

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/21-01/25**

Original: **14 October 2025**

Date: **28 October 2025**

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Tomoko Akane
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

**PUBLIC
with Public Annex A**

Public Redacted Version of “Appeal Brief on Interim Release”

Source: Defence for Mr Rodrigo Roa Duterte

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Duterte Defence Team

☐ Legal Representatives of the Victims

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☒ The Office of Public Counsel for Victims

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I. INTRODUCTION

1. Mr Duterte hereby appeals Pre-Trial Chamber I's decision to deny him interim release ("the Impugned Decision").¹
2. Mr Duterte is 80 years old, infirm, and debilitated. It is, quite simply, cruel to detain him while he enjoys the presumption of innocence. A court of law set up to address the crimes of ultimate concern to humanity may also show compassion. Mr Duterte has neither the desire nor capacity to flee or to return to a life of power or politics.² He merely seeks interim release in a country where he can participate in the confirmation proceedings in a setting conducive to his proven weak state of mental and physical health. To facilitate this, he has agreed to the most restrictive conditions for release ever proffered at the International Criminal Court. In light of various errors of law and fact, the Appeals Chamber is requested to overturn the Impugned Decision and to order Mr Duterte's immediate interim release to the State Party that has vigorously affirmed its commitment to the Court by expressing its keen desire to receive him, under terms and conditions tendered at first instance.

II. PROCEDURAL HISTORY

3. On 12 March 2025, Mr Duterte was surrendered to the custody of the International Criminal Court. When first brought to the Detention Centre, he was admitted directly into hospital.³ On the morning of 14 March 2025, even prior to his initial appearance, Counsel informed the Pre-Trial Chamber that Mr Duterte's fitness to stand trial would be at issue.⁴ The Chamber chose to

¹ Decision on the Defence's 'Urgent Request for Interim Release' and 'Renewed Request for Interim Release', [ICC-01/21-01/25-282-Conf](#), 26 September 2025 (the "[Impugned Decision](#)"). This appeal brief is filed **confidentially** pursuant to [Regulation 23bis\(2\)](#) because it concerns a decision of the same classification. The Defence has no objection to this brief being reclassified as public.

² [REDACTED].

³ [Registry Report on Arrest](#), paras. 15-16, 19.

⁴ [Annex 7 to the Registry Report on Decisions and Orders](#), p. 5, para. 7.

disregard this expression of concern commenting, without any support whatsoever, that Mr Duterte was “fully mentally aware and fit”.⁵

4. On 28 May 2025, a Defence-appointed neurologist examined Mr Duterte and reported that his cognitive symptoms were, to some degree, exacerbated by [REDACTED].⁶ Since then, Mr Duterte has lost his balance and collapsed several times while in detention and, on one occasion, was evacuated to hospital.⁷
5. On 12 June 2025, the Defence sought Mr Duterte’s interim release to a State Party that had agreed to receive him under the very same stringent terms and conditions, bar one,⁸ that the Prosecution had deemed sufficient to neutralise statutory risks for the purpose of release to the Kingdom of the Netherlands.⁹ The Pre-Trial Chamber thereafter ordered the State Party concerned to submit any observations as to its ability and willingness to receive Mr Duterte on its territory and to enforce restrictive conditions.¹⁰ On 3 July 2025, the State Party communicated to the Pre-Trial Chamber its readiness to “cooperate fully with the ICC regarding the adjudication of the Interim Release Request” and to enforce the terms and conditions annexed to the Registry’s *note verbale*.¹¹
6. Some days later, at the Defence’s request,¹² the Pre-Trial Chamber suspended its adjudication of the request for interim release to enable the Defence’s expert neurologist to finalise his findings.¹³ Upon receipt of the final medical report,¹⁴

⁵ [Initial Appearance](#), p. 8, line 25.

⁶ [Preliminary Neurological Expert Report](#), p. 11.

⁷ Email, Defence to ICCDC, “Duterte”, 8 August 2025, 12:33 (“[REDACTED]”). *See also* Email, Defence to ICCDC, “CT Images and New Information in Mr Duterte’s Medical File”, 8 October 2025, 16:25 (“[REDACTED]”).

⁸ [Annex B to the Urgent Request for Interim Release](#).

⁹ [Interim Release Request](#), paras. 38-40.

¹⁰ [Order Inviting State Observations](#), para. 5.

¹¹ [Registry Report on Consultations](#), para. 9. *See also* [Annex II to Registry Report on Consultations](#), p. 2.

¹² [Request for Suspension of Interim Release Request](#), para. 7.

¹³ [Request for Suspension of Interim Release Request](#), para. 9.

