

1 **II. Factual and Procedural Background**

2 1. In October, 2007, agents of the United States Immigration and Customs Enforcement
3 Agency (“ICE”) contacted Chief Investigator Edward R. Cabrera of the CNMI’s Attorney General’s
4 Investigative Unit (AGIU) advising him that officers of the Los Angeles Police Department’s (LAPD)
5 “Cold Case Unit” believed that Kazuyoshi Miura would be traveling to Saipan in November, 2007.

6 2. Chief Cabrera later spoke directly to LAPD Detective Rick Jackson who requested that
7 the CNMI assist in arresting Miura if he came to Saipan. Cabrera responded that the CNMI could
8 assist if it were provided with copies of the felony complaint or affidavit and warrant from California
9 charging Muir with a felony offense.

10 3. A few days later, Det. Jackson provided Chief Cabrera with a copy of the felony
11 complaint as well as a printout from the National Criminal Information Center (NCIC) alleging that
12 Miura was charged with criminal activity in California.

13 4. These documents reflect case number A 968458 issued by the Municipal Court of Los
14 Angeles District, County of Los Angeles, State of California, signed by a judge of said court on May
15 5, 1988.

16 5. After reviewing this information, Cabrera caused an alert to be placed in the CNMI
17 Border Management System so that he would be notified if Miura arrived or attempted to depart from
18 the Commonwealth.

19 6. On the afternoon of February 22, 2008, CNMI Airport Immigration contacted Chief
20 Cabrera and advised him that Miura had been detained as he attempted to depart the CNMI. Chief
21 Cabrera then contacted ICE in Guam to notify them that Miura was detained. The ICE agents
22 contacted the LAPD Warrants Division, who confirmed that there is an active arrest warrant for
23 Defendant and that they were willing to extradite Miura to California. This information was conveyed
24 to Cabrera.

7. After receiving confirmation of the information on the same day, Chief Cabrera met
Miura at the Saipan airport and told Miura he was being detained on an outstanding warrant from

1 California. He proceeded to read the Felony Complaint for Arrest Warrant to Miura, and when
2 Cabrera read the name “Kazumi Miura” as stated in the complaint, Miura said, “Yes, my wife.”

3 8. Chief Cabrera reviewed Miura’s Japan passport, which contained the same name and date
4 of birth that LAPD had previously provided, to confirm that Miura was the same individual who is
5 wanted by the State of California.

6 9. Mr. Miura was subsequently placed under arrest and detained at the CNMI Department of
7 Corrections on the afternoon of Friday, February 22, 2008.

8 10. On Monday, February 25, 2008 at 9:56 a.m., the Commonwealth filed an Information
9 alleging that Defendant Miura was a person charged in California with a crime punishable by death or
10 imprisonment for a term exceeding one year and attached a Felony Complaint for Arrest Warrant from
11 Los Angeles County, California². At 10:22 a.m., The Commonwealth also filed Chief Cabrera’s
12 Affidavit in Support of a Warrantless Arrest made under penalty of perjury.

13 11. On Monday, February 25, 2008 at 1:30 p.m., Defendant made his initial appearance with
14 a Japanese translator present before a judge of the CNMI Superior Court at a bail hearing.

15 12. At the bail hearing, Judge David A. Wiseman advised Defendant that he was being held
16 because the Commonwealth believed he was a fugitive from justice based on an outstanding warrant
17 from Los Angeles, California, and that the California warrant is based on the crimes of Murder and
18 Conspiracy to Commit Murder. Judge Wiseman proceeded to advise Defendant of his right to remain
19 silent and his right to an attorney of his choice indicating the Court would appoint an attorney to
20 represent him if he could not afford one. The Defendant requested to have the Court appoint counsel,
21 and Chief Public Defender Adam Hardwicke was present in the event the Court found the Defendant
22 qualified. The Court conducted an in-court indigency determination and concluded that Defendant
23 was not eligible for an appointed counsel because he did not meet the standards.

24 ² On February 27, 2008 at 9:08 a.m., Plaintiff filed a superseding Complaint for Extradition with Chief Cabrera’s Affidavit
and the Felony Complaint from California attached. At the status conference on Monday, March 3, 2008, the Court
dismissed the original information upon motion by Plaintiff.

1 13. Based on the Public Defender's assertion and the translator's concurrence that the
2 Defendant was possibly confused about the procedure, the Court ordered a recess and called in a new
3 translator, Mr. Noriyasu Horiguchi.

4 14. After coming back on the record, Judge Wiseman again advised Defendant that he is
5 before the Court because the Commonwealth believes he is a fugitive from justice based on documents
6 submitted by the LAPD and an outstanding arrest warrant based on charges in California that he
7 committed First Degree Murder and Conspiracy to Commit Murder.

8 15. The Court made a second inquiry into Defendant's eligibility for court appointed counsel
9 after Public Defender Adam Hardwicke (still not appointed) advised the Court that Defendant's wife
10 was present and could speak to the family's financial circumstances. After this examination, the Court
11 ordered Defendant to report to the Office of Adult Probation for a complete indigency determination.

