government may not be permitted to strip citizens of life, liberty, or property in an unfair or arbitrary manner. Palsis v. Kosrae, 17 FSM R. 236, 240 (App. 2010). Where such interests are subject to possible government taking or deprivation, the Constitution requires the government follow procedures calculated to assure a fair and rational decision making process. Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

In order to prevail on a claim of deprivation of liberty or property without due process of law, a plaintiff must: 1) identify a liberty or property right which implicates the due process clause; 2) identify a governmental action which amounts to deprivation of that liberty or property right; and 3) demonstrate that the deprivation occurred without due process of law. Linter v. FSM, 20 FSM R. 553, 557 (Pon. 2016); Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666 (Kos. S. Ct. Tr. 2002).

This claim must likewise be dismissed because it is impossible for the Government to violate or deprive Ms. Acker of any property right. As already determined, the monument is well within Parcel no. 008-C-25 and this parcel was never deeded or conveyed to Ms. Acker. Since Ms. Acker does not own Parcel no. 008-C-25, the Government could not have violated any of her civil rights.

JUDGMENT

For the reasons set forth above, the Court finds in favor of the Government and against Ms. Acker on all her claims as set forth in the Complaint.

ACCORDINGLY, it is ADJUDGED, ORDERED and DECREED that Ms. Mary Acker's claims are HEREBY DISMISSED. Judgment shall be entered in favor of the Government and against Ms. Acker as set forth above.

* * * *

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,	)	CRIMINAL CASE NO. 2021-1503
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOHNNY ARNOLD and MARCO IRONS,	)	
	)	
Defendants.	)	
_____	)	

ORDER DISMISSING CERTAIN CHARGES

Larry Wentworth
Associate Justice

Hearing: April 26, 2022
Decided: May 18, 2022

APPEARANCES:

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* * * *

HEADNOTES

Criminal Law and Procedure; Public Officers and Employees

Any person employed to perform a governmental function on the FSM's behalf or any department, agency or branch thereof, including, but not limited to, the President, Vice President, department heads and other government employees, legislators, judges, law enforcement officials, advisors and consultants, and allottees, but not including witnesses, is a public official and a public servant. FSM v. Arnold, 23 FSM R. 557, 566 (Chk. 2022).

Criminal Law and Procedure; Customs; Public Officers and Employees

Every customs officer is a law enforcement official employed to perform a governmental function – enforcement of the customs laws – on the FSM's behalf and is a public official and a public servant. FSM v. Arnold, 23 FSM R. 557, 566, 571 (Chk. 2022).

Criminal Law and Procedure

The two terms – "crimes" and "offenses" – are interchangeable. FSM v. Arnold, 23 FSM R. 557, 566 n.1 (Chk. 2022).

Criminal Law and Procedure – Sentence; Customs

No great disparity exists between penalties for Title 11 crimes and Title 54, chapter 2 customs offenses. FSM v. Arnold, 23 FSM R. 557, 567 (Chk. 2022).

Criminal Law and Procedure – Sentence

Maximum fines for Title 11 crimes are based on the crime's maximum possible term of imprisonment, and are listed separately in 11 F.S.M.C. 1201. FSM v. Arnold, 23 FSM R. 557, 567 n.2 (Chk. 2022).

Criminal Law and Procedure – Conspiracy; Customs

Title 54, chapter 2 imposes criminal liability on smugglers, importers (the person liable to pay the customs duties – the taxpayer or owner), and carriers of goods who violate its provisions, but usually not customs officers, who would not be charged under the tax code, with a possible exception of 54 F.S.M.C. 259(1), conspiracy to commit customs crimes like smuggling. A customs officer, who allegedly committed crimes related to his customs officer position, would properly be charged with crimes in Title 11, chapter 5, where the crimes that only public officials can commit, or that concern public administration or public

corruption, are generally found. FSM v. Arnold, 23 FSM R. 557, 568 (Chk. 2022).

Criminal Law and Procedure – Official Oppression

Official oppression relates to what are commonly known as civil rights crimes, i.e., occasions where policemen or other persons acting under color of official right subject a person to illegal arrest, detention, search, etc. The provision is broadly conceived to any situation where a person acting or purporting to act in an official capacity deprives another of any right, privilege, power, or immunity or infringes on any personal or property right, and many acts within this crime are independently criminal under some other provision. FSM v. Arnold, 23 FSM R. 557, 569 (Chk. 2022).

Criminal Law and Procedure – Official Oppression

Official oppression is a residual statute designed to reach official depredations that are not otherwise criminal but that nevertheless should be prosecuted as an abuse of authority. The statute against oppression discriminates between misbehavior involving the actor's official capacity and purely private wrongdoing by one who incidently may be a public servant. FSM v. Arnold, 23 FSM R. 557, 569 (Chk. 2022).

Criminal Law and Procedure – Official Oppression; Customs

Official oppression is not designed to address a public servant's wrongdoing that affects the ability of other public servants of similar rank in performing their duties. It generally addresses wrongful conduct directed towards members of the public. Since official oppression relates to civil rights crimes where a person acting in an official capacity deprives another of any right, privilege, power, or immunity or infringes on any personal or property right, it will not apply to one customs officer's clearance of a container whose inspection was assigned to other officers, because that officer did not deprive the other customs officers of any personal civil right, privilege, power, or immunity or infringe on any of their personal or property rights, but instead, prevented them from doing their job – from performing an assigned official duty to examine a container they were supposed to inspect, but had not yet inspected. FSM v. Arnold, 23 FSM R. 557, 569 (Chk. 2022).

Criminal Law and Procedure – Conflict; Criminal Law and Procedure – Obstruction; Customs

When an information alleges that a customs officer prevented other customs officers from performing their assigned official duty to examine container by wrongfully doing it himself, the information validly alleges that the customs officer obstructed the administration of law or other governmental function, and when the information further alleges that the customs officer and the importer are related and that the importer owned the undeclared goods, the information also validly alleges that the customs officer violated the conflict of interest statute. FSM v. Arnold, 23 FSM R. 557, 570 (Chk. 2022).

Criminal Law and Procedure – Compounding

A person commits the crime of compounding if he or she accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any national crime or information relating to such a crime. FSM v. Arnold, 23 FSM R. 557, 570 (Chk. 2022).

Criminal Law and Procedure – Compounding

The crime of compounding a crime is when one directly injured by the commission of a crime makes an agreement not to inform against or prosecute the offender in return for a reward. Generally, a person is guilty of compounding when he agrees, in consideration of money, property, or some other thing of value, to refrain from reporting or prosecuting the crime, or, if there is a prosecution, to refrain from participating therein as an informant or witness. FSM v. Arnold, 23 FSM R. 557, 570 (Chk. 2022).

Criminal Law and Procedure – Compounding

Compounding crime consists of the receipt of some property or other consideration in return for an agreement not to prosecute or inform on one who committed a crime. FSM v. Arnold, 23 FSM R. 557, 570 (Chk. 2022).

Criminal Law and Procedure – Compounding; Criminal Law and Procedure – Dismissal

When the alleged perpetrators of the charged crimes, are not the victim, informant, or witness, but are either a principal or an accomplice or an accessory, and are not victims or disinterested witnesses or informants, the charges against them of compounding will be dismissed. FSM v. Arnold, 23 FSM R. 557, 570 (Chk. 2022).

Criminal Law and Procedure – Accessory; Criminal Law and Procedure – Aiding and Abetting

Under FSM law, accessories, accomplices, aiders, abettors, and the like are all treated as principals to the crime. FSM v. Arnold, 23 FSM R. 557, 570 n.7 (Chk. 2022).

Criminal Law and Procedure – Falsification; Criminal Law and Procedure – Information

An allegation that the accused's purpose was to mislead the Custom and Tax Administration (by filing a false written customs declaration there), necessarily means that the accused intended to mislead one or more of the public servants employed there. FSM v. Arnold, 23 FSM R. 557, 571 (Chk. 2022).

Criminal Law and Procedure – Information; Criminal Law and Procedure – Prosecutors

Just as a prosecutor has wide discretion in determining who to, and whether to, prosecute, a prosecutor has similar discretion in determining what charges to file. FSM v. Arnold, 23 FSM R. 557, 571 (Chk. 2022).

Criminal Law and Procedure – Information; Criminal Law and Procedure – Prosecutors

When an act violates more than one criminal statute, the government may prosecute under either so long as it does not discriminate against any class of defendants. FSM v. Arnold, 23 FSM R. 557, 571 (Chk. 2022).

Criminal Law and Procedure – Information; Criminal Law and Procedure – Prosecutors

Absent congressional intent to the contrary, or a violation of the right to due process of the law, a prosecutor may chose between either of two statutes so long as it does not discriminate. The only exception is when Congress clearly intended that one statute supplant another; the fact that one statute is more specific than the other is not sufficient. FSM v. Arnold, 23 FSM R. 557, 572 (Chk. 2022).

Criminal Law and Procedure – Information; Criminal Law and Procedure – Prosecutors

At times, it may be wiser to choose to prosecute the more specific charge, but the prosecution is not required to always make the wisest choice. FSM v. Arnold, 23 FSM R. 557, 572 n.10 (Chk. 2022).

Criminal Law and Procedure – Information; Criminal Law and Procedure – Prosecutors

Statutes often overlap, and it is generally no defense to an indictment under one statute that the accused might have been charged under another, and the matter is necessarily and traditionally in the prosecuting attorney's discretion. Nor does the fact that one statute prescribes a felony and the other prescribes a misdemeanor affect the prosecutor's authority to choose among statutes. FSM v. Arnold, 23 FSM R. 557, 572 (Chk. 2022).

