may be affected.

The Panel, for example, did not make any recommendations against Assistant Director Medardo G. De Lemos. But, the single account about him also receiving a share from the ransom, although hearsay, is very disturbing.

II. ON NORIYO OHARA

The Panel does not lose sight of the fact that Noriyo Ohara, despite being an undocumented alien, went through a difficult situation and thus deserves some consideration from the government.

Firstly, we recommend that a complete clinical examination be done on her to enable her to cope with the physical and mental ordeal she has undergone and recover her sense of normalcy. While preliminary examination has been made by a composite team of doctors from the National Center for Mental Health (NCMH), Department of Health, the Panel has been informed that the doctors are ready to conduct a series of examinations on Ohara in their hospital facilities to complete her treatment.

Secondly, Noriyo Ohara is currently facing deportation charges¹¹³ on account of her illegal entry into the country. Considering the importance of her testimony for the successful prosecution of the cases to be filed against those who are not only criminally responsible for kidnapping and detaining her, but had tarnished the image of the NBI, the Panel recommends that the provisions of Section 47 (a)(1) of the Philippine Immigration Act,

¹¹³ Noriyo Ohara is being charged for violating Section 37(a)(1) and (9), in relation to Section 45(d), of the Philippine Immigration Act, as amended, as follows:

“Sec. 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

(1) Any alien who enters the Philippines after the effective date of this Act by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry or at any place other than at a designated port of entry;

xxx xxx xxx

(9) Any alien who commits any of the acts described in sections forty-five and forty-six of this Act, independent of criminal action which may be brought against him: *Provided*, That in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported: *Provided however*, That the imprisonment may be waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the Department Head;

xxx xxx xxx

“Sec. 45. Any individual who:

(d) Being an alien, enters the Philippines without inspection and admission by the immigration officials, or obtains entry into the Philippines by willful, false, or misleading representation or willful concealment of a material; xxx”

as amended, be invoked in order to legalize Ohara's stay in the Philippines, to wit:

“SPECIAL PROVISIONS

“Sec. 47. Notwithstanding the provisions of this Act, the President is authorized:

(a) When the public interest so warrants:

(1) To waive the documentary requirements for any class of nonimmigrants, under such conditions as he may impose;

xxx xxx xxx”

It bears noting that, pursuant to Presidential Decree No. 830¹¹⁴ (1975), as implemented under Item 5 of Letter of Implementation No. 47 dated August 18, 1976, the Office of the President delegated to the Secretary of Justice “action on immigration matters, including waiver of visas and admission of aliens, except deportation matters.”

III. ON JOSE ODELON CABILLAN

Considering the materiality and importance of the testimony of Ex-O/SI Cabillan for the successful indictment and prosecution of all those involved in the kidnapping-for-ransom of Noriyo Ohara and other related crimes committed, the Panel strongly recommends and favorably indorses his inclusion in the Witness Protection Program (WPP)¹¹⁵ and his qualification as a state witness.

¹¹⁴ Entitled, “Giving Flexibility and Continuing Authority to the President of the Philippines to Restructure the Office of the President.”

¹¹⁵ R.A. No. 6981, entitled “An Act Providing for a Witness Protection, Security and Benefit Program and for Other Purposes”

CHAPTER 7

FINAL WORDS

The Panel takes this opportunity to share some thoughts as it went through the rigors of marathon hearings with a singular goal in mind – arrive at the truth. It is in this process of ferreting out the truth that the Panel was faced with the very difficult task of investigating its peers in government service and family members, so to speak, in the Department of Justice.

After two (2) weeks of full-day hearings, the Panel came upon many heretofore mysterious or questionable activities in the NBI. The investigation has exposed some frailties and defects in the system, and the unscrupulous and the corrupt in the NBI have taken advantage of and benefited from it.

While the investigation is ongoing, the Panel was told that the morale of the employees and agents of the NBI was at its lowest. Really, the present controversy has shaken the NBI to its very core.

The Panel takes comfort in the fact that this endeavor could pave the way to better or more meaningful reforms in the leadership and in the ranks in the NBI and restore the image of the organization that is founded on **nobility, bravery and integrity**. To be sure, the President's core message of "*tuwid na daan*" was never intended to remain to be an empty slogan, but as a way of life that each public servant has to embrace. Indeed, NBI need not be reminded about it. For integrity and righteousness go into the very essence of the NBI: they are its reason for being.

Chief/SI Mario A. Garcia laments that he was kicked out like a dog when he was relieved from his post as SMD Chief. To this we say that it is high time that his criminal activities are abated and nipped in the bud: people like him and those protecting him have no place in this hallowed institution.

The Panel hopes that this fact-finding investigation has served the purpose of uncovering the truth with the end in view of bringing those responsible therefor before the bar of justice and account for their misdeeds and wrongdoing inflicted upon the hapless Japanese woman and the Marzan family.

On a more substantive note, the Panel hopes that this would restore transparency and accountability in the NBI's dealings with those seeking their assistance or expecting protection and support from the institution. It is said that people who feel uncomfortable under the bright light of scrutiny and criticism often have something to hide. Transparency is at the very heart of good governance.

The Panel expresses the hope and the confidence that the NBI will recover from this unfortunate incident, and may it serve as a wake-up call to the men and women of the NBI.

Pursuant to D.O. No. 1007, s. 2011, this Report is being respectfully submitted for the consideration of the Honorable Secretary Leila M. De Lima.

DONE this 6th day of January, 2012, in the City of Manila, Philippines.

FRANCISCO F. BARAAN III
Undersecretary
Chairman

ZABEDIN M. AZIS
Assistant Secretary
Vice-Chairman

DONALD T. LEE
City Prosecutor
Member

CCT/ISR/APS