IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

XIAO RU LIU,
Petitioner,

v.

COMMONWEALTH SUPERIOR COURT,
Respondent,

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Real Party in Interest.

Supreme Court Original Action No. 05-0001-OA

FOR PUBLICATION

ORDER

Cite as: ***Liu v. CNMI, 2006 MP 5***

Argued and submitted on August 19, 2005
Saipan, Northern Mariana Islands

BEFORE: F. PHILIP CARBULLIDO, Designated Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Designated Associate Justice; ROBERT J. TORRES, Jr., Designated Associate Justice.[1]

TORRES, J.:

This case was filed in the Supreme Court of the Commonwealth of the Northern Mariana Islands ("CNMI") as a Petition for a Writ of Certiorari and Mandamus. Counsel for Petitioner Xiao Ru Liu seeks an order requiring Judge Kenneth Govendo to show cause why Mandamus and / or Certiorari should not issue from this court directing the lower court to vacate its ruling that the prosecution of the Petitioner be allowed to go forward.

Liu contends the lower court clearly erred as a matter of law in finding that the prosecutorial function of the Attorney General is vested in the Office of the Attorney General and not necessarily the individual currently appointed and confirmed, who in this case is Attorney General Pamela Brown.

The Commonwealth filed a Motion to Dismiss the Petition which Liu opposed and oral arguments were heard. As explained below, we deny the motion to dismiss. However, having carefully considered the five factors set forth in *Tenorio v. Superior Court*, 1 NMI 1 (1989) that support issuance of a writ of mandamus, we also deny the petition for writ of mandamus. We further decline to exercise our discretion to issue a writ of certiorari because Liu has failed to satisfactorily establish why this extraordinary remedy is appropriate.

[1] Chief Justice Miguel S. Demapan, Associate Justice Alexandro C. Castro and Associate Justice John A. Manglona recused themselves from deciding this matter.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Liu was arrested for assault and battery, disturbing the peace, resisting arrest and trespass. An information was filed charging Liu with misdemeanor offenses, and the matter was set for trial. Liu, who is represented by the CNMI Public Defender, brought a motion to dismiss the information on the basis that Pamela Brown does not hold office legally in the CNMI. Liu asserted that the CNMI Constitution requires the Attorney General be responsible for prosecuting violations of Commonwealth law and the Superior Court was not empowered with the authority to transfer the mandatory constitutional responsibilities of the Attorney General to the "Office of the Attorney General".[2]

The Commonwealth opposed the motion to dismiss on the grounds that nearly identical motions to dismiss had been filed by the CNMI Public Defender in four other criminal cases and the decision entered in one of those cases, *CNMI v. Peredo*, Criminal Case No. 04-0181 (attached as Exhibit "B" to Commonwealth's Motion to Dismiss), was controlling and dispositive on the issue raised in Liu's motion. Relying on the reasoning adopted by the judge in *Peredo*, the Liu judge denied the motion to dismiss. The ruling was issued from the bench in the

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[2] Article III Section 11 of the CNMI Constitution provides:

> **Section 11: Attorney General.** The governor shall appoint an Attorney General with the advice and consent of the Senate. The Attorney General shall be a resident and a domiciliary of the Commonwealth of the Northern Mariana Islands for at least three years immediately preceding the date on which the Attorney General is confirmed. **The Attorney General shall be responsible for** providing legal advice to the governor and executive departments, representing the Commonwealth in all legal matters, and **prosecuting violations of Commonwealth law**. [emphasis added]

following exchange:

> (by Judge Kenneth L. Govendo): I could issue a different decision on this, but I have read through the *Peredo* case, and I think the reasoning is quite good in the *Peredo* case. So, I am going to follow that, and therefore, I'm going to deny your motion in this case. I think the key in the *Peredo* case is the court's interpretation, and I think that it will be followed by our Supreme Court and probably followed by the federal courts whether it's in habeas corpus or anything else. It's the office, and not the person that counts.

