



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

EXECUTIVE ORDER NO. 2016-05

**RELATIVE TO THE REMOVAL OF NINTON HAU,
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.] applies to Compact entrants, including the INA provisions governing exclusion and deportation; 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, on June 27, 2011, a 24-year old adult male individual identified as “Ninton Hauk” (aka Linton, aka Saat) was arrested and charged in Superior Court Case Number CF339-11 with attempted murder, aggravated assault, and jurisdiction over an adult; and

WHEREAS, Ninton Hauk entered a plea of guilty to Aggravated Assault as a 2nd Degree Felony with a Special Allegation of possession and Use of a Deadly Weapon in the Commission of a Felony.



WHEREAS, the Court sentenced him to 10 years with all but one year of imprisonment suspended for the first charge; and sentenced to 5 years imprisonment for the second charge to run consecutive to the first sentence. In addition, Ninton Hauk was given a special parole of 3 years.

WHEREAS, Ninton Hauk, while in the custody of Department of Corrections, on February 15, 2015 was charged in Superior Court on Case CF108-15 with disorderly conduct as a petty misdemeanor, assault as a misdemeanor, and promoting prison contraband as a 2nd Degree-Felony; assault on a peace officer as a 3rd Degree-Felony; and

WHEREAS, Ninton Hauk entered a guilty plea to the assault as a misdemeanor, and disorderly conduct as a petty misdemeanor; and he was sentenced with one year for the assault charge with all but 7 months suspended, and 60 days for the disorderly conduct; and two years of special parole all sentences to run concurrent with CF339-11; and

WHEREAS, Ninton Hauk did not take advantage of opportunities to participate in educational advancement programs offered at the Guam Department of Corrections; and

WHEREAS, Ninton Hauk is a nonimmigrant alien and a citizen of the FSM state of Chuuk who is residing in Guam, and is further a "habitual resident" as described in the immigration regulations at 8 C.F.R. Section 214.7(a)(4)(i), having been admitted to Guam pursuant to Section 141(a) of the Amended Compact with the FSM; and

WHEREAS, Ninton Hauk was not attending any school or university prior to his arrest and was not otherwise engaged in the pursuit of any available educational opportunities; and

WHEREAS, Ninton Hauk cannot show that he has sufficient means of support in the United States or Guam; and



WHEREAS, Ninton Hauk 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 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 by engaging in felony criminal activity which endangers public safety or national security; and

WHEREAS, the U.S. Immigration and Customs Enforcement has not placed a detainer for removal on Ninton Hauk as of July 10, 2016; 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; and

WHEREAS, despite the language of Amended Compact Section 104(e)(1), 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; 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, pursuant to the authority granted by the Organic Act of Guam, 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. **Commutation of sentence.** The individual identified as Ninton Hauk in Superior Court of Guam Case Nos. CF339-11 and CF108-15, is granted a reprieve and commutation of sentence to time served and satisfied on July 11, 2016.
2. **Ninton Hauk** is released from the custody of the Guam Department of Corrections, to be effected as soon as administratively possible or within a reasonable period to allow for release processing pursuant to applicable policies and procedures.
3. **Removal and deportation.** The individual identified as Ninton Hauk is a citizen of FSM, and is ordered to be removed and deported from Guam forthwith.
4. All Government of Guam agencies, including the Guam Police Department, the Department of Corrections, Guam Homeland Security/Office of Civil Defense, the Department of Customs & Quarantine, 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.
5. **Permanent Bar Against Reentry.** Ninton Hauk is permanently barred from entering or attempting to reenter Guam and from transiting through Guam. All Guam ports of entry and law



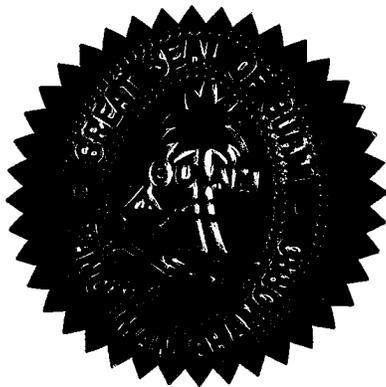
enforcement agencies shall keep a record of his fingerprints, photograph, biometrics, and any other individually identifiable information.

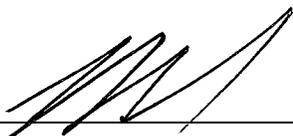
6. **Costs of Removal.** (a) The costs associated with this removal shall be borne by the Government of Guam, which may seek reimbursement of such costs from the appropriate federal authorities.

(b) If it is found 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.

7. This Executive Order shall be effective July 11, 2016.

SIGNED AND PROMULGATED at Hagåtña, Guam, this 10th day of July, 2016.





EDDIE BAZA CALVO
I Maga'Låhen Guåhan
Governor of Guam