12 16. Finally, the Chief Public Defender asked to be appointed—over the Commonwealth's
13 objection—asserting that he needed to be heard because Defendant was unjustly arrested and
14 incarcerated. The Court did allow Mr. Hardwicke to be heard. Unfortunately, this argument was not
15 recorded, but the Judge again ordered Defendant to be held with no bail and did not appoint the Public
16 Defender in this matter.

17 17. After the Court again indicated to Defendant that he would have no bail, Plaintiff asked
18 the Court to advise Defendant of his rights regarding a waiver of extradition, his right to challenge
19 extradition and that if he chose to challenge extradition, he could be held in jail up to 45 days pursuant
20 to 6 CMC § 6916, but the Court indicated it would not do so at that time.

21 18. Based on the information received at the hearing, the Defendant was referred to the
22 Office of Adult Probation for an indigency assessment, and "no bail" was set. A preliminary hearing
23 was also set for March 5, 2008 at 9:00 a.m., and an arraignment hearing was set for March 10, 2008.
24 (Feb. 25, 2008 Bail Order and Order).

 19. On Wednesday, February 27, 2008, Judge Wiseman reviewed an indigency assessment
report prepared by the Office of Adult Probation and concluded that Defendant was not eligible for a
court- appointed counsel and informed him that he should hire his own attorney. A status conference

1 was also ordered set for Monday, March 3, 2008 at 11:00 a.m. in order that the parties may discuss and
2 provide for the appropriate procedure for this unique matter of extradition. (Feb. 27, 2008 Order).

3 20. At the March 3, 2008 status conference, attorneys Bruce Berline and Mark Hanson
4 entered their first appearance on behalf of the Defendant. Earlier that same morning, they filed a
5 Motion to Dismiss and for Immediate Release From Custody on behalf of Defendant Miura. The
6 parties were informed at the status conference that the matter had been assigned to the undersigned
7 judge and that the motion would be heard on March 5, 2008 at 3:00 p.m.

8 **III. Analysis**

9 **A. The Commonwealth's Criminal Extradition Statute.**

10 The procedure for extraditing a person who is charged with a crime in another state from the
11 Commonwealth to the state where the person is charged with the crime is governed by 6 CMC §§ 6901-
12 6931. The fundamental authority to regulate interstate extradition rests with the federal government
13 pursuant to the Extradition Clause of Article IV of the U.S. Constitution. U.S. Const., art. IV, § 2, cl. 2.³
14 This authority is effectuated by 18 U.S.C. § 3182 (effective June 25, 1948, c. 645, 62 Stat. 822) which
15 by its terms applies equally to all states, territories and possessions of the United States.⁴ *See, Wolfe v.*
16 *Au*, 686 P.2d 16, 22 (Hawai'i 1984) (statute applicable to Federated States of Micronesia). A federal
17 statute of general applicability to the states and to Guam is presumptively applicable to the same extent
18 in the CNMI if the federal statute was enacted prior to January 9, 1978. COVENANT TO ESTABLISH A

19 ³ Article IV, § 2, cl. 2 of the United States Constitution states: "A Person charged in any State with Treason, Felony, or
20 other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the
21 State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

22 ⁴ Section 3182 of Title 18 of the United States Code states: "Whenever the executive authority of any State or Territory
23 demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such
24 person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or
Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the
governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of
the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the
executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the
fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the
arrest, the prisoner may be discharged."

1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF
2 AMERICA, § 502(a)(2), 48 U.S.C. §1801 note, *reprinted in* CMC at B-101, *et seq.* (“Covenant”); *Sablan v.*
3 *Tenorio*, 4 N.M.I. 351, 358, n. 23 (1996); *U.S. v. Dela Cruz*, 358 F.3d 623 (9th Cir. 2004).

4 Pursuant to 18 U.S.C. § 3182 and the Supremacy Clause of Article VI of the United States
5 Constitution, locally enacted procedures for extradition are permissible to the extent that they do not
6 expressly or impliedly contravene the federal statute. *Innes v. Tobin*, 240 U.S. 127, 36 S.Ct. 290, 60
7 L.Ed. 562 (1916). All fifty states and every United States territory, as well as the CNMI, have enacted,
8 with minor variations, uniform extradition statutes based upon the Uniform Criminal Extradition Act of
9 1936. *Wolfe, supra*, 686 P.2d at 20, n.3; *See generally*, 6 CMC §§ 6901-6931.⁵ Since 1936, none of
10 these uniform statutory provisions have been found to be unconstitutional, and decisional law
11 interpreting these provisions may serve as useful persuasive authority for the interpretation of the
12 Commonwealth’s statute.