Transcript of Proceedings, February 15, 2005, *CNMI v. Liu*, Criminal Case No. 04-0256B (attached as Exhibit "C" to the Petition for Writs of Certiorari and Mandamus, at 5: 5-10).

The *Peredo* decision held that the vacancy in the Office of the Attorney General cannot give rise to the situation where no criminal can be prosecuted. The ruling was based on statutory construction (the court refusing to give the statute a meaning which results in the ridiculous result that no criminal can be prosecuted) and on policy considerations ("it is not in the interest of the public welfare to rule that the Commonwealth is effectively paralyzed from prosecuting criminal [sic] every time a vacancy in the Attorney General's office occurs." Exhibit "A" to Motion to Dismiss, "Order Denying Defendant's Motion to Dismiss Information as not Brought by Lawful Attorney General," *CNMI v. Peredo*, at 12-13).

The court in Liu's criminal case agreed that it is the "Office of the Attorney General" rather than the "Attorney General" who is responsible for prosecuting crimes ("It's the office, and not the person that counts." Transcript of Proceedings, February 15, 2005). Any potential infirmities to Attorney General Brown's appointment do not impact the criminal prosecution, because the "office" is the prosecutor, not the person. The court, therefore, did not address the alleged problems with Attorney General Brown's nomination and confirmation in the CNMI Senate as Attorney General. Subsequently, however, the trial date was vacated and all

proceedings stayed pending resolution of this petition.

LEGAL ANALYSIS

A. COMMONWEALTH'S MOTION TO DISMISS THE PETITION.

The first issue we must consider is whether to dismiss the Petition outright. In support of its motion to dismiss, the Commonwealth argues that because this issue can be raised in an appeal, there is no writ jurisdiction. The Commonwealth stresses that Liu is using the writ process as an "impermissible alternative to the appellate process," (Commonwealth's Motion to Dismiss Original Proceeding at 2). The Supreme Court of the CNMI has mandamus jurisdiction over petitions for writs pursuant to the CNMI's writ statute, 1 CMC § 3102(b)[3].

At oral argument, the Commonwealth agreed that the court may entertain this Petition, because it is discretionary whether to entertain a Petition for Writ of Mandamus or Certiorari. The Commonwealth's argument is not that this court cannot hear the Petition, but that it is an abuse of the normal appellate process to do so. While the Commonwealth's arguments may be grounds to decline to *grant* a writ, they do not necessarily provide the basis to deprive this court of jurisdiction to *consider* a writ. Because the Supreme Court necessarily can exercise jurisdiction over petitions for writ relief, the Government's argument that this court should not exercise its jurisdiction is not compelling. If this court declines to actually review the matter (by

[3] 1 CMC § 3102 states: § 3102 Jurisdiction.

(a) The Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court of the Commonwealth.

(b) The Supreme Court has original but not exclusive jurisdiction to issue writs of mandamus, certiorari, prohibition, habeas corpus, and all other writs or orders necessary and appropriate to the full exercise of its appellate and supervisory jurisdiction.

(c) The Supreme Court shall have appellate jurisdiction over attorney disciplinary matters. Source: PL 6-25, § 3, ch. 1 (§ 3102).

certiorari) or compel a result (by mandamus), it is not because this court has no jurisdiction. This court still has jurisdiction over this case, and for this reason, the Petition will not be dismissed. Rather, this court will entertain the motion to dismiss as a platform to address whether issuance of a writ of mandamus or certiorari is appropriate in this case.

The relief sought is twofold – for mandamus and in the alternative, for certiorari. "The distinction between 'mandamus' and 'certiorari' is that the former issues to compel, and the latter to review, an official or judicial action." *West Jersey & S.R. Co. v. Board of Public Utility Comm'rs*, 89 A. 1017 (N.J. 1914). This court will first address the petition for writ of mandamus.

