



**OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96910
U.S.A.**

EXECUTIVE ORDER NO. 2016-09

**RELATIVE TO THE REMOVAL OF DENEK EUGICHI,
A NONIMMIGRANT ALIEN AND CITIZEN OF
THE FEDERATED STATES OF MICRONESIA**

WHEREAS, the Compact of Free Association (COFA) Act of 1985 [U.S. Public Law 99-239], is a law that approved a joint resolution agreement between the United States, the Federated States of Micronesia (FSM), and the Republic of the Marshall Islands (RMI) which established the FSM and RMI as independent nations and provided them with economic assistance, military defense, and other benefits given by the United States in exchange for certain operating rights in the FSM and RMI; and

WHEREAS, the original 1985 Compact agreements with the FSM and the RMI were subsequently amended by the COFA Amendments Act of 2003 [Public Law 108-188] and became effective in 2004; and

WHEREAS, pursuant to the Section 141(a) of Article IV of the 2003 Amended Compacts (aka "Compact II"), FSM and RMI citizens may be admitted to the U.S. and its territories and possessions as nonimmigrant aliens for the privilege of residing, seeking employment, or pursuing education; and

WHEREAS, further, Section 141(f) of the Amended Compacts state that the U.S. Immigration and Nationality Act (INA) [Title 8 U.S.C.], as amended, applies to Compact entrants, including the INA provisions governing exclusion and deportation; and



WHEREAS, further, Section 141(g) of the Amended Compacts state that any authority possessed by the Government of the United States may also be exercised by the Government of a territory or possession of the United States such as Guam in cases where the INA does not apply, to the extent such exercise of authority is lawful under a statute or regulation of such territory or possession that is authorized by the laws of the United States; and

WHEREAS, under INA Section 237 [8 U.S.C. § 1227], Compact entrants must obey the laws of the United States and of the state and locality in which they reside, or else be subject to removal and deportation; and

WHEREAS, under INA Section 237(a)(4)(A)(ii) [8 U.S.C. § 1227(a)(4)(A)(ii)], Compact entrants who engage in criminal activity, which endangers public safety or national security are deportable; and

WHEREAS, under Section 141(f)(1) of the Amended Compacts, INA Section 237(a)(5) is required to be construed and applied to Compact entrants such that a Compact entrant is subject to deportation as a “public charge” if he or she “cannot show that he or she has sufficient means of support in the United States”; and

WHEREAS, pursuant to the immigration regulations promulgated by the U.S. Department of Homeland Security (DHS) at 8 C.F.R. Section 214.7(a)(7) and Section 214.7(e)(1)(i), a Compact entrant is subject to removal from the United States and its territories if he or she has not been self-supporting for a period exceeding 60 consecutive days;

WHEREAS, pursuant to 8 C.F.R. Section 214.7(e)(1)(iii), a Compact entrant is subject to removal from the United States and its territories if he or she is in violation of INA Section 237(a)(5) [8 U.S.C. § 1227(a)(5)] which governs the deportation of a public charge who cannot show sufficient means of support in the United States; and



WHEREAS, at a hearing held on September 18, 2013, before the Superior Court of Guam in Criminal Case No. CF 585-12 (GPD Report Nos. 12-24884/-30845/-30940/-30982), a defendant identified as “Denek Eugichi” (a.k.a. “Ervin Otokichi,” a.k.a. “Denek Eugychy,” a.k.a. “Ervin Otokichy) entered a plea of guilty to the offenses of Three Counts of the First Charge of Second Degree Robbery (As a 2nd Degree Felony), a violation of 9 G.C.A. § 40.20(a)(3) and (b); and

WHEREAS, on October 30, 2014, the Superior Court entered a Judgment in CF 585-12 convicting Denek Eugichi and sentencing him to the recommended sentence in the written Plea Agreement executed by him on July 2, 2013 and filed with the Court on September 25, 2013, to wit: eight (8) years imprisonment at the Department of Corrections in Mangilao for each count, with all but five (5) years suspended, to run concurrently, with credit for time served; and

WHEREAS, Denek Eugichi was further ordered to pay a \$500.00, plus full restitution if any, perform 200 hours of community service, and serve a parole term of three (3) years; and

WHEREAS, prior to being convicted in CF0585-12, Denek Eugichi had also been charged by the Superior Court in Criminal Case No. CF 023-10 for offenses related to Aggravated Assault and Family Violence; and

WHEREAS, further, Denek Eugichi had also been charged by the Superior Court in Criminal Case No. CF 009-11 for offenses related to Family Violence, Assault, and Aggravated Assault; and

WHEREAS, while incarcerated pursuant to his conviction in CF 585-12, Denek Eugichi did not take advantage of opportunities to participate in educational advancement programs offered at the Guam Department of Corrections; and



WHEREAS, Denek Eugichi is a deportable alien because he has violated, and continues to be in violation of, the Amended Compact with the FSM, the U.S. Immigration and Nationality Act, and the DHS immigration regulations by virtue of engaging in and being convicted of felony criminal activity that endangers public safety or national security, being a public charge who cannot show that he has sufficient means of support in the United States or Guam, and by failing to be self-supporting for a period exceeding 60 consecutive days; and

WHEREAS, the U.S. Immigration and Customs Enforcement (ICE) agency and the DHS have not placed an immigration detainer or notice of action on Denek Eugichi as of the date of this Executive Order; and

WHEREAS, in light of Guam's unique geographic, economic, and political status, the peace and welfare of the island community depends on its ability to control public safety; and

