

1 Sergeant Cabrera (“Sgt. Cabrera”) arrived and entered the Premises, parking next to
2 the pavilion. Complaint ¶5.

3 3. Sgt. Cabrera questioned the Plaintiff about his involvement in an incident of
4 Disturbing the Peace that was reported at Tank Beach. Plaintiff then informed Sgt.
5 Cabrera that he was trespassing and instructed Sgt. Cabrera to leave. *See* Complaint
6 ¶6.

7 4. Sgt. Cabrera used his vehicle to block the driveway, which served as the entrance to
8 the Premises. Sgt. Cabrera then contacted DPS Officer Fitial (“Officer Fitial”) to
9 assist him in the arrest of the Plaintiff. *See* Complaint ¶7.

10 5. Officer Fitial then arrived at the Premises and used his car to block Plaintiff’s
11 driveway. *See* Complaint ¶8.

12 6. Officer Fitial, with the assistance, supervision, and direction of Sgt. Cabrera ordered
13 the Plaintiff to place his hands behind his back and placed him in handcuffs. *See*
14 Complaint ¶9.

15 7. The Plaintiff alleged that Officer Fitial used force and violence which caused sharp
16 pain and suffering to the Plaintiff in his arms and shoulders, both at the time and
17 afterward. *See Id.*

18 8. Officer Fitial then ordered the Plaintiff to get into Officer Fitial’s vehicle. *See Id.*

19 9. Officer Fitial detained the Plaintiff at DPS headquarters overnight before releasing
20 him at 4:00 p.m. on May 11, 2021. *See* Complaint ¶10.

21 10. Plaintiff alleged that neither Sgt. Cabrera nor Officer Fitial had a warrant to search
22 the Premises or arrest Plaintiff at any time. *See* Complaint ¶11.

III. PROCEDURAL BACKGROUND

- 1
2 1. On April 17, 2023, Plaintiff filed this suit alleging that Sgt. Cabrera and Officer Fitial
3 subjected Plaintiff to an unreasonable and illegal seizure in violation of Article I, § 3,
4 of the Commonwealth Constitution.
- 5 2. On April 22, 2023, the Government filed a 12(b)(6) Motion to Dismiss for Failure to
6 State a Claim arguing that Plaintiff is collaterally estopped from asserting an unlawful
7 seizure because his claim of Unlawful Seizure that occurred on or about May 10, 2021,
8 had already been fully litigated and rejected by the United States District Court for the
9 Northern Mariana Islands (“District Court” or “Federal Action”)¹. The Government
10 asks the Court to take judicial notice of the District Court filings attached as Exhibits
11 A through E. The District Court had also dismissed Plaintiff’s claim in a summary
12 judgment.
- 13 3. On June 23, 2023, the Plaintiff filed an Opposition to the Motion to Dismiss arguing
14 that collateral estoppel requires identity and necessity and the factual and legal issues
15 in this case are not identical. Firstly, Plaintiff argues this case raises the issue of
16 excessive force which was never litigated in the Federal Action. Secondly, Plaintiff
17 states that he sought to vindicate his rights under the Fourth Amendment in the
18 previous action while seeking to vindicate his rights under Article I, § 3 of the
19 Commonwealth constitution in this case.
- 20 4. On July 17, 2023, the Government filed a Reply arguing that the factual issues are
21 identical because, during the summary judgment motion hearing at the District Court,
22 Plaintiff argued that the officers used excessive force during the arrest.
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¹ *Yarofalchuw v. Cabrera*, 1:22-cv-00001, (D.N. Mar. I. Jan. 23, 2017).