¹⁴ [Expert Neurologist Report](#); [Expert Neuropsychologist Report](#).

the Defence promptly renewed its request for interim release. The renewed request addressed diagnosed cognitive impairments in multiple domains that prevent actualisation of the risks under Article 58(1)(b) of the Statute.¹⁵

7. On 8 September 2025, the Pre-Trial Chamber postponed the hearing on the confirmation of the charges for the purpose of adjudicating the issue of Mr Duterte's fitness to stand trial.¹⁶ In so doing, the Chamber ordered the Registry to submit a list of independent experts to examine Mr Duterte.¹⁷ Upon filing the requested list, the Registry noted that translation of medical documents would take approximately five weeks.¹⁸ Given such a lengthy administrative delay, the Defence notified the Chamber that, as a further condition of release, the Defence would provide a financial surety to the Court to cover any expenses related to the travel and accommodation of the Chamber-appointed experts to examine Mr Duterte in the State Party identified for release.¹⁹

III. APPLICABLE LAW

8. Article 82(1)(b) of the Rome Statute provides either party with the right to appeal any decision granting or denying release of the person being investigated or prosecuted.
9. The Appeals Chamber will not necessarily defer to the legal interpretation of the Pre-Trial Chamber, but "will arrive at its own conclusion as to the appropriate law and determine whether or not [the] Chamber misinterpreted the law".²⁰ A decision may be reversed where it is "materially affected" by a legal error. Although findings of fact are entitled to a margin of deference, decisions on interim release may be reversed when a panel of first instance

¹⁵ [Renewed Request for Interim Release](#), para. 8.

¹⁶ [Decision Postponing the Confirmation Hearing](#), para. 8. *See also* [Request for Indefinite Adjournment](#).

¹⁷ [Order Pursuant to Rules 113 and 115](#), para. 24.

¹⁸ [Registry Shortlist of Experts](#), para. 30.

¹⁹ [Defence Notification](#), para. 5.

²⁰ [Bemba et al. Appeals Judgment on Interim Release](#), para. 20.

misappreciates or fails to consider relevant facts, or takes into account irrelevant facts.²¹

10. Substantiated factual considerations which mitigate the need for detention should not be dismissed or ignored.²² Guarantees from a State Party, for example, must be accorded considerable weight in support of an application for interim release.²³ Similarly, the opinions of respected experts should be deemed dispositive in the absence of counter-expertise, especially when medical disability can impact on statutory risk factors.²⁴

IV. GROUNDS OF APPEAL

A. The Pre-Trial Chamber erroneously found that Mr Duterte poses a risk under Article 58(1)(b)(i)-(iii) of the Rome Statute

- i. *The Pre-Trial Chamber erred in law by relying on hypothetical and non-specific risks to find that continued detention is warranted*

11. At paragraphs 52 and 54 of the Impugned Decision, the Pre-Trial Chamber asserted that an assessment of risk under Article 58(1)(b) of the Statute revolves around the “possibility, not the inevitability, of a future occurrence”.²⁵ At other international and regional tribunals, this standard has been interpreted to mean “less than certainty, **but more than a mere possibility** of a risk materialising”.²⁶ In the context of risks to the administration of justice, it does “not suffice merely to refer to an abstract risk unsupported by any evidence”;²⁷ rather, the danger posed to the proper conduct of the proceedings must be supported by factual evidence.²⁸ In the present case, the Chamber has misapprehended the applicable legal standard by allowing itself to be guided by “possibility” alone.

²¹ [Said Appeals Judgment](#), paras. 13-14.

²² [Boicenco v. Moldova](#), para. 142.

²³ [Stanišić and Simatović Decision on Prosecution Appeal](#), para. 48.

²⁴ [Gbagbo Appeals Judgment on Interim Release](#), para. 87.

²⁵ [Impugned Decision](#), fn. 52, citing [Bemba Appeals Judgment on Interim Release](#), paras. 55, 67.

²⁶ [Shala Decision on Detention](#), para. 32 (emphasis added).

²⁷ [Grishin v. Russia](#), para. 148.

²⁸ [Piruzyan v. Armenia](#), para. 96 (emphasis added).

12. The Appeals Chamber has clarified that, while it falls to the panel of first instance to weigh the evidence and to “make a prediction as to the likelihood of future events”, any such prediction must, nevertheless, be reasonable. In other words, there must be a sufficient factual basis for the Pre-Trial Chamber to **reasonably** anticipate a risk.²⁹
13. In the present case, however, the Pre-Trial Chamber interpreted the standard to mean that *any* suggestion, however unsubstantiated, may give rise to the “possibility” of risk. For example, the Chamber found that it did not need to assess whether Mr Duterte could take steps to contact or exercise pressure on potential witnesses, but, rather, relied on a bland and unsubstantiated allegation that “Mr Duterte’s and his associates’ history shows that he is able and has means, either directly or through his associates, to obstruct proceedings against him”.³⁰ In making this finding, the Chamber noted Mr Duterte’s alleged involvement in briefing a witness due to testify in an inquiry before the Senate of the Philippines, and referred generally, without specific page reference, to document PHL-OTP-0017-4591.³¹
14. Document PHL-OTP-0017-4591, however, makes no direct reference to Mr Duterte. It is an open-source media article from a known anti-Duterte outlet –

²⁹ [Mbarushimana Appeals Judgment on Interim Release](#), para. 60 (emphasis added). See also [Stanišić Decision](#), para. 27, with the ICTY Appeals Chamber cautioning against relying on presumption for continued detention (“the Prosecution fails to [...] provide specific information as to the Accused’s alleged contacts; **instead, it merely argues that [his] prior senior position assumes such connections and that he retains them.** [...] The Appeals Chamber does not agree. Furthermore, even if the Trial Chamber failed to give sufficient attention to the fact that the Accused, due to his prior senior position, is likely to still have important connections [...], **the Prosecution has failed to provide any evidence showing that [he] would represent a concrete risk of harm to victims and witnesses upon release. No information has been provided showing that he has influenced or threatened them in the past or intends to do so in the future**”) (emphasis added).