13 Extradition proceedings uniquely concern the reciprocal rights and obligations of the individual
14 sovereigns within the federal system and the rights which may be asserted against the asylum state by
15 the accused are therefore more limited than the rights of a person accused of a crime in the asylum state.
16 *Michigan v. Doran*, 439 U.S. 282, 288, 99 S.Ct. 530, 535, 58 L.Ed.2d 521 (1987). Extradition is
17 intended to be “a summary and mandatory executive proceeding.” *Id.* Its purpose is “to preclude any
18 state from becoming a sanctuary for fugitives from justice of another state.” *Id.*, 439 U.S. at 287. The
19 Extradition Clause “never contemplated that the asylum state was to conduct the kind of preliminary
20 inquiry traditionally intervening between the initial arrest and trial.” *Id.*; *see also, California v. Superior*
21 *Court of California*, 482 U.S. 400, 407, 107 S.Ct. 2433, 2438, 96 L.Ed.2d 332 (1987). The discretion of
22 the executive authorities of the asylum state is constitutionally limited, thus limiting the matters that may

23 ⁵ In 1980, the National Conference of Commissioners on Uniform State Laws approved the Uniform Extradition and
24 Rendition Act, intended to supersede the 1936 model act. To date, however, only North Dakota has adopted the 1980
version.

1 be properly considered by its courts. *Doran*, 439 U.S. at 288; *Biddinger v. Commissioner of Police*, 245
2 U.S. 128, 135, 38 S.Ct. 41, 43, 62 L.Ed. 193 (1917). The nature of the matters brought before the Court
3 pursuant to 6 CMC §§ 6901, *et seq.*, means that the Commonwealth Rules of Evidence do not generally
4 apply to these proceedings. Com. R. Evid. 1101(c)(2).

5 **B. The Validity of the February 22, 2008 Warrantless Arrest.**

6 Miura contends that his initial warrantless arrest and detention thereafter failed to meet the
7 requirements of 6 CMC § 6915 and that the Commonwealth failed to bring a sufficient complaint
8 against Miura pursuant to the requirements of 6 CMC §§ 6915 and 6914. Miura argues that these
9 failures create a jurisdictional defect which cannot be cured and therefore necessitate his immediate
10 release. Section 6915 of the Commonwealth's extradition statute, captioned "Arrest Prior to
11 Requisition: Without a Warrant," provides:

12 The arrest of a person may also be lawfully made by any police officer or private citizen
13 without a warrant upon reasonable information that the accused stands charged in the
14 courts of a state with a crime punishable by death or imprisonment for a term exceeding
15 one year. When so arrested the accused must be taken before the court with all
16 practicable speed and complaint must be made against the accused under oath setting
17 forth the ground for the arrest as in 6 CMC § 6914 and thereafter his or her answer shall
18 be heard as if he or she had been arrested on a warrant.

19 6 CMC § 6915 (Source: 12 TTC § 465).

20 For such a warrantless arrest to be valid, even without a governor's warrant from the demanding
21 state, the person making the arrest must have (1) reasonable information that (2) the person arrested (3)
22 is a person who currently stands charged with a crime in the courts of a state, and (4) that the crime
23 charged by the state against the person is one punishable by death or imprisonment for a term exceeding
24 one year; i.e., a felony. *Id.*

25 Once arrested, the accused must be taken "with all practicable speed" before the court, and
26 "complaint must be made" which is "under oath" and "setting forth the ground for the arrest as in 6
27 CMC § 6914." Subsequent proceedings will thereafter conform to the remaining applicable provisions

1 of the statute. *Id.* Section 6915 validates the warrantless arrest by permitting expeditious post-arrest
2 compliance with the requirement of showing probable cause sufficient to obtain a judicial warrant
3 (“prerequisite warrant” or “fugitive warrant”) under 6 CMC § 6914. That Section, “Arrest Prior to
4 Requisition: By Warrant,” states:

5 A judge shall issue a warrant directed to the Attorney General or Director of
6 Public Safety commanding the apprehension of the person named in it wherever the
7 person may be found in the Commonwealth and to bring the person before the court to
8 answer the charge or complaint and affidavit. A certified copy of the sworn charge or
9 complaint and affidavit upon which the warrant is issued shall be attached to the warrant
10 whenever:

11 (a) Any person within the Commonwealth is charged on the oath of any credible
12 person before any judge of the Commonwealth with the commission of a crime in any
13 state, and, except in cases arising under 6 CMC § 6907, with having fled from justice,
14 with having been convicted of a crime in that state and with having escaped from
15 confinement, or with having broken the terms of bail, probation, or parole; or

16 (b) Complaint has been made before the court setting forth on the affidavit of any
17 credible person in a state that a crime has been committed in the other state and that the
18 accused has been charged in that state with the commission of the crime, and, except in
19 cases arising under 6 CMC § 6907, has fled from justice, or that the accused has been
20 convicted of a crime in that state and has escaped from confinement, or has broken the
21 terms of bail, probation or parole, and that the accused is believed to be in the
22 Commonwealth.

23 6 CMC § 6914 (Source:12 TTC § 464).