Criminal Law and Procedure – Information; Criminal Law and Procedure – Prosecutors

The general rule is that, even when two statutes cover the same crime and there is a difference in the penalty between the two statutes, the government is under no obligation to prosecute under the statute with the lesser penalty. It may choose to prosecute under either, and so long as the choice is clear and unequivocal the defendant has no right to complain. FSM v. Arnold, 23 FSM R. 557, 572 (Chk. 2022).

Criminal Law and Procedure – Information; Criminal Law and Procedure – Prosecutors

Just as a defendant has no constitutional right to elect which of two applicable statutes will be the basis of his prosecution, neither is he entitled to choose the penalty scheme under which he will be sentenced. That is within the prosecution's discretion. FSM v. Arnold, 23 FSM R. 557, 572 (Chk. 2022).

Criminal Law and Procedure – Information; Criminal Law and Procedure – Falsification; Customs

When the court can find no Congressional intent that the Title 54, chapter 2 offenses were meant to "supplant" the Revised Criminal Code crimes, a Title 11 falsification charge will not be dismissed on the ground that smuggling should have been charged instead. FSM v. Arnold, 23 FSM R. 557, 572 (Chk. 2022).

Courts; Judgments

A trial court decision is not a binding precedent or controlling law, but only persuasive authority. It is not binding precedent in either a different trial court, the same trial court, or even on the same judge in a different case. FSM v. Arnold, 23 FSM R. 557, 572 n.12 (Chk. 2022).

Criminal Law and Procedure – Information

The test for an information's sufficiency is whether, reading it and the affidavit of probable cause together, it is fair to the defendant to require him to defend on the basis of the charge as stated therein – whether the accused is given notice of the essential elements of the charges against him, with liberality the guide in testing an information's sufficiency in charging all of the crime's essential elements, although this applies to matters of form and not of substance. FSM v. Arnold, 23 FSM R. 557, 573 (Chk. 2022).

Criminal Law and Procedure – Information

Since an affidavit of probable cause should contain sufficient information in the form of factual details, not legal conclusions, to explain how probable cause exists for each charge, an information's supporting affidavit need not state the legal conclusion of exactly which statute(s) the information will charge were violated. But it should contain sufficient factual detail to explain how probable cause exists for each crime the information charges. The failure to name a particular crime in the supporting affidavit of probable cause is thus not, in itself, fatal to an information charging that crime so long as the crime's factual elements are set out in the affidavit. FSM v. Arnold, 23 FSM R. 557, 573 (Chk. 2022).

Criminal Law and Procedure – Attempt; Criminal Law and Procedure – Information

Since an attempt to commit a crime is a lesser included crime that merges with the greater ("target") crime if the attempt is successful, an affidavit, by implication, provides probable cause for an attempt if it provides probable cause for the alleged target crime. Thus, attempt does not need to be named in the affidavit of probable cause if the affidavit contains sufficient factual elements to establish probable cause for the greater or "target" crime. FSM v. Arnold, 23 FSM R. 557, 573 (Chk. 2022).

Criminal Law and Procedure – Conspiracy; Criminal Law and Procedure – Information; Criminal Law and Procedure – Solicitation

Since a solicitation charge will merge into a conspiracy charge when the person solicited agrees to the solicitation by acting on the request, an affidavit, by implication, usually provides probable cause for a solicitation charge if it provides probable cause for a conspiracy charge. Probable cause for a conspiracy count is sufficient if the affidavit supports the existence of an agreement, identifies the object towards which the agreement is directed, and an overt act. If it does that, the affidavit's omission of the word "conspiracy" is not fatal to an information's conspiracy charge. FSM v. Arnold, 23 FSM R. 557, 573 (Chk. 2022).

Criminal Law and Procedure – Mischief; Criminal Law and Procedure – Theft; Criminal Law and Procedure – Unauthorized Possession

Under Title 11, a "person" is any natural or legal person, including but not limited to, a government, corporation or unincorporated association, or other organization, and since a government is a legal person, the FSM government is "another person" that can be the victim of crimes such as theft, criminal mischief, and the unauthorized possession or removal of property. FSM v. Arnold, 23 FSM R. 557, 574 (Chk. 2022).

Criminal Law and Procedure – Theft

A person commits the crime of theft if he or she commits theft of any property in which another person has any legal, equitable, or possessory interest. FSM v. Arnold, 23 FSM R. 557, 574 (Chk. 2022).

Criminal Law and Procedure – Theft; Customs

An information that alleges that the property stolen by the accused was $6,862.20 in unpaid import taxes; that is, that the accused committed theft because he did not pay the taxes due on the undeclared goods, does not allege a theft because unpaid taxes are not the government's property until paid. FSM v. Arnold, 23 FSM R. 557, 574 (Chk. 2022).

Criminal Law and Procedure – Theft; Customs; Taxation

Taxes due are not the government's property before their remittance. Thus, persons, who did not pay their taxes, did not steal money that belonged to the government, but rather failed to make payments of taxes which were their personal obligations under the tax law. FSM v. Arnold, 23 FSM R. 557, 574 (Chk. 2022).

Criminal Law and Procedure – Fraud; Criminal Law and Procedure – Theft; Customs

By allegedly not reporting the goods' importation and not paying the customs duty thereon, an importer committed a fraud, not a theft, because the government never had ownership or possession of the tax money, constructively or otherwise. FSM v. Arnold, 23 FSM R. 557, 574 (Chk. 2022).

Customs; Debtors' and Creditors' Rights – Secured Transactions; Taxation – Tax Liens

The government has a statutory lien on imported goods because all duties imposed on imported goods, together with any penalties and interest thereon, constitute a lien on those goods having priority over all other claims and liens, except as provided in the Secured Transactions Act. FSM v. Arnold, 23 FSM R. 557, 574-75 (Chk. 2022).

Customs; Taxation – Tax Liens

The government has a lien that extends beyond the dutiable imported goods to all of an importer's personal property because an importer's personal liability is also secured by a lien on any personal property of that importer and has priority over all other claims and liens, except as provided in the Secured Transactions Act, and with the exception of liens imposed by 54 F.S.M.C. 135 (2). FSM v. Arnold, 23 FSM R. 557, 575 (Chk. 2022).

Criminal Law and Procedure – Theft; Customs; Taxation – Tax Liens

Neither the statutory lien on the importer's imported goods nor the statutory lien on an importer's personal property gives the national government a legal, equitable, or possessory interest in the tax money that the importer should have paid, but has not, for import duties on the undeclared goods. FSM v. Arnold, 23 FSM R. 557, 575 (Chk. 2022).

Criminal Law and Procedure – Theft; Customs

An importer who should have paid import duties on undeclared goods, but has not, has not committed theft by deception because a person commits theft by deception if he purposely obtains property of another by deception, and, while there may have been deception, unpaid taxes are not another person's (the FSM's) property until the tax money has either been remitted to the FSM or has been collected by an agent on its behalf. FSM v. Arnold, 23 FSM R. 557, 575 (Chk. 2022).

Criminal Law and Procedure – Dismissal; Criminal Law and Procedure – Theft

An importer's alleged failure to report the imported goods and to pay the tax thereon does not constitute a theft any more than a debtor's intentional failure to pay a debt (or a judgment) constitutes theft since the unpaid taxes were not government property, and therefore the court must dismiss theft charges against that importer and accomplice because the alleged facts do not state the elements of theft. FSM v. Arnold, 23 FSM R. 557, 575 (Chk. 2022).

Criminal Law and Procedure – Mischief; Customs

Since a person commits the crime of criminal mischief if he or she intentionally or recklessly: (a) causes any damage to property in which another person has any legal, equitable, or possessory interest; or

(b) causes another person by deception or threat to suffer any loss, when the government alleges that the accused committed this crime by causing the national government by deception to suffer loss of money in terms of unpaid import taxes due the FSM national government, it is charging the accused with criminal mischief under 11 F.S.M.C. 603(1)(b), not 603(1)(a). FSM v. Arnold, 23 FSM R. 557, 575 (Chk. 2022).

Criminal Law and Procedure – Mischief

Although the FSM omitted the word "tangible" from the statute when it adopted the criminal mischief provision, a holding that criminal mischief charges are limited to damage to tangible property is probably still a correct analysis for 11 F.S.M.C. 603(1)(a). Subsection 603(1)(b), however, is directed at such possibilities as expensive practical jokes and mischief causing the substantial interruption or impairment of public services such as public communication, transportation, supply of water, gas or power, or other public service, and, although not particularly directed to cover losses brought about by other deceptive (and false) documents, it is worded broadly enough to cover such deception and losses. FSM v. Arnold, 23 FSM R. 557, 576 (Chk. 2022).

Criminal Law and Procedure – Mischief; Criminal Law and Procedure – Prosecutors; Customs

Criminal mischief, when the loss is caused by deception, can extend beyond just expensive practical jokes and the substantial interruption or impairment of public services because 11 F.S.M.C. 603(1)(b) is broad enough to include the defendants' intentionally causing the government to suffer a loss by the deception of an importer's false customs declaration and a customs officer's wrongful clearance of the container, and it is within the prosecution's discretion to choose this statute to charge instead of the more specific customs statute. FSM v. Arnold, 23 FSM R. 557, 576-77 (Chk. 2022).

Criminal Law and Procedure – Unauthorized Possession

A person commits the crime of unauthorized removal of property if, knowing he or she does not have proper authority, he or she has in his or her possession, or has removed from its location any property, wherever situated, in which another person has any legal, equitable, or possessory interest. FSM v. Arnold, 23 FSM R. 557, 577 (Chk. 2022).