³⁰ [Impugned Decision](#), para. 54.

³¹ In respect of the appropriate temporal scope of risk assessments, the ICTY has warned against using outdated information or conducting assessments *in abstracto*: “[t]he Trial Chamber may consider whether there was any suggestion that an accused had interfered with the administration of justice in any way **since the date when an indictment was confirmed against him**”. See [Tarčulovski Decision on Provisional Release](#), para. 18 (emphasis added).

the ‘Rappler’ – that focuses on the alleged actions of two *other* individuals, Alan Peter Cayetano and Ronald dela Rosa. [REDACTED], [REDACTED] whose testimony has changed, over the years, [REDACTED] and cannot now [REDACTED] because [REDACTED]. Despite the Pre-Trial Chamber’s reliance on this document to conclude that Mr Duterte was involved in ‘briefing’ a Senate witness, there is **no mention** of such conduct anywhere in the document.

15. The Pre-Trial Chamber relied on four other documents to support Mr Duterte’s possible capacity to thwart investigations if released.³² The first document comprises uncorroborated hearsay [REDACTED]. The second and third documents are merely statements by biased NGOs that allude to actions taken by third parties or various arms of the Philippine Government against apparent Duterte critics, while the fourth document is an open-source media article discussing Mr Duterte’s verbal attacks on the Catholic Church. The Chamber erred in attaching excessive evidential weight to such evidence.³³ NGO reports and open-source press articles selectively picked by the Prosecution have limited probative value and cannot serve as a reliable basis for objective factual findings.³⁴ Nor can evidence with such diminished evidential value serve as the basis for restricting the fundamental right to pre-trial release.³⁵

³² [Impugned Decision](#), fn. 55, referring to PHL-OTP-0018-0003; PHL-OTP-0003-0803; PHL-OTP-0003-0826; PHL-OTP-00019369.

³³ See [Katanga and Ngudjolo Decision on Bar Table Motions](#), para. 30 (“[the Chamber] is therefore unable to qualify those documents as sufficiently reliable [...] where such reports are based, for the most part, on hearsay information [...] the reliability of their content is **seriously impugned**”) (emphasis added).

³⁴ [Katanga and Ngudjolo Decision on Bar Table Motions](#), para. 30 (finding that, to be considered reliable, NGO reports **must** provide sufficient guarantees of non-partisanship and impartiality as well as sufficient information on sources and the methodology used to compile and analyse the evidence upon which the factual assertions are based). In the context of confirmation of charges, see [Gbagbo Decision Adjourning the Confirmation Hearing](#), para. 35 (“NGO reports and press articles do not usually constitute a valid substitute for the type of evidence that is required to meet the evidentiary threshold”).

³⁵ [Gbagbo Decision Adjourning the Confirmation Hearing](#), para. 28 (“[a]lthough there is no general rule against hearsay evidence [...] hearsay statements [...] will usually have less probative value. Reliance upon such evidence should thus be avoided wherever possible [...] Heavy reliance upon **anonymous hearsay, as is often the basis of information contained in reports of nongovernmental organizations (“NGO reports”) and press articles**, is problematic [because it] puts the Defence in a difficult position

16. The Pre-Trial Chamber's flawed application of appellate precedent allowed speculation to supplant reason in predicting risk. The Impugned Decision relied largely on hypothetical assumptions, referring, for example, to the fact that Mr Duterte "appears to have the necessary political contacts", including his daughter's position as Vice-President of the Philippines, "that may help him abscond".³⁶ No reasoning was provided as to how these political contacts would translate into a flight risk nor was any reasoning forwarded as to why the Vice-President of a sovereign nation would risk breaking the law or severing diplomatic relations to assist her father's flight.
17. Furthermore, the Pre-Trial Chamber mistakenly found that the mere existence of popular or political support (a characteristic shared by every high-profile ICC detainee) is, *per se*, of such significance that it negates any mitigation that could otherwise be achieved by State guarantees. The Appeals Chamber should curb the formulaic reliance on a "network of supporters". Such a hypothetical construct renders interim release at the International Criminal Court illusory.
18. The Defence submits that the methodology applied by the Pre-Trial Chamber in the present instance would entail a presumption of continued detention for any suspect or accused brought before this Court. After all, it will always be possible to suggest, absent objectively independent and substantiated evidence, that there *might* exist some degree of risk, however unsupported, that a suspect, or others acting on his behalf without his knowledge, *might* want to actualise the Article 58(1)(b) risk factors.

because it is not able to investigate and challenge the trustworthiness of the source(s) of the information, [...] [and] the Chamber itself does not know the source of the information and is deprived of vital information about the source of the evidence. **In such cases, the Chamber is unable to assess the trustworthiness of the source, making it all but impossible to determine what probative value to attribute to the information**") (emphasis added). See also [Ntaganda Judgment](#), para. 57, fn. 132 ("the probative value of [NGO reports] is often too low to serve as the only basis for a factual finding [...] these documents have served mainly as corroboration for other credible and reliable evidence").

