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IN REPLY REF. TO



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

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(6)(5)

SEP 28 1971

Memorandum

To : Ambassador Hummel
From : Associate Solicitor, Territories, Wildlife and Claims
Subject: Status of Micronesians as nationals, citizens or aliens ^{1/}

Although the Micronesians could acquire the status of aliens as a result of our negotiations (i.e., Position IV), in negotiating Position I (modified Commonwealth), they would, at least, have to become U.S. nationals. This status would follow as a matter of law from the extension by the U.S. of its jurisdiction (sovereignty) in defense, foreign affairs and other functions over the area. Subjectively, the Micronesians could consider and call themselves citizens of Micronesia; but in the international sense, they would be considered nationals of the U.S. This means that they would have to owe allegiance to the United States. This does not mean, however, that they would not also owe allegiance to Micronesia. Allegiance means the obligation of fidelity and obedience which an individual owes to the government under which he lives for the protection he receives. Thus, Micronesians would owe allegiance domestically to their own government. Internationally, their allegiance would be to the United States and no other foreign power. In exchange for this they would enjoy most of the rights and privileges of U.S. citizens, including U.S. protection in their international travel and other relations in the world communities. Since they would not be aliens, they would not be subject to the U.S. immigration laws. We could agree that they would not be subject to conscription in time of war (Samoans were exempted during WW II). They could, however, be given the right to enlist in the U.S. armed forces if they wished.

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^{1/} Attached are two papers from the Department of Justice dealing generally with the subject. Also attached is a draft paper also on the subject previously prepared in the Branch of Territories, Division of Territories, Wildlife and Claims.

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AGC (IA) No. *[Redacted]*

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1. the Micronesians were to refuse status as U.S. nationals, albeit also citizens of Micronesia, they would then have to be considered aliens. As aliens they would have to be considered persons subject to a foreign sovereignty who owe allegiance elsewhere than to the U.S. As aliens they would be subject to the immigration and naturalization laws of the U.S. and other restrictions and limitations imposed in the U.S. on aliens except as might otherwise be negotiated in a compact (treaty) between the U.S. and Micronesia. They would have only such rights and privileges in the U.S. and they would be entitled only to such protection in the international community as would be set forth in the treaty. Clearly, at this point we would be at Position IV.

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Conclusion

To successfully negotiate a modified Commonwealth association, the Micronesians will have to accept status as nationals of the U.S. This does not mean, however, that they lose their identity as citizens of Micronesia.

In the so-called Commonwealth proposal of last May, Micronesians were offered status as U.S. nationals with the option of becoming U.S. citizens. This offer should stand.

C. Brewster Chapman, Jr.

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Associate Solicitor
Territories, Wildlife and Claims

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DUTIES, OBLIGATIONS, RIGHTS, AND RESPONSIBILITIES

A. CITIZENS

Citizens / Nation
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1. With reference to obligations, duties, rights, etc. what is the distinction between being a United States citizen and a national?

The Fourteenth Amendment to the Constitution of the United States states that: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The Constitution, does not, however, define the privileges and immunities of citizens. In the Slaughter House Cases (16 Wall. 35), decided in 1873, the Supreme Court enumerated some of the rights of United States citizens. Among these, the following were identified by the Court:

1. Right of access to the seat of Government and to the seaports, subtreasuries, land offices and courts of justice in the several states.
2. Right to demand protection of the Federal Government on the high seas or abroad.
3. Right to peaceably assemble and petition the national government.
4. Privilege of the writ of habeas corpus.
5. Right to use the navigable waters of the United States, however they may penetrate the territory of the several states.

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6. Right to engage in interstate commerce and have access to seaports.

7. Right to become a citizen of any state in the Union by bona fide residence therein.

8. Rights secured by treaties.

9. Right of expatriation.

10. Right of free migration within the country.

As a rule, rights are emphasized more than duties; however, they are normally correlative. Every right is usually balanced by a duty, every duty by a right. The citizen receives from the government, benefits, services, protection, privileges or immunities; to it, he owes duties, obligations and allegiance.

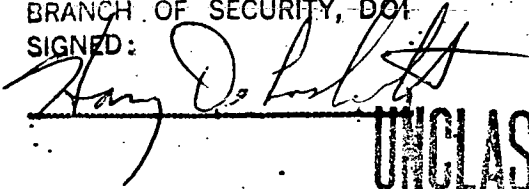
The obligations of the citizen are:

1. To assist in the defense of his country.
2. To uphold it.
3. To cooperate with it in law observance and enforcement.
4. To participate in it as permitted and enabled.
5. To give allegiance to his country as a dutiful member.

The rights and obligations of United States nationals are

largely the same as those for citizens.

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B. NATIONALS

The United States Code - 1964 edition, Title 8, Section 1101 (a) (22), defines "national" in these words: "The term 'national of the United States' means (A) a citizen of the United States, or (b) a person who though not a citizen of the United States, owes a permanent allegiance ^{to} of the United States."

This may be paraphrased to read: Though all nationals of the United States are not citizens thereof, all citizens of the United States are nationals thereof. (Brownell v. Lee Mon Hong, 217 Fed. 2d 143).

