



By the order of the court, Judge David A Wiseman

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**FOR PUBLICATION**



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

**CHERYL INDALECIO,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )

**CIVIL CASE NO. 03-0514**  
**CIVIL CASE NO. 10-0236**

**ORDER DENYING THE  
GOVERNMENT'S MOTION TO STRIKE**

**COMMONWEALTH OF THE** )  
**NORTHERN MARIANA ISLANDS, and** )  
**The DEPARTMENT OF PUBLIC** )  
**HEALTH AND SERVICES,** )  
 )  
 **Defendants.** )

**ORDER DENYING PLAINTIFFS'  
MOTION FOR AN ORDER IN AID OF  
JUDGMENT**

**MIGUEL MAGOFNA CAMACHO, also** )  
**known as MICHAEL MAGOFNA** )  
**CAMACHO, CARMANDA CAMACHO,** )  
**a minor, JOSHUA MICHAEL** )  
**CAMACHO, JR., a minor, BRANDON** )  
**CAMACHO, a minor, all minors and** )  
**through their personal representative,** )  
**MARGARET AYUYU,** )

**Plaintiffs,** )

**v.** )

**COMMONWEALTH OF THE** )  
**NORTHERN MARIANA ISLANDS,** )  
**DEPARTMENT OF PUBLIC HEALTH,** )  
**COMMONWEALTH HEALTHCARE** )  
**CENTER,** )

**Defendants.** )

1 **I. INTRODUCTION**

2 These MATTERS came before the Court on November 19, 2015, at 1:30 p.m. in Courtroom 223A.  
3 For Civil Case No. 03-0514, Plaintiff, Cheryl Indalecio, was represented by Attorney Michael Dotts.  
4 Defendant, the Commonwealth of the Northern Mariana Islands, was represented by Assistant Attorney  
5 General David Lochaby. For Civil Case No. 10-0236, Plaintiffs, Miguel Magofna Camacho and others, were  
6 also represented by Attorney Michael Dotts. Defendant, the Commonwealth of the Northern Mariana  
7 Islands, was also represented by Assistant Attorney General David Lochaby. Because the filed motions are  
8 nearly identical, the Court will address both in the present ORDER.

9 The Court heard arguments on the respective motions for an order in aid of judgment filed by  
10 Plaintiffs. The Government opposed. In addition, the Court heard arguments on the Government's motions  
11 to strike Plaintiffs' reply brief. Plaintiffs opposed. Based upon the parties' written briefs, oral arguments, and  
12 applicable law, the Court denies both the Government's motions to strike and the Plaintiffs' motions for an  
13 order in aid of judgment.

14 **II. BACKGROUND**

15 **A. Indalecio v. Commonwealth**

16 On January 18, 2007, Cheryl filed a first amended complaint against the Government seeking relief  
17 for the loss of Christopher, her son. Cheryl alleged that physicians at CHCC botched an adjustment of a  
18 tracheotomy tube as Christopher was recovering from surgery. 20 minutes after Christopher was noted to  
19 be bleeding, he was pronounced dead.

20 A little less than a year and a half later, on May 12, 2008, the parties entered into a settlement  
21 agreement where the Government was to pay \$50,000<sup>1</sup> to Cheryl. In the present motion, Cheryl complains  
22 that the Government has yet to satisfy said judgment.

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25 <sup>1</sup> Pursuant to 7 CMC § 2202(a)(1), \$50,000 is the maximum tort liability for a wrongful death claim against the Government.

1 **B. Camacho v. Commonwealth**

2 On August 23, 2010, Miguel filed a complaint against the Government seeking relief for the loss  
3 suffered by Brandon, his minor son. Miguel alleged that physicians at CHCC installed a rod in Brandon's  
4 arm. However, due in part to complications arising from Brandon's medical condition, his arm became  
5 infected and had to be amputated.

6 Almost three years later, on July 19, 2013, the parties entered into a settlement agreement where the  
7 Government was to pay \$15,000 to Miguel. In the present motion, Miguel complains that the Government  
8 has yet to satisfy said judgment.

9 **III. DISCUSSION**

10 **1. Motion to Strike**

11 The Government requests that the Court strike Plaintiffs' reply brief. It cites to *Silas v. Cross*, 911  
12 F.2d 341, 345 (9th Cir. 1990), for the conferred proposition that a court need not consider new issues raised  
13 in a reply brief. The Court does not grant the Government's motion for two reasons.

14 First, the Government does not specify which arguments it considers new, only going so far as to say  
15 that its opponent "makes many arguments and cites many cases . . ." Mot. 3. Second, rulings based on the  
16 merits are favored over rulings based on technicalities. *Office of the Attorney General v. Ortiz*, No. 01-0534  
17 (NMI Super. Ct. Jan. 30, 2002) (Order Denying Mot. to Quash and Denying Mot. to Dismiss Order to Show  
18 Cause at 4). Therefore, the Court will consider Plaintiffs' reply brief.