WHEREAS, the Amended Compact with the FSM explicitly states at Section 104(e)(1) [48 U.S.C. § 1904(e)(1)] that, "In reauthorizing the U.S.-FSM Compact ... it is not the intent of the Congress to cause any adverse consequences for an affected jurisdiction" such as Guam. *See also*, 48 U.S.C. § 1921c(e) (same); and

WHEREAS, it has been reported in the media that numerous cases of possible deportations are on hold because of a lack of federal government resources in Guam and that there is no fully functioning immigration court in Guam; and

WHEREAS, despite the language of Amended Compact Section 104(e)(1) and 48 U.S.C. § 1921c(e), there is no known or reasonably foreseeable plan by the U.S. government to enforce the Compact provisions governing the removal and deportation of public charges or of otherwise alleviating the adverse consequences caused; and



WHEREAS, Section 1422 of the Organic Act of Guam, Title 48 United States Code, provides that the Governor “shall be responsible for the faithful execution of the laws of Guam and the laws of the United States applicable in Guam”; and

WHEREAS, pursuant to the authority granted by Organic Act Section 1422 to enforce federal laws applicable to Guam, the Governor “has the residual authority to enforce the immigration laws of the United States in default of performance by the Immigration and Naturalization Service of the United States.” *See, Ex parte Rogers*, 104 F. Supp. 393, 396 (D. Ct. Guam 1952); and

WHEREAS, further pursuant to Organic Act Section 1422, the Governor has the authority to “grant pardons and reprieves. . . for offenses against local laws.”

NOW, THEREFORE, I, EDDIE BAZA CALVO, I Maga’Låhen Guåhan, Governor of Guam, by virtue of the authority vested in me by the Organic Act and laws of Guam, do hereby order and direct as follows:

1. **Removal and deportation.** (a) Denek Eugichi, a citizen of Chuuk State, FSM, is ordered to be removed and deported from Guam forthwith.

(b) All Government of Guam agencies, including the Guam Police Department, the Department of Corrections, Guam Homeland Security/Office of Civil Defense, the Guam Customs & Quarantine Agency, the Guam International Airport Authority, the Department of Administration, and the Bureau of Budget & Management Resources, are ordered to coordinate together to make immediate arrangements for his one-way repatriation to Chuuk, FSM.



2. **Commutation of sentence.** Subject to the condition of Permanent Bar Against Reentry set forth below in this Executive Order, the removed individual, Denek Eugichi, is granted a reprieve and commutation of sentence to time served and satisfied as of the date of verification of his return to, and arrival in, Chuuk.
3. **Release from Custody.** Denek Eugichi is released from the custody of the Guam Department of Corrections (DOC) as of the date of verification of his return to, and arrival in Chuuk, said release to be effected in Chuuk as soon as administratively possible or within a reasonable period to allow for proper release processing pursuant to applicable policies and procedures.
4. **Permanent Bar Against Reentry.** (a) As a condition of the commutation of sentence and release from custody contained in this Executive Order, Denek Eugichi shall be, and is, permanently barred from reentering, attempting to reenter, or from transiting through Guam. All Guam ports of entry and law enforcement agencies shall keep a permanent record of his fingerprints, photograph, biometrics, and any other individually identifiable information.

(b) In the event that Denek Eugichi fails to leave Guam and return to Chuuk peacefully, or if he reenters, attempts to reenter or transits through Guam, the commutation of sentence granted by this Executive Order shall be automatically revoked and void from the beginning. Denek Eugichi shall be immediately placed in physical custody by law enforcement personnel and returned to the Guam Department of Corrections to serve out the balance of all terms and conditions of his sentence and incarceration remaining at the time of commutation.



5. **Costs of Removal.** (a) Any costs associated with this removal shall be borne by the Government of Guam, which may seek reimbursement of such costs from the appropriate federal authorities.

(b) If it is determined that the removed individual has reentered or attempted to reenter, or attempted to transit through Guam, he shall be detained and held pending his immediate re-removal at the earliest opportunity on a vessel or aircraft owned by the owner of the vessel or aircraft on which the individual arrived in Guam. The owner of the vessel or aircraft shall also bear all transportation, detention, and maintenance costs associated with the re-removal.

SIGNED AND PROMULGATED at Hagåtña, Guam, this 12th day of August, 2016.



EDDIE BAZA CALVO
I Maga'Låhen Guåhan
Governor of Guam

Remove Agenda

August 16, 2016; 8:30 am

I. CALL TO ORDER

II. UNFINISHED BUSINESS

- a. Meeting with AG, U.S. Attorney, ERO.
- b. Meeting with FSM President.
- c. Cost of last four commutations/ Invoice to Federal Government
- d. Letter to Humphreys
- e. Letter/ FOIA to feds asking about status of previous detainees clients released to them.
- f. Candidates:
 - i. Derek Eugichi- August 15th- Confirmed for Monday morning at 8:20 am. Original birth certificate on file. Robbed different game rooms. No restitution. Secure tickets, Notify Airport, Certification, DOC ID, United Ops Plan, Interpreter, DOC Agreement, Executive Order, Media, Forward photo to customs.
 - ii. Richard Ken- August 29th (expired passport).
- g. Bulk candidate listing- 35 people estimate. Due Friday, August 19th.

III. NEW BUSINESS

IV. ACTION ITEMS

V. OPEN DISCUSSION

VI. NEXT MEETING- Friday, 8:30am.

VII. ADJOURN