- 1 a. Plaintiff argued his excessive force claim was included in his claim, but the
2 District Court found that he did not specifically plead that allegation. Plaintiff
3 filed a motion to amend his complaint to add factual allegations surrounding
4 the excessive force and the District Court denied the motion. The Government
5 argues that denial is a rejection of the claim of excessive force.
- 6 b. If not through issue preclusion, claim preclusion still prevents Plaintiff from
7 raising his claim in this case. In the Federal Action and the case here, the
8 Plaintiff is alleging an unlawful seizure occurred on or about May 10, 2021.
9 Excessive force is a claim that should have been litigated in the earlier suit
10 since it stemmed from the same incident on or about May 10, 2021. The
11 Government also argues that Plaintiff has failed to state a claim for excessive
12 force because his allegation is conclusory and insufficient to survive a motion
13 to dismiss.
- 14 c. The Government argues that the legal issues are identical under the Fourth
15 Amendment and Art. I, § 3. The latter draws from the Fourth Amendment. The
16 protections against unlawful search and seizure under Art. I, § 3 are the same
17 as the Fourth Amendment except for the additional protections for wiretapping
18 which are not relevant here.
- 19 d. The Government argues that the District Court found there was no
20 unreasonable seizure, and the officers were protected by qualified immunity.
21 A warrant was not required because the Plaintiff was arrested outside his home,
22 in an area like a front porch. Since there was no constitutional violation,
23 qualified immunity was not applicable. Even if there was a constitutional
24 violation of the Fourth Amendment, the officers would be protected under
25 qualified immunity.
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1 e. Lastly, the Government argues that the CNMI jurisdiction recognizes qualified
2 immunity. Since the District Court dismissed Plaintiff's claim Plaintiff cannot
3 assert that the Government is liable for damages. The Government cannot be
4 liable for the same conduct that the District Court found was not wrongful.

5 5. On July 28, 2023, Plaintiff filed a Sur-reply arguing that the factual issues are not
6 identical because the evidence presented to the District Court on excessive force was
7 stricken and this case will be the first time that issue is litigated on the merits. The
8 Plaintiff argued the legal issues are not identical because there is no clear federal test
9 for an unreasonable warrantless seizure at home absent exigent circumstances. The
10 Plaintiff also states that for the "curtilage" issue, the questions of "reasonable" depend
11 on community standards, and the daily experience in the CNMI may differ when
12 referring to whether home-life activities stop at the hedge. Unreasonable seizure was
13 not necessarily found. Plaintiff argues that the District Court was not clear as it ruled
14 from the bench and not in a written order. Plaintiff states, "At no time did it find no
15 constitutional violation outside the context of qualified immunity – a context in which
16 such a finding, if any, is unnecessary, and thus does not support collateral estoppel."
17 Plaintiff's Sur-reply at 5.

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20 6. On October 23, 2023, Plaintiff filed a Motion for Leave to Amend the Complaint to
21 add a Free Speech Violation claim. Plaintiff alleged that he was recording and
22 livestreaming his encounter with the two officers which is constitutionally protected
23 free speech. Sgt. Cabrera and Officer Fitial knocked his cell phone to the ground while
24 arresting him.

25 7. On October 24, 2023, Plaintiff filed an amended Motion for Leave to Amend the
26 Complaint to add an Infringement of Privacy claim. Plaintiff alleged the officers
remained on the Premises and conducted surveillance despite him instructing them to

1 leave. The officers disrupted Plaintiff's recording, handcuffed him, and forcibly
2 removed him from the Premises. Plaintiff argues that a reasonable person would find
3 those actions objectionable and offensive, and therefore an intrusion upon his privacy.

4 8. On November 20, 2023, the Government filed an Opposition to the Motion to Amend
5 arguing that:

6 a. The Court should deny Plaintiff's Motion due to undue delay, bad faith, and
7 dilatory motive. Plaintiff filed a last-minute motion to amend, and the facts
8 underlying the new claims were known to him when Plaintiff filed his
9 Complaint. In the previous action, the Plaintiff also waited last minute to file a
10 motion for leave to amend.

