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**FOR PUBLICATION**

**IN THE SUPERIOR COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,  
Petitioner,**

**vs.**

**PABLO MENDOZA,  
  
Respondent**

**Civil Action No. 05-0302E**

**ORDER DENYING HEARING FOR  
VOLUNTARY DEPARTURE**

**I. INTRODUCTION**

**THIS MATTER** came for hearing on September 8, 2005, at 1:30 p.m. for an Order to Show Cause. Assistant Attorney General Ian Catlett appeared on behalf of the Government. Respondent appeared and was represented by Stephen Woodruff.

**II. BACKGROUND**

Respondent is a citizen and national of the Philippines and an alien in the CNMI as defined in 3 CMC § 4303(a). Respondent entered the Commonwealth on a Non-Resident Worker Entry Permit on March 16, 2004. The permit expired March 16, 2005. On June 17, 2005, a Judgement and Commitment Order was issued against Respondent after he pled guilty to Assault and Battery and Attempted Aggravated Assault and Battery, both misdemeanors. The Government filed an Order to Show Cause against Respondent based on Respondent's two misdemeanor convictions. At the September 8, 2005 hearing, Respondent asserted that he has a due process right to a hearing by the

1 Attorney General in order to determine Respondent’s eligibility for voluntary departure. The  
2 Government wishes to proceed with involuntary deportation proceedings, which the Respondent  
3 challenges.  
4

### 5 III. DISCUSSION

#### 6 A. The CNMI Attorney General has the sole discretion to grant or deny voluntary departure 7 to aliens facing deportation pursuant to 3 CMC § 4341(e) and (f).

8 The Commonwealth Legislature exercises plenary power with respect to  
9 Commonwealth immigration matters, pursuant to section 503 of the Covenant. ‘For  
10 reasons including the population and size disparity between the CNMI and the rest of  
11 the U.S. and preservation of the CNMI’s [sic] unique Chamorro and Carolinian ethnic  
and cultural heritage, the CNMI has been permitted to exercise plenary authority over  
its own immigration.’

12 *Office of the Attorney Gen. v. Sagun*, 1999 MP 19 ¶ 8, 6 N.M.I. 36, 38 (footnote omitted) (*quoting Tran*  
13 *v. Commonwealth*, 780 F. Supp. 709, 713 (D.N.M.I 1991) *aff’d in an unpublished opinion*, 993 F.2d 884  
14 (9th Cir. 1993)). “With respect to Commonwealth immigration matters, the Commonwealth is  
15 sovereign and this Court is duty-bound to apply only the immigration laws of the Commonwealth.” *Id.*  
16 at ¶ 8, 6 N.M.I. at 39 (footnote omitted).

17  
18 “In the Commonwealth, deportation proceedings are governed by the terms of the  
19 Commonwealth Entry and Deportation Act of 1983, 3 CMC §§ 4301-4382. Sections 4341 and 4343  
20 govern deportation procedures at the hearing stage and set the terms for voluntary departure.” *Id.* at ¶9,  
21 6 N.M.I. at 39. Therefore, Respondents’ request for voluntary departure rests on the express language  
22 of 3 CMC § 4343, wherein it is expressly recognized that the grant or denial of the relief of voluntary  
23 departure is at the “discretion” of the Attorney General, “prior to actual commencement of the hearing  
24 on the order to show cause.” 3 CMC § 4343.  
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1 By contrast, the role of the Superior Court is limited to determining whether the alien is  
2 deportable pursuant to 3 CMC § 4340. 3 CMC § 4341(e) and (f); *see also Sagun*, 1999 MP 19, 6 N.M.I.  
3  
4 36. In light of the express division of responsibilities between the Superior Court and the Attorney  
5 General's Office in Commonwealth immigration law, this Court cannot interfere with the statutorily  
6 mandated discretion of the Attorney General's Office to grant or deny voluntary departure, and will not  
7 do so in this case.

8  
9 **B. The Attorney General's discretionary refusal to grant Respondent's request for voluntary  
10 departure does not violate Respondent's due process rights.**

11 As explained *supra*, the Commonwealth immigration law provides the CNMI Attorney General  
12 with the ultimate discretion in determining whether to grant or deny voluntary departure. A plain  
13 reading of 3 CMC § 4343 reveals no requirement that the alien against whom deportation proceedings  
14 are commenced receive a hearing with the Attorney General. 3 CMC § 4343.

15 Federal case law discussing an equivalent federal immigration statute granting such  
16 discretionary authority similarly provides no such procedural interludes. For example, in *Turcotte*, 12  
17 I. & N. Dec. 206 (U.S. Dep't Justice 1967), the Board of Immigration Appeals noted voluntary  
18 departure is not an automatic act conditioned solely upon a showing of statutory eligibility, rather, it  
19 is a privilege and a matter of grace. *United States ex rel. Exarchou v. Murff*, 265 F.2d 504 (2d Cir.  
20 1959) held that although the petitioner alien had made a showing of good moral character, the ultimate  
21 decision whether or not to allow a deportable alien to leave the country voluntarily is committed to the  
22 discretion of the Attorney General. The same result is found in numerous other cases including:  
23 *Parcham v. I.N.S.*, 769 F.2d 1001 (4th Cir. 1985); *Harchenko v. I.N.S.*, 379 F.3d 405 (6th Cir. 2004);  
24 *Khalaf v. I.N.S.*, 361 F.2d 208 (7th Cir. 1966); *Felzcerk v. I.N.S.*, 75 F.3d 112 (2nd Cir. 1996);  
25 *Cunanan v. I.N.S.*, 856 F.2d 1373 (9th Cir. 1988). *See also, Ali v. Ashcroft*, 366 F.3d 407 (6th Cir.  
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1 2004) (failure to grant discretionary relief, such as voluntary departure, to an alien does not amount to  
2 a deprivation of liberty interest subject to due process protection).

3  
4 Here, Respondent has allegedly overstayed his entry permit by several months. In addition,  
5 Respondent was charged with, and convicted of, Assault and Battery and Attempted Aggravated Assault  
6 and Battery, both misdemeanors, and consequently is deportable on that basis also. In accordance with  
7 3 CMC § 4340(d) (which provides as grounds for deportation of an alien, conviction of two or more  
8 misdemeanors), Petitioner initiated deportation proceedings against Respondent. Respondent has  
9 provided no grounds here to convince the Court that it should ignore the discretionary authority granted  
10 the Attorney General's Office in deciding whether to grant voluntary departure. In addition,  
11 Respondent's alleged conviction for two violent misdemeanors provides this Court no desire to impose  
12 its will on the discretion of the Government.  
13

#### 14 15 **IV. CONCLUSION**

16 For the foregoing reasons, Respondent's request that the Court overrule the Attorney General's  
17 decision regarding involuntary departure is DENIED.

18 It is further ordered: the hearing on the Petition for an order to show cause why Respondents  
19 should not be deported shall be held on November 16, 2005 at 1:30 p.m.  
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21  
22 **So ORDERED this 21st day of October 2005.**

23  
24 /s/ \_\_\_\_\_  
25 David A. Wiseman, Associate Judge  
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