B. WRIT OF MANDAMUS

The seminal case interpreting the CNMI's writ statute, 1 CMC § 3102(b), is *Tenorio v. Superior Court*, 1 NMI 1 (1989). In that case, this court set forth the five requirements for consideration of a petition for a writ of mandamus:

> 1. The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief desired;
> 2. The petitioner will be damaged or prejudiced in a way not correctable on appeal;
> 3. The lower court's order is clearly erroneous as a matter of law;
> 4. The lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and
> 5. The lower court's order raises new and important problems, or issues of law of first impression.

In order to determine whether this court should issue mandamus, this court must analyze the five *Tenorio* factors ("[t]he considerations are cumulative, and proper disposition will often require a balancing of conflicting indicators," *Tenorio* at *3). *See also Sablan v. Superior Court*, 2 NMI 165, 168 (1991) (whether mandamus is appropriate depends on a balanced analysis of the

factors). Not all five factors must be met. *Villacrusis v. Superior Court*, 3 NMI 546, 553 (1993)("We need not consider the other factors enunciated in *Tenorio* in view of the clear jurisdictional error.") Accordingly, we shall consider and weigh these factors as is appropriate, based on the facts of this case.

1. *FACTORS ONE AND TWO: NO OTHER ADEQUATE MEANS FOR RELIEF AND NON-CORRECTABLE PREJUDICE*

Because the first two *Tenorio* factors are similar, we will consider them together here. Petitioner argues that she does not have adequate means of relief from prosecution at the hands of an improperly selected prosecuting authority. However, the Petitioner preserved this issue for appeal by moving to dismiss as required by CNMI precedent in *Zhen v. CNMI*, 2002 MP 4, requiring a defendant to raise this issue in a pretrial motion to dismiss in order to preserve the issue. The issue is therefore appealable in the event that the Petitioner is convicted at trial. For this reason, Petitioner does have an adequate remedy at law. She can appeal the trial court's interpretation of Article III § 11 of the CNMI Constitution at the conclusion of the prosecution.[4]

An attack on the validity of the prosecutor's authority is an appealable issue. In two of the cases cited extensively by the parties regarding the merits, *United States v. Gantt*, 194 F.3d 987 (9th Cir. 1999) and *United States v. Hidalgo*, 218 F.3d 19 (1st Cir 2000), the issue of an improperly appointed prosecutor was addressed in a direct appeal. Therefore, the prong that there is not an adequate remedy at law has not been met.

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[4] The conclusion of the trial court that the "office" of the Attorney General is the proper prosecutor does not involve the other factual issues involved in the appointment of Ms. Brown as the Attorney General of the CNMI. In order for there to be a meaningful review on appeal, there must be a record to review. Currently, there is no meaningful record to review the state of Ms. Brown's appointment as Attorney General. This does not preclude review of the trial court's ruling, but in a case in which the issue is directly attacked, a factual record will have to be generated.

Petitioner argues, however, that the relief desired is not relief from a criminal conviction, but relief from a criminal prosecution if that prosecution is not legally conducted. Petitioner relies on this ground to argue that the prejudice she faces is not correctable on appeal. An appeal would not necessarily afford this relief because she would still have to endure the entire trial and the conviction before she was permitted to challenge the prosecutor's authority.

This court is not persuaded that Liu will be prejudiced in a manner not correctable on appeal. Petitioner concedes she has no right to be free from prosecution altogether. Petitioner only claims a right to be free from the ordeal of successive prosecutions. This is a hollow argument because if Petitioner is acquitted, she cannot be retried even if the prosecutor is later found invalid because of double jeopardy, and if she is convicted she has this issue as an appealable issue (among her other issues) on appeal. Since it was clear in *Hidalgo* and *Gantt*, this issue can be raised on appeal. It cannot be said that the harm is utterly irreversible.