11 b. Plaintiff has no valid cause of action for Free Speech Violation because
12 "Article I, Sections 2, 5, and 10 of the NMI Constitution are not necessarily
13 self-executing." Opposition to Motion to Amend at 6.

14 c. The Court lacks jurisdiction over Plaintiff's new claim because he failed to
15 provide notice of the new claims to the Attorney General. For money damages,
16 "Commonwealth law requires at least 90-days advance notice to the Attorney
17 General before a claim can be instituted against the Commonwealth." Id at 9.

18 d. Plaintiff's claims are time-barred by the statute of limitations set in 7 CMC §
19 2503(b) and barred by claim preclusion.

20 9. On December 11, 2023, Plaintiff filed a Reply arguing that justice favors deciding
21 cases on their merits and that undue delay requires a showing of prejudice, yet the
22 Government has not made any showing of prejudice. No law is required for a Free
23 Speech Violation to exist. Plaintiff's Constitutional claims lie against the
24 Commonwealth and the Commonwealth is not exempt from Constitutional claims.
25 Plaintiff further argues that the 90-day notice to the Attorney General is not required
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1 because the presentment requirement does not apply in this case. Plaintiff states that
2 the claims are not time-barred because this is an action against the Commonwealth
3 government, not the individual police officers. “No specific limitations period is set
4 out for such actions, and they are therefore covered by the six-year catch-all period of
5 7 CMC § 2505.” Plaintiff’s Reply at 13.

6 10. On December 18, 2023, the Government filed a Sur-reply arguing that Plaintiff lacks
7 a reasonable explanation for his last-minute motion especially since the facts were
8 known to Plaintiff at the time of filing this suit. A law is required for a free speech
9 violation to exist under Art. I § 2 of the NMI Constitution. The Plaintiff lacks a direct
10 cause of action for damages against the Commonwealth for speech and privacy claims.
11 The Commonwealth government is immune from claims for money damages based on
12 discretionary functions. Plaintiff failed to provide notice to the attorney general so the
13 Court lacks jurisdiction over this case. Plaintiff’s claims are time-barred and barred by
14 claim preclusion.
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16 11. On April 3, 2024, the Court ordered the parties to submit a supplemental brief to
17 discuss the relevancy of Title 7 CMC § 2204(b).
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19 12. On May 3, 2024, Plaintiff filed his Supplemental Briefing on 7 CMC 2204(b) arguing
20 that Art. I § 3 and 7 CMC § 2204(b) can be read to conflict. Plaintiff argues that
21 limitations are not prohibitions, and to the extent that 7 CMC § 2204(b) prohibits a
22 cause of action against the Government for false arrest, it cannot be one of the limits
23 that Art. I §3(c) mentions. Plaintiff asserts that based on the plain language of 7 CMC
24 § 2204(b) it cannot be a limit. The legislative history shows the statute is not a
25 limitation because the only limitations mentioned were monetary limits, not barring
26 the claims altogether. Finally, Plaintiff argues that the “limits” the constitutional

1 framers discussed did not refer to the statute but something new and not yet in place.
2 *Id.* at 7.

3 13. On May 24, 2024, the Government filed their Opposition to Plaintiff’s Supplemental
4 Brief arguing that Plaintiff’s supplemental brief did not address the relevance of 7
5 CMC § 2204(b) to the two new claims. Since Plaintiff alleges that his arrest was
6 unlawful, 7 CMC § 2204(b) bars the two claims arising from that unlawful or false
7 arrest. The Government also argues that the plain reading of the 7 CMC § 2204(b)
8 “prevents the Commonwealth government from being held liable for money damages
9 based on claims arising out of a false arrest.” Defendant’s Opp. at 5. The legislative
10 history also shows that the legislature can limit the amount and availability of
11 monetary damages. Lastly, the Government argues that “the legislature has not
12 amended 7 CMC § 2204(b) to extend the waiver of sovereign immunity to claims
13 arising out of a false arrest involving law enforcement officers.” Defendant’s Opp. at
14 11.

