

--- For Publication on Court's Web Site ---

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,)	Criminal Case No. 04-00007-003
)	
Plaintiff)	
)	
v.)	FINDINGS OF FACT and
)	CONCLUSIONS OF LAW
YE, Wei Shun,)	RE DEFENDANT YE
)	
Defendant)	
)	

THIS MATTER came before the court for trial¹ on August 9 - 10, 2004.

Plaintiff appeared by and through Assistant U.S. Attorney Patrick J. Smith;

defendant appeared personally and by and through her attorney, G. Anthony

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(Rev. 8/82)

1 Long. Defendant's translator, Mr. Norman Xing, was present throughout the
2 trial. Witness testimony was translated by the court's translator, Ms. Betty Bai.
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4 At the conclusion of the trial, the court found defendant Ye guilty on
5 each of the three charges remaining against her, and stated on the record the
6 reasons for its findings. However, in order to more fully address each of the
7 charges, the court issues these written findings and conclusions.
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9 By an indictment returned March 24, 2004, defendant (and others) were
10 charged with several crimes. Defendant was charged under count I (conspiracy
11 to make false statements, in violation of 18 U.S.C. § 371), count IV (attempted
12 improper entry by an alien, in violation of 8 U.S.C. § 1325(a)), count VII
13 (improper entry by an alien: subsequent commission, in violation of 8 U.S.C. §
14 1325(a)), and count X (criminal contempt, in violation of 18 U.S.C. § 401(3)).
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17 At the beginning of trial, the felony immigration aspect ("subsequent
18 commission") of count VII was dismissed after motion by the defendant. Count
19 I was dismissed on motion of plaintiff. The jury was then discharged and the
20 three remaining counts, all misdemeanors, were tried to the court.
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1 The court, having heard and considered all the evidence, makes the
2 following findings of fact and conclusions of law.²
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4 Findings of Fact

5 The court found the following facts beyond a reasonable doubt:

6 Defendant Ye is a citizen of the People's Republic of China.

7 At all relevant times herein, she was legally present in the
8 Commonwealth of the Northern Mariana Islands ("CNMI" or
9 "Commonwealth") as a non-resident worker.
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12 In an incident for which she was not charged, defendant Ye and fifteen
13 other passengers attempted to travel by boat from the Commonwealth to the
14 U.S. Territory of Guam on or about December 2, 2003. The boat left Saipan
15 between 6:30 and 7:00 p.m., for the express purpose of arriving at Guam when it
16 was still dark and they would not be easily seen by authorities. They did not
17 reach Guam, due to engine trouble incurred by the boat. As testified to by the
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23 These written findings and conclusions are intended to more fully set
24 forth the court's oral findings and conclusions, and not replace them. If there is
25 a discrepancy or inconsistency between the oral and the written findings and
26 conclusions, the oral findings and conclusions shall control. To the extent that
a finding of fact should be considered a conclusion of law, or a conclusion of law
be deemed a finding of fact, it shall be so considered.

1 captain of the boat, Godofredo Agawa, and two of the passengers, the express
2 purpose of that trip, as well as the two that followed, was to illegally land the
3 passengers on Guam, where they could seek asylum "in the United States," an
4 option not available to them in the Commonwealth of the Northern Mariana
5 Islands. *See infra*. Defendant Ye sat next to the boat captain for at least part of
6 the trip and was identified by him in open court. The passengers had paid
7 \$5,000.00 each to be transported to Guam and the boat captain was paid
8 \$5,000.00 for his efforts.³

12 On December 4, 2003, defendant Ye and others again attempted to reach
13 Guam by boat. The passengers first traveled from Saipan to Tinian by inter-
14 island ferry. On Tinian they all gathered at a house or hotel room prior to
15 departure for Guam. They left Tinian and reached Guam about 1:00 a.m. on
16 the morning of December 5, 2003. They succeeded in reaching the reef that
17 fronts Tumon Bay, Guam, but, due to rough seas, the captain of the boat, again
18 Godofredo Agawa, adjudged it too dangerous to discharge his passengers at that
19 location. Agawa testified that he motored up and down the reef until near
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26 Agawa pleaded guilty to conspiracy to smuggle aliens for financial gain
and is awaiting sentencing.