19 **2. Order in Aid of Judgment**

20 Plaintiffs bring a motion for order in aid of judgment under 7 CMC § 4205, seeking to "determine  
21 the fastest manner in which the debtor can reasonably pay a judgment . . ." Plaintiffs seek two orders. First,  
22 an order compelling the Government to pay the final judgment amount out of the "Judgment against  
23 Government" line item. Second, an order compelling the executive branch of the Government to reprogram  
24 funds to allow full payment of Plaintiffs' judgment. Or, in the alternative, an order directing the legislature  
25 to pay the judgment under the courts' inherent powers. The Court grants the former, but denies the latter

1 relief for the following reasons.

2 **A. "Judgment against Government" Line Item**

3 Under the most recent budget appropriations act, the Legislature has set aside \$8,000 for the  
4 "Judgment against Government" line item, an independent programming allocation. PL 19-8. Part of  
5 Plaintiffs' judgment may be satisfied from that fund. In fact, the Court has already granted such relief in its  
6 order, dated December 7, 2015. *Indalecio v. Commonwealth*, No. 03-0514 (NMI Super. Ct. Nov. 23, 2015)  
7 (Interim Order Granting in Part Plaintiffs' Mot. for an Order in Aid of Judgment at 1) ("Defendant shall pay  
8 \$6,153.85, out of the \$8,000 expressly appropriated for payment of judgments, towards the satisfaction of  
9 the Judgment in this case immediately upon entry of this Order."); *Camacho v. Commonwealth*, No. 10-0236  
10 (NMI Super. Ct. Dec. 7, 2015) (Interim Order Granting in Part Plaintiffs' Mot. for an Order in Aid of  
11 Judgment at 1) (ordering the Government to pay \$1,846.15 out of the same).

12 **B. The Executive Branch's 100% Reprogramming Authority**

13 To the extent that Plaintiffs seek monies not already appropriated for payment of judgments, the  
14 court is generally unable to grant such relief. Under 1 CMC § 7207, the Commonwealth courts are expressly  
15 barred from compelling the government to disburse funds from the general treasury or to mandate the  
16 reprogramming of funds in order to satisfy civil judgment obligations. *Marine Revitalization Corp. v. DNLR*,  
17 2010 MP 8 ¶ 49 ("Under 1 CMC § 7207, the trial court did have the power to order the government to pay  
18 these funds to MRC because the Legislature already appropriated the money for settlements and  
19 judgments—assuming that any funds still remain.").

20 To overcome Section 7207's limitations, Plaintiffs argue that the Court may compel the executive  
21 branch to allocate funds to the fund for settlements and judgments pursuant to the 100% reprogramming  
22 authority granted in the wake of the devastating effects of Typhoon Soudelor.<sup>2</sup> Under Section 501 of the

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23  
24 <sup>2</sup> Letter from Governor Inos to the Legislature, dated Sep. 29, 2015 (" I acknowledge that the Governor has also been  
25 authorized to reprogram up to 100% of the appropriations for the executive branch. However, this flexibility is warranted as the  
Governor needs the flexibility to respond to, among other matters, obligations resulting from the damage the Commonwealth  
suffered during Typhoon Soudelor and the Commonwealth's obligation to retirees under the *Johnson v. Inos* settlement

1 Appropriations and Budget Authority Act of 2016, the Governor may fully reprogram funds appropriated  
2 by the annual appropriation act for the operations and activities of departments, agencies, and offices within  
3 the executive branch. PL 19-8, § 501 (suspending 1 CMC § 7402(b), which limits the Governor's  
4 reprogramming authority to twenty-five percent).

5 The backbone to Plaintiffs' novel argument lies in the assertion that a government official with full  
6 programming authority must allocate money to fulfill the government's obligations as a judgment debtor.<sup>3</sup>  
7 They cite to *Thompson v. Cherokee Nation of Oklahoma*, 334 F.3d 1075, 1088 (Fed. Cir. 2003), to posit that  
8 the Governor must reprogram funds available to the executive branch to either allocate more funds into the  
9 "Judgment against Government" line item or by some other method that will allow the government to satisfy  
10 Plaintiffs' judgments.

11 However, *Thompson's* holding is not as broad as Plaintiffs suggest. *Thompson* merely holds that the  
12 government may not claim that their non-performance under a contract is excused where a government  
13 official can reprogram funds. *Id.*; *Blackhawk Heating & Plumbing Co. v. United States*, 622 F.2d 539, 552  
14 (Ct. Cl. 1980) (holding that an agency with reprogramming authority may not skirt its contractual  
15 obligations). Here, there's already been a judgment against the Government in a court of law. Accordingly,  
16 *Thompson* is inapplicable. The Court further finds that whether the Governor has been granted full  
17 reprogramming authority is not material to the question of whether the court can compel the executive  
18 branch to reprogram funds—as expressly limited under Section 7207—in order to satisfy a civil judgment  
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22 agreement.").

