FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, **Plaintiff,** **vs.** **EDWIN F. BLANILLA, ZILIN DENG, and YANONG LIN DOONE,** **Defendants.**	**CRIMINAL CASE NO. 07-0132C** **ORDER DENYING DEFENDANT EDWIN F. BLANILLA'S MOTION TO DISMISS**

I. Factual and Procedural Background

THE COMMONWEALTH'S original Information in this case was filed on July 6, 2007. The following facts are alleged in the charging documents, including the Rule 5 Complaint: On June 27, 2007, the United States Coast Guard ("USCG") responded to a distress call from a sea vessel located in international waters approximately 20 miles north of Guam. On board the vessel were eleven Chinese nationals and Edwin F. Blanila, who is a citizen of the Republic of the Philippines. The Commonwealth alleges that Blanila admitted to investigators of the Attorney General Investigation Unit that he was the pilot of the vessel, that none of the passengers held documentation entitling them to entry into Guam, that his purpose was to drop them off in the waters surrounding Guam outside of an official port of entry, and that he expected to be paid for his endeavor by receiving title to the vessel.

The original complaint charged all twelve foreign nationals with the crime of Improper Entry Into the United States, in violation of 3 CMC § 4363(a), made punishable under 3 CMC § 4363(b) by a

fine of not more than $1,000, imprisonment for up to two years, or both. The Commonwealth later dismissed nine of the defendants without prejudice and filed its First Amended Information on July 10, 2007, naming Blanila, Zilin Deng and Yanong Lin Doone as the remaining defendants. With respect to Defendant Blanila, the amended information alleges a single count of smuggling or attempting to smuggle aliens from the Commonwealth into the United States for commercial gain, in violation of 3 CMC § 4364(b)(1), which is punishable under 3 CMC § 4364(c)(2) by a fine of not more than $10,000 or imprisonment for up to 10 years, or both. Defendants Deng and Doone were each charged with a single count of the separate offense of encouraging or inducing aliens to depart the CNMI for the purpose of entering the United States with knowledge or reckless disregard of the fact that such entry is in violation of U.S. law, a violation of 3 CMC § 4364(b)(2). This offense carries the lesser punishment of a fine of not more than $2,000 and/or imprisonment of not more than 5 years. 3 CMC § 4364(c)(1).

On August 6, 2007, Defendant Doone filed a motion to dismiss the charge against her on the basis that (1) the Commonwealth Entry and Deportation Act at 3 CMC §§ 4361-4369 (PL 15-17, effective June 20, 2006) is unconstitutional under the Supremacy Clause of U.S. Const. art. VI, cl. 2; (2) the Court lacks jurisdiction over matters arising under the Act; and (3) the enforcement of 3 CMC § 4364(b)(2) would violate Doone's right to due process of law under Amendments V to the N.M.I. and U.S. Constitutions. On August 29, 2007, Deng filed notice that he fully joined in Doone's motion. Blanila also joined in the motion and filed a supplemental memorandum in support thereof, to which Doone subsequently joined, incorporating Blanila's supplemental memorandum in support of her original motion to dismiss. On September 10, 2007, the Commonwealth filed an Answer to Motion to Dismiss in opposition to Doone's motion, to which Defendants Blanila and Doone replied separately on September 20, 2007.

On November 6, 2007, the Court heard oral arguments on the Defendants' motion to dismiss and continued the matter, requesting counsel to further brief the issue raised explicitly in Doone's reply

memorandum regarding the impact of the relevant provisions of PL 15-17 on the Defendants' constitutional right to travel, in particular any right they may possess as aliens to freely depart from the CNMI. The Court ordered a briefing schedule and set a further hearing for December 12, 2007. Defendant Deng prematurely filed notice that he "joined" in the supplemental memoranda of Doone and Blanila before any such memoranda were filed. On November 6, 2007, Doone filed a notice that she elected to rest on her prior arguments without further addressing the issue raised by the Court. Blanila belatedly filed his own "joinder" in Doone's motion along with a supplemental memorandum in which he argues the single contention that 3 CMC § 4364(b)(1) is unconstitutionally vague. Plaintiff filed its supplemental memorandum in response on November 16, 2007.

Following two continuances for unrelated reasons, the matter was heard by the Court on January 16, 2008. Plaintiff was represented by Assistant Attorney General Kevin A. Lynch. Doone appeared and was represented by Assistant Public Defender Richard C. Miller. Attorney Vicente T. Salas, Esq., appeared on behalf of Blanila, who was also present. Deng appeared with counsel Ramon K. Quichocho, Esq. After the hearing, the Defendants' motion to dismiss was taken under advisement by the Court with a further status conference set for February 13, 2008. On January 23, 2008, the Court accepted Defendants Deng and Doone's change of plea to a stipulated new count, Improper Entry into the United States by an Alien, in violation of 3 CMC 4363(a), and punishable by 3 CMC 4363(b) by not more than two years imprisonment, and a fine of not more than $1,000. Thereupon, the Court entered judgment on Defendants' guilty pleas on January 25, 2008, leaving Blanila as the sole remaining defendant. At the hearing on February 13, 2008, the Court announced its ruling denying Defendant's motion and hereby sets forth its reasoning in denying Blanila's motion to dismiss the information.