³⁶ [Impugned Decision](#), para. 51 (emphasis added).

ii. *The Pre-Trial Chamber's reliance on irrelevant considerations led to errors of law and fact*

19. The Pre-Trial Chamber relied on a number of irrelevant factors to find that Mr Duterte poses a risk under Article 58(1)(b) of the Rome Statute. Such factors include (i) the characterisation, by Mr Duterte's family, of his arrest "as a pure and simple kidnapping"; (ii) that he "expressed the view that his arrest was the result of political actions by the Philippine government"; (iii) that his family not only physically resisted his arrest, but have also publicly voiced criticism thereof, and; (iv) that his daughter allegedly indicated, on 19 August 2025, that Mr Duterte had told her that he wished to return to Davao City should he be granted interim release.³⁷ The Chamber found that the above actions illustrated Mr Duterte's rejection of the proceedings before this Court and the will of his close family to help him elude detention and prosecution.
20. Furthermore, the Pre-Trial Chamber supported these findings, and its predetermined decision to detain Mr Duterte, by selectively citing facts while ignoring other pertinent facts in the same item of evidence.³⁸ For example, when finding that his alleged denial of the Court's authority could mean that he would refuse to appear at trial, it relied on an extract of a conversation between Mr Duterte and the Defence medical expert. In this conversation, Mr Duterte relayed his belief that his arrest was politically-motivated – something which is undeniably true. A full reading of the very same conversation, however, reveals that Mr Duterte stated, at the outset, that he "[REDACTED]".³⁹ Similarly, in support of its finding that Mr Duterte poses a risk of flight, the Chamber relied on a statement by Vice-President Sara Duterte – in which she said that her father had expressed a wish to return to Davao City. Yet, the very

³⁷ [Impugned Decision](#), para. 50.

³⁸ [Impugned Decision](#), para. 50.

³⁹ [Expert Neurologist Report](#), p. 4 (emphasis added).

same article presents in its opening lines Mr Duterte's emphatic assertion "**that he will face the process head-on and will not run from justice**".⁴⁰

21. It is legally and factually incorrect for the Pre-Trial Chamber to impute the actions or statements of third parties – whether it be his family, former associates, or the general populace⁴¹ – to Mr Duterte. Criticism by Mr Duterte's family of the manner in which he was arrested (an opinion fully shared by the Defence)⁴² does not mean that members of the family would assist him to elude prosecution. Such a finding is unreasonable. Interim release cannot be conditioned on abrogating the right to free expression or to present a legitimate legal plea, especially in the face of clear evidence that Mr Duterte intends to respect the legal process. Nor can the Chamber substantiate a finding of risk on recent statements made by a former associate with whom Mr Duterte has had no contact since his arrest.
22. The Pre-Trial Chamber's finding that Mr Duterte's recent election as mayor, and his son's election to the position of vice-mayor, portends risk is equally unreasonable.⁴³ Not only did the Chamber fail to explain how Mr Duterte would be able to flee monitored release in another country to return to power in the very country that surrendered and opposes him, but it also ignored the germane fact that Mr Duterte has formally relinquished his position as Mayor— **an action immediately brought to the Chamber's attention by the Defence, more than two months before the Impugned Decision was issued.**⁴⁴

⁴⁰ See [Impugned Decision](#), fn. 45, referring to TGFM, '[Duterte eyes return to Davao if granted ICC interim release, says Sara](#)', The Global Filipino Magazine, 19 August 2025 (emphasis added).

⁴¹ See [Impugned Decision](#), paras. 51, 54.

⁴² [Defence Challenge on Jurisdiction](#), paras. 116-118.

⁴³ [Impugned Decision](#), para. 58.

⁴⁴ [Defence Response to OTP's Second Request to Maintain Contact Restrictions](#), para. 3.

Indeed, the Pre-Trial Chamber was made well aware that Mr Duterte has neither the intention nor inclination to return to politics.⁴⁵

23. The Pre-Trial Chamber also erred by relying on gravity and the possibility of a lengthy sentence to find that Mr Duterte poses a flight risk.⁴⁶ Gravity is not a relevant factor when considering interim release. The International Criminal Court was established precisely to tackle the most serious crimes of international concern. Crimes lacking sufficient gravity are deemed inadmissible⁴⁷ and those crimes deemed admissible will invariably attract lengthy sentences. This approach has been rejected by other international tribunals,⁴⁸ and challenged within this very Chamber.⁴⁹

iii. The Pre-Trial Chamber erred in fact by failing to give appropriate weight to relevant facts

