



1 papers. After examining Respondent's papers, Investigator Peter left the premises. Several minutes  
2 later, a Commonwealth police officer arrived and arrested Respondent. Neither Investigator Peter,  
3 nor any subsequent arresting officer obtained any warrant prior to entering Capitol Bowling.

### 4 III. DISCUSSION

5 Respondent requests that summary judgment be entered in favor of Respondent on the  
6 grounds that she was subject to an unlawful search and seizure in violation of the Fifth and  
7 Fourteenth Amendments to the U.S. Constitution, and Article I, section 3 of the CNMI Constitution.  
8 Although the Court finds it odd that Respondent uses the tool of Summary Judgment to effectuate its  
9 arguments of illegal search and seizure,<sup>1</sup> it will, for the sake of expediency, assume that Respondent  
10 argues that 1) the warrantless search and seizure of Ms. Gascon was constitutionally defective; 2)  
11 that any evidence tainted from this initial fault is inadmissible, and 3) because the only evidence  
12 supporting any conclusion that Respondent was illegally employed and thereby deportable is  
13 inadmissible, there is no question of material fact left for the finder, because any material facts  
14 would be excluded. The Court also finds it troubling that Respondent grounds its illegal search and  
15 seizure argument under the Fifth Amendment of the U.S. Constitution. In fact, the *Fourth*  
16 *Amendment* is the only properly invoked amendment when arguing an illegal search and seizure  
17 took place.

18 Though the Court takes serious issue with the haphazard manner Respondent brings forth her  
19 arguments, it will nonetheless organize and sort what should have been organized and sorted by  
20 counsel before it was presented to the Court. Therefore, the Court will lay out the standard for  
21 issuing summary judgment and discuss whether the facts warrant summary judgment *after* it makes  
22 an evidentiary determination regarding whether any evidence following Investigator Peter's  
23 warrantless entry into the Capitol Bowling kitchen will be considered in determining whether or not  
24 to grant Summary Judgment to Respondent.

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26 <sup>1</sup>Indeed, it appears that a suppression motion to exclude all evidence flowing from the initial violation would be  
27 the most proper vehicle, and then, if granted, Respondent may file a separate motion for Summary Judgment, which  
28 correctly lay out the standards for summary judgment, and hence make her arguments in favor of such disposition.  
Here, Respondent fails to explain to the Court how summary judgment is warranted within the standards developed  
under the Commonwealth Rules and precedents.

1           **A. Investigator Peter’s Warrantless Entry, Search, and Subsequent Seizure of**  
2 **Respondent is Constitutional.**

3           A person’s Fourth Amendment right to be free from unreasonable search and seizure comes  
4 into play only when that person has a legitimate expectation of privacy. *See Minnesota v. Carter*,  
5 525 U.S. 83, 88, 119 S. Ct. 469, 142 L.Ed.2d 373 (1998), *see also Rakas v. Illinois*, 439 U.S.  
6 128,143, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978). Although the Fourth Amendment has been deemed  
7 to “protect people, not places” the level of protection extended varies depending on whether the  
8 person has a “legitimate expectation of privacy in the invaded place.” *See Id* (quoting *Katz v.*  
9 *United States*, 389 U.S, 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), *and Rakas*, at 143, 99 S.Ct.  
10 421, respectively).

11           Here, Respondent’s argument that Investigator Peter’s warrantless search and seizure  
12 violated her constitutional rights is unpersuasive because she had no legitimate expectation of  
13 privacy, irrespective of her standing to raise such protection.<sup>2</sup> Courts have traditionally recognized  
14 that the Fourth Amendment provides its greatest protection when an individual is in his or her own  
15 home, however, it has extended the sense of a legitimate expectation of privacy also to those outside  
16 of their abodes. *See Minnesota v. Olson*, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990)  
17 (holding that an overnight guest in a house has a legitimate expectation of privacy to the degree  
18 protected by the Fourth Amendment) *cf Rakas* (no legitimate expectation of privacy when person is  
19 only an invitee and not an overnight guest). The logical conclusion, then, is that commercial  
20 properties, used as public businesses, for example, likely do not provide a legitimate expectation of  
21 privacy at the same level of a home. *See New York v. Burger*, 482 U.S. 691, 700, 107 S.Ct. 2636, 96  
22 L.Ed.2d 601 (1987) (“An expectation of privacy in commercial premises... is different from, and  
23 less than, a similar expectation in an individual’s home.). Thus, unless the business, which engages  
24 the person invoking the Fourth Amendment’s protections, is of the nature that a heightened

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27           <sup>2</sup>*See Carter*, at 88. (“Central to our analysis was the idea that in determining whether a defendant is able to  
28 show the violation of his (and not someone else’s) Fourth Amendment rights, the definition of those rights is more properly placed within the purview of substantive Fourth Amendment law than within that of standing”) citations and quotations omitted.