Criminal Law and Procedure – Unauthorized Possession; Customs

The unauthorized removal of property statute covers, among other things, crimes that in other jurisdictions are often called receiving stolen property. But the FSM statute is broader than that – broad enough to cover goods released from Customs control without proper authorization – receiving imported goods not properly released from customs control. FSM v. Arnold, 23 FSM R. 557, 577 (Chk. 2022).

Criminal Law and Procedure – Unauthorized Possession; Customs

Imported goods are subject to Customs control until the applicable duties are paid and the goods are released. The government has a "possessory" interest in imported goods because it has constructive custody of all imported goods until the applicable duties are paid and the goods are properly released. FSM v. Arnold, 23 FSM R. 557, 577 (Chk. 2022).

Criminal Law and Procedure – Attempt; Criminal Law and Procedure – Dismissal

Because an attempt to commit a crime is a lesser included crime that merges with the target crime if the attempt is successful, the court will not dismiss the attempt charges for those target crimes the court has denied a dismissal. FSM v. Arnold, 23 FSM R. 557, 578 (Chk. 2022).

Criminal Law and Procedure – Solicitation

A person commits the crime of solicitation if, with intent to promote or facilitate the commission of a national crime, he or she commands, encourages, or requests another person to engage in conduct or cause the result specified by the definition of the crime, which would be sufficient to establish complicity in the specified conduct or result. Of the three terms – commands, encourages, or requests – encourages is the most expansive and encompasses actors who bolster the fortitude of those who have already decided to commit crimes, so long as the encouragement is done with the requisite criminal purpose. FSM v. Arnold,

23 FSM R. 557, 578 (Chk. 2022).

Criminal Law and Procedure – Solicitation

Essentially, solicitation is an offer, request or invitation to another to commit a crime with the intent that the person solicited commit the crime. Solicitation is defined broadly to include requesting another to commit any offense. FSM v. Arnold, 23 FSM R. 557, 578 (Chk. 2022).

Criminal Law and Procedure – Solicitation

In the usual solicitation case, it is the solicitor's intention that the criminal result be directly brought about by the person he has solicited; that is, it is his intention that the crime be committed and that the other commit it as a principal, as where A asks B to kill C. FSM v. Arnold, 23 FSM R. 557, 579 (Chk. 2022).

Criminal Law and Procedure – Solicitation

When the information does not allege that the accused solicited anyone else to commit the crime for them, it is unfair to the accused to require them to defend this solicitation charge based on the information's allegations if the government is trying to allege that the accused solicited others, but makes no further allegations about any others; and if the government is alleging that one of the two accused solicited the other in order to form a conspiracy (since the government does charge conspiracy), it is unclear when the information does not allege that one solicited the other, or the other way around, although one of the two must have happened for there to have been a conspiracy, the solicitation charge will be dismissed because the information is insufficient to charge the solicitation crime's essential elements. The accused cannot be required to defend such a nebulous charge. FSM v. Arnold, 23 FSM R. 557, 579 (Chk. 2022).

Criminal Law and Procedure – Conspiracy; Criminal Law and Procedure – Solicitation

Solicitation may be thought of as an attempt to conspire, but a solicitation charge will merge into a conspiracy charge when the person solicited agrees to the solicitation by acting on the request. FSM v. Arnold, 23 FSM R. 557, 579 (Chk. 2022).

Criminal Law and Procedure – Conspiracy

When the events alleged in the information could not have occurred in the manner alleged without a criminal agreement – a conspiracy – between the two co-defendants since there had to have been an agreement of some kind between the two to effect the unlawful release of the undeclared goods, one of the co-defendants must have initially solicited the other for the agreement although no indication in the information, which of the two that might have been, the information is sufficient to charge that two committed the crime of conspiracy, and that charge will not be dismissed. FSM v. Arnold, 23 FSM R. 557, 579 (Chk. 2022).

Criminal Law and Procedure – Conspiracy

When the defendants by their acts pursued the same object, one performing one part and the other performing another part so as to complete it or with a view to its attainment, a court will be justified in concluding that they were engaged in a conspiracy to effect that object. FSM v. Arnold, 23 FSM R. 557, 579 (Chk. 2022).

* * * *

COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On February 24, 2022, the court heard motions to dismiss by defendant Marco Irons (filed January 10, 2022) and defendant Johnny Arnold (filed January 14, 2022). As explained below, the motions are granted in part and denied in part.

I. BACKGROUND

The government alleges that on July 1, 2021, Johnny Arnold, then an FSM customs revenue officer, willfully and without proper inspection and clearance, verbally and improperly authorized the release from the Transco dock on Weno of a container (TRHU2751669) belonging to Marco Irons, a Chuukese store owner, who made a false written declaration to the FSM Division of Customs and Tax Administration of the container's contents, omitting numerous goods, that resulted in the national government's loss of the import taxes (customs duties) that Irons should have paid on those undeclared goods. The government further alleges that Irons offered Arnold a pecuniary benefit for this act and that Arnold knew that the inspection and clearance of container TRHU2751669 had been assigned to other customs inspectors and knew that his conduct was improper. The government also alleges that Arnold and Irons are related.

Based on these allegations, the FSM charges Johnny Arnold with obstructing the administration of law or other governmental function, violating 11 F.S.M.C. 501 [Count 1]; compounding, violating 11 F.S.M.C. 504 [Count 2]; conflict of interest, violating 11 F.S.M.C. 512 [Count 3]; official oppression, violating 11 F.S.M.C. 514 [Count 4]; theft, violating 11 F.S.M.C. 602 [Count 5]; criminal mischief, violating 11 F.S.M.C. 603 [Count 6]; unauthorized possession or removal of property, violating 11 F.S.M.C. 604 [Count 7]; attempt to commit theft, criminal mischief, and unauthorized possession or removal of property, violating 11 F.S.M.C. 201(1) [Count 8]; solicitation, violating 11 F.S.M.C. 202 [Count 15]; and conspiracy, violating 11 F.S.M.C. 203(1) [Count 16].

Also, based on these allegations, the government charges defendant Marco Irons with unsworn falsification to authorities, violating 11 F.S.M.C. 524 [Count 9]; theft, violating 11 F.S.M.C. 602 [Count 10]; criminal mischief, violating 11 F.S.M.C. 603 [Count 11]; unauthorized possession or removal of property, violating 11 F.S.M.C. 604 [Count 12]; compounding, violating 11 F.S.M.C. 504 [Count 13]; attempt to commit theft, criminal mischief, and unauthorized possession or removal of property, violating 11 F.S.M.C. 201(1) [Count 14]; solicitation, violating 11 F.S.M.C. 202 [Count 15]; and conspiracy, violating 11 F.S.M.C. 203(1) [Count 16].

II. DEFENDANTS' MOTIONS

Defendant Irons moves to dismiss the charges against him on the ground that the information and its supporting affidavit of probable cause fail to state a valid violation of law by him. First, Irons contends that the information charges him with the crimes of unauthorized possession or removal of property, compounding, attempt, solicitation, and conspiracy, although those crimes are not named in the supporting affidavit. Next, Irons asserts that the information is replete with errors of fact. He further contends that, because the FSM national government is the victim of the alleged crimes, he cannot be charged with theft, under 11 F.S.M.C. 602, or criminal mischief under 11 F.S.M.C. 603, or unauthorized possession or removal of property under 11 F.S.M.C. 604 since the statutory definitions of those crimes require the victim to be "another person." Irons argues that the government is not a "person." Irons also contends that the allegations in the information and supporting affidavit are not sufficient to charge him with unsworn falsification to authorities because the statutory definition of that crime requires that the false statement or false impression be made "with purpose to mislead a public servant in performing his or her official duties," 11 F.S.M.C. 524(1), and the information alleges he committed the crime against the Custom and Tax Administration, Chuuk branch, which Irons asserts does not meet the definition of a public servant.

Defendant Arnold joins his co-defendant's motion and adds further grounds for dismissal of the charges against him. Arnold contends that he cannot be charged with any of the crimes in the information because the information's allegations all involve the importation of goods and the liability for taxes thereon. Arnold, relying on FSM v. Edwin, 8 FSM R. 543 (Pon. 1998), argues that he cannot be charged with violating any criminal statutes except those found in the Customs Act of 1996, 54 F.S.M.C. 211 *et seq.*, but none of the crimes he was charged with are found there, but are instead found in Title 11, the Revised Criminal Code. Arnold further contends that he cannot be charged with violating sections 501, 504, 512, and 514 of

Title 11 because those statutory provisions require a public official's involvement and neither he nor anyone at Customs and Tax with whom he or Irons dealt meets 11 F.S.M.C. 104(12)'s definition of a public official.

During the February 24, 2022 hearing, Irons orally joined Arnold's motion made on these additional grounds to the extent that they applied to him. The court will therefore have to consider all of the raised grounds for both defendants to the extent that they may apply to that defendant.

III. ANALYSIS

A. *Public Official and Public Servant*

Arnold first contends that neither he nor anyone at the Chuuk Customs and Tax office meets the statutory definition of a public official. That statute provides:

> "Public official" and "public servant" means any person elected, appointed or employed to perform a governmental function on behalf of the Federated States of Micronesia, or any department, agency or branch thereof, or any allottee as defined in the Financial Management Act of 1979 or any successor law, in any official function under or by authority of any such agency or branch of government. The terms include, but are not limited to, the President, Vice President, department heads and other government employees, legislators, judges, law enforcement officials, advisors and consultants, but do not include witnesses.