24. The Pre-Trial Chamber erred by failing to assign appropriate weight to Mr Duterte's ailing health and its mitigating effect on the risk factors set out in Article 58(1)(b). Mr Duterte's cognitive impairment and physical infirmity have significant bearing on his ability to abscond, to interfere with the investigations or proceedings, and to commit a crime.
25. Objective medical evidence demonstrates that Mr Duterte is severely disoriented in time and space,⁵⁰ something which cannot but affect his ability

⁴⁵ [Stanišić Decision](#), para. 28, with the Appeals Chamber highlighting the importance of finding intent on the basis of concrete evidence, as opposed to inference or hypothesis ("[i]n any event, the Appeals Chamber notes that if the Accused has retained the high-level contacts the Prosecution claims he has, it would be reasonable to conclude that he would have been able to identify potential witnesses prior to obtaining this knowledge from the Prosecution, and could have threatened them before the issuance of his indictment and his transfer to the Tribunal. **Again, there is no information that he has done so or that he intends to do so. The fact that he has been informed by the Prosecution of potential witnesses does not provide support for the argument that he now has that intent**") (emphasis added).

⁴⁶ [Impugned Decision](#), para. 51.

⁴⁷ [Rome Statute](#), Articles 1, 17(1)(d) ("[t]he case is not of sufficient gravity to justify further action").

⁴⁸ [Haradinaj et al. Decision on Provisional Release](#), para. 24 ("[t]he Trial Chamber further agrees that the expectation of a lengthy sentence cannot be held against an accused *in abstracto* because all accused before this Tribunal, if convicted, are likely to face heavy sentences") (internal footnotes omitted).

⁴⁹ See [Dissenting Opinion of Judge Ušacka](#), para. 27.

⁵⁰ [Expert Neurologist Report](#), p. 7.

to abscond. His inability to remember names similarly impedes his ability to recall witness information so as to interfere with them or an ongoing investigation.⁵¹ His impaired executive functioning indicates an inability to organise activity and to adapt to new situations.⁵² This would naturally impact his capacity to plan an escape or to continue to commit crimes (even if he were, inconceivably, to be returned to a position of power that would permit him to formulate the criminal policy attributed to him). Had appropriate weight been given to his medical conditions, the Chamber could not reasonably have found that Mr Duterte's detention remains necessary within the meaning of Article 58(1)(b).

26. Furthermore, while issues of fitness to stand trial and interim release are factually distinct, the clinical evidence presented for the purpose of evaluating competency also bears upon the assessment of risk under Article 58(1)(b). A documented cognitive deficiency that limits the ability to recall events relevant to the charges⁵³ would also affect the ability to interfere with the investigation of those same charges. Just as the ability to participate meaningfully in a legal process is affected by mental deterioration, so too is the ability to endanger that very same process. Put differently, the purpose for which clinical evidence was proffered does not change the *substance* of the evidence. To suggest that the Chamber was precluded from considering evidence in respect of its interim release assessment simply because it was procured for the purposes of competency⁵⁴ is legal sophistry and ignored clear appellate guidance that interim release assessments must contemplate a suspect's personal circumstances. The Pre-Trial Chamber's failure to appreciate these facts and the

⁵¹ [Expert Neuropsychologist Report](#), p. 5.

⁵² [Expert Neurologist Report](#), p. 14.

⁵³ [Expert Neurologist Report](#), pp. 4 ("[REDACTED]"); 18 ("[REDACTED]") (emphasis added).

⁵⁴ [Impugned Decision](#), paras. 64, 70.

clinical evidence presented is a clear error, which materially impacts its finding on the Article 58(1)(b) risks posed by Mr Duterte.

27. The Pre-Trial Chamber also erred by mischaracterising as “speculative” Defence arguments that relied on and explained the medical evidence that it had received.⁵⁵ The Defence submissions did not comprise extrapolated and unqualified expertise of Counsel; they presented a permissible conclusion founded in common sense and based on the objective findings of a highly qualified neurologist. Had the Defence asked its neurologist to pronounce on the actualisation of risk factors, the Prosecution would undoubtedly have protested that the neurologist’s conclusions were self-serving and trespassing on the province of the Pre-Trial Chamber.⁵⁶
28. The Defence arguments were thus grounded in hard and unchallenged clinical **fact**: Its submissions on Mr Duterte’s inability to “manoeuvre himself” or “locate [a] get-away transport” are based on findings by an expert neuropsychologist that Mr Duterte has “severe cognitive impairments in multiple domains (memory, executive functioning and visuospatial abilities)”.⁵⁷ Similarly, assertions that Mr Duterte does not possess the faculties necessary to formulate and execute the continued commission of crimes are based on another expert’s conclusions that his “ability to plan, organize, and adapt to new situations [...] is also impaired”.⁵⁸ Had the Chamber not committed such a factual error, it would have appropriately recognised the degree of mitigation presented by Mr Duterte’s medical conditions.

⁵⁵ [Impugned Decision](#), para. 64.