24 In the present case, Miura was arrested and brought before the Court without a warrant. It was
therefore incumbent upon the Commonwealth to promptly make a complaint under oath setting forth the
“ground for the arrest.” The grounds for a fugitive warrant under Section 6914, however, differ from the
elements necessary to justify a warrantless arrest under Section 6915. At this point, the grounds
justifying the issuance of a warrant may be demonstrated through either a “sworn charge” or a
“complaint and affidavit.” The Commonwealth must supply the oath of a credible person before a
Commonwealth judge that: (i) a person within the Commonwealth committed a crime in any state, and
(ii) the person has fled from justice. Alternatively, the Commonwealth may provide the affidavit of any
credible person in a state that: (i) a crime has been committed in the other state and (ii) that the accused

1 has been charged in that state with the commission of the crime and (iii) has fled from justice. 6 CMC §
2 6914(a),(b).⁶

3 Both Sections 6914 and 6915 require a finding of probable cause to believe that the respective
4 statutory elements exist, but the criteria for this determination are different from those required to find
5 probable cause to believe that an accused has committed a criminal offense. *State v. Hughes*, 229
6 N.W.2d 655, 672 (Wis. 1975) (“[T]he factual showing for a finding of probable cause to arrest and
7 detain a fugitive on a prerequisite warrant differs from that required in the case of a criminal arrest.”);
8 *See also, Evans v. Simonet*, 699 P.2d 1337, 1339 (Colo. 1985); *Cf., France v. Judd*, 932 So.2d 1263,
9 1265-66 (Fla.App. 2006). The statutory requirements of “reasonable information” or the oath of “any
10 credible person” to support the finding that the accused “appears” to be “the person charged with having
11 committed the crime alleged and... that the person has fled from justice,” are not limited by the further
12 evidentiary or procedural rules applicable in criminal cases. *Evans*, 699 P.2d at 1339; 31A AM.JUR. 2D
13 *Extradition* § 61 (1989).⁷

14 In this case, on or about October of 2007, AGIU Investigator Cabrera attested that he had
15 received information from an ICE agent that Kazuyoshi Miura had been charged with criminal activity
16 in California. At that time, Cabrera conferred with a Los Angeles detective who requested assistance in
17 arresting Miura should he be found in Saipan. Shortly thereafter, he received a copy of an NCIC report
18 and a Felony Complaint for Arrest Warrant issued by the Municipal Court of Los Angeles District,

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20 ⁶ The exception provided for “cases arising under 6 CMC § 6907” refers to extradition requests to the Governor from third-
21 party states; including cases in which the accused is charged with a crime in the requesting state but was not physically
22 present in the state at the time of the offense, so could not have “fled” from that state. Third-state renditions are provided for
by state statutes but these laws are not inconsistent with 18 U.S.C. § 3182. *In re Cooper*, 349 P.2d 956 (Cal. 1960) cert.
denied, 81 S.Ct. 104, 364 U.S. 294, 5 L.Ed.2d 83. Extradition in such cases is therefore constitutionally permissive and not
mandatory. *Id.*

23 ⁷ Miura has not been charged with a crime in the CNMI and does not face the possibility of trial in the courts of the
24 Commonwealth. Consequently, his 5th and 6th Amendment rights to criminal due process and a fair trial are not implicated in
this proceeding. *State v. Waggoner*, 846 P.2d 162, 165 (Idaho App. 1993). Miura does have a personal liberty interest under
the 4th Amendment and Article I, Section 3 of the N.M.I. Constitution to be free from any unreasonable seizure of his person
by the government.

1 County of Los Angeles, State of California, signed by a judge on May 5, 1988 for case number
2 A968458, detailing the factual basis for the charges against Miura and authorizing his arrest.

3 When informed that a man identified by Immigration officers as Kazuyoshi Miura was being
4 detained by Immigration at the Saipan International Airport on the afternoon of February 22, 2008,
5 Cabrera contacted the Resident Agent in Charge of ICE, Guam, who further contacted the Warrants
6 Division of LAPD to confirm that the warrant for Miura was still active, and who then relayed this
7 information back to Cabrera. He then carried with him a copy of the Felony Complaint for Arrest
8 Warrant to the airport. When Cabrera introduced himself, Miura did not dispute that his name was
9 Kazuyoshi Miura, and Cabrera identified him based upon his Japan Passport containing his name and
10 date of birth. He further confirmed Miura's identity by the fact that, when he read the Felony Complaint
11 for Arrest Warrant aloud to Miura and came to the name of the victim stated in the complaint, Miura
12 spontaneously uttered "Yes, my wife."

13 Miura does not dispute Cabrera's testimony regarding these events and does not assert that he is
14 someone other than the defendant identified in the California complaint. Instead, he argues that Cabrera
15 lacked probable cause to make the arrest at that time because he possessed "no reasonable information"
16 that Miura "currently stands charged" in California with a crime punishable by death or imprisonment
17 for a term exceeding one year. Miura makes this argument by attacking two documents filed in this
18 proceeding: the Felony Complaint for Arrest Warrant issued by the California court on May 5, 1988;
19 and Cabrera's Affidavit in Support of Warrantless Arrest executed February 25, 2008.