1 sunrise, searching for a safe location to put his passengers ashore. During this
2 time he telephoned his confederate, Rancapan, who told him to run the boat
3 aground on Guam, so as to deliver the "cargo." Unwilling to take so dangerous
4 a course of action, and being unsuccessful in finding a safe drop-off spot, Agawa,
5 over the voluble protestations of his passengers, returned to the Island of Rota,
6 Commonwealth of the Northern Mariana Islands.
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9 Agawa testified that, at or before arriving on Rota, he and his passengers
10 agreed that they would tell anyone who enquired that they had been out on a
11 sightseeing cruise. After arriving on Rota, defendant Ye and the others were
12 questioned as a group by CNMI Immigration officials. The group maintained,
13 as they had previously agreed, that they had been on a sightseeing cruise. No
14 member of the group carried any identification or luggage. Unpersuaded by the
15 unlikely story, CNMI officials detained the captain and the passengers and
16 returned them to Saipan by airplane the next day.
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19 Once on Saipan, all the people from the boat were questioned by both
20 Federal and Commonwealth authorities. Initially, they stuck to their story that
21 they had merely been out sightseeing, but soon the truth began to emerge: that
22 they had in fact paid money to be taken to the U.S. Territory of Guam so as to
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1 seek asylum.

2 As a result of the December 4-5, 2003, foray, defendant and others were
3 charged under 8 U.S.C. § 1325(a), attempted improper entry by an alien.
4 Defendant was granted pre-trial release. Two of the conditions of defendant's
5 release were (1) that she not break any Federal or Commonwealth laws while
6 released and (2) that she not leave the Island of Saipan without having first
7 obtained the written permission of the court.
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11 On February 27, 2004, while she was still free pending trial, defendant Ye
12 and others again tried to reach Guam by boat from the CNMI. For the
13 February trip, defendant and at least one co-defendant, witness LING, Hui Fang
14 (*see infra*), first traveled from Saipan to Tinian by ferry. Ling recognized
15 defendant as a passenger on the two December trips but they did not speak
16 much on the ferry, as both were seasick. Once on Tinian, all the passengers and
17 the captain of the boat (a different person than that for the December, 2003,
18 trips) boarded the boat at about midnight for the trip to Guam.
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22 This time the boat succeeded in illegally depositing all eleven Chinese
23 passengers on Guam: they came ashore at the 12th hole of the Mangilao Golf
24 Course. The group was first seen by a groundskeeper, Patrick Dela Cruz. He
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1 testified that he first noticed the boat in a small cove near the 12th hole and that,
2 because he likes to fish, it caught his attention because he assumed it was out
3 fishing. Shortly thereafter, he noticed a small group of people coming up from
4 the beach by the cove. He testified that at first he thought they were golfers but
5 then noticed that all of them were wet from head to toe. He called his
6 supervisor, who in turn called the Guam police.

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10 Officer Mark Nelson of the Guam Police Department testified that he
11 responded to the call, which had been reported to him as a case of possible
12 illegal aliens. When he arrived, he found six of the group in a store near the golf
13 course. Because all six were soaking wet, and because they could produce no
14 identification, he detained them on the scene until the arrival of U.S.
15 Immigration officials. After she had been directed by her attorney to turn her
16 face away from the witness stand, defendant Ye was identified by Officer
17 Nelson from a photo array.

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21 Mike Hernandez, U.S. Immigration Special Agent, testified that he had
22 first met defendant when he interviewed her on Saipan in December, 2003,
23 when he was assisting the Federal Bureau of Investigation. When he was called
24 to the Mangilao Golf Course on February 27, 2004, he recognized her from
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1 their earlier meeting and later at his office ran a records check to confirm it. He
2 further testified that the 12th hole of the Mangilao Golf Course is not a "port of
3 entry" as that term is used for U.S. immigration purposes.
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5 Co-defendant XU, Yi Ming, testified that she was part of both the
6 December, 2003, and February, 2004, trips and that defendant Ye, whom she
7 identified in court, was part of both prior attempts as well. Xu testified that the
8 two Chinese "snakeheads"⁴ running the alien smuggling operation required
9 payment from prospective passengers of \$500.00 "earnest money" and a later
10 payment of \$4,500.00 for the trip to Guam.
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14 Witness LING, Hui Fang, also testified that she had had to pay the two
15 Chinese "snakeheads" \$500.00 down, and \$4,500.00 more before she could join
16 the attempt to illegally enter Guam. She testified that she knew defendant Ye
17 from having worked together and that they had talked about going to Guam.
18 LING also testified that all of the passengers, including defendant Ye, had first
19 met at the house of Ah Su, one of the two "snakeheads," where they were given
20 instructions about the trip and told what to say if they were questioned. LING
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26 The term "snakehead" is generally used in Asia to describe a person
engaged in alien smuggling.