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II. Analysis

Defendant Blanila is charged with the crime of Smuggling of Persons, a violation of 3 CMC § 4364(b)(1), which states:

> A person commits the crime of smuggling a person from the Commonwealth to the United States if that person knowing that a person is an alien, brings or attempts to bring such person, in any manner whatsoever, from the Commonwealth into the United States, at a place other than a designated United States port of entry or place other than as designated by the Commissioner of Immigration and Naturalization of the United States, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

Defendant argues that this statute is invalid and unenforceable on the basis that (1) it is preempted by the Supremacy Clause of the United States Constitution; (2) it requires the Court to adjudicate matters of federal law that are beyond the Court's jurisdiction; and (3) the statute is unconstitutionally vague and fails to provide defendants fair notice of what acts constitute a violation of the law.[1] None of these challenges convince the Court that the statute is invalid on its face or as applied to Defendant.

A.

Defendant asserts that the law is an attempt by the CNMI Legislature to regulate U.S. immigration that is preempted by Congressional authority over matters of U.S. immigration. Defendant recognizes that the U.S. Congress has specifically granted the Commonwealth the authority to administer its own immigration laws under Section 503 of the COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, 48 U.S.C. § 1801 note, *reprinted in* CMC at B-101, *et seq.* ("Covenant"). Nevertheless, Defendant notes that there are specific exceptions to the Commonwealth's authority over immigration listed in Section 506 of the

[1] Defendant's due process argument may only indirectly touch upon the "right of departure" issue raised by Doone in support of her motion to dismiss the government's charge against her based upon an alleged violation of 3 CMC § 4364(b)(2) (encouraging or inducing alien's departure for purpose of unlawful entry into the U.S.), now moot, but the Court gives full credit to such prior arguments that may apply to Blanila's separate challenge to Section 4364(b)(1).

Covenant and, interpreting the plenary authority of the U.S. Congress over matters of U.S. immigration as a Congressional intent to "occupy the field" of immigration, he therefore argues that the statute intrudes impermissibly into the sphere of federal immigration and foreign policy. (Def. Blanilla's Reply to Opp'n to Mot. to Dismiss, p. 4, *citing, Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713, 105 S.Ct. 2371, 2375, 85 L.Ed.2d (1985) (commerce clause) and *Hines v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581 (1941) (foreign relations)).

The Commonwealth Entry and Deportation Act, 3 CMC §§ 4301-4369, is local legislation enacted to implement the power specifically reserved to the Commonwealth under Section 503 of the Covenant. Under the specific exceptions of Section 506, United States immigration law applies to the Commonwealth only for limited purposes pertaining to citizenship, immediate relatives, and loss of nationality. The basis of federal immigration law is the Immigration and Nationality Act, 8 U.S.C. §§ 1101-1524, which does not even recognize the CNMI within its definition of the "United States." 8 U.S.C. § 1101(a)(38); *See, Ahmed v. Celis (CNMI)*, Special Proceeding No. 00-0101 (N.M.I. Super. Ct., March 27, 2000).[2] Defendant's reliance upon authorities interpreting the doctrine of implied preemption of state laws under the commerce clause (U.S. Const. Art. VI, cl. 2) is inappropriate given the role of Congress in granting the CNMI jurisdiction over local immigration and its responsibility for creating both regimes. *See*, Covenant §§ 102, 501; *Cf., Hillsborough County*, *supra*, 471 U.S. at 713.

Most significantly, however, there is no conflict between 3 CMC § 4364(b) and United States law. The statute makes criminal certain conduct originating in the CNMI and knowingly conducted with a purpose that violates the public policy embodied in the CNMI's immigration law. It does not enforce U.S. immigration law or punish individuals for violations of U.S. statutes. Although the definition of

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[2] (Bellas, A.J.) Noting that 8 U.S.C. § 1101(a)(38) defines the "United States" as "the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States" and that 8 U.S.C. § 1101(a)(36) defines the term "state" to include the "District of Columbia, Puerto Rico, Guam, and the Virgin Islands, as well as the several states."

