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

OFFICE OF THE ATTORNEY GENERAL)
AND THE OFFICE OF IMMIGRATION)
AND NATURALIZATION OF THE)
COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)

CIVIL ACTION NO. 91-156

Petitioners,)

DECISION AND ORDER

vs.)

BOK MAN LIM,)

Respondent.)

Pursuant to 3 CMC § 4340, the Attorney General has petitioned for the deportation of the Respondent, Lim Bok Man. The Respondent's deportation is being sought in connection with a plea of Guilty he entered on March 13, 1991, in response to a charge for failing to register as an alien. Respondent had two previous convictions for Driving Under the Influence of Alcohol in both 1986 and 1990. Under § 4340, the Attorney General can seek deportation when an alien is convicted of two or more misdemeanors.

The gravamen of this case involves the intent of the legislature

in using the word "shall" in § 4341(e). 3 CMC § 4341(e) states in relevant part:

A hearing on the petition to show cause shall be before the Commonwealth Trial Court. A determination of deportability shall be made if there is clear and convincing evidence that the facts alleged as grounds are true. (emphasis added).

Though statutory language indicating that a Defendant "shall" be dealt with in a particular way is not controlling, such language generally constitutes a mandatory command. *Escoe v. Zerbst*, 295 U.S. 490, 55 S. Ct. 818 (1934). "Unless the context otherwise indicates(,) the use of the word, 'shall' . . . indicates a mandatory intent." 1A.C. Sands Sutherland Statutory Constr., § 25.04, at 445 (4th ed. 1985). Where a party contends that the legislative intent was that "shall" be given a directory, rather than a mandatory meaning, the contending party can introduce extrinsic evidence to show that the legislative intent differs from the seemingly mandatory meaning that appears from a superficial examination of the law's text: *Sierra Club v. Train*, 557 F.2d 485 (5th Cir. 1977).

Respondent offers no legislative history indicating an interpretation contrary to the meaning to be derived from a plain and simple reading of the word "shall." The Court is also unaware of any legislative history with respect to this statute. Respondent suggests that the Court somehow has the power to narrowly construe the word "shall" in such a way that will give the statute a directory rather than mandatory meaning. It is not within the province of this Court to legislate new meaning into an otherwise unambiguous statute.

The statute gives the Court discretion only to determine whether

the grounds the Attorney General has alleged are true. Once that determination has been made in the affirmative, it is incumbent upon the Court to order deportation. 3 CMC § 4341(f). Under these circumstances, no other interpretation would be reasonable, nor would any other reading of the statute comport with the probable intent of the legislature.

The second issue Respondent raises is whether the Court should abandon the clear language of the statute and import a section from the federal statute that grants the Court the option to recommend to the Attorney General that an alien not be deported. See, 8 U.S.C. § 1251(b)(2). The Court is not aware of any justifiable grounds for such a blatant invasion into matters that are clearly within the province of the legislature. Therefore, the Court declines Respondent's invitation to rewrite the statute.

The Court does not even address Respondent's third issue since it is irrelevant that he received ineffective counsel with respect to the March, 1991, conviction. The Attorney General could have sought deportation after the second DUI conviction in 1990. Therefore, whether Respondent had effective counsel prior to his third conviction has no bearing on the resolution of the deportation issue.

The Court sympathizes with Respondent's situation. Unfortunately, it is not within this Court's power to rewrite a clear mandate from our legislature. The legislature is the proper forum in which to seek changes in the existing immigration laws, not the courts. Accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the facts alleged as grounds for the deportation of Respondent are true. The Respondent shall be **deported** forthwith.

Entered this 26 day of April, 1991.



Alexandro C. Castro, Associate Judge