Moreover, it is widely held that expense or delay do not justify the use of the extraordinary remedy of mandamus jurisdiction, nor does the possibility that the result will be different on appeal. "[T]he possibility that a ruling may be erroneous and may impose additional litigation expense is not sufficient to set aside the finality requirement imposed by Congress." *In Re BellSouth Corp.*, 334 F.3d 941, 953 (11th Cir. 2003). When we say that a petitioner has no adequate means for relief or that he or she will be prejudiced in a way not correctable on appeal, we do not mean that the petitioner has been forced by an erroneous ruling of the lower court to suffer unnecessary cost and delay. *Mortgages, Inc. v. United States Dist. Ct.*, 934 F.2d 209, 211 (9th Cir. 1991). *Cf. Equal Employment Opportunity Comm'n (EEOC) v. Am. Express Co.*, 558 F.2d 102, 103 (2nd Cir. 1977)(stating that appeal from a collateral order could not be taken

although the ruling forced a defendant to litigate an action it sought to avoid and ran the risk that the proceeding would be nugatory). *See also Parr v. United States,* 351 U.S. 513, 519- 20, 76 S. Ct. 912, 916-17 (1955) ("bearing the discomfiture and cost of a prosecution for crime even by an innocent person is one of the painful obligations of citizenship."). Although the cost and delay may indeed be burdensome to an individual litigant, such harm cannot support mandamus. Otherwise, mandamus would no longer be an extraordinary remedy and we will have effectively abandoned our long standing practice of avoiding piecemeal appeals. Thus, we find the first two *Tenorio* factors weigh against Liu.

2. *FACTOR THREE: CLEARLY ERRONEOUS AS A MATTER OF LAW*

The third factor - clear error as a matter of law - is significant. *DeGeorge v. United States Dist. Ct.*, 219 F.3d 930, 936 (9th Cir. 2000) (stating that "[t]he absence of clear error is usually fatal to a petition for writ of mandamus"). The clearly erroneous standard accords high deference to the lower court. Under *Tenorio*, a writ is not appropriate if "a rational and substantial legal argument can be made in support of the questioned . . . ruling even though on normal appeal a reviewing court may find reversible error." *Id.* at 5. The question we ask, therefore, is whether the lower court rationally could have found as it did. We do not ask whether we would have ruled differently.

The Petition presents, *inter-alia*, issues involving the Appointments Clause of the U.S. Constitution as well as the CNMI Constitution, but the parties have not fully briefed the merits and a complete record has not been developed. Nonetheless, the basis of the trial judge's denial of the motion to dismiss was not related to whether Pamela Brown was properly appointed the Attorney General of the CNMI. Rather, the trial judge's decision was that the Office of the Attorney General, rather than the Attorney General herself, is responsible for prosecuting criminal cases.

Judge Govendo relied upon and adopted the reasoning in the *Peredo* case. To issue the writ, we must be "firmly convinced that the [Superior] Court has erred." *Valenzuela v. Gonzalez v. United States Dist. Ct.*, 915 F.2d 1276, 1279 (9th Cir. 1990). Judge Govendo's reasoning to his decision and his reliance on *Peredo* appear sound and not "so far afield that a writ of mandamus, rather than appeal, is a permissible method of review." *Feliciano v. Superior Court* (*In Re Estate of Hillblom* 5 NMI 211 ¶ 23 (1999)). Liu, therefore, has not demonstrated that the challenged order is clearly erroneous as a matter of law.

3. *FACTORS FOUR AND FIVE: OFT-REPEATED ERROR AND NEW QUESTIONS OF LAW*

The fourth and fifth factors are usually opposite sides of the same coin and are rarely if ever present together. *Calderon v. United States Dist. Ct.*, 163 F.2d 350 (9th Cir. 1998); *United States v. Amlani*, 169 F.3d 1189, 1193 (9th Cir. 1999). Petitioner argues, however, that both factors are present in this case. The Petitioner argues that an improperly appointed Attorney General presents a possibility of repeating problems for all functions relegated to the CNMI Attorney General, and it can be anticipated that the lower courts will rely on *Peredo* and resolve the issue similarly, thus the error will be often repeated. However, this is not so if the trial court is upheld on appeal in its ruling that the office is responsible for prosecuting, not the individual.