⁵⁶ The Prosecution has previously forwarded precisely such an argument. See [Prosecution Response to Request for Indefinite Adjournment](#), paras. 11 (“it is ultimately the Chamber itself, and not the experts, that is exclusively competent to make the determination of an accused’s fitness to stand trial”); 22 (“the Prosecution submits that the [REDACTED] is premature and speculative at this stage and should not be taken into account by the Chamber”).

⁵⁷ [Expert Neuropsychologist Report](#), p. 2.

⁵⁸ [Expert Neurologist Report](#), p. 14.

B. The Pre-Trial Chamber erred in its rejection of the State guarantees

i. The Pre-Trial Chamber erred in law in failing to address the proposed conditions of release and States guarantees

29. The Pre-Trial Chamber committed a further legal error in holding that the proposed conditions of release could not be “assessed in a vacuum” and that a “lack of detail” existed as “to the manner and the context in which they would be implemented to ensure effective enforcement”.⁵⁹ As such, the Pre-Trial Chamber summarily dismissed the proposed conditions of release and State guarantees as being insufficient without even considering their ability to neutralise the risks posed by Mr Duterte’s release.⁶⁰
30. The Chamber’s concern with respect to the supposed lack of detail is unwarranted. No statutory provision or precedent requires the Defence to furnish such details at this stage. On the contrary, these details are negotiated between the Registry and the receiving State after a definitive ruling on whether a suspect actually poses a risk under Article 58(1)(b), and if so, whether State guarantees and proposed conditions of release can mitigate such risk. Concrete details concerning the implementation of conditions of release are developed during subsequent consultations with the State, and only after the Chamber has identified the specific conditions that it requires implementing.⁶¹
31. Even the KSC appellate jurisprudence on which the Pre-Trial Chamber itself relied suggests that the Pre-Trial Chamber abused its discretion by dismissing *in limine* the proposed conditions and guarantees. The KSC Appeals Panel found that, had the Pre-Trial Judge sought additional information on implementation before rejecting terms of release, he would have had a “more

⁵⁹ [Impugned Decision](#), paras. 68, 69.

⁶⁰ [Impugned Decision](#), para. 70.

⁶¹ This is also the practice at the other international tribunals. See e.g. [Stanišić and Simatović Decision on Prosecution Appeal](#), para. 48 (referring to the Trial Chamber’s power to “impose conditions upon the release of an accused so as to ensure his or her presence for trial as well as the protection of others”).

complete and solid factual basis to assess the feasibility of such conditions”.⁶² In the absence of such assessment, the KSC Appeals Panel remanded the issue back to first instance to determine the issue of effective enforcement.

32. The same flaw infects the Pre-Trial Chamber’s finding that an electronic bracelet, though supposedly “essential” to mitigate flight risk, cannot be implemented [REDACTED].⁶³ While [REDACTED], the State Party authorities anticipated this problem well in advance and specifically – and repeatedly⁶⁴ – agreed “[t]o implement or enforce **any other condition** deemed appropriate by the Pre-Trial Chamber in order to facilitate interim release onto [its] territory”.⁶⁵ The Pre-Trial Chamber had also been informed by the Defence that should electronic tagging be deemed necessary, the State Party concerned would be open to negotiations on the matter.⁶⁶ The Chamber’s failure to seek further clarification from the State Party on these matters was not only diplomatically insensitive but also erroneous to the extent that it vitiates this particular finding.
33. Given the unprecedented and stringent nature of the proffered terms and conditions for release, the Defence submits that the Pre-Trial Chamber’s insistence on an electronic bracelet was, itself, unnecessary. Having said that, it should be noted that in most jurisdictions applying such a regime, electronic tagging and the associated services are normally implemented by private companies which, thereafter, transmit surveillance reports to the competent authorities.⁶⁷ As such, and if deemed critical, the Defence will attempt to locate a private company and to finance the implementation of this measure so long

⁶² [Thaçi et al. Appeal Decision on Detention](#), para. 57.

⁶³ [Impugned Decision](#), para. 69.

⁶⁴ See [Interim Release Request](#), para. 12. See also [Annex II to the Registry Report on Consultations](#), p. 2; [Renewed Request for Interim Release](#), para. 14.

⁶⁵ [Registry Report on Consultations](#), para. 9 (emphasis added).

⁶⁶ [Renewed Request for Interim Release](#), para. 15, fn. 25.

⁶⁷ See **Peru**, Resolución Ministerial No. [0108-2024-JUS](#), art. 2; **Mexico**, Thesis I.7o.P.138 P (10th), Reg. No. [2023483](#), August 2021.

as the State Party concerned can agree to receive such surveillance reports and transmit them to the Court.