1 testified that she knew she needed a visa to go to Guam, that she did not have
2 one, and that it was her intention to seek asylum at the U.S. Immigration office
3 once on Guam.
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5 As a result of this February, 2004, trip, defendant Ye was charged in count
6 VII with improper entry by an alien, in violation of Title 8 U.S.C. § 1325(a).
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8 Witnesses Margarita Wonenberg, U.S. Probation Officer, and Michelle
9 Macaranas, Deputy Clerk of this court, testified, respectively, about the
10 conditions of defendant Ye's release in December of 2003 and whether or not
11 the conditions of release were translated to her. Their combined testimony
12 established that defendant Ye had been advised of the conditions of her release
13 at least three separate times: once in open court, once in the Probation Office,
14 and once in the office of the Clerk of Court. Each time the conditions had been
15 translated to her by a translator.⁵ The two conditions important here are those
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21 To sustain defendant's objection that the court does not *know* that the
22 conditions were accurately and fully translated because neither the court, Ms.
23 Wonenberg, nor Ms. Macaranas speaks Chinese would ensnare the court in a
24 *reductio ad absurdum*: even an infinite succession of translators vouching that
25 the previous translator had accurately translated would not cure the problem
26 defendant seeks to raise. Translators are sworn (as these were) to translate
"justly, truly, fairly, and impartially." The only way to *know* if that is being
done would be for the judge to, in this case, be fluent in Mandarin. There is no
evidence that any of the translators here did not fulfill their oath.

1 mentioned above: that defendant was not to violate any Federal or
2 Commonwealth laws while released and that she was not supposed to leave the
3 Island of Saipan without the prior written permission of the court. She violated
4 both of these conditions of release during the February, 2004, attempt to
5 illegally enter Guam. As a result of failure to abide by the conditions of her
6 release, defendant was charged in count X with criminal contempt, in violation
7 of Title 18 U.S.C. § 401(3).
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11 Conclusions of Law

12 Jurisdiction and venue are proper in this district pursuant to 18 U.S.C. §§
13 3231 and 3237.
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15 Defendant Ye is an alien, non-resident worker who was at all times legally
16 within the Commonwealth of the Northern Mariana Islands.
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18 The Commonwealth of the Northern Mariana Islands is not considered
19 part of the United States for purposes of United States immigration laws.
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21 Covenant § 503 ("The following laws of the United States...will not apply to the
22 Northern Mariana Islands except in the manner and to the extent made
23 applicable to them by Congress by law...(a)...the immigration and naturalization
24 laws of the United States[.]"
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1 Count IV - Attempted Entry Into United States

2 (Title 8 U.S. Code § 1325(a))

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4 The following elements were proved beyond a reasonable doubt:

5 Defendant is an alien.

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7 Defendant attempted to enter the United States---that is, the U.S.
8 Territory of Guam---at a time and place other than as designated by immigration
9 officers. The testimony of the witnesses and the circumstantial evidence
10 overwhelmingly showed that defendant Ye, on or about December 4-5, 2003,
11 traveled, with others, from the Commonwealth of the Northern Mariana
12 Islands by boat with the intention of entering Guam illegally. Evidence of the
13 attempt included payment for the trip, preparations and meetings with the
14 organizers of the trip and others similarly engaged, taking the boat, and entering
15 Guam's territorial waters.
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20 Defendant acted knowingly and intentionally in this undertaking. She
21 carried no identification, she was aboard the boat when it left the
22 Commonwealth at a time which would bring it to Guam's shores in the dark,
23 she was present when the "snakeheads," passengers, and crew agreed to tell any
24 authorities they encountered that they were all on a sightseeing cruise, and she
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1 persisted in this falsehood when the boat's crew and passengers were detained
2 and questioned by both Federal and Commonwealth authorities.
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4 Count VII - Illegal Entry Into the United States