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16 14. On June 2, 2024, Plaintiff filed his Reply arguing the free speech claim is not directly
17 related to the false arrest, as the claim would remain the same regardless of the
18 lawfulness of the arrest. The privacy claim pertains to the officers’ intrusion that took
19 place before the arrest. Plaintiff also argues that there is a direct constitutional action
20 available against the Government as the Government has waived its immunity in other
21 instances.
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23 15. On June 21, 2024, the Government filed a Sur-reply to Plaintiff’s Supplemental Brief
24 arguing that “arising out of” should be broadly construed as it was in *Metz v. United*
25 *States*, 788 F.2d 1528, 1532–33 (11th Cir. 1986). Defendant’s Sur-reply at 2. “Arising
26 out of” refers to the factual situation, which is the arrest in this case, and Yarofalchuw’s
speech claim arises out of the arrest. The new claims stem from the same police

1 conduct and factual scenario, even if the new claims are separate from the false arrest
2 claim. The Government argues that the arrest is necessary for the Plaintiff's speech
3 claim, as Plaintiff believed that the arrest impeded his ability to exercise his freedom
4 of speech. Without the arrest, there would be no grounds for his claim. Similarly,
5 Plaintiff's privacy claims arose from the same factual situation, which includes the
6 arrest and what happened before the arrest when officers arrived. Finally, the
7 Government claims a direct constitutional action is unavailable when it arises from an
8 excepted tort under 7 CMC § 2204(b) as the Plaintiff's new claims do.

10 IV. LEGAL STANDARD

11 “[A] party seeking to amend a pleading after the filing of a responsive pleading may
12 only do so with the adverse party's consent or by leave of court. *Won Bae Shon v. Hee Jong*
13 *Choo*, Civil Case No. 15-0018, (NMI Super. Ct. Jun. 12, 2023) (Order Granting Defendant
14 Yan Hua Li's Motion for Leave To Amend Cross-claims at 4-5) (citing NMI R. Civ. P. 15(a)).

15 A “trial court may deny leave for several reasons, including undue delay, bad faith,
16 dilatory motive, undue prejudice to the opposing party, or futility of amendment.” *Id.* at 5
17 (citing *Commonwealth v. Superior Court*, 2008 MP 11 ¶ 14). “Liberality in amendment is
18 important to assure a party a fair opportunity to present his claims and defenses, but equal
19 attention should be given to the proposition that there must be an end finally to a particular
20 litigation.” *Id.* at 5 (*Commonwealth v. Superior Court*, 2008 MP 11 ¶ 18). “[A] proposed
21 amendment is futile only if no set of facts can be proved under the amendment . . . that would
22 constitute a valid and sufficient claim[.]” *Id.* at 6 (citing *Miller v. Rykoff-Sexton, Inc.*, 845
23 F.2d 209, 214 (9th Cir. 1988)).
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V. DISCUSSION

1. Undue Delay & Bad Faith, and Prejudice to Opposing Party

The Government contends that Plaintiff's Motion for Leave to Amend has caused an unnecessary delay and questions the timing of the new amendments. Moreover, the Plaintiff's actions are an attempt to prolong the case, similar to his past behavior in Federal Court, and the Government claims it is done in bad faith and unfairly impacts the Government. "Burden to the judicial system occurs when 'substantive amendments shortly before trial serve to defeat the public's interest in speedy resolution of legal disputes.'" *Commonwealth v. Superior Court*, 2008 MP 11, ¶ 16 (citing *Perrian v. O'Grady*, 958 F.2d 192, 195 (7th Cir. 1992)).