- ii. *The Pre-Trial Chamber erred in law by failing to consider if the proposed State guarantees could mitigate risk under Article 58(1)(b)*

34. A suspect may only be detained insofar as lesser measures are insufficient to achieve the purpose of pre-trial detention.⁶⁸ The Pre-Trial Chamber failed to consider the proffered terms and conditions both individually and in their totality against the backdrop of identified risks. The Chamber also applied an erroneous standard by seemingly requiring the *elimination* of risk factors as opposed to their *mitigation* in accordance with the principle of proportionality.
35. Indeed, even where risks are found to exist, interim release is still warranted if those risks can be mitigated. State guarantees, in particular, carry considerable weight in such extenuation. The reliability of a governmental guarantee, which must be assessed in relation to the circumstances of each particular case,⁶⁹ can be demonstrated by State cooperation, such as through the existence of a national law on cooperation⁷⁰ or a general sense of cooperation during the proceedings.⁷¹ Provisional release has been secured on the strength of such governmental guarantees even where the Prosecution has argued that political instability would render enforcement uncertain;⁷² where the detainee's health was, on its own, insufficient to warrant release;⁷³ and where the accused had held a senior position and exercised significant influence.⁷⁴ Notably, the

⁶⁸ [Thaçi et al. Decision on Consolidated Appeal](#), paras. 55, 57. See also [Ilmseher v. Germany](#), para. 137; [Stanev v. Bulgaria](#), para. 143.

⁶⁹ [Stanišić and Simatović Decision on Prosecution Appeal](#), para. 48; [Tolimir et al. Decision on Appeal](#), para. 10; [Mrkšić Decision on Appeal](#), paras. 9, 11; [Šainović Decision on Provisional Release](#), para. 26.

⁷⁰ [Tolimir et al. Decision on Appeal](#), para. 10; [Šainović et al. Decision on Provisional Release](#), para. 6; [Milutinović et al. Decision on Lukić's Provisional Release](#), pp. 6-7.

⁷¹ [Čermak and Markač Decision on Provisional Release](#), para. 32.

⁷² [Stanišić and Simatović Decision on Prosecution Appeal](#), paras. 48, 49.

⁷³ [Milutinović et al. Decision on Lukić's Provisional Release](#), p. 8.

⁷⁴ [Perišić Decision on Provisional Release](#), p. 3 ("[c]onsidering that while the Accused held a senior position, the Trial Chamber recently granted provisional release to other accused of similar status **on the strength attributed to the guarantees of [the State]**") (emphasis added).

Defence is unable to cite to a single instance at the international tribunals in which a judicial panel has refused to conduct a meaningful assessment of proffered State guarantees. Such outright dismissal of the State guarantees in the present case is even more striking and inappropriate given that the receiving country is a State Party, which has [REDACTED] and has made repeated assurances of its full and ongoing cooperation.

36. The Pre-Trial Chamber thus erred by failing appropriately to assess the mitigating effect of the proposed terms of release, stating, in a single sentence, that it had “duly considered the list of conditions proposed by the Defence, but finds that they do not sufficiently mitigate the risks set out in article 58(1)(b)”.⁷⁵ Not a single other line in the Impugned Decision is dedicated to an appraisal of the terms and conditions proffered by the Defence or the State.⁷⁶
37. The Defence notes that the Pre-Trial Chamber’s position is also self-contradictory: on the one hand, it found that the lack of detail in respect of the implementation of the proposed conditions precluded a meaningful assessment thereof (for they could not be assessed “in a vacuum”). On the other hand, it simultaneously held that it had, indeed, “duly considered” the list of conditions and found they were insufficient to mitigate the identified risks.
38. Finally, the Defence avers that the Pre-Trial Chamber erred by failing to appreciate that the Prosecution had agreed to almost exactly the same terms of release to the Host State. At the end of the day, the Prosecution’s opposition to release in the State Party concerned – arguments ostensibly accepted by the Pre-Trial Chamber – was not founded on reason but, rather, a misguided and rather offensive belief that Mr Duterte would be met with sympathy by the local senior hierarchy that would adopt a *laissez-faire* attitude to enforcing conditions of release.

⁷⁵ [Impugned Decision](#), para. 68.

⁷⁶ [Impugned Decision](#), para. 66.

iii. The Pre-Trial Chamber erred in fact and law by taking into account irrelevant considerations in respect of the State guarantees

39. The Chamber erred by giving excessive and misplaced weight to the need for [REDACTED] to which release is contemplated.⁷⁷
40. In the first place, the Chamber appeared to have assumed [REDACTED]. Nothing in the statutory or procedural framework of the Court, however, requires this. On the contrary, established practice [REDACTED] in coordination and cooperation with national authorities.⁷⁸
41. Second, the Chamber failed to indicate what is meant by “[REDACTED]”. If the Chamber was referring to [REDACTED], this would unduly restrict the application of Article 60(2). The Court, after all, has 125 State Parties, but only [REDACTED],⁷⁹ none of which have a pre-existing interim release agreement with the Court under Rule 185(1). The requirement of a [REDACTED], as seems to be intimated by the Impugned Decision, would necessarily limit applications and release to only one of [REDACTED]. This is an unreasonable assumption that would impermissibly limit the intended application of Article 60(2).
42. The Chamber’s failure to abide by standard practice and the existing legal framework, coupled with the arbitrary imposition of an additional and unanticipated requirement into its assessment, materially affected the Impugned Decision by denying Mr Duterte interim release on the basis of factors neither reasonable nor foreseeable. Such a clear error mandates that this finding be quashed.