11 F.S.M.C. 104(12). Arnold argues that the statute's specific mention of high-level officials such as the President, Vice President, department heads, legislators, and judges indicates that Congress did not intend for the term "public official" to include low-level government employees such as himself or the other customs officers in the Customs and Tax office on Chuuk.

This view lacks merit. By its terms, the statutory definition is explicitly "not limited to" those high-level officials. It clearly includes "any person . . . employed to perform a governmental function on behalf of the Federated States of Micronesia, or any department, agency or branch thereof." *Id.* Further, it specifically includes "law enforcement officials." All customs officers are tasked with the enforcement of the customs laws and regulations. *See, e.g.*, 54 F.S.M.C. §§ 231(7), 235, 242, 243, 245, 254. Arnold was thus employed to perform a governmental function – enforcement of the customs laws – on the FSM's behalf. Therefore, he was a public official and a public servant, as were all the other customs officers.

In the court's view, Congress specifically listed high-level officials in the statute's definition to warn or to disabuse all those high-level officials of any thought that the terms "public official" and "public servant" might not include them. There should be no mistake. Every FSM national government employee is both a "public official" and a "public servant."

B. *Title 11, Chapter 5 Charges*

1. FSM v. Edwin *and Disparity in Punishment*

Arnold contends that he cannot be prosecuted under Title 11 because the information's allegations all involve the importation of goods and the import duties levied on those goods. Arnold urges the court to follow FSM v. Edwin, 8 FSM R. 543 (Pon. 1998), where the court held that a defendant alleged to have filed false gross revenue tax returns and to have failed to keep accurate records could not also be charged with the Title 11 offenses[1] of criminal mischief, or alternatively, theft against the government. *Id.* at 544-45. The

[1] The current Title 11 (Revised Criminal Code) now uses "crimes" instead of "offenses," while Title 54 still uses "offenses." The two terms are interchangeable. The court, in this order, will, from here on, use "crimes" for

Edwin court noted that the FSM had adopted an extensive tax code with civil and criminal penalties specifically applicable to tax crimes and that Congress, aware of the much harsher Title 11 penalties for criminal mischief (or theft), did not intend that the general criminal code should apply to tax code violations, but instead intended that the taxpayer-defendant should be charged only under the tax code. *Id.* at 549.

The government contends that Edwin is inapplicable because Edwin involved the gross revenue tax in Title 54, Chapter 1 (taxation of wages, salaries, and gross revenue) while this case involves customs duties imposed in Chapter 2 (duties and customs). It points out that, unlike Title 54, chapter 1, the chapter 2 criminal penalties are no harsher than those for the crimes Arnold is charged with.

The government is generally correct about the penalties' relative harshness. In Edwin, the maximum penalty for any gross revenue tax violation was one year imprisonment and a $1,000 fine, a misdemeanor, 54 F.S.M.C. 154, while a Title 11 criminal mischief or a theft charge had a maximum ten years imprisonment and a $100,000 fine[2] if the amount involved was over $5,000, 11 F.S.M.C. 603(4)(a); 11 F.S.M.C. 602(4)(a), or five years imprisonment and a $50,000 fine if the amount was between $1,000 and $5,000, both felonies, 11 F.S.M.C. 603(4)(b); 11 F.S.M.C. 602(4)(b), with misdemeanors for lesser amounts. This was a great disparity. The Edwin court emphasized this when it cautioned that its decision

> must not be read as a blanket statement that a criminal information may only charge violations of one particular code. Instead, it should be viewed in the limited context in which it was issued: a case involving conduct specifically addressed by the tax code (which has comprehensive civil and criminal penalties established for a clearly stated purpose) where the government also seeks to charge the defendant with alternative violations of criminal code sections providing for criminal penalties *up to ten times greater* than those allowed under the tax code and which were not clearly intended to apply to tax crimes.

Edwin, 8 FSM R. at 546 (emphasis in original).

That great disparity does not exist here. Most customs duty violations that could be charged in this case are felonies. *See* 54 F.S.M.C. 260(3) (maximum 5 years imprisonment, $10,000 fine); 54 F.S.M.C. 259(3) (same); 54 F.S.M.C. 234(6) (same). Lesser included miscellaneous customs offenses constitute misdemeanors 54 F.S.M.C. 264(2) (1 year imprisonment, $1,000 fine).[3]

Arnold is charged with misdemeanors, 11 F.S.M.C. 501 (1 year imprisonment, $5,000 fine); 11 F.S.M.C. 504 (same), and felonies, 11 F.S.M.C. 512 (5 years imprisonment, $50,000 fine); 11 F.S.M.C. 514 (10 years imprisonment, $100,000 fine, and disqualification from holding national government office); 11 F.S.M.C. 602 (varies based on theft amount); 11 F.S.M.C. 603 (varies based on property's value); 11 F.S.M.C. 604 (varies based on property's value); 11 F.S.M.C. 201(1) (one-half of sentence for crime attempted); 11 F.S.M.C. 202 (one-half of sentence for crime solicited); and 11 F.S.M.C. 203(1) (one-half of sentence for crime conspired).

Of the two Title 11, chapter 5 charges against Irons, one is a misdemeanor, 11 F.S.M.C. 504 (1 year imprisonment, $5,000 fine), and the other is a felony, 11 F.S.M.C. 524(3) (5 years imprisonment, $50,000 fine), with a penalty similar to that for customs duty violations, 54 F.S.M.C. 260(3) (5 years imprisonment,

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Title 11 provisions and "offenses" for Title 54 provisions. No inference is to be drawn from this.

[2] The maximum fines for Title 11 crimes are based on the maximum possible term of imprisonment for the crime, and are listed separately in 11 F.S.M.C. 1201.

[3] These miscellaneous offenses may give prosecutors the discretion to charge a lesser included misdemeanor instead of a felony found in Sections 234, 259, or 260 when the transgression is less serious or the proof of an element is lacking.

$10,000 fine); 54 F.S.M.C. 259(3) (same); 54 F.S.M.C. 234(6) (same). The other charges against Irons also do not carry disproportionate penalties: 11 F.S.M.C. 602 (varies based on amount of theft); 11 F.S.M.C. 603 (varies based on property's value); 11 F.S.M.C. 604 (varies based on property's value); 11 F.S.M.C. 201(1) (one-half of sentence for crime attempted); 11 F.S.M.C. 202 (one-half of sentence for crime solicited); and 11 F.S.M.C. 203(1) (one-half of sentence for crime conspired).

The Edwin court's reasoning on the great punishment disparity for chapter 1 gross revenue tax offenses misses the mark for chapter 2 custom duty offenses.

2. *Arnold and Title 11, Chapter 5 Crimes Generally*

There is, however, a more obvious reason to reject Arnold's argument that the Edwin rationale applies to the charges against him. Title 54, chapter 2 imposes criminal liability on smugglers, importers (the person liable to pay the customs duties – the taxpayer or owner), and carriers of goods who violate its provisions. *See* 54 F.S.M.C. 260. Arnold was not alleged to be any of these. Arnold was a customs officer. Customs officers inspect, assess and collect duty on, and release (or seize for the government) imported goods.

The government also could not prosecute Arnold under 54 F.S.M.C. 234(5). That statute imposes criminal liability on "[any person who, otherwise than by authority and in accordance with this chapter, moves, alters or interferes with goods subject to the control of Customs, is guilty of a National offense." Arnold, however, is alleged to have moved the container using his customs officer authority and in purported accordance with Customs control.

Arnold thus could not have been charged under the tax code, with a possible exception. Someone acting as a customs officer might be charged under 54 F.S.M.C. 259(1), because it imposes criminal liability on those who "willfully conspire for the purpose of . . . (c) smuggling." But since 54 F.S.M.C. 261 provides that "[any person who willfully attempts, solicits, or conspires to commit any National offense defined in this chapter [2] shall be subject to the penalties provided in chapter 2 of title 11 of this code except where otherwise provided in this chapter," Arnold probably could have been charged with conspiracy under either 11 F.S.M.C. 203(1) or 54 F.S.M.C. 259(1)(c). The government chose 11 F.S.M.C. 203(1).[4]

Arnold was a public official (a customs officer) when he allegedly committed crimes related to his customs officer position. It is thus proper that he be charged with crimes in Title 11, chapter 5, where the crimes that only public officials can commit, or that concern public administration or public corruption, are generally found. He could not be charged with Title 54, chapter 2 tax code offenses. This should make sense. Since Arnold was not a would-be taxpayer, the government should not be required to charge him exclusively under the tax code.

The court must therefore reject Arnold's contention that Edwin precludes charging him with violating Title 11, Sections 501, 504, 512, and 514.

3. *Whether Information Validly Alleges Violations of Title 11, Chapter 5*

Arnold and Irons contend that the information does not state valid violations of law by them. The court first considers this for the Title 11, chapter 5 charges.

[4] Interestingly, the maximum sentence for a 54 F.S.M.C. 259 conspiracy, five years imprisonment and a $10,000 fine, 54 F.S.M.C. 259(3), is generally higher than the maximum sentence for an 11 F.S.M.C. 203(1) conspiracy, which is only "one-half the maximum sentence which is provided for the most serious crime that was the object of the . . . conspiracy," 11 F.S.M.C. 204(2), which, for most Title 11, chapter 5 felonies, would only be 2½ years imprisonment but a $25,000 fine.

a. *Arnold and the Crime of Official Oppression*

Arnold is charged with official oppression. This crime is committed when

> (1) A person acting or purporting to act in an official capacity on behalf of the Federated States of Micronesia, or taking advantage of such actual or purported capacity, commits a crime if, knowing that his or her conduct is illegal, he or she:
>
> > (a) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or
> >
> > (b) denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

11 F.S.M.C. 514. The information alleges that Arnold, by unlawfully inspecting and releasing the container himself, denied and impeded the customs officers, to whom the container's inspection was assigned, from exercising their alleged rights, privileges, and power to inspect that container.