the offense *refers* to a "port of entry" as designated by U.S. authority, the law clearly and expressly applies "regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien." 3 CMC § 4364(b). The Commonwealth Legislature exercises plenary authority with respect to Commonwealth immigration matters. *Office of Attorney Gen. v. Sagun*, 1999 MP 19, ¶ 8, 6 N.M.I. 36. Controlling the ingress end egress of aliens within its borders is a matter of compelling interest to the government. *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542-543, 70 S.Ct. 309, 312, 94 L.Ed. 317 (1950); *See, also,* 8 U.S.C. § 1185(a)(1), *and* 8 C.F.R. § 215.2, at 69 Fed. Reg. 480 (Jan. 5, 2004) (alien departure control authority). The purpose of the CNMI's statute is to prevent the Commonwealth from becoming a stepping-stone for unlawful immigration into Guam and other U.S. jurisdictions and an attractive base for persons who profit from human traffic, thereby protecting the lawful residents of the Commonwealth from the deleterious effects of these undesirable activities. PL 15-17, Section 1., Findings. In essence, 3 CMC § 4364(b) proscribes conduct that violates local law and in no way intrudes upon federal jurisdiction, whether or not the offender is concurrently liable under United States law.

B.

This consideration also disposes of Defendant's contention that the Court lacks jurisdiction over this matter. The Superior Court has jurisdiction to hear and determine matters arising under local law, including all criminal matters. N.M.I. Const. art. IV, § 2; 1 CMC § 3202. This jurisdiction is not diminished by any concurrent liability on the part of Defendant under federal law. *Bartkus v. People of the State of Ill.*, 359 U.S. 121, 131, 79 S.Ct. 676, 682, 3 L.Ed.2d 684 (1959). Although the statute relies upon the designation of U.S. Commissioner of Immigration and Naturalization for the purpose of defining a lawful United States "port of entry," this does not transform the local offense into a violation of the criminal law of the United States. *Id.*; 18 U.S.C. § 3231; *United States v. Bink*, 74 F.Supp. 603,

611 (D.C.Or. 1947) (federal jurisdiction cannot be enlarged by implication). At most, this feature requires the Court to *take notice* of United States law or regulations, something inherently within the Court's power and specifically authorized by Rule 201 of the Commonwealth Rules of Evidence.

C.

Defendant also submits that the provision under which he is charged is unconstitutionally vague because of the entire statute's several references to the requirements of United States immigration law, and because it necessarily lends itself to arbitrary enforcement. Due process of law requires that "a penal statute… state with reasonable clarity the act it proscribes and provide fixed standards for adjudging guilt, or it is void for vagueness." *Commonwealth v. Bergonia*, 3 N.M.I. 22, 36 (1992). A plain reading of 3 CMC § 4364(b) together with the Commonwealth's allegations against Defendant, however, reveals no vagueness in the statute. Defendant argues that the law is overbroad and could conceivably be interpreted to apply to an individual who never actually entered the territorial jurisdiction of the CNMI. (Def's Joinder and Supp. Mem. to Mot. to Dismiss, Nov. 9, 2007, p 3). Overbreadth is a doctrine of First Amendment law that is inapplicable in this case. *Sabri v. U.S.*, 541 U.S. 600, 609, 124 S.Ct. 1941, 1948, 158 L.Ed.2d 891 (2004). Because it puts aside the ordinary requirement of standing, a facial challenge to the criminal statute invoked in a case through the defendant's use of hypotheticals has commonly proven to be an ineffective means of establishing that the defendant's right to due process has been violated. *Id.*

Quoting the preface to PL 15-17, Defendant recites that the purpose of the law is to curtail aliens from using the CNMI to "travel from the Commonwealth into Guam or other areas of the United States without satisfying the proper United States entry requirements that apply to those areas." PL 15-17, Section 1., Findings. Defendant asserts that this language fails to provide adequate notice of the kind of conduct that would violate the law, arguing that "in order to avoid violating such CNMI laws a person must not only be cognizant of the CNMI law, but he must also be aware of the proper entry requirements

into Guam and other areas of the United States." (Def's Supp. Mem., Aug. 29, 2007, p. 3). Of course, the legislative findings in the Act do not criminalize conduct. To the extent that this argument pertains directly to the offense alleged against Defendant, it suggests that an individual must be familiar with the federal regulations establishing a "designated United States port of entry" in order to avoid violating CNMI law. 3 CMC § 4364(b)(1).

This interpretation exaggerates the import of the provision's reference to "designated" ports of entry and misconstrues its application. *See*, *State v. Eckblad*, 98 P.3d 1184, 1187 (Wash. 2004) (state statute applicable only to automobiles meeting federal regulatory standards was not impermissibly vague). It can be regarded as common knowledge that the entry of an alien into the United States, or generally into any sovereign nation, is regulated through official ports of entry. In fact, a citizen of one country who attempted to enter another country *outside* of an official port of entry would normally be required to take extraordinary measures in order to do so. To comply with the law, a person who is transporting aliens into the United States *for commercial gain* only needs to know *where* the official ports are, and then deliver the passengers to that point. This is not an onerous burden and does not require research into federal law. Whether or not an individual is in fact an alien may be more difficult to ascertain, but Section 4364(b)(1) places the burden on the government to prove that Defendant had this knowledge at the time of the offense.