5 (Title 8 U.S. Code § 1325(a))
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7 The following elements were proved beyond a reasonable doubt:

8 Defendant is an alien.

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10 On or about February 27, 2004, defendant and others entered the United
11 States---that is, the U.S. Territory of Guam---at a time and place other than as
12 designated by immigration officers. The direct and circumstantial evidence
13 overwhelmingly showed that defendant, with others, traveled by boat from the
14 Commonwealth of the Northern Mariana Islands to Guam and were put ashore
15 near the 12th hole of the Mangilao Golf Course (a time and place other than as
16 designated by immigration officers), that defendants reached shore without the
17 knowledge of any officials⁶, that defendant had no identification or entry visa
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22 Defendant objected that, because her arrival on Guam was witnessed by
23 Patrick Dela Cruz, the golf course employee, the "official restraint" doctrine
24 addressed in United States v. Gonzalez-Torres, 309 F.3d 594 (9th Cir. 2002),
25 precludes conviction for this crime. On these facts, the "official restraint"
26 doctrine would come in to play only if Ye entered the United States while
under the surveillance of the authorities. Mr. Dela Cruz was not an "official"
and took no steps to deprive Ye of her freedom or to prevent her from going

1 with her, and no remotely plausible story to explain her presence.

2 Defendant acted knowingly and intentionally. She had twice before
3 attempted to make this journey under circumstances that proved beyond a
4 reasonable doubt that in the instant matter she knew that what she was trying
5 to do was illegal.
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8 Count X - Criminal Contempt

9 (Title 18 U.S. Code § 401)

10 The court found the elements of criminal contempt beyond a reasonable
11 doubt.
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13 As set out in United States v. Powers, 629 F.2d 619, 627 (9th Cir. 1980)
14 and United States v. Doe, 125 F.3d 1249, 1254 (9th Cir. 1997), the elements of
15 criminal contempt are: (1) a clear and definite order of the court⁷; (2) that
16 defendant knew of the order; and (3) that defendant willfully disobeyed the
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20 anywhere.
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22 Defendant argued that she cannot be convicted of criminal contempt
23 under 18 U.S.C. § 401(3) because an element of the crime is that the contempt
24 be committed before a "court of the United States," as defined in 28 U.S.C. §
25 451, and that this court is not included in that section. However, this court is a
26 court of the United States for purposes of Title 18: "As used in this title, except
where otherwise expressly provided the term 'court of the United States'
includes...the District Court for the Northern Mariana Islands." 18 U.S.C. § 23.

1 order.

2 In its pretrial release order of December 18, 2003, in Criminal No. 03-
3 00041, defendant was ordered not to leave the Island of Saipan without the prior
4 written permission of the court and was further ordered not to violate any
5 federal, state, or local law during her release.
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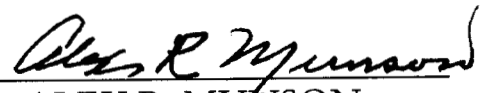
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8 The court's record shows that defendant was advised in open court of all
9 the conditions of her release and that all the conditions were translated to her.
10 She indicated on the record that she understood the conditions. The testimony
11 of Probation Officer Wonenberg showed that the conditions of release were
12 translated for defendant a second time by the Probation Office. The testimony
13 of Deputy Clerk Macaranas showed that the conditions of release were
14 translated for defendant a third time in the Clerk's Office and that she signed
15 the form, acknowledging that she understood the conditions.
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18 As shown above in the findings of guilty on counts IV and VII, defendant
19 willfully disobeyed the court's order, beyond a reasonable doubt.
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22 FOR THE REASONS stated on the record and above, defendant was
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1 found guilty of the three misdemeanor charges laid against her.

2 DATED this 16th day of August, 2004.

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7 ALEX R. MUNSON
8 Judge
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