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1 **FOR PUBLICATION**

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3 **IN THE SUPERIOR COURT**  
4 **FOR THE**  
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **COMMONWEALTH OF THE**  
7 **NORTHERN MARIANA ISLANDS,**

8 **Plaintiff,**

9 **v.**

10 **VINNIE INOS,**

11 **Defendant.**

**CRIMINAL ACTION NO. 18-0097**

**AMENDED ORDER DENYING  
DEFENDANT’S MOTION TO DISMISS**

12 **I. INTRODUCTION**

13 THIS MATTER came before the Court on December 19, 2019 at 9:00 a.m. in Courtroom 2  
14 of the Marianas Business Plaza. Assistant Attorney J. Robert Glass, Jr.<sup>1</sup> represented the  
15 Commonwealth of the Northern Mariana Islands (“Commonwealth”). Assistant Public Defender Jean  
16 Pierre Nogues represented Vinnie Inos (“Defendant”), who was present.

17 **II. BACKGROUND**

18 The Defendant was arrested without a warrant on September 12, 2018. He was released the  
19 following morning, September 13, 2018, after posting \$500.00 bail. He was given a summons with  
20 orders to appear before the Court on September 24, 2018. When the Defendant appeared at the  
21 September 24 hearing, the Commonwealth had yet to file a criminal complaint or information. The  
22 Court then ordered Defendant to reappear on October 15, 2018. However, when the Defendant again  
23 appeared on October 15, the Commonwealth again failed to produce a written criminal complaint or

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<sup>1</sup> In the previous version of this order the Assistant Attorney General was incorrectly identified as “Robbie Glass Jr.”

1 information. The Court set the matter for another hearing on November 26, 2018. On November 26,  
2 2018, Defendant dutifully appeared, but the Commonwealth had still not filed a written criminal  
3 complaint or information. The Court then determined that the Defendant was indigent and appointed  
4 the Public Defender to represent him. The Court proposed a third adjournment to give the  
5 Commonwealth another opportunity to file the necessary documents. The Defendant, now  
6 represented by the Public Defender, objected; arguing that the Court did not have jurisdiction due to  
7 the lack of a complaint or information. The Commonwealth joined the objection, asking that the case  
8 be dismissed without prejudice so that the case could be re-filed when the necessary information  
9 became available. Due to the reoccurring nature of this situation, the Court asked the parties to brief  
10 the issue.

11 Finally, on November 28, 2018, the Commonwealth filed an information charging the  
12 Defendant with the Defendant with two (2) counts of criminal mischief in violation of 6 CMC §  
13 1803(a)(1). In his brief, the Defendant asks that this matter be dismissed. The Commonwealth objects  
14 to dismissal but continues to agree with Defendant's argument that the Court initially lacked  
15 jurisdiction.

### 16 III. DISCUSSION

17 The Court has two issues to address. First, whether the Court had jurisdiction over the  
18 Defendant before the Commonwealth filed a complaint or an information. Second, whether the Court  
19 should dismiss case, even after the Commonwealth filed its November 28, 2018, Information.

#### 20 A. Jurisdiction Over the Defendant

21 Before addressing the actual question, it must be pointed out that this issue was rendered moot  
22 by the Commonwealth's November 28, 2018 Information. The Commonwealth's filing undoubtedly

1 gave the Court jurisdiction: “[w]here there is an appropriate accusation either by indictment or  
2 information, a court may acquire jurisdiction over the person of the defendant . . .” *Albrecht v. United*  
3 *States*, 273 U.S. 1, 8 (1927) (citing *Ex Parte Bain*, 121 U.S. 1, 7 (1887)).

4 Both the Commonwealth and Defendant point out that this issue avoids mootness because it  
5 is “capable of repetition, yet evading review.” See *Southern Pacific Terminal Co. v. I.C.C.*, 219 U.S.  
6 498 (1911); *Becker v. United States*, 451 U.S. 1306, 1309 (1981). Capable of repetition, yet evading  
7 review generally applies when “(1) the challenged action [is] in its duration too short to be fully  
8 litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same  
9 complaining party [will] be subjected to the same action again.” *Eichwedel v. Curry*, 700 F.3d 275,  
10 279 (7th Cir. 2012) (citing *Turner v. Rogers*, 564 U.S. 431, 439-40 (2011)). The window of  
11 opportunity for this Court to review the situation was rather short, especially in the context of Super  
12 Typhoon Yutu and its effects on the Superior Court. Further, while the Defendant himself may not  
13 be subject to the same situation again, there are certainly many potential defendants who will be if  
14 the matter is not addressed. This situation is not an uncommon occurrence in the Commonwealth.  
15 This Court has itself witnessed numerous occasions where a defendant was arrested without a  
16 warrant, appeared before the Court, and the Commonwealth failed to produce a complaint or an  
17 information at the initial hearing. Therefore, the Court feels that this matter meets the capable of  
18 repetition, yet evading review standard and the Court may still address the issue.