Here, the motion to dismiss hearing had not yet taken place, and although it had to be rescheduled, the Government will still have an opportunity to present its argument for dismissal. While Plaintiff could have filed his motion earlier or included the amendments in the original Complaint, the time frame is not excessive given that the case is still in its early stages. The Court in *Commonwealth v. Superior Court* discussed the case *Loyola Fed. Sav. & Loan Ass'n v. Fickling*, in which the plaintiff requested to amend a year after the close of discovery and nine months after filing a summary judgment motion. *See Commonwealth v. Superior Court*, at ¶ 16. "In denying the motions to amend, the trial court stressed that the movants' alleged facts forming the bases of the motions were surely known after the completion of discovery and before the filing of the motions for summary judgment." *Commonwealth v. Superior Court*, at ¶ 17 (citing *Loyola Fed. Sav. & Loan Ass'n v. Fickling*, 783 F. Supp. 620, 623 (M.D. Ga. 1992)). The Court in *Superior Court* also mentioned *Freeman v. Continental Gin Co.*, a suit between a seller and a buyer. "Nine months after the grant of summary judgment and approximately eighteen months after the filing of the original answer, defendant attempted to amend to charge plaintiff with fraud."

1 *Commonwealth v. Superior Court*, at ¶ 18 (citing *Freeman v. Continental Gin Co.*, 381 F.2d
2 459 (5th Cir. 1967)).

3 In contrast to the above cases, this case is still in the early stages of the proceedings.
4 Plaintiff filed the amended Motion for Leave to Amend six months after the original
5 Complaint was submitted. “[D]elay alone is not a sufficient basis for denying a motion to
6 amend, delay combined with burden to the judicial system may warrant denial of a motion to
7 amend absent prejudice to the opposing party.” *Commonwealth v. Superior Court* at ¶15
8 (citing *Perrian v. O’Grady*, 958 F.2d 192, 194-95 (7th Cir. 1992)). “Substantive amendments
9 shortly before trial can hinder the public’s interest in prompt resolution of legal disputes.” *Id.*
10 The Court has not detected any undue delay or bad faith on the part of Plaintiff. Additionally,
11 the Government would not be adversely affected if Plaintiff were to amend the Complaint.
12

13 **2. Futility**

14 **a. Amendment Relate-Back**

15 Plaintiff argues that his amendment relates back to the May 10, 2021, date in the
16 original pleading. “An amendment to a pleading relates back to the date of the original
17 pleading when: the amendment asserts a claim or defense that arose out of the conduct,
18 transaction, or occurrence set out—or attempted to be set out—in the original pleading.” *See*
19 NMI R. Civ. P. 15(c)(1)(B). Plaintiff contends that the amendment is related to the same
20 incident in which officers went to the Plaintiff’s residence and conducted an arrest. The
21 Government has responded to Plaintiff’s claim by referring to Rule 15(c)(1)(A) which states,
22 “[a]n amendment to a pleading relates back to the date of the original pleading when the law
23 that provides the applicable statute of limitations allows relation back[.]”. NMI R. Civ. P.
24 15(c)(1)(A).
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The Government argues Plaintiff’s amendment is time-barred by the two-year statute
of limitations in 7 CMC § 2503. Section 2503 states, “[t]he following actions shall be

1 commenced only within two years after the cause of action accrues: Actions for injury to or
2 for the death of one caused by the wrongful act or neglect of another[.]” 7 CMC § 2503. Two
3 years from May 10, 2021, is approximately May 9, 2023. “A civil action is commenced by
4 filing a complaint with the Superior Court.” NMI R. Civ. P. 3. Plaintiff, while adding new
5 claims, is simply amending his Complaint, not filing a new action. “A plaintiff does not ‘bring
6 an action’ by amending a complaint, ‘[o]ne brings an action by commencing suit’.” *United*
7 *States ex rel. Carter v. Halliburton Co.*, 144 F. Supp. 3d 869, 880 (E.D. Va. 2015) (citing
8 *United States ex rel. Chovanec v. Apria Healthcare Grp. Inc.*, 606 F.3d 361, 362 (7th Cir.
9 2010)). The Court in *Weekley v. Guidant Corp.* stated, “[p]leadings may be amended, but
10 amending pleadings does not commence a civil action.” *Weekley v. Guidant Corp.*, 392 F.
11 Supp. 2d 1066, 1068 (E.D. Ark. 2005). “[A] civil action must already have been commenced
12 before a pleading can be amended.” *Id.*