Finally, Defendant argues that the law is susceptible of arbitrary enforcement because the U.S. Coast Guard or law enforcement officers who happen to detain a suspect in international waters may have a choice of whether to return the suspect and vessel to the CNMI or to bring them within the jurisdiction of the United States.[3] This argument is unconvincing. A statute may be unconstitutionally

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[3] The Court notes that Blanila also incorporates Doone's prior argument to the extent that she generally challenged the extraterritorial application of criminal laws. It is well settled in international law, however, that a sovereign may enforce a criminal law within its territory even when an essential act constituting the offense occurs outside of its territory, and that a crime such as conspiracy may be complete within one jurisdiction even when the crime contemplated by the conspiracy will

vague if it delegates to law enforcement officers an unbridled discretion to determine "on an ad hoc and subjective basis" what constitutes an offense, thereby permitting arbitrary and discriminatory application of the law. *Foti v. City of Menlo Park*, 146 F.3d 629, 639 (9th Cir. 1998) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298-99, 33 L.Ed.2d 222 (1972)). This doctrine does not serve to give a person who is suspected of committing an offense in another jurisdiction, or of violating the laws of multiple jurisdictions, any right to determine *where* that person will be prosecuted. The discretion of the U.S Coast Guard or any outside law enforcement agency to decide to return an individual to the CNMI was not conferred by the statute and has no bearing on the question of whether or not the statute is impermissibly vague. As stated, the Court finds nothing in the provisions of 3 CMC § 4364(b)(1) that is vague, and no basis for determining that the government's prosecution of Defendant pursuant to the statute violates Defendant's constitutionally protected right to due process of law.

D.

The charge against Defendant Blanila criminalizes *any* person's knowing efforts to bring a person who is an alien *from the Commonwealth* into the United States to a place other than a designated United States port of entry. Defendant argued that "[e]veryone has the right to leave any country, including his own…" and so there can be no such thing as "unlawful departure" from the Commonwealth. (Def. Doone's Reply to Parts I-III of the Commonwealth's Answer, filed Sept. 20, 2007, p. 2). Defendant contends that a*ny* restriction on this right to leave the Commonwealth therefore violates his right to travel. The Commonwealth responded that all the defendants were permitted to

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occur in a separate jurisdiction. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 402 (1)(c) and (3) cmt. (f) (1987). Because Section 4364(b)(1) makes no distinction between the *attempt* to unlawfully transport a known alien *from the Commonwealth* to the United States and the successful act of doing so, it is difficult to conceive of circumstances in which liability for the offense would attach to an individual wholly outside of the territorial jurisdiction of the Commonwealth. The government's factual allegations against Blanila in this case, however, do not approach such a hypothetical.

travel from the Commonwealth to any location that would accept them within the bounds of laws applicable to everyone. (Suppl. Answer, filed Nov. 16, 2007, at p. 2).

The statute in question is restrictive only in that it regulates the manner in which the right to travel may be exercised by requiring that it be accomplished lawfully. It is a time, place, and manner restriction, and is not an outright ban on travel. This Court agrees with the Commonwealth's arguments as stated in its Supplemental Answer and adopts it. In particular, this case does implicate the right to international travel since the law addresses the departure from the Commonwealth, which has sovereignty over CNMI immigration, and intention to enter Guam, which is under the immigration authority of the United States, a separate sovereign for this purpose. *Office of Atty. Gen. v. Phillip*, 2008 MP 1, ¶ 5; *Sagun*, at ¶ 8. The Commonwealth's interest in controlling the flow of aliens across its borders and its broader interest in curtailing travel for unlawful purposes, however, is more than sufficient to sustain the validity of the statutory restrictions at issue in this case. *See, Califano v. Aznavorian*, 439 U.S. 170, 176-178, 99 S.Ct. 471, 475-476 (1978) (a *citizen's* right to international travel is not equivalent to the right to travel interstate, and is subject to "rationally based" restrictions); *Hoke v. United States*, 227 U.S. 308, 323, 33 S.Ct. 281, 284 (1913) (upholding ban on *interstate* travel for illicit purposes).

III. Conclusion

For the foregoing reasons, the Defendant's Motion to Dismiss the Information is hereby DENIED.

SO ORDERED this 20th day of February, 2008.

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RAMONA V. MANGLONA, Associate Judge