19 After reviewing the briefs and hearing the arguments, the Court agrees with the parties that it  
20 lacked jurisdiction from when the Defendant appeared at his first hearing on September 24, 2018  
21 until November 28, 2018. The Court will now discuss the issue below.

1           There are two avenues with which a defendant can be arrested or charged with a crime/citation  
2 in the CNMI. First, a Defendant may be arrested and charged via a Rule 4 arrest warrant or a summons  
3 upon complaint. NMI R. CRIM. P. 4(c)(1). In this scenario, probable cause is found pre-arrest, thus a  
4 determination that there is sufficient evidence to charge a defendant with a crime is made before the  
5 defendant makes his or her first court appearance. *See* NMI R. CRIM. P. 4(a).<sup>2</sup> “A prosecution is  
6 commenced either when an information or complaint is filed, or when an arrest warrant or other  
7 process is executed without unreasonable delay.” 6 CMC § 107(c). Therefore, a court would  
8 undoubtedly have jurisdiction over a defendant at his or her first court appearance in this scenario.

9           Second, is the scenario which concerns the Defendant in this case. The Defendant was arrested  
10 without a warrant pursuant to Title 6 of the Commonwealth Code. Therefore, the arresting officer  
11 either witnessed the Defendant committing a crime or was able to collect enough evidence to  
12 determine the Defendant likely committed a crime. When a defendant is arrested without a warrant,  
13 “[a] complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with  
14 respect to the showing of probable cause.” NMI R. CRIM. P. 5(a). The Superior Court has previously  
15 clarified “[t]hat the word ‘forthwith’ as used in Rule 5(a) means that a complaint shall be prepared  
16 and filed by the Attorney General at the initial appearance.” *Commonwealth v. Aguon*, *Crim.* No. 90-  
17 008 at \*13-14 (NMI Super. Ct. Mar. 9, 1990) (Castro, A.J.). “A person may not be punished for a  
18 crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of  
19 the court.” *Albrecht v. United States*, 273 U.S. 1, 8 (1927).<sup>3</sup> The initial appearance, in the  
20 circumstances of a warrantless arrest, is a way to ensure that a fair and reliable determination of  
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22 <sup>2</sup> Traffic Citations are also similar to a summons upon complaint. NMI R. TRAFF. 3.

23 <sup>3</sup> “An accusation made in the manner prescribed by law (constitutional or statutory) is a prerequisite to the court's power  
24 to exercise its jurisdiction over a criminal offense.” *Dothan v. Holloway*, 501 So.2d 1136,1146 (Ala. 1986).

1 probable cause for the arrest is made by a judicial officer “promptly after arrest.” *Gerstein v. Pugh*,  
2 420 U.S. 103, 125 (1975); *Aguon*, Crim. No. 90-008, at \*9.<sup>4</sup>

3 It is well documented the complaint or information must be filed promptly. However, that  
4 was not the case here as it took the Commonwealth a little over two (2) months to produce the  
5 necessary information. Rule 5(c) requires that at the initial hearing the court “shall inform the  
6 defendant of the complaint against him and of any affidavit filed therewith...” NMI R. CRIM P. 5(c).  
7 It is impossible for the Court to inform a Defendant of the complaint against him if the  
8 Commonwealth has not filed a complaint or information. “A . . . court lacks jurisdiction to entertain  
9 a criminal case if it appears the Government ‘lacked power to prosecute the defendant.’”  
10 *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 40 (citing *United States v. Suescun*, 237 F.3d 1284,  
11 1287 (11th Cir. 2001). If at the initial hearing, the Commonwealth fails to produce the necessary  
12 information at that time, the Commonwealth has shown that it “lacks the power to prosecute the  
13 defendant.” *Id.* Therefore, “[w]ithout jurisdiction the court cannot proceed at all in any cause.  
14 Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to  
15 the court is that of announcing the fact and dismissing the cause.” *Commonwealth v. Crisostomo*,  
16 2005 MP 18 ¶ 17 (citing *Ex Parte McCardle*, 74 U.S. 506 (1868)).