14 Plaintiff initiated this action by filing his Complaint on April 17, 2023, and he filed
15 the amended Motion for Leave to Amend on October 24, 2023. The Plaintiff is not filing a
16 new action by amending the Complaint, thus as to the new claims, the Court finds that the
17 Plaintiff’s amendment is not time-barred by 7 CMC § 2503. Since the new claims arose from
18 the same occurrence and conduct on May 10, 2021, and are not time-barred, the amendment
19 relates back to the original filing.

21 **b. Government Liability Act**

22 The Government argues Plaintiff cannot amend his Complaint because the two new
23 claims have not been presented to the Attorney General. “An action shall not be instituted
24 upon a claim against the Commonwealth for money damages [...] unless the claimant shall
25 have first presented the claim to the Attorney General and the claim shall have been finally
26 denied by the Attorney General, in writing, and the claimant so notified.” *See* Title 7 CMC §
2202(b). However, as stated above, amending a Complaint is not equivalent to filing a new

1 action. *See Weekley v. Guidant Corp.*, at 1068. The presentment requirement does not bar
2 Plaintiff from amending his Complaint.

3 c. Claim Preclusion

4 The Government argues that Res Judicata prevents Plaintiff from amending his
5 Complaint to include the Free Speech Violation and Infringement of Privacy claims. “Res
6 judicata refers to two concepts related to preclusion.” *In re Est. of Manglona*, 2023 MP 13 ¶
7 31 (citing *Del Rosario*, 2001 MP 3 ¶ 62). “Issue preclusion, also referred to as collateral
8 estoppel, ‘refers to the effect of a judgment in foreclosing re-litigation of a matter that has
9 been already litigated and decided.’” *Id.* “Claim preclusion ‘refers to the effect of a judgment
10 in foreclosing litigation of a matter that has not been litigated, because it should have been
11 raised in an earlier suit.’” *Id.* (citing *Simmons-Harris v. Zelman*, 54 F. Supp. 2d 725, 730 (N.D.
12 Ohio 1999)). The Government argues that Plaintiff’s claim is specifically barred by claim
13 preclusion because he had an opportunity to litigate this claim in the previous Federal Action
14 but chose not to do so. In the previous Federal Action, Plaintiff had one cause of action,
15 deprivation of civil rights under 42 U.S.C. § 1983, and claimed he was subjected to an
16 unreasonable search and seizure. *See* August 14, 2023, Memorandum Decision at 1 n.1. The
17 Federal Action was based on the events of May 10, 2021, involving the same officers. Thus,
18 “[a]ll claims arising out of one transaction or factual situation are treated as being part of a
19 single cause of action, and they are required to be litigated together.” *Taman v. Marianas*
20 *Public Land Corp.*, 4 NMI 287, 4 (1995) (quoting *Brye v. Brakebush*, 32 F.3d 1179, 1183 (7th
21 Cir. 1994)).