Section 514 is taken, virtually verbatim, from Section 243.1 of the Model Penal Code. The Model Penal Code Explanatory Note for Section 243.1 explains that

> Section 243.1 relates to what are commonly known as civil rights offenses, i.e., occasions where policemen or other persons acting under color of official right subject a person to illegal arrest, detention, search, etc. The provision is broadly conceived to any situation where a person acting or purporting to act in an official capacity deprives another of any right, privilege, power, or immunity or infringes on any personal or property right. . . .

"Many acts within this offense are independently criminal under some other provision . . . . Section 243.1 is thus a residual statute designed to reach official depredations that are not otherwise criminal but that nevertheless should be prosecuted as an abuse of authority." 3 MODEL PENAL CODE AND COMMENTARIES § 243.1 cmt. 2, at 293 (1980). This "[l]egislation against oppression discriminates between misbehavior involving the actor's official capacity and purely private wrongdoing by one who incidently may be a public servant." *Id.* § 243.1 cmt. 3, at 295 (e.g., altercation between two on-duty policemen leading to an assault by one on the other raises only private wrongdoing issues while a policeman's assault on a prisoner raises abuse of authority issues).

Arnold was undoubtedly acting in his official capacity when he cleared the container. The information further alleges that Arnold knew his conduct was illegal. The remaining element is whether Arnold denied or impeded others in the exercise or enjoyment of any right, privilege, power, or immunity of theirs. The court concludes that he did not.

Section 514 was not designed to address a public servant's wrongdoing that affects the ability of other public servants of similar rank in performing their duties. It generally addresses wrongful conduct directed towards members of the public.[5] Since Section 514(1) relates to civil rights crimes where a person acting in an official capacity deprives another of any right, privilege, power, or immunity or infringes on any personal or property right, it would not apply here. Arnold did not deprive the other customs officers of any personal civil right, privilege, power, or immunity or infringe on any of their personal or property rights. Instead, Arnold prevented them from doing their job – from performing an assigned official duty to examine

[5] The court will not now consider whether a superior public official could, in some instance of official (mis)conduct, commit the crime of official oppression when that public official's abuse of official authority is directed towards a subordinate. That is not this case.

a container they were supposed to inspect, but had not yet inspected.

Thus, the information does not validly allege that Arnold violated 11 F.S.M.C. 514(1). Count 4, official oppression, is therefore dismissed.

b. *Arnold and Obstruction and Conflict of Interest*

The government alleges that Arnold prevented the other customs officers from performing their assigned official duty to examine the container. The information thus validly alleges that Arnold violated 11 F.S.M.C. 501, by his obstructing the administration of law or other governmental function. Count 1 will therefore not be dismissed. And, since the allegations include that Arnold and Irons are related and that Irons owned the undeclared goods, the information also validly alleges that Arnold violated 11 F.S.M.C. 512(2), conflict of interest. Therefore, Count 3 also will not be dismissed.

c. *Arnold and Irons and the Compounding Crime*

Irons and Arnold are both charged with the crime of compounding. A person commits the crime of compounding "if he or she accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any national crime or information relating to such a crime . . . ." 11 F.S.M.C. 504(1). The government does not allege that either Irons or Arnold accepted or agreed to accept from anyone else (or that anyone else offered them) a pecuniary benefit to not report [their own(!)] alleged crimes.

"The offense of compounding a crime is the making by one directly injured by the commission of a crime of an agreement not to inform against or prosecute the offender in return for a reward." 15A AM. JUR. 2D *Compounding Crimes* § 1, at 767 (1976). Generally, "a person is guilty of compounding . . . when he agrees, in consideration of money, property, or some other thing of value, to refrain from reporting or prosecuting the [crime], or, if there is a prosecution, to refrain from participating therein as an informant or witness." 4 CHARLES E. TORCIA, WHARTON'S CRIMINAL LAW § 573, at 287 (15th ed. 1996). "Compounding crime consists of the receipt of some property or other consideration in return for an agreement not to prosecute or inform on one who committed a crime." 2 WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., SUBSTANTIVE CRIMINAL LAW § 6.9(c), at 176 (1986).

That did not happen here. Irons is the alleged perpetrator of the charged crimes, not a victim,[6] informant, or witness. Likewise, Arnold was an alleged participant in the charged crimes, either as a principal or as an accomplice or an accessory,[7] and was not a victim or disinterested witness or informant. The information and supporting affidavit therefore do not allege facts that would constitute the elements of the crime of compounding. Accordingly, Counts 13 and 2, charging Irons and Arnold, respectively, with compounding are dismissed.

d. *Irons and Crime of Falsification*

Irons is charged with one other Title 11, chapter 5 crime, falsification.

I. *Public Servant*

Irons contends that since the statute requires that a false statement or false impression be made "with purpose to mislead a public servant in performing his or her official duties," 11 F.S.M.C. 524(1), the

[6] The victim of the alleged crimes is, of course, the national government.

[7] Under FSM law, accessories, accomplices, aiders, abettors, and the like are all treated as principals to the crime. 11 F.S.M.C. 301(1)(d).

information is deficient because it alleges that his purpose was to mislead the Custom and Tax Administration, Chuuk branch, which Irons asserts does not meet the definition of a public servant.

As noted above, *supra* part III.A., every FSM national government employee is a "public official" and a "public servant." That the information alleges that Irons intended to mislead the Chuuk branch of the Custom and Tax Administration (by filing a false written customs declaration there), necessarily means that Irons intended to mislead one or more of the public servants employed there. This contention must therefore be rejected.

ii. *Falsification Crime or Tax Code Offense?*

By joining Arnold's motion, Irons also contends that he cannot be prosecuted under 11 F.S.M.C. 524 because it is not a tax code provision and he is alleged to have underpaid his import taxes. The government's opposition remains the same. But unlike Arnold, Irons is the importer who would be liable to pay the import duties on the allegedly undeclared goods.[8] He could have been charged under Title 54.

Presumably, Irons expects that he should have been charged under either 54 F.S.M.C. 260 (smuggling or otherwise unlawfully importing), a felony, or 54 F.S.M.C. 264(1)(a) (evading any duty that is payable); 54 F.S.M.C. 264(1)(c) (willfully making an untrue statement in a document or declaration produced to a customs officer); 54 F.S.M.C. 264(1)(d) (willfully producing to a customs officer a document or declaration containing an untrue statement); 54 F.S.M.C. 264(1)(e) (willfully misleading a customs officer), all misdemeanors, instead of 11 F.S.M.C. 524 (unsworn falsification to authorities), a felony. While these crimes and offenses all overlap, each generally requires proof that the others do not.

For example, smuggling requires an intent to defraud the FSM, but does not require anything in writing. Section 264(1)(a) requires only the evasion of a customs duty, but no particular intent and by no particular means. Section 264(1)(c) requires that the defendant make an untrue statement but does not require any further intent to mislead or cause loss. Section 264(1)(d) requires only an untrue statement be contained in a document the defendant produced but no further intent to mislead or cause loss. And Section 264(1)(e) requires only that the defendant mislead a customs officer in a way likely to affect the discharge of the officer's duty. But 11 F.S.M.C. 524(1)(a) requires a misleading or false writing made with the purpose to mislead a public servant in performing his or her official function, but not necessarily causing a provable loss to the government.[9] The government chose to prosecute under 11 F.S.M.C. 524(1)(a).

Just as a prosecutor has wide discretion in determining who to, and whether to, prosecute, FSM v. Fritz, 14 FSM R. 548, 552 (Chk. 2007); FSM v. Wainit, 11 FSM R. 1, 8 (Chk. 2002); Nix v. Ehmes, 1 FSM R. 114, 126 (Pon. 1982), a prosecutor has similar discretion in determining what charges to file. *See* United States v. Batchelder, 442 U.S. 114, 124, 99 S. Ct. 2198, 2204, 60 L. Ed. 2d 755, 765 (1979). "[W]hen an act violates more than one criminal statute, the Government may prosecute under either so long as it does not discriminate against any class of defendants." *Id.* at 123-24, 99 S. Ct. at 2204, 60 L. Ed. 2d at 764 (government could choose between two statutes barring felons from possessing firearms which statute to prosecute under even though one had a higher maximum sentence).

[8] "If any imported goods are removed, whether legally or illegally . . . before payment of the full and correct duties thereon, the importer of the goods shall be personally liable for the payment of any duties not so paid, together with any penalties and interest thereon." 54 F.S.M.C. 225.

[9] One alternative subsection of § 524, does require that the defendant commit the act for "any pecuniary or other benefit," 11 F.S.M.C. 524(1)(b), which implies a loss by someone else (the government?). But the information's language – "Irons made a written false statement which he does not believe to be true with [the] purpose to mislead . . . in performance of their official functions," Criminal Information Count 9, clearly shows that Irons is being prosecuted under 11 F.S.M.C. 524(1)(a), and not any of the other three alternative 524(1) subsections.

> Absent congressional intent to the contrary, or a violation of the right to due process of the law, a prosecutor "may chose between either of two statutes so long as it does not discriminate. The only exception arises where Congress clearly intended that one statute supplant another; the fact that one statute is more specific than the other is not sufficient."