Moreover, as Petitioner's counsel conceded at oral argument, the issue in this case is not whether Pamela Brown is properly appointed as Attorney General. The issue is whether criminal prosecutions in the CNMI are a function of the office or the person. Petitioner has no right to be free from prosecution altogether in the event that Attorney General Brown is found to be illegally appointed. The issue whether Attorney General Brown is properly appointed may be of more relevance in another case, but not in this case.

Because the issue is not whether Attorney General Brown was properly appointed, but whether the prosecution function belongs to the office or to the person, it is also an issue that can

be addressed on appeal. A ruling in this case will not affect the underlying issue that Petitioner argues will repeat in successive cases--whether the Attorney General is properly appointed. As such, the fourth Tenorio factor is not present either.

Liu also argues that the Superior Court order raises issues of first impression and creates new and important problems. The issue whether a prosecutor is properly authorized to bring a prosecution has arisen before in the CNMI in *Commonwealth v. Zhen*, 2002 MP 4, where this court was presented with the issue whether a prosecution initiated by an acting Attorney General was valid. In that case, this court noted that "[r]ecent cases have held that an appointment of a United States Attorney that is not made as provided by the Appointments Clause does not affect the government's power to prosecute." *Zhen*, 2002 MP 4 ¶ 40. The current controversy contributes little to advance this jurisprudence, as the issues in the *Zhen* case, as clearly stated above, are different from the proper appointment of a prosecutor.

Even if we assume, *arguendo*, that the validity of Attorney General Brown's appointment implicates the "important problem" of the Attorney General's constitutional responsibilities for prosecuting violations of Commonwealth law and weighs toward granting mandamus, this problem alone does not require mandamus. In sum, at least four of the five *Tenorio* factors weigh against issuance of the writ.

After a careful review of the five *Tenorio* factors for consideration of a writ of mandamus, this court finds that the Petitioner has not met the requirements set forth in that case. Liu, as the party seeking mandamus, has not established her "clear and undisputed" right to issuance of the writ. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 US 271, 289 (1988).

C. WRIT OF CERTIORARI

This court next examines whether it is suitable to undertake this Petition under its authority to grant certiorari review of the same issue. Like mandamus, the CNMI Supreme Court's jurisdiction over certiorari review is found in 1 CMC § 3102, "Jurisdiction . . . (b) The Supreme Court has original but not exclusive jurisdiction to issue writs of mandamus, certiorari, prohibition, habeas corpus, and all other writs or orders necessary and appropriate to the full exercise of its appellate and supervisory jurisdiction."

Unlike the consideration of a petition for writ of mandamus, there is no leading case in the CNMI addressing the standards to be met before the CNMI Supreme Court grants certiorari review. This is a novel issue. The Petitioner cites *United States v. Fanfan*, 2004 WL 1723114 (D.Me. Jan.28, 2004), *cert. granted* 542 U.S. 956 (2004), as an example of a case in which the United States Supreme Court agreed to certiorari review of a pervasive constitutional question. Petitioner likens the grant of certiorari in *Fanfan*, which sought to review the effects of the *Blakeley v. Washington*, 542 U.S. 296 (2004) (unconstitutionality of the federal sentencing guidelines) decision on many federal prosecutions to the situation here involving the alleged infirmity in Attorney General Brown's appointment on the many CNMI prosecutions. The *Fanfan* certiorari review (which resulted in a consolidation with a similar case and a subsequent remand, 543 U.S. 220 (2005)), is an interesting example, but not analogous because the *Fanfan* case rested directly on the *Blakeley* decision, whereas in this case, the issue is not whether the Attorney General is properly appointed, as framed by the Petitioner, but whether the office or the individual has responsibility under the CNMI Constitution for prosecuting violations of Commonwealth law. *Fanfan* does not directly support the grant of certiorari in this case, therefore we must review further our jurisdiction to issue writs of certiorari.