22 In this suit, Plaintiff’s Complaint had one claim, an Unreasonable Seizure under Art.
23 I § 3 of the NMI Constitution. Plaintiff seeks to amend his Complaint to add a Free Speech
24 violation under Art. I §§2 and 5, and an Infringement of Privacy under Art. I § 10. In the
25 previous Federal Action, the Plaintiff alleged that the officers’ conduct constituted an
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1 unlawful seizure in violation of the Fourth Amendment. Plaintiff's Free Speech Violation
2 claim is based on the same conduct except now he seeks to amend his Complaint to assert that
3 the officers' conduct was a retaliatory action aimed at preventing his exercise of free speech.
4 "Plaintiffs may not re-litigate the same set of facts and transactions now as they did in the
5 prior case, by merely reclassifying those facts and transactions under different legal theories,
6 or by naming new defendants." *Mahaffey v. Quality Loan Serv. Corp.*, 2019 U.S. Dist. LEXIS
7 226620 at *24. In *Mahaffey*, the plaintiff attempted to add a new defendant in a subsequent
8 action based on the same facts as in the previous action but with a new legal theory. The Court
9 in *Mahaffey* found the facts and allegations alleged were identical and the plaintiff "had the
10 opportunity and duty to join OCWEN as a necessary party in the prior litigation." *Mahaffey*
11 *v. Quality Loan Serv. Corp.*, at 23. "Failure to do so does not provide Plaintiffs the chance to
12 re-litigate the same set of facts now against a new party." *Id.*

14 Here, Plaintiff is merely reclassifying the same facts under another legal theory against
15 a different named defendant. The Court already found that the amendments relate back to the
16 May 10, 2021 incident as they are connected to the same conduct involving the arrest of
17 Plaintiff by the officers. However, Plaintiff argues that he could not have brought these claims
18 to District Court because these are local claims under the Commonwealth Constitution.
19 "[A]ctions upon the following claims may be brought against the Commonwealth government
20 in the Commonwealth Trial Court which shall have exclusive original jurisdiction thereof
21 [a]ny other civil action or claim against the Commonwealth government founded upon any
22 law of this jurisdiction[.]" *See* 7 CMC § 2251. Res Judicata is not applicable in cases where
23 the second jurisdiction maintains exclusive jurisdiction. *See Taman v. MPLC*, 4 N.M.I. 287,
24 290-91 (1995) (citing Restatement (Second) of Judgments § 26(1)(c) & cmt. c(1)). Art. I § 2
25 "is drawn from the First Amendment to the United States Constitution which is made
26 applicable to the states by the Fourteenth Amendment, which in turn is made applicable in the

1 Northern Mariana Islands by section 501 of the Covenant.” Analysis of the Constitution at 4
2 (Dec. 6, 1976). Plaintiff’s Free Speech Violation claim is not a “local claim” as that law
3 derives from the U.S. Constitution. Similarly with Art. I § 5 of the NMI Constitution, “[t]his
4 section is taken directly from section 1 of the Fourteenth Amendment to the United States
5 Constitution which is made applicable in the Northern Mariana Islands by section 501 of the
6 Covenant.” Analysis of the Constitution at 23-24. Jurisdiction over free speech and due
7 process violations is not exclusive to the Commonwealth, as those sections were derived from
8 the U.S. Constitution without substantive changes. Plaintiff could have pursued the federal
9 equivalent of Art. I §§ 2, and 5 in the previous Federal Action.
10

11 The Court finds that the Free Speech Violation claim is precluded by claim preclusion
12 because it is a reclassification of the same conduct from May 10, 2021, and since the CNMI
13 does not have exclusive jurisdiction over free speech claims, it should have been brought in
14 the previous Federal Action.

15 Under the Infringement of Privacy claim, Plaintiff is seeking to add that before the
16 arrest, the officers refused to leave, handcuffed Plaintiff, and forcibly removed him. Plaintiff
17 states those actions were objectionable and offensive, making them intrusions upon his
18 privacy without a compelling interest. The U.S. Constitution does not include an explicit Right
19 to Privacy, while the CNMI has explicitly expressed the Right to Privacy in the NMI
20 Constitution. “The right of individual privacy shall not be infringed except upon a showing of
21 compelling interest.” Art. I § 10 of the NMI Constitution. “Section 10 indicates that the right
22 to privacy is explicitly recognized in the Commonwealth as a constitutional guarantee, distinct
23 from privacy interests that may be protected by the due process or equal protection clauses of
24 the Commonwealth or the U.S. Constitutions.” *Elameto v. Commonwealth*, 2018 MP 15 ¶16.
25 The Right to Privacy is codified in the NMI Constitution and includes heightened protections.
26 The compelling interest requirement shows the intent for the right to privacy to be a

