

## FSM Information Services

### Press Release

#### **FSM Supreme Court Dismisses Complaint for Declaratory Judgment Against President Panuelo's Declaration of Public Health Emergency**

PALIKIR, Pohnpei—Via Civil Action Number 2021-007, the Supreme Court of the Federated States of Micronesia (FSM) has partially dismissed claims from FSM citizens that the President lacked authority to issue the Declaration of Public Health Emergency originally instituted on January 31<sup>st</sup>, 2020.

Fourteen (14) FSM citizens had submitted a Complaint for Declaratory Judgment in March 2021 against His Excellency David W. Panuelo, in his capacity as the President of the FSM, and the Government of the FSM. The plaintiffs alleged that the President lacked the authority to close the Nation's borders on the premise that the Declaration of Public Health Emergency was not based on any grounds specifically authorized under the FSM Constitution. The plaintiffs also alleged that less drastic alternative measures were—and still are—available for the President to preserve the public's peace, health, and safety.

The plaintiffs sought a declaratory judgment that the President's Declaration of Public Health Emergency contravened the Constitution; that the Declaration was invalid *ab initio* (i.e. from the beginning); that the President acted beyond his Constitutional authority when he closed the Nation's borders; and that less drastic alternatives exist that would allow FSM citizens, such as themselves, to return home.

The plaintiffs contended that a Pandemic, or the threat of a Pandemic, is not an emergency or a circumstance for which the Constitution authorizes the President to issue a Declaration of Public Health Emergency. Article Ten's Section Nine of the Constitution states "If required to preserve public peace, health, or safety, at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war, or insurrection, the President may declare a state of emergency and issue appropriate decrees."

The plaintiffs asserted that the COVID-19 Pandemic is not a natural disaster on the premise that it is a disease and not a sudden environmental event, such as an earthquake, typhoon, or flood. The plaintiffs further asserted that, even if COVID-19 were a natural disaster, it could not be defined as a disaster for the FSM on the premise that the Nation is COVID-19 free; therefore, the President could not make an emergency declaration based on it.

“The court will not take such a cavalier attitude towards the public health and the safety of the FSM and its people,” the FSM Supreme Court wrote in its Order Granting Dismissal in Part. “The court fails to understand how a raging world-wide Pandemic could not be considered a natural disaster until it has started killing people in the FSM, and only then could the President issue an emergency declaration to preserve the public health and safety. The court will not read the President’s emergency powers so narrowly as to render them imponent in the face of an unprecedented Pandemic, that threatens to inundate our shores, and which only empowers the President to act once it has become too late to stem the tide or to have any beneficial preventative effect. The court takes judicial notice that, if the President had not closed the FSM’s borders, the COVID-19 Pandemic would have arrived in the FSM not long thereafter, and that the FSM health and medical system was ill-prepared to face it.”

The plaintiffs asserted that, as the Declaration of Public Health Emergency applies to FSM citizens, that less drastic measures might have been imposed on FSM citizens specifically. The FSM Supreme Court wrote “From the plaintiffs’ standpoint, the civil right, that the President’s...emergency declaration impaired, is the right of a citizen to reside in or return to the country of his or her citizenship. That right is not specifically mentioned in the Constitution. But it is a right that appears to be inherent in the concept of citizenship or nationality and human rights.” This statement was followed by a citation to the United Nations’ Universal Declaration of Human Rights.

The FSM has not ratified the Universal Declaration of Human Rights but has otherwise abided by it. It is the belief of the FSM National Government that, if the FSM were a sovereign Nation-State in December 1948 when the voting on the Declaration originally occurred, that it is likely the FSM would have voted in favor of the Declaration.

The FSM Supreme Court concluded by partially dismissing some of the plaintiffs’ complaints, such as those regarding the legality of the Declaration of Public Health Emergency, but otherwise allowing others to proceed, such as those asserting that less drastic measures might have been imposed on FSM citizens specifically. “The [FSM Supreme Court] dismisses the plaintiffs’ complaint to the extent that the plaintiffs claim that the President lacked any authority to issue the...emergency declaration barring all persons from entering the FSM. The plaintiffs may proceed on their claims that, as applied to them as FSM citizens, less drastic measures might have been imposed to preserve the FSM’s health and safety.”

Citizens wishing to read the entirety of this specific FSM Supreme Court filing may find it here: [https://gov.fm/files/Partial\\_Dismissal\\_-\\_Stranded\\_Citizens.pdf](https://gov.fm/files/Partial_Dismissal_-_Stranded_Citizens.pdf)

Citizens with inquiries regarding the work of the FSM Supreme Court—which is a co-equal branch of the FSM National Government, that conducts itself as independent, fair, and impartial in the

rendering of justice to all—are encouraged to reach out to the Court itself. The Supreme Court’s website is here: <http://fmsupremecourt.org/>

As of May 24<sup>th</sup>, 2021, the FSM remains COVID-19 free. The first successful repatriation effort occurred on May 13<sup>th</sup>, 2021, from the U.S. Territory of Guam. The next repatriation effort is scheduled on May 31<sup>st</sup>, with the intent to repatriate FSM citizens stranded in the Republic of the Marshall Islands. It is the intention of the FSM National Government to implement another repatriation flight from the U.S. Territory of Guam to the FSM in the month of June, 2021.