Though the exact source of the language establishing the CNMI Supreme Court's writ of certiorari jurisdiction is unclear, the language used is not uncommon. Among the states that

share the CNMI's court structure (lacking an intermediate appellate court between the trial level and the highest court),[5] many of them share the language conferring a broad grant to the supreme court. For instance, Title 4 Vermont Statutes Annotated § 2 states: "The supreme court shall have original jurisdiction, concurrent with the superior court, of proceedings in certiorari, mandamus, prohibition and quo warranto and shall have jurisdiction to issue all writs, processes and orders that may be necessary to the furtherance of justice and the regular execution of the law." In Vermont, this authority is exercised with caution. The writ of certiorari is an extraordinary remedy of limited scope and function, the issuance of which "is largely a matter of discretion, and is dependent on the lack of any other adequate remedy at law." *Royalton College, Inc. v. State Bd. of Ed.*, 251 A.2d 498, 500 (Vt. 1969). So, in a state with a similar court structure and similar certiorari language, the issuance of a writ of certiorari is limited to those cases where there is no right of appeal or other means of review available. *In Re Petition of Essex*, 212 A.2d 623 (Vt.1965).

This court is also guided by states with a well-developed body of case law interpreting the supreme court's powers of certiorari, such as the Florida Supreme Court, in interpreting its own certiorari statute, which grants similar powers to its appellate courts ("A district court of appeal may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction." West Florida Stat. Ann. Const. Art. 5 § 4.) Florida courts interpreting this grant of certiorari jurisdiction have found that "[g]enerally, writ of certiorari will not issue if there is another adequate remedy, [footnote omitted] such as an appeal or writ of error," *Williams v. Spears*, 719 So. 2d 1236 (Fla. Dist. Ct. App. 1998), *reh'g denied*, (Nov. 5, 1998); *Caliente Partnership v. Johnston*, 604 So. 2d 886 (Fla. Dist. Ct. App. 1992).

[5] Those states are Delaware, Montana, Nevada, North Dakota, Rhode Island, Vermont and West Virginia.

We adopt the same standard for extending certiorari review as that stated in both Vermont and Florida. First, a writ of certiorari is limited to those situations where there is no right of appeal or other means of review available. Second, in determining whether to exercise our discretion to issue a writ of certiorari, we agree with Florida that "the writ is reserved for those situations where there has been a violation of a clearly established principle of law resulting in a miscarriage of justice." *Florida v. Pettis*, 520 So.2d 250, 254 (Fla. 1988).

As stated above, the Petitioner does not meet these grounds for certiorari review. Petitioner has not shown a right to be free from prosecution by a legitimately appointed Attorney General. She has not shown either that she has been prejudiced or that her rights are diminished. Further, a court of competent jurisdiction has found that the prosecution of Petitioner presents no constitutional problems that cannot be corrected on appeal. Finally, there is an appellate avenue to pursue in the event that the Petitioner is convicted.

In interpreting a certiorari statute granting the same powers to the appellate court as the CNMI statute, the Florida courts have enunciated the important proposition that "to permit interlocutory appeals by certiorari in this instance would result in unwarranted harm to our system of procedure." Moreover, "[l]itigation of a non-issue will always be inconvenient and entail considerable expense of time and money for all parties in the case. The authorities are clear that this type of harm is not sufficient to permit certiorari review." *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1100 -1101 (Fla. 1987).

This court concurs. In virtually no jurisdiction do the time and expense of a trial justify the invocation of the extraordinary proceeding of the writ of certiorari. *See Sunrise Gift &*

Souvenir, Inc. v. Marcotte, 698 So. 2d 345, 346 (Fla. App. 1997).

For these reasons, this court declines to grant certiorari review of the issue presented by the Petitioner. While the power of certiorari should be read broadly, to allow for review of systemic challenges, such review by certiorari should be directed to cases not otherwise reviewable. This is not such a case. It was established above that there is a right of appeal in this case. *See Commonwealth v. Zhen,* 2002 MP 4. Therefore, this petition fails to meet the threshold requirement that there be no right of appeal, and it fails to meet the criteria for certiorari review as adopted herein.