17 It is clear from Commonwealth, federal, and other state law that the Court lacked jurisdiction  
18 over the Defendant when the Commonwealth failed to submit a complaint on September 24, 2018. It  
19 is certainly a Constitutional violation for any court to continually demand appearances and to impose

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21 <sup>4</sup> In general, “[t]here are two requirements for the exercise of personal jurisdiction over a defendant: there must be an  
22 applicable rule or statute conferring jurisdiction and, the assertion of jurisdiction *must accord with constitutional*  
23 *principles of due process.*” *Bank of Saipan v. Superior Court of Commonwealth of N. Mariana Islands*, 2001 MP 5 ¶  
24 34 (emphasis) (citing *Data Disc., Inc. v. Systems Tech, Assoc. Inc.*, 557 F.2d 1280, 1286 (9th Cir. 1977)).

1 bail conditions on a potential defendant when the government or Commonwealth has yet to formally  
2 charge that individual. *Gerstein v. Pugh*, 420 U.S. at 114-16. Therefore, and in the future, when a  
3 defendant is arrested without a warrant and appears before the Court for the first time, the  
4 Commonwealth *must* have a complaint or information on hand. If the Commonwealth fails to produce  
5 a complaint or information at that time, the matter will be *dismissed without prejudice* for lack of  
6 jurisdiction.

7 **B. Dismissal of the Commonwealth's Information**

8 Despite the Commonwealth's November 28, 2018, Information, the Defendant still wishes to  
9 have the matter dismissed "for much the same reason that dismissal is proper after a court finds no  
10 probable cause at a preliminary hearing." *Defendant's Motion to Dismiss*, Pg. 10, fn. 5, (citing  
11 *Commonwealth v. Crisostomo*, 2005 MP 18 ¶ 14). The Defendant goes on to argue that "[a] criminal  
12 case without charges is, indeed, on its face groundless, and it creates unnecessary and unjustified  
13 imposition and expense..." *Id.* As previously noted, "[a] prosecution is commenced either when an  
14 information or complaint is filed, or when an arrest warrant or other process is executed without  
15 unreasonable delay." 6 CMC § 107(c). Thus, after the Commonwealth finally filed their Information,  
16 it is no longer appropriate for the Court to dismiss the matter because "[a] prosecution is  
17 commenced..." *Id.* Even if the Court were to dismiss the case without prejudice as the Defendant  
18 desires, the Commonwealth would the simply refile in a matter of minutes. The Commonwealth  
19 explicitly stated that very intention during the December 19, 2018, hearing. While Defendant has  
20 certainly been inconvenienced by his repeated trips to the Court, he was not detained during that time.

1 Thus, it is a waste of time and paper for the Court to dismiss the matter at this stage.<sup>5</sup> The Court of  
2 course regrets that the Defendant was unlawfully forced to appear before the Court on two (2) separate  
3 occasions and had unlawful bail conditions imposed against him. But the Defendant has not suffered  
4 serious or irreparable harm during the time-period from September 24 to November 28, 2018 because  
5 the Defendant was not in custody. *Averalo v. Hennessy*, 882 F.3d 763, 766-767 (9th Cir. 2018);  
6 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012); *Mannes v. Gillespie*, 967 F.2d 1310, 1312  
7 (9th Cir. 1992). Additionally, the Court is exonerating Defendant's bail at the request of both the  
8 Commonwealth and the Defendant. Therefore, despite the unfortunate waste of time and the imposed  
9 bail conditions, the Defendant's request for a dismissal must be denied.

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18 <sup>5</sup> While not completely on point, the Commonwealth Code dealing with arrest procedure can provide an additional guide  
in this analogous situation:

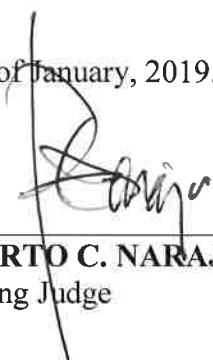
19 No violation of a provision of this division shall in and of itself entitle an accused to an acquittal, but  
20 no evidence obtained as a result of any violation may be admitted against the accused; provided, that  
21 any person detained in custody in violation of any provision of this division may, upon motion by any  
22 person in his or her behalf, and after such notice as the court may order, be released from custody by  
the court named in the warrant, or before which the person has been held to answer. The release may  
be upon such terms as the court may deem law and justice require. The relief authorized by this section  
shall be in addition to, and does not bar, all forms of relief to which the arrested person may be entitled  
by law.

23 6 CMC § 6107.

1 **IV. CONCLUSION**

2 For the forgoing reasons, the Defendant's Motion to Dismiss is **DENIED**. Bail is to be  
3 immediately exonerated. An arraignment is now scheduled for March 4, 2019, at 9:00 a.m. at the  
4 Marianas Business Plaza. The Defendant is ordered to appear.

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6 **IT IS SO ORDERED** this 29<sup>th</sup> day of January, 2019.

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10 **ROBERTO C. NARAÑA**  
11 Presiding Judge