1 fundamental right. *See Id.* “[E]ach individual person has a zone of privacy that should be free
2 from government or private intrusion.” *Elameto* at ¶17 (quoting *Analysis of the Constitution*
3 at 28). To justify the intrusion, there must be a public purpose that advances the health, safety,
4 or welfare of the community. *See Analysis of the Constitution* at 30. That public purpose
5 must be compelling which means it was “necessary and could not have been accomplished in
6 any other less intrusive way.” *See Id.* In this context, the explicit Right to Privacy has a
7 different nuance in the CNMI jurisdiction. By way of example only to elaborate the thoughts
8 of the Court, before the “federal” right to abortion was recently overturned by the United
9 States Supreme Court², abortion in the Federal context “stemmed” from an *implicit* Right to
10 Privacy. *See Roe v. Wade*, 410 U.S. 113 (1973). In the CNMI, there is an explicit Right to
11 Privacy in the NMI Constitution, and the same NMI Constitution also explicitly prohibits
12 abortion. *See Art. I § 12* of the NMI Constitution. *Res Judicata* is not applicable in cases
13 where the second jurisdiction maintains exclusive jurisdiction. *See Taman v. MPLC*, at 290-
14 91 (citing *Restatement (Second) of Judgments § 26(1)(c) & cmt. c(1)*).

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16 The Court finds Plaintiff’s Infringement of Privacy claim is not barred by claim
17 preclusion because the Right to Privacy in Art. I § 10 is a fundamental right in the NMI
18 Constitutional and the explicit Right to Privacy has a different nuance in the CNMI
19 jurisdiction.
20

21 VI. CONCLUSION

22 A “trial court may deny leave [to amend] for several reasons, including undue delay,
23 bad faith, dilatory motive, undue prejudice to the opposing party, or futility of amendment.”
24 *Won Bae Shon v. Hee Jong Choo*, at 5 (citing *Commonwealth v. Superior Court*, 2008 MP 11
25 ¶ 14). The Court has not found any bad faith from Plaintiff, undue delay, or undue prejudice
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² *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

1 to the Government. This case is still in the early stages of the proceedings. The new claims do
2 arise out of the same “conduct, transaction, or occurrence” as the facts in the Complaint and
3 do relate back to the May 10, 2021, incident. As these amendments do not constitute a new
4 action, there is no requirement to present them to the Office of the Attorney General before
5 Plaintiff may amend his Complaint.

6 The Government argues that Plaintiff’s new claims are barred by claim preclusion and
7 should have been included in the previous Federal Action. The Court finds that since
8 Plaintiff’s Free Speech Violation claim is not exclusive to the Commonwealth of the Northern
9 Mariana Islands, and arises out of the same “conduct, transaction, or occurrence” as the
10 previous Federal Action, the Free Speech Violation is barred by claim preclusion.
11 **THEREFORE**, Plaintiff’s Motion for Leave to Amend Complaint to include the Free Speech
12 Violation claim is **DENIED**.

14 However, the Right to Privacy is a fundamental right in the Commonwealth, and
15 explicitly guaranteed in the NMI Constitution. The explicit CNMI Right to Privacy has a
16 different nuance in the CNMI jurisdiction. Plaintiff’s Infringement of Privacy claim has a
17 different nuance that could not be brought in the previous Federal Action. Thus, Plaintiff’s
18 Infringement of Privacy claim is not barred by claim preclusion. **THEREFORE**, Plaintiff’s
19 Motion for Leave to Amend Complaint to include the Infringement of Privacy claim is
20 **GRANTED**.

23 **SO ORDERED** this 5th day of August, 2024.

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25 /s/
26 **JOSEPH N. CAMACHO**, Associate Judge