We acknowledge that *Zhen* required Liu to raise this issue in a motion to dismiss the information, which she did. We also acknowledge that the trial court urged that the issues surrounding the appointment of the Attorney General be brought to the attention of the CNMI Supreme Court with no delay. However, the case presented in its current posture is not the best vehicle to address those issues. Critically, the issue of the CNMI Senate approval of Attorney General Brown's appointment will depend on facts, which can only be developed in a proceeding in which evidence can be taken.[6]

[6] This court observes that an action *quo warranto* may be the proper means for making a direct attack of the qualifications of a government officer. To attack "directly," which in this context means to attack the official's qualifications but not her actions, the proper procedure is *quo warranto*, which is by means of a writ. ("In addition, *quo warranto* might also be available as a direct attack device." *National Ass'n of Greeting Card Publishers v. U. S. Postal Service,* 569 F.2d 570, 579, (C.A.D.C. 1976)) *rev'd on other grounds*, 434 U.S. 884 (1977). However, whether the reviewing court takes the case ultimately as a petition for writ *quo warranto* or an appeal, a reviewing court is not the suitable venue for developing the factual record on appeal. Obviously the court prefers to fully review a record created by the parties in the lower court rather than have to review an incomplete and anecdotal record.

For all of the foregoing reasons, the Petition for Mandamus and/or Certiorari is DENIED.

March 20, 2006

/s/
ROBERT J. TORRES, JR.
Associate Justice

/s/
FRANCES M. TYDINGCO-GATEWOOD
Associate Justice

/s/
F. PHILIP CARBULLIDO
Chief Justice

IN THE SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF DECISIONS TO BE PUBLISHED IN NORTHERN MARIANA ISLANDS REPORTER, VOLUME SEVEN.	**ERRATA ORDER** **2011-ADM-0003-MSC**

PER CURIAM:

I. DECISIONS REVISED BY THIS ORDER

The decisions listed below, all styled as opinions, require substantive revision. They are hereby revised by changes as set forth in section two of this order. The published decisions containing all revisions shall constitute the final versions of the decisions.

1. *Commonwealth v. Taitano*, 2005 MP 20
2. *Kevin Int'l Corp. v. Superior Court*, 2006 MP 3
3. *Liu v. CNMI*, 2006 MP 5
4. *Sattler v. Mathis*, 2006 MP 6
5. *Commonwealth v. Pua*, 2006 MP 19
6. *Bank of Saipan v. Martens*, 2007 MP 5
7. *Commonwealth v. Milliondaga*, 2007 MP 6
8. *Tan v. Younis*, 2007 MP 11
9. *Estate of Muna v. Commonwealth*, 2007 MP 16

10. *Commonwealth v. Blas,* 2007 MP 17

II. REVISIONS

1. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 28 shall read as follows:

¶28 ...the trial court must consider the factors set forth in *United States v. Cook*, 608 F.2d 1175, 1185 n. 9 (9th Cir. 1979) (en banc). (*continuation omitted.*)

2. *Kevin Int'l Corp. v. Superior Court*, 2006 MP 3 Supreme Court Original Action Number shall read as follows:

Supreme Court Original Action No. 06-0009-GA.

Attorneys of Record shall read as follows:

For Plaintiff-Petitioner: Viola Alepuyo, Saipan.

For Defendant-Real Party in Interest: Steven Carrara, Saipan.

3. Liu v. CNMI, 2006 MP 5 ¶ 27 shall read as follows:

¶27 ...The Petitioner cites *Unites States v. Fanfan*, 2004 WL 1723114, 2004 U.S. Dist. LEXIS 18593 (D.Me. June 28, 2004)...Petitioner likens the grant of certiorari in *Fanfan*, which sought to review the effects of the *Blakely v. Washington*, 542 U.S. 296 (2004)...the *Blakely* decision... (*continuation omitted.*)

4. *Sattler v. Mathis*, 2006 MP 6 ¶ 8 shall read as follows:

¶8 Looking beyond our own decisions, to those we have relief on in the past, is more helpful. Our precedent stems primarily from an Idaho case, *Krebs v. Krebs*, 759 P.2d 77 (1988) (discussed below), and from a Ninth Circuit decision, *U.S. v. McConney*, 728 F.2d 1195 (9th Cir. 1984). (*continuation omitted.*)

