



1 **II. DISCUSSION**

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3 **A. The Office of the Attorney General has Standing to Move to Quash the Public Defenders’**  
4 **Office Entry of Appearance.**

5 Before addressing the merits of the Commonwealth’s motion to quash, the Court will dispose of  
6 the Public Defender’s (PDO) claim that the Office of the Attorney General (OAG) lacks standing to  
7 pursue its objection of the PDO’s entry of appearance. The justiciability doctrine of standing simply  
8 requires that the person seeking action by a court must have a personal stake in the outcome of the  
9 litigation. However, as our Supreme Court has ruled, this rule is not to be applied without some  
10 flexibility. See *Rayphand v. Tenorio*, 2003 MP 12, at ¶23, quoting *Mafnas v. Commonwealth*, 2 N.M.I.  
11 248, 261 (1991) (“On appeal, we addressed standing to sue, and noted that it is a “self-imposed rule of  
12 restraint: ‘[I]t is not a rigid or dogmatic rule but one that must be applied with some view to realities as  
13 well as practicalities. Standing should not be construed narrowly or restrictively.’”). With those  
14 principles in mind, the Court will examine the PDO’s claim and the OAG’s response.

15 In essence, the PDO argues that the OAG lacks standing because the OAG has no stake or  
16 interest in whether or not the PDO assists the defendants. Though the Court sympathizes with the  
17 PDO’s concern that pursuing disqualification of the PDO in an attempt to deny the respondents a fair  
18 hearing would be an unacceptable motive for establishing a stake in the litigation, it is not necessary to  
19 graft such motive to the OAG’s actions in order to detect a justiciable interest in the outcome of the  
20 litigation. Under article III, section 11 of the Commonwealth Constitution, the Attorney general is  
21 charged with “representing the Commonwealth in all legal matters, and prosecuting violations of the  
22 Commonwealth law.” N.M.I. Const., art. III, § 11.

23 Given the broad constitutional mandate of the Attorney General’s to represent the  
24 Commonwealth in all legal matters, it is not unreasonable to interpret the OAG’s general mandate as to  
25 ensure that the law of the Commonwealth is properly implemented. Accordingly, it is also reasonable to

1 conclude that ensuring that the Commonwealth's resources are not unnecessarily expended by agencies  
2 like the PDO for purposes which run ultra vires of the agency's constitutional or statutory mandate.  
3 Such an interest in ensuring that the law is followed and that the agencies only exercise that power  
4 reasonably conferred to them by statute or constitutional law, is sufficient to establish a stake in the  
5 outcome of this case and standing for the OAG.

6 **B. The PDO is without Statutory Authority to Provide Representation to Indigent Persons Subject**  
7 **to Deportation.**

8 The next question which invites consideration by this Court is whether the PDO is authorized to  
9 provide representation to indigent persons outside criminal representation? The OAG maintains that the  
10 PDO's powers are limited to appearing on behalf of criminal defendants, and their services should not  
11 extend to respondents in a deportation proceeding. By contrast, the PDO insists that its statute mandates  
12 representation of all indigent persons requiring legal assistance, including respondents who are the  
13 subjects of deportation proceedings.

14 The Public Defender possesses the following statutory powers and duties:

- 15 (a) To defend indigent defendants in criminal cases before the courts of  
the Commonwealth ...;
- 16 (b) To render legal assistance to those who are in need of legal counseling  
and who are unable to afford the services of private counsel.

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18 1 CMC § 2203. It is undisputed that section 2203(a) grants the PDO with the power and duty to defend  
19 criminal defendants before the courts of the Commonwealth.

20 Furthermore, it is beyond dispute that immigration matters, particularly deportation hearings, are  
21 civil proceedings. Consequently, the PDO does not have authority to offer legal representation to  
22 respondents in deportation proceedings under section 2203(a) because deportations are purely civil  
23 matters. *CNMI v. Shuanglan Chen*, 2006 MP 14 ¶ 12; *CNMI v. Shimabukuro*, 2008 MP 10 ¶ 15  
24 (“deportation is a civil matter, wholly separate from a criminal proceeding.”); *CNMI v. Jindawong*, 2008  
25 MP 3 ¶ 10; *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) ([a] deportation proceeding is a purely

1 civil action to determine eligibility to remain in this country ....”). Therefore, deportation proceedings,  
2 as they are civil in nature, would not fall under the ambit of section 2203(a).

3           However, according to the PDO, the broad language in subsection (b) mandates the PDO to  
4 represent all indigent persons in any proceeding, irrespective of the nature of the case. The Court is not  
5 convinced that PDO’s interpretation was intended by the drafters. Though the Court acknowledges that  
6 the plain language of subsection (b) is broad, it still fails to endow or mandate the PDO with powers or  
7 responsibilities to appear on behalf of respondents in a deportation proceeding. To be sure, the plain  
8 language in subsection (b), though mandating that the PDO “render legal assistance to those in need of  
9 legal counseling,” nothing in this section extends such powers or duties to defending or appearing on  
10 behalf of respondents in deportation proceedings before the courts of the Commonwealth. Without a  
11 clearer mandate, this Court must conclude that the PDO is not authorized by statute to appear on behalf  
12 of respondents in deportation proceedings before Commonwealth courts.<sup>1</sup>