23 <sup>3</sup> The Court rejects Plaintiffs' assertion, citing *Commonwealth v. Lot No. 353 New G*, 2012 MP 6 ¶ 24 n.10, that granting  
24 100% reprogramming authority to the Governor is the equivalent to a blank slate appropriation. Section 7207, for example,  
25 provides for an explicit distinction between appropriation and reprogramming. Even if Plaintiffs were correct, they have not  
discussed their request for relief in the context of 7 CMC § 2254, which provides that "Judgments rendered pursuant to this article  
shall be paid from such funds as may be appropriated by the Commonwealth Legislature for that purpose."

1 against the government.<sup>4</sup> Therefore, the Court finds that Plaintiffs have not met their burden to show that  
2 the Governor may be compelled to reprogram its funds to satisfy the instant judgments.

### 3 **C. Inherent Powers Doctrine**

4         Alternatively, Plaintiffs argue that the Court may compel the Legislature to satisfy the judgments  
5 under its inherent powers pursuant to Article IV, Section 2 of the NMI Constitution. Plaintiffs cite to cases  
6 where judiciaries have compelled legislatures to allocate funds to it. In said cases, the legislatures were  
7 compelled to fund the courts in order to ensure the administration of justice and to ensure a functioning  
8 independent judiciary. *E.g.*, *Matter of Alamance Cnty. Court Facilities*, 329 N.C. 84, 99 (1991) (ordering  
9 the government to fund court facilities); *Grimsley v. Twiggs Cnty.*, 249 Ga. 632, 635 (1982) (ordering the  
10 government to fund a part-time clerical worker); *O'Coin's v. Treasurer of Worcester Cnty.*, 362 Mass. 507,  
11 517 (1972) (ordering the government to fund a tape recorder and some tapes).

12         However, while the Legislature's lack of a full commitment to addressing the Government's judgment  
13 debtor obligations is undoubtedly an infraction on the administration of justice, the Court is not persuaded  
14 that said inaction rises to a threat on the notion of an independent judiciary. Therefore, the Court finds that  
15 Plaintiffs have not met their burden to show that the court may compel the Legislature to satisfy the instant  
16 judgments under the Judiciary's inherent powers.

### 17 **CONCLUSION**

18         This is not the first time this Court has addressed the harm of legislative inaction—or the first time  
19 the Commonwealth courts have addressed such concerns. *Marine Revitalization Corp.*, 2010 MP 8 ¶ 35  
20 (explaining that courts have the power to invalidate illegal or unconstitutional laws, but have limited powers  
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22         <sup>4</sup> In addition, the Court need not discuss whether the Governor has an obligation to fulfill the Government's judgment  
23 debtor obligations under Article III, Section 9(a) of the NMI Constitution. Section 9(a) requires that the Governor submit a  
24 "balanced" budget to the Legislature. However, ensuring that the Government complies with its constitutional obligations is a  
25 collateral issue to a motion for an order in aid of judgment, if not violative of the separation of powers doctrine. *Cf. Rayphand  
v. Tenorio*, 2003 MP 12 ¶ 46 ("The adjudication of this case will require us to do nothing more than to juxtapose Governor  
Tenorio's actions with the framework provided by existing Commonwealth law, and determine whether Governor Tenorio's  
actions were permitted by these laws. These are tasks for which we are qualified.").

1 in forcing the legislature to act). This Court has once cautioned that the continuing culture by our  
2 Government of not honoring the courts' judgments "can create an environment of distrust and may shape  
3 an unsavory reputation for the Commonwealth." *Marine Revitalization Corp. v. DNLR*, Nos. 02-0566 &  
4 04-0589 (NMI Super. Ct. Feb. 24, 2009) (Order Granting Pls.' Third Order in Aid of Judgment at 14).

5 Our society is built on the simple, but human principle that "I will honor my promise." That age-old  
6 gesture is not the hallmark of a good society or even that of a decent society; it is the necessary foundation  
7 for a basic one. It is what good mothers teach their daughters. And what good fathers teach their sons. It is  
8 what good governments do for their citizens.

9 The Legislature grants no benefit to society when judgments are not honored. Certainly, not when  
10 they're ignored. While the Court reluctantly effects judicial restraint, it reminds the Government that a noble  
11 reputation takes great effort to build, but may be swiftly destroyed. If not today, maybe tomorrow.

12 For the foregoing reasons, the Governments' motions to strike are **DENIED**. In addition, Plaintiffs'  
13 motions for an order in aid of judgment are **DENIED** at this time.

14  
15 **SO ORDERED** this 11<sup>th</sup> day of January, 2016.

17 /s/  
18 \_\_\_\_\_  
David A. Wiseman, Associate Judge