United States v. Sherman, 150 F.3d 306, 318 (3d Cir. 1998) (quoting United States v. Hopkins, 916 F.2d 207, 218 (5th Cir. 1990)).[10] Statutes often overlap, and "'it is generally no defense to an indictment under one statute that the accused might have been charged under another, and the matter is necessarily and traditionally in the discretion of the prosecuting attorney.'" State v. Mendonca, 711 P.2d 731, 734 (Haw. 1985) (quoting State v. Rabago, 686 P.2d 824, 826 (Haw. 1984)).

"Nor does the fact that one statute prescribes a felony and the other prescribes a misdemeanor affect the prosecutor's authority to choose among statutes." United States v. Hopkins, 916 F.2d 207, 218 (5th Cir. 1990) (no congressional intent that misdemeanor election laws were meant to supplant general fraud felony laws).

> Even where there are two statutes covering the same crime, and there is a difference in the penalty between the two statutes, the [government] is under no obligation to prosecute under the statute with the lesser penalty. It may choose to prosecute under either, and so long as the choice is clear and unequivocal the defendant has no right to complain. This is the general rule . . . .

Cumbest v. State, 456 So. 2d 209, 222 (Miss. 1984). Irons thus has no right to choose which statute he should be prosecuted under or whether he should be prosecuted for a felony or a misdemeanor. "Just as a defendant has no constitutional right to elect which of two applicable statutes shall be the basis of his indictment and prosecution, neither is he entitled to choose the penalty scheme under which he will be sentenced." Batchelder, 442 U.S. at 125, 99 S. Ct. at 2205, 60 L. Ed. 2d at 766. That is within the prosecution's discretion.

The Edwin court based its ruling restricting the government to prosecuting Edwin only for the Title 54, chapter 1 tax offenses because Congress had created a comprehensive tax code with civil and criminal penalties; because the chapter 1 tax offenses were all misdemeanors while the general criminal code charges were serious felonies; and because the Edwin court concluded that Congress intended for chapter 1 to "supplant" the general criminal code wherever Title 54, chapter 1 applied. Edwin, 8 FSM R. at 546-48.

The court finds no such Congressional intent in Title 54, chapter 2. Chapter 2 is not as comprehensive as chapter 1. It does not contain civil penalties. Its offenses are all felonies, with the exception of the 54 F.S.M.C. 264 miscellaneous offenses. Chapter 2 does not "supplant" the Revised Criminal Code.[11] Furthermore, Edwin is not a binding precedent. The court is not compelled to follow it.[12]

Accordingly, the motion to dismiss the falsification charge is denied.

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[10] At times, it may be wiser to choose to prosecute the more specific charge, but the prosecution is not required to always make the wisest choice.

[11] The Revised Criminal Code was enacted in 2001, well after the enactment of the Customs Act of 1996. If Congress intended that the Customs Act of 1996 "supplant" any of the Revised Criminal Code, Congress could have said so when it enacted the Revised Criminal Code.

[12] A trial court decision is not a binding precedent or controlling law, but only persuasive authority. Setik v. Mendiola, 21 FSM R. 537, 560-61 (App. 2018). A trial court decision is not binding precedent in either a different trial court, the same trial court, or even on the same judge in a different case. Robert v. Chuuk Public Utility Corp., 23 FSM R. 44, 51-52. (Chk. 2020).

C. *Title 11, Chapter 6 Charges*

The government contends that crimes in Title 11, chapter 6 (crimes against persons and property) are also appropriate charges. It charges Arnold and Irons with theft, 11 F.S.M.C. 602; criminal mischief, 11 F.S.M.C. 603; and unauthorized possession or removal of property, 11 F.S.M.C. 604 (and the lesser crimes of attempt, solicitation, and conspiracy to commit those three crimes).

Arnold and Irons contend that these charges must be dismissed because they were not mentioned by name in the affidavit of probable cause; because these crimes require the victim to be "another person" and the alleged victim, the FSM, is not a "person"; because the alleged facts do not state the elements of the crime; and because any crimes should have been charged under chapter 2 of Title 54.

1. *Not Named in the Supporting Affidavit of Probable Cause*

Irons and Arnold contend that the court must dismiss the charges of unauthorized possession or removal of property, compounding,[13] attempt, solicitation, and conspiracy because those crimes are not named in the affidavit of probable cause, and the information is thus deficient with respect to those crimes.

The test for an information's sufficiency is whether, reading it and the affidavit of probable cause together, it is fair to the defendant to require him to defend on the basis of the charge as stated therein – whether the accused is given notice of the essential elements of the charges against him, with liberality the guide in testing an information's sufficiency in charging all of the crime's essential elements, although this applies to matters of form and not of substance. FSM v. Itimai, 20 FSM R. 232, 234 (Pon. 2015); FSM v. Ehsa, 20 FSM R. 106, 108-09 (Pon. 2015); FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011); FSM v. Sorim, 17 FSM R. 515, 519-20 (Chk. 2011); FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011); FSM v. Esefan, 17 FSM R. 389, 394 (Chk. 2011); FSM v. Kansou, 15 FSM R. 373, 380-81 (Chk. 2007); FSM v. Xu Rui Song, 7 FSM R. 187, 189 (Chk. 1995).

Since an affidavit of probable cause "should contain sufficient information in the form of factual details, not legal conclusions, to explain how probable cause exists for each charge," State v. Ingram, 165 A.3d 797, 810 (N.J. 2017) (search warrant), an information's supporting affidavit need not state the legal conclusion of exactly which statute(s) the information will charge were violated. But it should contain sufficient factual detail to explain how probable cause exists for each crime the information charges. The failure to name a particular crime in the supporting affidavit of probable cause is thus not, in itself, fatal to an information charging that crime so long as the crime's factual elements are set out in the affidavit.

Furthermore, since an attempt to commit a crime is a lesser included crime that merges with the greater ("target") crime if the attempt is successful, Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015), an affidavit, by implication, provides probable cause for an attempt if it provides probable cause for the alleged target crime. Thus, attempt does not need to be named in the affidavit of probable cause if the affidavit contains sufficient factual elements to establish probable cause for the greater or "target" crime. Likewise, since a solicitation charge will merge into a conspiracy charge when the person solicited agrees to the solicitation by acting on the request, FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011), an affidavit, by implication, usually provides probable cause for a solicitation charge if it provides probable cause for a conspiracy charge. Probable cause for a conspiracy count is sufficient if the affidavit supports the existence of an agreement, identifies the object towards which the agreement is directed, and an overt act. *See* FSM v. Sorim, 17 FSM R. 515, 523 (Chk. 2011). If it does that, the affidavit's omission of the word "conspiracy" is not fatal to an information's conspiracy charge.

[13] The compounding charges are already dismissed. *See supra* part III.B.3.c.

2. *The FSM Is "Another Person"*

Irons and Arnold contend that neither can be charged with violating 11 F.S.M.C. 602 (theft), 11 F.S.M.C. 603 (criminal mischief), and 11 F.S.M.C. 604 (unauthorized possession or removal of property) because each of those statutes requires that "another person" be the victim. They assert that the alleged victim, the government, is not "another person."

This contention lacks merit. In Title 11, a "person" is defined as "any natural or legal person, including but not limited to, a government, corporation or unincorporated association, or other organization." 11 F.S.M.C. 104(9). A government is a legal person. Therefore the FSM government is "another person."

3. *Whether the Alleged Facts State the Elements of the Charged Crimes*

a. *Theft*

Arnold and Irons are both charged with theft. "A person commits the crime of theft if he or she commits theft of any property . . . in which another person has any legal, equitable, or possessory interest." 11 F.S.M.C. 602(1). The information alleges that the property stolen by Arnold and Irons was $6,862.20 in unpaid import taxes that belonged to the national government; that is, that Irons and Arnold committed theft because Irons did not pay the taxes due on the undeclared goods.

This does not allege a theft. While the government may unquestionably be another person, tax money is not property owned by the government until the taxes are paid, that is, when the tax money has either come into the government's possession, or has been collected by an agent on its behalf and held for it. Unpaid taxes are not government's property until paid.

As explained by New York's highest court, "[t]he taxes due were not property of the [government] prior to their remittance. Accordingly, defendants did not steal money that belonged to [the government], but rather failed to make payments of taxes which were their personal obligations under the Tax Law." People v. Nappo, 729 N.E.2d 698, 700 (N.Y. 2000) (larceny convictions reversed because the state did not own the taxes which defendants were required to pay to New York on the importation and distribution of motor fuel bought in another state; defendants' failure to pay the taxes was not stealing from the state; since defendants did not steal money belonging to the state but rather failed to make the tax payments that were their personal obligations, larceny charges could not be supported).

Nor were the Nappo defendants "in possession, by trust or otherwise, of monies owned by the [government]." *Id.* "The defendants' failure to report their fuel importation and pay taxes due thereon did not constitute a taking, obtaining, or withholding of moneys that belonged to the State, any more than a debtor's intentional failure to pay a debt would constitute larceny of the creditor's moneys." Porcelli v. United States, 303 F.3d 452, 456 (2d Cir. 2002) (discussing Nappo). "They had committed a fraud, but not a larceny, but larceny was the crime charged." *Id.* at 457; *see also* State v. Lau, 300 P.3d 838, 844-46 (Wash. Ct. App. 2013) (underreporting taxable income and underpaying taxes does not constitute theft of tax revenues).