1 expectation of privacy would attach, the expectation of privacy would rarely warrant the protection  
2 of the Fourth Amendment.

3 Here, at all times relevant, Respondent was washing dishes in a kitchen in a bowling alley  
4 open to the public and before closing time. If Respondent was indeed an employee of the bowling  
5 alley, she might of had some expectation of privacy depending on the nature of her business.  
6 However, given the fact that Respondent was ostensibly washing dishes with an employee, suggests  
7 that Respondent had no greater legitimate expectation of privacy than if she had been serving drinks  
8 on the bowling lanes.

9 Secondly, if Respondent is truly to argue that she was *not* engaged by the bowling alley as  
10 an employee when confronted by Investigator Peter, she cannot argue that she had even the  
11 legitimate expectation of privacy that a legitimate employee of the bowling alley would have.  
12 Indeed, if the Court is to believe Respondent's arguments that she was only volunteering her  
13 services to wash dishes, she can at best only claim to be an invitee of the bowling alley. As  
14 demonstrated above, invitees in homes have no such legitimate expectation of privacy such that the  
15 Fourth Amendment shields them from warrantless search and seizure. Because Respondent has  
16 characterized herself as an invitee of a public establishment, she consequently has no legitimate  
17 expectation of privacy, and thus no constitutional complaint against her warrantless search and  
18 seizure.

### 19 **B. Summary Judgment**

20 A court may grant summary judgment when there are no issues as to any material fact and  
21 the moving party is entitled to judgment as a matter of law. Com. R. Civ. P. 56(c); *Santos v. Santos*,  
22 4 N.M.I. 206, 209 (1994). The moving party bears the initial burden of demonstrating to the court  
23 that there is an absence of any genuine issue concerning any material fact and that as a matter of  
24 law, the non-moving party cannot prevail. *Id.* To survive a motion for summary judgment, the non-  
25 moving party must then show that there is evidence from which a jury might return a verdict in the  
26 non-moving party's favor. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990). Conclusory  
27 allegations are not sufficient to defeat a motion for summary judgment. *Id.* The court must accept  
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1 all of the non-moving party's evidence as true and will view all inferences drawn from the  
2 underlying facts in the light most favorable to the non-moving party. *Id.*

3 Here, it is obvious to this Court that should it have suppressed all evidence tainted by an  
4 unreasonable search and seizure, the Commonwealth would have had no facts to support a case  
5 against Respondent, and consequently Summary Judgment may have been proper. However,  
6 because Respondent never had a legitimate expectation of privacy as an invitee, the entry,  
7 questioning by Investigator Peter, and subsequent arrest of Respondent did not invoke constitutional  
8 concerns. Thus, the only thing left to determine is whether there is any issue of material fact, after  
9 this Court has examined the affidavits supporting the parties' positions.

10 Respondent argues that she was not engaged in employment, rather, she volunteered her  
11 services as a dishwasher to the bowling alley while seeking future employment with the business.  
12 Respondent also cites 42 U.S.C. § 1981 to support her argument that she is safe from prosecution  
13 because she was engaged in the federally protected activity of attempting to make and enforce a  
14 contract.

15 First, whether or not Respondent was actually engaged in an employment activity is a  
16 question of fact relegated to a factfinder. Because this claim is disputed by the Government and its  
17 affidavits, it is not ripe for disposition by summary judgment. Further, 42 U.S.C. § 1981 may  
18 protect an individual's right to enter and enforce contracts regardless of race, however, its tenets are  
19 not invoked by the legitimate attempt by the CNMI government to enforce its immigration laws.  
20 Consequently, the existence of 42 U.S.C. § 1981 does not per se invalidate the Commonwealth's  
21 ability to enforce its own immigration regulations.

22 Lastly, this Court has consistently held that ongoing labor cases *do not* stay deportation  
23 proceedings unless the labor dispute would have some bearing on whether the alien was in fact  
24 deportable. Here, Respondent has failed to raise any argument demonstrating that her ongoing labor  
25 case would affect her status if resolved in her favor. In light of the fact that Respondent has failed to  
26 demonstrate that there are no issues of material fact for the fact-finder, the Court finds that  
27 Summary Judgment is premature and that a hearing on an Order to Show Cause be scheduled.

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**IV. CONCLUSION**

For the foregoing reasons, Respondent’s Motion for Summary Judgment is DENIED.

It is further ordered that Respondent appear for a status conference on June 15, 2006 at 1:30 p.m. in courtroom 223A.

**SO ORDERED** this 5th day of June, 2006.

/s/  
DAVID A. WISEMAN, Associate Judge