20 With respect to the Felony Complaint for Arrest Warrant, Miura objects that the document is not
21 authenticated, does not bear a file stamp from the California court, and does not state on its face that it is
22 a "charging document." He further argues that the date of the document and the events described
23 therein, when considered together with provisions of California law and Miura's intervening
24 prosecution, conviction, appeal and acquittal in Japan based upon the same general factual allegations,

1 all show that the Complaint is “illegal,” stale, and cannot provide probable cause for Miura’s arrest
2 under 6 CMC § 6915 because it is in violation of his right against double jeopardy.

3 Miura also argues that his arrest was unlawful based upon what he alleges are “fatal” ambiguities
4 and omissions in Cabrera’s *post-arrest* affidavit of February 25, 2008. Examining the four corners of
5 this document, Miura objects that Cabrera refers to the California Felony Complaint for Arrest Warrant
6 at two points as “the felony complaint,” even though its full caption and a reference to the correct case
7 number are cited elsewhere in the affidavit, and objects that Cabrera failed to independently describe the
8 crimes alleged in the Complaint or to employ the statutory language that Miura “fled from justice” or
9 that his crimes “are punishable by death or a term of imprisonment of more than one year.” Miura cites
10 persuasive authority correctly stating that the sufficiency of a rendition warrant must be determined at
11 the time of the arrest, and that a warrantless arrest without probable cause cannot be retroactively
12 justified by providing additional information unknown to the arresting officer at the time. *France*,
13 *supra*, 932 So.2d at 1267-68; *Owens v. Boyer*, 207 So.2d 29, 31 (Fla. App. 1968).

14 This case, however, involves a warrantless arrest. The question therefore is whether there was
15 *reasonable information* known by the officer at the time of the arrest that would warrant a prudent
16 person to believe that Miura was charged with committing a crime in California punishable by death or
17 imprisonment for a term exceeding one year. 6 CMC § 6915; *Cf.*, *United States v. Green*, 783 F.2d
18 1364, 1367 (9th Cir. 1986). Courts have repeatedly found that an asylum state law enforcement officer’s
19 knowledge of the existence of an out-of-state felony warrant provides sufficient probable cause for the
20 officer to arrest an individual reasonably identified as the subject of the warrant, even without an actual
21 copy of the out-of-state warrant. *Case v. Kitsap County Sherriff’s Dept.*, 249 F.3d 921, 927 (9th Cir.
22 2001); *Lowrance v. Pflueger*, 878 F.2d 1014, 1020 (7th Cir. 1989) (NCIC information on existence of
23 warrant sufficient); *United States v. Johnson*, 815 F.2d 309, 313-314 (5th Cir. 1987) (knowledge of
24 issuance of warrant, even by private citizen, sufficient for warrantless arrest; location of fugitive in

1 asylum state sufficient reason to believe that he fled from justice); *See, also, Evans, supra*, 699 P.2d at
2 1338, and *Hughes, supra*, 229 N.W.2d 657, 661 (notice of warrant via teletype).

3 It is significant that the courts in these cases were not concerned with the defendant's status with
4 respect to the stage of formal proceedings in the demanding state, beyond the fact that a warrant had
5 issued from the demanding state based upon a determination of probable cause made in that state.
6 *Hughes*, 229 N.W.2d at 659. Reasonable reliance upon the information in an out-of-state warrant does
7 not require the officer to inquire into the laws of the other state or of any foreign country, and a warrant
8 otherwise confirmed as outstanding is not rendered invalid due to the antiquity of the offense. *See*,
9 *People ex rel. Strachan v. Colon*, 571 N.E.2d 65, 67 (N.Y.App. 1991) (defendant not charged with a
10 crime before he moved from demanding state became a "fugitive" subject to extradition when charged
11 with a murder in that state committed 44 years prior to charge). The charges detailed in the Felony
12 Complaint for Arrest Warrant place Miura in California at the time of the crimes and identify the crimes
13 as felonies.

14 From the credible evidence presented regarding Cabrera's knowledge of the relevant facts and
15 circumstances appearing at the time of the arrest, the Court concludes that Cabrera acted upon
16 reasonably credible information that Miura was charged with a felony in California and that his
17 February 22nd arrest of Miura in Saipan was lawful under 6 CMC § 6915.

18 **C. The Sufficiency of the Commonwealth's Prerequisite Complaint.**

19 Miura also attacks the sufficiency of the Commonwealth's Information and Complaint of
20 February 25th and 27th, respectively, as well as Cabrera's Affidavit, on the basis of many of the same
21 points raised against the above supporting documents. The function of a complaint in this proceeding is
22 to set the matter before the court for an examination to determine whether it appears that the person held
23 is the person charged with committing the crime alleged and that the person has fled from justice, and to
24 give notice of these matters to the person held. 6 CMC §§ 6914-6915. The precise form for a

1 prerequisite complaint or answer is not prescribed by the statute. Section 6914(a) authorizes the Court
2 to issue an arrest warrant upon a “sworn charge” before a Commonwealth judge, and Section 6914(b)
3 authorizes the issuance of an arrest warrant when a complaint is presented on the sworn affidavit of any
4 credible person. Section 6915, prescribing the procedure that follows a warrantless arrest, states that the
5 person arrested must be brought to court “and complaint must be made against the accused under oath
6 setting forth the ground for the arrest as in 6 CMC § 6914 and thereafter his or her answer shall be heard
7 as if he or she had been arrested on a warrant.” There is no further mention of prerequisite complaints
8 in the statute.