5. *Commonwealth v. Pua*, 2006 MP 19 ¶ 10 shall read as follows:

¶10 Aside from the fact that the Attorney General did not "certif[y] to the Superior Court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of

a fact material in the proceeding" – which will not necessarily defeat jurisdiction, *see U.S. v. Becker*, 929 F.2d 442, 445 (9th Cir. 1991) (finding that failure to certify pursuant to analogous federal statute is correctable at the court's discretion) – this statute is clearly inapplicable to the present case. (*continuation omitted.*)

6. *Commonwealth v. Pua*, 2006 MP 19 ¶ 16 shall read as follows:

¶16 Furthermore, we are not the first court to find mandamus jurisdiction may be accorded even when appellate jurisdiction is lacking. In *U.S. v. Barker*, 1 F.3d 957, 959 (9th Cir. 1989), the Ninth Circuit held that where the Government had plead in the alternative for 1) jurisdiction pursuant to 18 U.S.C. § 3731 (the federal analog to our 6 CMC § 8101), or 2) mandamus relief, even though no jurisdiction could be had under 18 U.S.C. § 3731, mandamus relief was still available due to the gravity of issue. *See also U.S. v. Collamore*, 868 F.2d 24, 30 (1st Cir. 1989) (holding similarly that mandamus was proper when 18 U.S.C. § 3731 jurisdiction was questionable.) (*continuation omitted.*)

7. *Bank of Saipan v. Martens*, 2007 MP 5 ¶ 14 shall read as follows:

¶14 . . . The question in each case is whether under all the circumstances the remedy was pursued with reasonable dispatch. *See McDaniel v. U.S. Dist. Court*, 127 F.3d 886, 890 n.1 (9th Cir. 1997) (Rymer, Circuit Judge, concurring, *citing United States v. Olds*, 426 F.2d 562 (3rd Cir. 1970)). (*continuation omitted.*)

8. *Commonwealth v. Milliondaga*, 2007 MP 6 ¶ 6 shall read as follows:

¶6 . . . Two provisions are not the same offense if each contains an element not included in the other. *Hudson v. United States*, 522 U.S. 93, 107 (1997) (Stevens, J. concurring). (*continuation omitted.*)

9. *Tan v. Younis*, 2007 MP 11 ¶ 36 shall read as follows:

¶36 So strong is the Constitutional protection of free expression that it even contemplates and protects a degree of abuse. "[E]rroneous statement is inevitable in free debate, and . . . it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need to survive.'" *Brown v. Hartlage*, 456 U.S. 45, 60, 102 S. Ct. 1523, 71 L. Ed. 2d 732 (1982) (citations omitted). Indeed, "[s]ome degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press." *New York Times*, 376 U.S. at 271 (quoting James Madison, 4 *Elliot's Debates on the Federal Constitution* 571 (1856)).

10. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 13 shall read as follows:

¶13 The Fifth Amendment of the United States Constitution and the Constitution of the Commonwealth of the Northern Mariana Islands Constitution require that when private property is taken for public use by eminent domain, "just compensation" must be provided to the owner. *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 9 (1984).

11. *Commonwealth v. Blas*, 2007 MP 17 ¶ 3 shall read as follows:

¶3 The Commonwealth charged Blas with vehicular homicide, reckless driving, and driving under the influence of alcohol. On October 18, 2004, the jury heard the vehicular homicide charge, while the trial court heard the reckless driving and driving under the influence charges. On November 2, 2004, the jury returned a verdict acquitting Blas on the vehicular homicide charge, but the trial court found him guilty of reckless driving and driving under the influence of alcohol. Blas timely appealed.

SO ORDERED.

Entered this 30th day March of 2011.

MIGUEL S. DEMAPAN, CHIEF JUSTICE

ALEXANDRO C. CASTRO, ASSOCIATE JUSTICE

JOHN A. MANGLONA, ASSOCIATE JUSTICE