This case is similar. By allegedly not reporting the goods' importation and not paying the customs duty thereon, Irons committed a fraud, not a theft, but theft is the crime charged. The government never had ownership or possession of the tax money, constructively or otherwise. Smuggling under 54 F.S.M.C. 260(1) may have been an appropriate charge because smuggling is "any importation or . . . attempted importation . . . with the intent to defraud the FSM," 54 F.S.M.C. 212(33). But it was not charged. Theft was.

The government may argue that it had an equitable interest in the goods that Irons and Arnold removed from Customs control because the government had a tax lien on those goods. The government has a statutory lien on imported goods. "All duties imposed on goods under this chapter, together with any

penalties and interest thereon, shall constitute a lien on those goods having priority over all other claims and liens, except as provided in the Secured Transactions Act . . . ." 54 F.S.M.C. 224. The government also has a lien that extends beyond the dutiable imported goods to all of the importer's personal property. "The personal liability of an importer provided for in this chapter shall be secured by a lien on any personal property of that importer having priority over all other claims and liens, except as provided in the Secured Transactions Act, and with the exception of liens imposed pursuant to subsection (2) of section 135 of this title . . . ." 54 F.S.M.C. 226.

But neither lien on the importer's personal property and goods gives the national government a legal, equitable, or possessory interest in the tax money that the importer should have paid, but has not, for import duties on the undeclared goods. Lau, 300 P.3d at 845-46 (theft conviction overturned because statutory tax lien on taxpayer's real and personal property could not support a theft of tax revenues charge when taxes were underreported and underpaid).

If the government wished to charge Irons directly for not paying the undeclared goods' import duty that he was personally obligated to pay, 54 F.S.M.C. 225, it could have charged Irons with smuggling, 54 F.S.M.C. 260(1), because Irons's alleged intent was to defraud the FSM of that customs duty, and also charged Irons with any of the various miscellaneous offenses under 54 F.S.M.C. 264(1) that might apply. Arnold might then have been charged as a co-conspirator or an aider or abetter to the smuggling.

The government might also argue that Arnold and Irons both committed theft by deception. The court cannot agree. The allegations against Arnold and Irons do not fall within the statutory definition of theft by deception. That is because "[a] person commits theft [by deception] if he purposely obtains property of another by deception." 11 F.S.M.C. 601(9)(a). Once again, while there may have been deception, unpaid taxes are not the FSM's property until the tax money has either been remitted to the FSM or has been collected by an agent on its behalf.

The Porcelli court's reasoning is sound. Irons's alleged failure to report the imported goods and to pay the tax thereon does not constitute a theft any more than a debtor's intentional failure to pay a debt (or a judgment) constitutes theft. Porcelli, 303 F.3d at 456. Since the unpaid taxes were not government property, the court must dismiss the theft charges against Arnold and Irons, Counts 5 and 10 respectively, because the alleged facts do not state the elements of theft.

b. *Criminal Mischief*

Arnold and Irons are both charged with criminal mischief. "A person commits the crime of criminal mischief if he or she intentionally or recklessly: (a) causes any damage to property in which another person has any legal, equitable, or possessory interest; or (b) causes another person by deception or threat to suffer any loss." 11 F.S.M.C. 603(1).

Since the government alleges that Arnold and Irons committed this crime by causing the national government "by deception to suffer loss of money in terms of import taxes belonging to the FSM National Government," Criminal Information ("Information") Counts 6, 11 (Sept. 27 2021), it is charging Arnold and Irons with criminal mischief under 11 F.S.M.C. 603(1)(b), not 603(1)(a). The deception the government alleges is the false customs declaration by Irons and Arnold's customs clearance of the container.

The Edwin court considered "the Model Penal Code's treatment of criminal mischief [to be] derive[d] from crimes against tangible property . . . ." Edwin, 8 FSM R. at 549. It therefore concluded that the criminal mischief statute contemplated punishment only "for causing damage to tangible property *not* for evading taxes." *Id.* (emphasis in original). Although the FSM omitted the word "tangible" from the statute when it adopted the criminal mischief provision, the Edwin court's analysis is probably still correct for 11 F.S.M.C. 603(1)(a). Subsection 603(1)(a) is otherwise a condensation of Model Penal Code § 220.3(1)(a) and § 220.3(1)(b), which in turn were derived from the common law crimes of malicious mischief and related

statutory offenses and were "limited to 'tangible property.'" 3 MODEL PENAL CODE AND COMMENTARIES § 220.3 cmt. 2, at 42-44 (1980).[14]

Subsection 603(1)(b), however, is derived almost verbatim ("pecuniary" modifying the word "loss" is omitted) from Model Penal Code § 220.3(1)(c). The Model Penal Code's drafters noted that "[n]o general provision corresponding to Subsection (1)(c) was found in prevailing law at the time the Model Code was drafted. The subsection is directed at such possibilities as expensive 'practical jokes' . . . ." 3 MODEL PENAL CODE AND COMMENTARIES § 220.3 cmt. 6, at 49 (1980) (giving examples). Model Penal Code Subsection (1)(c) is also directed at mischief causing the substantial interruption or impairment of public services such as "public communication, transportation, supply of water, gas or power, or other public service." *Id.* cmt. 7, at 50-51.

But Model Penal Code § 220.3(1)(c) and 11 F.S.M.C. 603(1)(b) are both worded more broadly than to cover just expensive practical jokes and the substantial interruption or impairment of public services. Although not particularly directed to cover losses brought about by other deceptive (and false) documents, it is worded broadly enough to cover such deception and losses.

Although a few jurisdictions have adopted Model Penal Code § 220.3(1)(c), the court could find only two reported cases that even discussed what deception in a criminal mischief statute derived from Subsection (1)(c) might entail.

In Moore v. State, 550 N.E.2d 318, 320 (Ind. 1990), when the appellant, who had been convicted of forgery for cashing a bogus check, argued that the jury should have been instructed that it could have instead convicted him of criminal mischief for causing another "to suffer pecuniary loss by deception," the appellate court stated that "[i]n the broadest sense any crime against property could come within this definition," but, to support giving the requested instruction, the evidence had to have been capable of being interpreted so that the lesser crime (criminal mischief) was committed while the greater crime of forgery was not and the evidence in Moore was capable of only two interpretations – either forgery, the only crime charged, was committed or it was not.

Bartruff v. State, 553 N.E.2d 485, 488 (Ind. 1990), also involved a defendant's rejected jury instruction on a lesser included crime of criminal mischief by "causing another to suffer pecuniary loss by deception." In Bartruff, one defendant contended that the evidence could have been construed to show that he believed that the burglary was an "insurance job" so that the persons burglarized could collect from their insurance company. The Bartruff court appeared to agree that criminal mischief would include defrauding an insurance company by causing it a pecuniary loss by deception, but rejected the defendant's argument because "the felonious intent charged" in the information was "the intent to deprive those in lawful possession of property on the [burglarized] premises of the value and use of such property, and not to deprive insurers of their money." *Id.*

These two cases, as well as the statute's plain language, stand for the principle that criminal mischief, when the loss is caused by deception, can extend beyond just expensive practical jokes and the substantial

[14] The drafters of the Model Penal Code explained that:

> The reason for limiting this offense to tangible property, and thus excluding contract rights, choses-in-action, and other similar interests in or claims to property, is that Subsections (1)(a) and (1)(b) are aimed at acts of physical destruction or tampering. Moreover, broadening the concept of "property" in this context would open the possibility of prosecution for criminal mischief in cases of unfair, or even fair, competitive practices, ordinary contract breach, and other similar conduct for which, traditionally and for good reason, civil remedies alone are provided. Intentional contract breach . . . is commercially tolerated and even encouraged in some contexts . . . .

3 MODEL PENAL CODE AND COMMENTARIES § 220.3 cmt. 2, at 43 (1980).

interruption or impairment of public services. Thus, 11 F.S.M.C. 603(1)(b) is broad enough to include the defendants' intentionally causing the government to suffer a loss by the deception of Irons's false customs declaration and Arnold's clearance of the container. It was also within the prosecution's discretion to choose this statute to charge instead of the more specific statute. Accordingly, Counts 6 and 11 are not dismissed.

c. *Unauthorized Removal of Property*

Arnold and Irons are both charged with the unauthorized removal of property. A person commits the crime of unauthorized removal of property "if, knowing he or she does not have proper authority, he or she has in his or her possession, or has removed from its location any property, wherever situated, in which another person has any legal, equitable, or possessory interest." 11 F.S.M.C. 604(1). The government alleges that Arnold and Irons committed this crime by removing container TRHU2751669 from the Transco dock without proper inspection and authorization thus "result[ing] in loss of money in terms of import taxes, in which the FSM National Government has legal, equitable, or possessory interest." Information Counts 7, 12.

The court has just determined that the FSM National Government does not have a legal, equitable, or possessory interest in the unpaid import taxes. *Supra* part III.C.3.a. However, the property that the government alleges that was removed without proper authority was the undeclared goods in container TRHU2751669, not the tax money. The court therefore considers the mention of lost import taxes to be the government's allegation of the value of its loss for the purpose of the possible sentence under 11 F.S.M.C. 604(3), and the clause "in which the FSM National Government has legal, equitable, or possessory interest" to be mere surplusage in the unauthorized removal charges which can be stricken from the information, *see* FSM Crim. R. 7(d).

The unauthorized removal of property statute covers, among other things, crimes that in other jurisdictions are often called receiving stolen property. But the FSM statute is broader than that. It seems broad enough to cover goods released from Customs control without proper authorization – in essence, receiving imported goods not properly released from customs control.

