

JAN 08 2002

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

JUYEL AHMED, *et al.*, )

Plaintiffs )

v. )

ROBERT GOLDBERG, in his  
personal capacity, *et al.*, )

Defendants )

Civil Action No. 00-0005

ORDER DENYING  
UNITED STATES'  
MOTION TO DISMISS

\_\_\_\_\_ )  
RUI LIANG, *et al.*, )

Plaintiffs )

v. )

ROBERT GOLDBERG, in his  
personal capacity, *et al.*, )

Defendants )

Civil Action No. 99-0046

1           THIS MATTER came before the court on Thursday, December 6, 2001,  
2 for hearing of defendant United States' motions to dismiss and to hold in  
3 abeyance consideration of plaintiffs' cross-motion for summary judgment, and  
4 plaintiffs' motion for an order requiring non-parties to submit memoranda.  
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6 Plaintiffs appeared by and through their attorney, Bruce L. Jorgensen; defendant  
7 United States appeared by and through its attorneys, Cindy S. Ferrier, Office of  
8 Immigration Litigation, U.S. Department of Justice, who argued the motions,  
9 William J. Howard, Senior Litigation Counsel, Office of Immigration  
10 Litigation, U.S. Department of Justice, and Assistant U.S. Attorney Gregory  
11 Baka.  
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15           The court has previously ruled on all motion except the United States'  
16 motion to dismiss. Now, having fully considered the written and oral  
17 arguments of the parties, the court rules as follows:  
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20           As has been stated repeatedly, Federal Rule of Civil Procedure 8 requires  
21 only a "short and plain statement of the claim showing that the pleader is  
22 entitled to relief." The Rule contains "a powerful presumption against rejecting  
23 pleadings for failure to state a claim." Auster Oil & Gas, Inc. v. Stream, 764  
24 F.2d 381, 386 (5th Cir. 1985). A motion to dismiss for failure to state a claim  
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1 upon which relief can be granted will succeed only if from the complaint it  
2 appears beyond doubt that plaintiffs can prove *no* set of facts in support of their  
3 claim that would entitle them to relief. Morley v. Walker, 175 F.3d 756, 759  
4 (9th Cir. 1999) (emphasis added). All allegations of material fact are taken as  
5 true and construed in the light most favorable to the non-moving party. Enesco  
6 Corp. v. Price/Costco, Inc., 146 F.3d 1083, 1085 (9th Cir. 1998). In reviewing  
7 the sufficiency of the complaint, the “issue is not whether a plaintiff will  
8 ultimately prevail but whether the claimant is entitled to offer evidence to  
9 support the claims.” Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686  
10 (1974). “[I]t may appear on the face of the pleadings that recovery is very  
11 remote and unlikely but that is not the test.” *Id.*

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17 The United States has moved to dismiss with prejudice counts 3, 4, 5, 8, 9,  
18 and 10. The motion is denied in its entirety.

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20 Defendant United States argues that count 3 should be dismissed because  
21 it “has required...that international treaties to which the United States is a Party  
22 are applicable in the CNMI,” and, therefore, “it is defendant CNMI that has the  
23 responsibility for acting in a manner consistent with the provisions of the  
24 applicable international treaties.” Defendant United States’ Memorandum, p. 5  
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1 (Sept. 21, 2001). The court is not persuaded at this juncture that so blithe an  
2 assertion by the United States that it has completely fulfilled all its international  
3 obligations by referring them to the Commonwealth via the Covenant<sup>1</sup> is  
4 sufficient to show “beyond doubt that plaintiffs can prove *no* set of facts in  
5 support of their claim that would entitle them to relief.” Morley v. Walker,  
6 *supra*, at 759.

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10 Similarly, on the record presently before it, the court cannot say that it  
11 believes plaintiffs can prove no set of facts entitling them to relief under count 4.  
12 Although it may be unlikely that plaintiffs can prevail, “that is not the test.”  
13 Scheuer v. Rhodes, *supra*, 416 U.S. at 236, 94 S.Ct. at 1686. The court is not yet  
14 convinced that it is impossible to reconcile the requirements of the Foreign  
15 Affairs Reform and Restructuring Act (“FARR”) and the United States’ and  
16 Commonwealth’s obligations under the Covenant.  
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20 Defendant United States’ motion to dismiss the due process claim in  
21 count 5 is denied. The record as developed so far in this lawsuit is too imperfect  
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24 See “Covenant to Establish a Commonwealth of the Northern Mariana  
25 Islands in Political Union with the United States of America,” Act of Mar. 24,  
26 1976, Pub. L. No. 94-241, 90 Stat. 263 (codified as amended at 48 U.S.C. § 1681  
(1988)) (hereinafter “Covenant”).

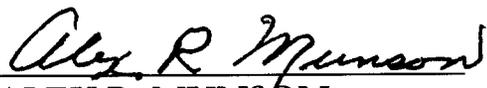
1 for the court to accept the argument of the United States that these plaintiffs are  
2 essentially entitled to no due process protections and that what protections they  
3 *are* entitled must be provided solely by the Commonwealth government.  
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5 Finally, the court concludes that it would be inappropriate to dismiss  
6 counts 8 (concealment: concealed knowledge or information)), 9 (emotional  
7 distress), and 10 (estoppel), without first affording plaintiffs an opportunity to  
8 conduct discovery. Again, although the prospects for success on the merits  
9 appear dim, that is not the test on a motion for dismiss.  
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12 FOR THE FOREGOING REASONS, defendant United States' motion  
13 to dismiss is denied in its entirety.  
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15 This order shall be sent via facsimile to all parties.  
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17 DATED this 8th day of January, 2002.  
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23 ALEX R. MUNSON  
24 Judge  
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