9 On February 25, 2008, the AGO filed an Information charging Miura with being a fugitive from
10 justice, attaching a copy of the California Felony Complaint for Arrest Warrant. Less than an hour later
11 and prior to the afternoon bail hearing, the AGO filed the sworn affidavit of the arresting officer
12 Cabrera. On February 27, 2008, AGO amended its pleading by recaptioning it as a Complaint for
13 Extradition, and also attaching the California Complaint as well as the Cabrera affidavit. Thereafter,
14 the February 25th Information was orally dismissed by the Court at the February 27th hearing. The latter
15 complaint stated one count captioned “Fugitive From Justice,” alleging that Miura was arrested on
16 Saipan on or about February 22, 2008, that he was a person charged in California with a crime
17 punishable by death or imprisonment for a term exceeding one year, and that he is subject to extradition
18 pursuant to 6 CMC §§ 6901, *et seq.* The complaint on its face is signed by the AGO attorney, but it is
19 not signed under oath.

20 Miura objects that the Complaint for Extradition document itself is not signed under oath by the
21 AGO. At the hearing on this matter, the AGO Chief Prosecutor offered to provide such an oath if
22 required, but pointed out that the matters within his personal knowledge were no more than that
23 previously provided by the attached California Complaint and affidavit of Cabrera, which were already
24 signed under oath. The Court is not persuaded that AGO’s omission of a sworn attestation on the face of

1 its pleading is fatal to its sufficiency or that this calls for the remedy Miura demands; i.e., the voidance
2 of the proceedings and his immediate release. No authority has been presented or discovered by the
3 Court to support the requirement that when “complaint must be made against the accused under oath”
4 pursuant to 6 CMC § 6915, that the Commonwealth’s attorney must provide a sworn subscription to the
5 pleading document *in addition to* the sworn charges or affidavits under oath that are attached to the
6 pleading. On the contrary, the judicial opinions and decisions cited above commonly treat the affidavits
7 supplied in support of out-of-state charging instruments, together with the affidavits of local arresting
8 officers, as the “sworn” portion of the complaint. *See, e.g., Hughes, supra*, 229 N.W.2d at 658.

9 Miura also argues that the complaint as a whole is indefinite as to the grounds for his arrest and
10 detention, again raising the objection that Cabrera’s affidavit fails to include the statement that he “fled
11 from justice” or “stands charged” with a crime “punishable by death or imprisonment for a term
12 exceeding one year.” In the pleading context, it is asserted that these alleged technical deficiencies are
13 especially “fatal” because they invalidate the Court’s jurisdiction and are incapable of amendment. The
14 Court does not agree with this reading of the complaint. In extradition proceedings, the term “fugitive”
15 or one who has “fled from justice” has been broadly defined as meaning one who commits a crime in
16 one state and thereafter leaves it and is found in another. *Appleyard v. Massachusetts*, 203 U.S. 222, 27
17 S.Ct. 122, 51 L.Ed. 161 (1906). A “felony” is a crime “punishable by death or imprisonment for a term
18 exceeding one year.” For prerequisite extradition purposes, a person “stands charged” of a crime in
19 another state when a warrant has been duly issued from that state for their arrest for that crime. *Hughes*,
20 229 N.W.2d at 659. As described above by this Court, the matters to be determined at a commitment
21 hearing under 6 CMC § 6916 are limited. The function of the complaint is to provide notice to the
22 accused that the Commonwealth is asserting grounds for his extradition so that the accused may answer.
23 The Commonwealth’s pleadings, both the Cabrera Affidavit which incorporates the California warrant,
24

1 as well as the February 27th Complaint that attached the Cabrera Affidavit and the California warrant,
2 sufficiently state these grounds.

3 **D. Miura's Objection to Commitment to Await Requisition.**

4 In his motion to dismiss filed March 3, 2008, and before the Court at the March 5th hearing,
5 Miura contends that his detention is unlawful because he was brought to court on the third day after his
6 arrest, at which time he was treated to a bail hearing, and he was not ultimately brought before the
7 present judge assigned to the matter until March 5, 2008. Miura argues that this 12-day delay violated
8 his right under 6 CMC § 6915 to be brought to court for an examination "with all practicable speed,"
9 and necessitates his release.

10 There is no fixed statutory period within which the accused fugitive must be brought to court
11 after a warrantless arrest under 6 CMC § 6915 and the reasonableness of any delay must be determined
12 from the particular circumstances of each case. *Hughes*, 229 N.W.2d at 662-663 (four-day delay not
13 unreasonable); *Cf.*, *Commonwealth ex rel. Heaton v. Harvey*, 21 Pa.D. & C.2d 763 (Pa. Com. Pl. 1960)
14 (15-day delay before first appearance not unreasonable when authorities required additional
15 documentation from demanding state to prepare for hearing). "The period of time which is reasonable
16 where an extradition arrest is involved presents a different situation than when a local crime is
17 involved." *Hughes*, at 663. Detention pursuant to the extradition statutes is distinguished by the fact
18 that the accused is not being detained for purposes of interrogation relative to a crime in the
19 Commonwealth and is not facing trial before the Court. Consequently, the special nature of the
20 proceeding and all of the circumstances surrounding it may properly be considered to determine the
21 reasonableness of any delay; including the particular needs of both the Commonwealth and the accused,
22 and the actions and representations of both with respect to the proceeding. *Id.*, *See also, Desjarlais v.*
23 *State*, 243 N.W.2d 453, 458 (Wis. 1976).