Imported goods are subject to Customs control "until applicable duties are paid and the goods are released." 54 F.S.M.C. 234(1)(a). The government thus has a "possessory" interest in imported goods because it has constructive custody of all imported goods until the applicable duties are paid and the goods are properly released. This seems to be a general principle worldwide. *See, e.g.*, United States v. Slocum, 708 F.2d 587, 597 (11th Cir. 1988) ("imported goods are in the constructive custody of customs from the moment of their arrival in . . . port until their formal release by the Customs Service, regardless of whether customs has actual, physical possession"); United States v. Harold, 588 F.2d 1136, 1142 (5th Cir. 1979) (since Customs Service had "a broad constructive custody of all imports," merchandise was in constructive custody of customs when discovered in defendant's car "because it had not yet been formally released by the Customs Service"); Mungo v. United States, 423 F.2d 1351, 1354 (4th Cir. 1970) ("Congress intended that imported merchandise should be in constructive customs custody at the moment of its arrival in this country"); *cf.* Harris v. Dennie, 28 U.S. (3 Pet.) 292, 304, 7 L. Ed. 683, 687 (1830) ("From the moment of their arrival in port, the [imported] goods are, in legal contemplation, in the custody of the [government], and every proceeding which interferes with, or obstructs or controls that custody, is a virtual violation of the [customs] act.").

Here, the government alleges that the applicable duties were not paid and that therefore the undeclared goods were improperly released. The government could have charged Irons with violating 54 F.S.M.C. 234(5) ("Any person who, otherwise than by authority and in accordance with this chapter, moves, alters or interferes with goods subject to the control of Customs, is guilty of a National offense"), a felony with a maximum penalty of five years imprisonment and a $5,000 fine, 54 F.S.M.C. 234(6).

It did not. It chose instead to charge both Irons and Arnold with unauthorized removal of property,

which, if the value of the loss of the property or service is over $5,000, carries a maximum penalty of ten years imprisonment and a $100,000 fine. This maximum may apply since the government alleges that its lost tax revenue was $6,862.20. ("The amount involved in a violation of subsection (1) of this section shall be deemed to be the highest value, by any reasonable standard, of either the loss to the Government . . . ." 11 F.S.M.C. 604(2).)

The court therefore concludes that the alleged facts state the elements of the crime of unauthorized removal of property, and that it was within the prosecution's discretion to choose to prosecute under this statute instead of 54 F.S.M.C. 234(5). Accordingly, the court will not dismiss Counts 7 and 12.

d. *Attempt, Solicitation, and Conspiracy*

Arnold and Irons are also both charged with conspiracy, solicitation, and attempt to commit theft, criminal mischief, and unauthorized possession or removal of property. Since the theft charges are dismissed, the charges that Arnold and Irons attempted, conspired, or solicited one or the other or other persons to commit theft are, by implication, also dismissed.

i. *Attempt*

Arnold and Irons are both charged with having "attempted to commit theft, criminal mischief, and unauthorized possession or removal of property." Information Counts 8 and 14. "A person commits the crime of an attempt to commit a crime if, with intent to commit a national crime, he or she does an act which constitutes a substantial step in a course of conduct planned to culminate in the commission of that crime." 11 F.S.M.C. 201(1).

Because an attempt to commit a crime is a lesser included crime that merges with the target crime if the attempt is successful, Ned v. Kosrae, 20 FSM R. 147, 154 (App. 2015), the court will not dismiss the attempt charges for those target crimes the court has not already dismissed.

ii. *Solicitation*

Arnold and Irons are both charged with solicitation. They are both alleged to have "with intent to promote or facilitate commission of crimes, commanded, encouraged, or requested the removal of the container TRHU2751669 from the Transco dock without proper authorization and without inspection, resulting in the loss of money in the terms of import taxes . . . ." Information Count 15.

> A person commits the crime of solicitation if, with intent to promote or facilitate the commission of a national crime, he or she commands, encourages, or requests another person to engage in conduct or cause the result specified by the definition of the crime, which would be sufficient to establish complicity in the specified conduct or result.

11 F.S.M.C. 202(1). Like many of the other charges in this case, this FSM statute is taken, virtually verbatim, from the Model Penal Code. Of the three terms – "commands, encourages, or requests" – "'[e]ncourages' is the most expansive . . . and encompasses actors who bolster the fortitude of those who have already decided to commit crimes, so long as the encouragement is done with the requisite criminal purpose." 2 MODEL PENAL CODE AND COMMENTARIES § 5.02 cmt. 3, at 372 (1980). Essentially, "[s]olicitation is an offer, request or invitation to another to commit a crime with the intent that the person solicited commit the crime." 21 AM. JUR. 2D *Criminal Law* § 181, at 257-58 (rev. ed. 1998). "The Model Penal Code defines solicitation broadly to include requesting another to commit any offense . . . ." 2 LAFAVE & SCOTT, *supra*, § 6.1(a), at 5.

The government alleges that Arnold and Irons committed this crime when, on July 1, 2021, they, "with intent to promote or facilitate commission of crimes, commanded, encouraged, or requested the removal

of container TRHU2751669 from the Transco dock without proper authorization and without proper inspection . . . ." Information Count 15.

The information does not allege or identify who Arnold and Irons may have commanded, encouraged, or requested to commit the crime of the unauthorized removal of the container for them. It does not state who Arnold or Irons solicited.

> In the usual solicitation case, it is the solicitor's intention that the criminal result be directly brought about by the person he has solicited; that is, it is his intention that the crime be committed and that the other commit it as a principal . . . as where A asks B to kill C.

2 LAFAVE & SCOTT, *supra*, § 6.1(a), at 10. There is no such allegation here. The information does not allege that Arnold and Irons solicited anyone else to commit the crime for them. It is thus not fair to Arnold and Irons to require them to defend this solicitation charge based on the allegations as stated in the information if the government is trying to allege that Arnold and Irons solicited others, but makes no further allegations about any others.

If, on the other hand, the government is alleging that one of the two – Arnold or Irons – solicited the other in order to form a conspiracy (since the government does charge conspiracy), that is also unclear from the information. "Solicitation may, indeed, be thought of as an attempt to conspire." 2 LAFAVE & SCOTT, *supra*, § 6.1(a), at 6. But a solicitation charge will merge into a conspiracy charge when the person solicited agrees to the solicitation by acting on the request. FSM v. Esefan, 17 FSM R. 389, 398 n.5 (Chk. 2011). However, the information does not allege that Arnold solicited Irons, or that Irons solicited Arnold, although one of the two must have happened for there to have been a conspiracy.

Accordingly, Count 15, solicitation, is dismissed because the information is insufficient in charging the solicitation crime's essential elements. Arnold and Irons cannot be required to defend such a nebulous charge.

iii. *Conspiracy*

Arnold and Irons are both charged with conspiracy. They are both alleged to have "agreed with each other to the unlawful removal of the container belonging to Marco Irons from the Transco dock, without proper authorization and without proper inspection, resulting in loss of money in terms of import taxes . . . ." Information Count 16.

Based on the charging documents, the events alleged in the information could not have occurred in the manner alleged without a criminal agreement – a conspiracy – between the two co-defendants – Arnold and Ions. Since there had to have been an agreement of some kind between Arnold and Irons to effect the unlawful release of the undeclared goods, one of the co-defendants must have initially solicited the other for the agreement although no indication from the pleadings, which of the two that might have been. When the defendants by their acts pursued the same object, one performing one part and the other performing another part so as to complete it or with a view to its attainment, a court will be justified in concluding that they were engaged in a conspiracy to effect that object. Cholymay v. FSM, 17 FSM R. 11, 24 (App. 2010); Engichy v. FSM, 15 FSM R. 546, 558 (App. 2008). Since it seems that the events alleged could not have happened without an agreement between Arnold and Irons, and that the object of the alleged agreement was unlawful, the information is sufficient to charge that Arnold and Irons committed the crime of conspiracy.

Accordingly, the conspiracy charge will not be dismissed.

IV. CONCLUSION

Accordingly, the court grants the defendants' motions to dismiss Counts 2 (compounding, against

Arnold), 4 (official oppression, against Arnold), 5 (theft, against Arnold), 10 (theft, against Irons), 13 (compounding, against Irons), and 15 (solicitation, against Arnold and Irons) are dismissed. Counts 8 (against Arnold) and 14 (against Irons) are dismissed to the extent they charge an attempt to commit a theft. The government may prosecute the remaining charges.

The court will therefore take the defendants' pleas on Monday, June 6, 2022, at 10:00 a.m., and if a not guilty is entered, trial will follow immediately thereafter.

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FSM SUPREME COURT TRIAL DIVISION

GENESIS CORPORATION d/b/a Genesis Medical Clinic and Pharmacy (Chuuk) and d/b/a Genesis Pharmacy (Pohnpei), Plaintiff, vs. EUGENE AMOR, in his capacity as Secretary of the Department of Finance and Administration of the Federated States of Micronesia, and FEDERATED STATES OF MICRONESIA through its Department of Finance and Administration, Defendants.	CIVIL ACTION NO. 2021-005 consolidated with Civil Action No. 2021-006
ISAMU NAKASONE STORE and BARGAIN CENTER, Plaintiffs, vs. EUGENE AMOR, in his capacity as Secretary of the Department of Finance and Administration of the Federated States of Micronesia, and FEDERATED STATES OF MICRONESIA through its Department of Finance and Administration, Defendants.	

ORDER REVERSING ADMINISTRATIVE DECISIONS AND GRANTING SUMMARY JUDGMENT

Larry Wentworth
Associate Justice

Hearing: April 26, 2022
Decided: May 18, 2022