13           Moreover, in construing a statute, though a Court must always endeavor to interpret the drafters’  
14 intent from the plain language, the plain language must be interpreted in a manner that avoids absurd  
15 results. *Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc.*, 2 N.M.I. 212 (1991) (holding  
16 that “[a] court should avoid interpretations of a statutory provision which would defy common sense or  
17 lead to absurd results”). As argued by the OAG, to give effect to the PDO’s broad interpretation of  
18 section 2203(b) would potentially create a situation which would mandate that the PDO appear on  
19 behalf of any person in need of legal counseling or assistance. Certainly the legislature did not envision  
20 the Commonwealth undertaking the burden of representing indigent debtors in collection proceedings or  
21 indigent tort victims or tortfeasors in other civil actions. Rather, it is evident that the PDO is charged  
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23           <sup>1</sup>The Court’s construction of section 2203(b) does not address the question of whether the PDO  
24 has the authority to provide a respondent who is the subject of deportation proceedings legal assistance  
25 outside of court appearances. The Court simply concludes that the PDO is without authority to appear  
*in court* on behalf of immigration respondents who are the subject of deportation proceedings.

1 with the duties of providing subsidized legal assistance and counseling to those who are in need, but are  
2 not permitted to appear in Commonwealth court on behalf of any person except a criminal defendant  
3 who is facing criminal charges.

4 **C. The Commonwealth is Not Obligated Under Due Process Law to Provide Legal Counsel to**  
5 **Respondents Facing Deportation from the Commonwealth.**

6 In arguing that Respondents at the very least have a due process right to representation by  
7 counsel at the Commonwealth's expense, the PDO chiefly relies on the holdings from *Office of the*  
8 *Attorney General v. Honrado*, 1996 MP 15, and *Aguilera-Enriquez v. I.N.S.*, 516 F.2d 565 (6th Cir.  
9 1975). The PDO's reliance on these cases as a basis for Commonwealth-subsidized representation for  
10 indigent persons facing deportation is misplaced.

11 Specifically, *Honrado* provides only that due process demands an "inquiry on the record as to  
12 whether an alien appearing pro se understands and wishes to waive his or her right to counsel in a  
13 deportation hearing." *Honrado* at 11. In fact, Commonwealth statute reinforces the importance of  
14 advising a person subject to deportation that he or she has a right to obtain counsel. 3 CMC § 4341 (c)-  
15 (d). However, *Honrado* fails to require that the Commonwealth provide a respondent in a deportation  
16 proceeding counsel at the expense of the Commonwealth.

17 By comparison, the court in *Aguilera-Enriquez* recognized that deportation hearings, although  
18 many are summary in nature, implicate constitutional due process protections, which in some cases  
19 require an appointment of lawyer at the government's expense. The determination of whether an alien is  
20 entitled to counsel at the expense of the government is made on a case-by-case basis:

21 The test for whether due process requires that appointment of counsel for  
22 an indigent alien is whether, in a given case, the assistance of counsel  
23 would be necessary to provide "fundamental fairness – the touchstone of  
due process."

24 *Aguilera-Enriquez*, 516 F.2d at 568 quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 790, L. Ed. 2d 656, 93  
25 S.Ct. 1756 (1973). In applying the *Gagnon* test, the court in *Aguilera-Enriquez* held that the lack of

1 counsel at Aguilera-Enriquez’s deportation hearing “did not deprive his deportation proceeding of  
2 fundamental fairness.” *Id* at 569. Instead, the court concluded that because Aguilera-Enriquez was  
3 already convicted of an offense (possession of illegal narcotics) which made him deportable, no added  
4 appearance or assistance by counsel during his deportation proceedings would have provided Aguilera-  
5 Enriquez with a viable defense. *Id*.

6 Like *Aguilera-Enriquez*, each respondent in this matter has been convicted of offenses which  
7 make that respondent deportable under CNMI law. Accordingly, the Commonwealth has sought  
8 deportation of the respondents. At any hearing they may have, the Court will have only two  
9 determinations to make: 1) whether the respondents are subject to the immigration statutes of the CNMI;  
10 and 2) whether the respondents have indeed been convicted of the requisite offenses which would  
11 subject them to deportation from the Commonwealth. No assistance or presence of counsel will be able  
12 to present a viable defense to these grounds for deportation, if such information is properly established  
13 at the deportation hearing by the government. Should the respondents wish to attack their underlying  
14 criminal convictions, the participation of the PDO will likely be validated. However, here,  
15 constitutional due process rights will not be implicated even if respondents are not provided counsel at  
16 the government’s expense. Consequently, the Commonwealth’s motion to quash the PDO’s appearance  
17 in this case is GRANTED.

### 18 19 III. CONCLUSION

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21 Based on the foregoing, the Court GRANTS the Commonwealth’s motion to quash the  
22 appearance of the PDO on behalf of respondents. The hearing on the **Order to Show Cause** shall  
23 commence on **October 9, 2008 at 1:30 p.m.** in **Courtroom 223A**. Respondents are ordered to appear. .  
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1 **SO ORDERED** this 25<sup>th</sup> day of September, 2008.

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/s/  
David A. Wiseman, Associate Judge