1 Cabrera testified that he received a telephone call from CNMI Airport Immigration at
2 approximately 2:00 p.m. on Friday, February 22, 2008, informing him that Miura was being detained at
3 the airport. He then telephoned the ICE office in Guam to determine if Miura was still wanted by the
4 authorities in California. After ICE agents contacted the LAPD Warrants Division, they made a
5 telephone call to Cabrera to confirm that the California warrant was active and to relay the message that
6 California officers were willing to extradite Miura. Cabrera then retrieved his copy of the California
7 warrant and drove to the airport, where he questioned Miura and placed him under arrest, reading aloud
8 to him the entire Felony Complaint for Arrest Warrant. Miura was subsequently detained at the
9 Department of Corrections the same afternoon.

10 Miura's first court appearance was on Monday, February 25, 2008. The Commonwealth filed its
11 original Information at 9:56 a.m. and the California Felony Complaint for Arrest Warrant together with
12 Cabrera's affidavit at 10:22 a.m. Miura appeared before the Superior Court at 1:30 p.m. the same day.
13 The matter, however, was scheduled on the court's calendar as a bail hearing before Associate Judge
14 David A. Wiseman. Nevertheless, Miura appeared with a Japanese translator and Judge Wiseman
15 explained the nature of the Commonwealth's Information and supporting documents and that Miura was
16 being held on the charge of being a fugitive based upon the California warrant alleging crimes of murder
17 and conspiracy to commit murder and that he was being held for the purpose of extradition to California.
18 This explanation by the judge was repeated when Miura obtained a new translator later in the hearing.
19 Miura was advised of the rights of a defendant in a criminal proceeding and Miura requested that
20 counsel be appointed to represent him. The CNMI Public Defender was present and allowed to address
21 the court, although he was not yet appointed. After an in-court examination, Judge Wiseman referred
22 Miura to the Office of Adult Probation for an indigency determination. On Thursday, February 27,
23 2008, the judge informed Miura that, based upon his review the OAP report, it was determined that he
24

1 was ineligible for court-appointed counsel and advised him to seek private counsel. A status conference
2 was set for Monday March 3, 2008.

3 Miura used the intervening time to obtain the services of the current private counsel, who filed a
4 motion to dismiss the proceedings on the morning of March 3rd. Based on the substantive motion filed
5 by the Defendant, the parties were informed that the matter was assigned to the undersigned judge, and
6 at 3:00 p.m. that day, the matter was set for a hearing on Wednesday, March 5, 2008, below the
7 undersigned judge to allow the Commonwealth to file a memorandum in opposition to the motion and
8 any reply by Miura.

9 Thus, following his arrest on a Friday afternoon, Miura was detained by DOC for approximately
10 three days before being brought to court at 1:30 p.m. on the following Monday. The hearing on that
11 day, however, was scheduled as a regular criminal matter rather than as a special proceeding under 6
12 CMC §§ 6901-31. Substantively, the judge at that hearing thoroughly explained that the basis and
13 purpose of the Commonwealth's complaint was to hold Miura for extradition to face charges in
14 California for the crimes alleged in the supporting documents, but indicated that he would not be ruling
15 on the matter. Miura was further told that he had the right to have counsel present, that counsel would
16 be appointed for him if he could not afford one, and of the further rights possessed by individuals
17 charged with a crime. Miura exercised some of these rights by seeking appointed counsel and
18 submitting to an indigency examination and by subsequently hiring private counsel who prepared and
19 filed a motion to dismiss on his behalf on March 3, 2008.

20 This means that the present hearing on March 5th is the twelfth day following Miura's arrest. In
21 the context of proceedings brought under the extradition statute, the Court does not find the approximate
22 3-day delay between Miura's warrantless arrest on a Friday afternoon and the time he was brought to
23 court on Monday afternoon to be unreasonable. There is no sign of an improper purpose on the part of
24 The Commonwealth, and in light of the required preparation of a special form of complaint, the

1 inaccessibility of the Court on weekend days, and administrative necessities, there was no unreasonable
2 delay in bringing Miura to court on the next business day following his arrest.

3 Miura's more substantial argument is that his initial appearance on February 25th and the
4 intervening hearings were not the substantive equivalent of a hearing contemplated by 6 CMC § 6915 as
5 the hearings dealt only with preliminary matters. As such, no examination was conducted under 6 CMC
6 § 6916 and no prerequisite warrant has issued from the court. The requirement that the accused be
7 brought to court "with all practicable speed" applies to the officer or person with custody of the accused,
8 and the Court has found that the Commonwealth complied with this requirement on February 25th. 6
9 CMC § 6915. It is sensible, however, to read Section 6915 in conjunction with the succeeding Section
10 6916 to imply that the Court must not defer the matter but must make its determination under Section
11 6916 and issue a warrant with the same speed.