⁷⁷ [Impugned Decision](#), para. 69.

⁷⁸ See e.g. the Framework Agreement between the Argentine Republic and the ICC on the Release of Persons, [ICC-PRES/26-02-18](#), 28 February 2018.

⁷⁹ [REDACTED].

C. The Pre-Trial Chamber erred in law by failing to take into account humanitarian considerations in assessing the right to interim release

43. The Pre-Trial Chamber erred in law by refusing to consider humanitarian grounds in assessing Mr Duterte's right to pre-trial liberty, either as an independent consideration, consistent with established practice across the international tribunals,⁸⁰ or as a mitigating factor of Article 58(1)(b) risks. The latter, in particular, is a clear contravention of relevant ICC appellate guidance on the manner in which medical conditions may serve to neutralise such risks.
44. The Appeals Chamber has held that a detainee's condition is relevant to interim release decisions in at least two ways: (i) first, the medical condition may have an effect on, and potentially even negate, the risks under Article 58(1)(b), including, for example, on the ability to abscond; and (ii) second, the medical condition may, on its own, be a reason to grant interim release with conditions,⁸¹ a possibility forwarded by the Defence, but which the Pre-Trial Chamber refused to contemplate.⁸²
45. By failing to consider Mr Duterte's medical condition as, *first*, a potential mitigating factor of Article 58(1)(b) risks, and *second*, as an independent basis on which conditional interim release may be justified, the Pre-Trial Chamber committed a material error of law. ICC jurisprudence requires a qualitative legal assessment of all circumstances potentially relevant to the necessity of continued detention.⁸³ By refusing to engage with Defence submissions on the

⁸⁰ [Impugned Decision](#), para. 73. See [Gvero Decision on Provisional Release](#), para. 21 ("Gvero is 70 years old, and suffers from a variety of ailments. It noted Gvero's submissions that [he] is "in extremely low spirits" and "a state of some despair", as well as counsel's concern that unless granted provisional release, Gvero may not be well enough to participate on a daily basis (through his lawyers) in the trial, and in particular in the presentation of his own defence case").

⁸¹ [Gbagbo Appeals Judgment on Interim Release](#), para. 87.

⁸² [Impugned Decision](#), paras. 72-76.

⁸³ [Said Decision](#), para. 19. See also [Bemba et al. Appeals Judgment on Interim Release](#), para. 24; [Petković Decision on Provisional Release](#), para. 7. See also [UNHRC General Comment No. 35](#), para. 38 ("[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances").

degree and impact of Mr Duterte's intensifying cognitive impairment, the Pre-Trial Chamber disregarded a material consideration that directly affects the question as to whether the identified risks could have been sufficiently mitigated or conditional release warranted. This glaring omission vitiates the reasonableness of the Chamber's determination under Article 58(1)(b).

46. The Pre-Trial Chamber also erred in finding that prior Court practice of interim release on humanitarian grounds were fact-specific exercises inapplicable to the present case.⁸⁴ That only short, temporary transfers have previously been authorised at the ICC on humanitarian grounds does not negate the fact of their *existence* and *applicability* to the present case. The term of the release is inconsequential; it is the *basis* of the release that forms the issue.
47. The Chamber's position was, once again, contradictory: it found, on the one hand, that because it could not release a suspect on humanitarian grounds upon identification of any Article 58(1)(b) risks, it must altogether dispense with the question as to "whether it could release a suspect solely on humanitarian grounds".⁸⁵ Simultaneously, and without any engagement whatsoever with the clinical evidence or arguments on Mr Duterte's medical condition, the Chamber dismissed the Defence's submissions, noting that "such grounds have *in any event* not been sufficiently set out in the case at hand".⁸⁶
48. The Chamber erred by failing to consider these humanitarian considerations and their capacity to mitigate risk alongside the proposed conditions for release and State guarantees. The Defence submits that after finding that risks exist under Article 58(1)(b), the Pre-Trial Chamber deemed it unnecessary to further consider the existence of *any* condition or circumstance that may serve to neutralise them.

⁸⁴ [Impugned Decision](#), para. 72.

⁸⁵ [Impugned Decision](#), para. 73.

⁸⁶ [Impugned Decision](#), para. 73 (emphasis added).

49. In so doing, so it is argued, the Pre-Trial Chamber breached its positive obligation to ensure that Mr Duterte's pre-trial detention is neither disproportionate nor inconsistent with the presumption of innocence. Taken together, the Chamber's errors have materially affected the Impugned Decision as, without commission of these errors, it could not have found that Mr Duterte's continued pre-trial detention is warranted.

V. CONCLUSION AND RELIEF SOUGHT

50. In accordance with Rule 158(1) of the ICC Rules of Procedure and Evidence, the Defence respectfully requests that the Appeals Chamber **REVERSE** the Impugned Decision and **ORDER** the immediate release of Mr Duterte under the terms and conditions proffered at first instance.

A handwritten signature in black ink, reading "Nicholas Kaufman", written over a horizontal line.

Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 28th day of October 2025
The Hague, the Netherlands