12 The intervening hearings in this matter before Judge Wiseman were a result of the misperception
13 that this proceeding was a regular criminal matter. Consequently, the matter was handled according to
14 procedures that appropriately respect the constitutional rights of a person accused of a crime. Although
15 these rights are in excess of those implicated by the statute, Miura has availed himself of the
16 opportunities afforded by these procedures to seek court-appointed counsel and to subsequently hire
17 counsel to file an objection to the proceedings while preparing a vigorous opposition to the examination
18 and commitment hearing under 6 CMC § 6916.⁸ The one-week delay began with Miura's request for
19 counsel and culminated with the filing of his motion to dismiss. While irregular, it does not appear that
20 Miura was substantially disadvantaged by this delay, and under all of the circumstances of this case, the
21 Court does not find the period of the delay to be unreasonable.

22
23 ⁸ See, *Judd v. Vose*, 813 F.2d 494, 497 (1st Cir. 1987) (extradition is not a "criminal proceeding;" no right to counsel in
24 preliminary and summary proceedings). Cf., 6 CMC § 6911 (providing statutory right to procure legal counsel when person
is arrested on a Governor's Warrant of Arrest).

1 After determining the legal sufficiency of the Commonwealth’s complaint and that Miura’s
2 warrantless arrest was valid, and finding no unreasonable delay, the Court denied Miura’s motion to
3 dismiss and required Miura to answer. Defendant, through counsel, waived the full reading of the
4 complaint and entered a denial to the complaint. The Court accepted Miura’s answer and, with the
5 parties’ concurrence, proceeded at that time to conduct the prerequisite commitment examination
6 required by 6 CMC § 6916.

7 **E. Examination and Commitment to Await Requisition under 6 CMC § 6916.**

8 The matters to be determined by the Court at this stage are limited. The statute provides only
9 that “If from the examination before the court it appears that the person held... is the person charged
10 with having committed the crime alleged... the court shall, by a warrant reciting the accusation, commit
11 the person to jail for a time not exceeding 45 days...” 6 CMC § 6916. The purpose of the detention is to
12 give the Commonwealth Governor and the executive authority of the state with jurisdiction over the
13 offense the necessary time to complete the formal extradition process. *Id.* At this preliminary stage, it is
14 only necessary that the person held appears to be the one charged, as opposed to the final extradition
15 stage where it must be determined upon proof that the person held is in fact the person charged in the
16 state where the offense was committed. *See*, 6 CMC §§ 6903, 6911; *Commonwealth ex rel. Lattimore v.*
17 *Gedney*, 363 A.2d 786, 792 (Pa. Super. 1976).⁹

18 Miura, while maintaining his objection to the entire proceeding, answered with a general denial.
19 The Commonwealth thereupon called AGIU Investigator Cabrera to testify regarding his knowledge of

21 ⁹ Miura’s counsel strenuously argues that the requirements that must be met at this preliminary stage of the extradition
22 process actually involve a *more demanding* showing by Plaintiff than what must be proved for an ultimate resolution of the
23 matter of extradition. There may be an element of truth to this representation, insofar as the requirements for a valid
24 warrantless arrest and detention are *different* from the requirements for a valid Governor’s Request for Extradition or
Governor’s Warrant. But this Court has determined that Miura’s arrest was valid under the terms of 6 CMC § 6915.

1 the charges and the facts and circumstances of Miura's arrest as previously described herein. Miura's
2 counsel briefly cross-examined Cabrera, but offered no testimony or documentary evidence to rebut the
3 Commonwealth's prima facie case that Miura is a person charged with committing a crime in California.

4 From the complaint and sworn documents on record, including the Felony Complaint for Arrest
5 Warrant and Cabrera's Affidavit in Support of Warrantless Arrest, as well as the testimony presented,
6 and with no controverting evidence, the Court finds sufficient evidence to believe that the accused is
7 Kazuyoshi Miura and that he is the same person who has been charged in the State of California with the
8 crimes of murder and conspiracy to commit murder and has fled from justice.

9 **IV. Conclusion**

10 For the forgoing reasons, the Court DENIES Miura's motion to dismiss and for release from
11 custody. Pursuant to 6 CMC § 6916, the Court finds that sufficient credible evidence exists to warrant
12 Kazuyoshi Miura's continued temporary detention pending the outcome of formal extradition
13 proceedings, and separately issues its warrant that Mr. Miura be maintained in the custody of the CNMI
14 Department of Corrections for a period of no longer than forty-five (45) days. The Court further sets a
15 **Status Conference on this matter for 1:30 p.m. on March 19, 2008 in Courtroom 220A.**

16 SO ORDERED this 14th day of March, 2008.

17
18 /S/ _____
RAMONA V. MANGLONA, Associate Judge