By allegiance is meant the obligation of fidelity and obedience which the individual owes to the government under which he lives or to his sovereign in return for the protection he receives. (U. S. v. Wong Kim Ark, 169 U. S. 649).

A national of the United States who is not a citizen of the United States is defined by Section 1403 of Title 8 of the United States Code as:

- (1) A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession;
- (2) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person; and

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(2) A person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession.

1. A national is subject to the jurisdiction of the United States and recognized as such by other nations.

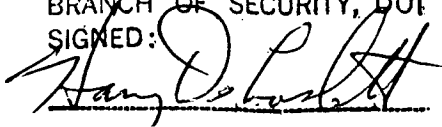
2. Nationals of permanent allegiance to the United States owe the obligation of military service.¹ (Barber v. Gonzales (347 U. S. 637 at 639)).

3. The non-citizen national in the United States does not enjoy the political rights of the citizen. The lack of citizenship precludes his exercise of the right to vote or hold political office (Federal and State).

4. The non-citizen national has the right of access to State and Federal courts under the provisions of the Fourteenth Amendment which accords equal protection of the law to all persons within the territorial jurisdiction.

5. He does not enjoy the constitutional right of citizens to serve upon grand or petit juries in the courts of several states or the United States. The qualifications of a juror rests with the states and such qualifications will be upheld as long as there is not discrimination in respect to jury service because of race.

We are informed that American Samoans are not subject to the draft, even though this case states otherwise. The Universal Military Training and Service Act, codified in the appendix to Title 50 of the United States Code, does not include American Samoa within the definition of United States when the term United States is used in a geographical sense. 50 U.S.C. App. 466(b), (1944 Ed.).

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TO : C. Brewster Chapman, Jr.
Associate Solicitor
Department of the Interior

DATE: SEP 28 1971

FROM: *[Signature]* Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

SUBJECT: Status of Aliens in the United States

This memorandum is in response to your inquiry as to the status which the citizens of Micronesia would have in the United States, if Micronesia should become an independent country. In that event the inhabitants of Micronesia necessarily would have the status of aliens. They would be subject to all the requirements of the immigration laws (including entry, exclusion, and deportation) and to all the disabilities of aliens under federal and state law.

A treaty, of course, could remove many of those disabilities,*/ including those arising under state law. *Asakura v. City of Seattle*, 265 U.S. 332 (1924). We seriously question whether a treaty can confer upon the citizens of a foreign country the status, or most, if not all, of the privileges, of citizens of the United States.

*/ To the extent that the disabilities relate to the revenue laws of the United States, implementing legislation may be required. Restatement of the Law of Foreign Relations of the United States, § 141(3), comment f.

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TO : C. Brewster Chapman, Jr.
Associate Solicitor
Department of the Interior

DATE: SEP 24 1971

FROM: *J. U.* Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

SUBJECT: Status of Noncitizen Nationals of the United States.

This memorandum is in response to your oral inquiry as to the principal differences between citizens of the United States and nationals of the United States, or more precisely, between those nationals of the United States who are citizens and those who are not citizens of the United States.^{1/} A short descriptive history and background of the category of noncitizen nationals may be found in Gordon and Rosenfield, Immigration Law and Procedure Vol. I, section 2.3c:

"2.3c Noncitizen nationals

"These are persons who do not have complete citizenship rights, but who owe permanent allegiance to the United States. At best this is an unsatisfactory designation which was reserved for natives of insular possessions who were not regarded as ready for full citizenship status. With the grant of independence to the Philippines

^{1/} According to section 101(a)(22) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), the term "national of the United States" means either a citizen of the United States or "a person who, though not a citizen of the United States, owes permanent allegiance to the United States." Again, section 301(a) of the Act, 8 U.S.C. 1401(a), defines those who are "nationals and citizens of the United States," while section 308, 8 U.S.C. 1408, provides who shall be nationals, but not citizens, of the United States.

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and the progressive award of citizenship rights to the inhabitants of other territorial possessions there has been a substantial reduction in this anomalous category. * * * On the other hand, the trust territories placed under supervision of this country at the end of World War II never have become a part of the United States and their inhabitants are not nationals of the United States.

"But there are still some persons who are noncitizen nationals. As such they are not aliens and consequently have never been subject to the immigration laws. They can enter and leave the United States at will, in the same manner as citizens." 2/

The extent to which the provisions of the Constitution apply to noncitizen nationals has been analyzed in a recent memorandum prepared in your office and need not be restated here.

The applicability of federal law to an area the natives of which are noncitizen nationals is basically a matter of Congressional discretion. To our knowledge, relatively few federal statutes apply now to Samoa and Swains Island.

The principal difference between citizen and noncitizen nationals occurs in the following situation: If a citizen of the United States resides in an area which is subject to the jurisdiction of the United States but outside a State, and has no residence in a State, he cannot vote for President or members of Congress. If he then moves into a State he becomes a citizen of that State

2/ At present the principal category of noncitizen nationals consists of persons born in the outlying possessions of the United States, i.e., American Samoa and Swains Island, secs. 308 and 101(a) (29) of the Act; 8 U.S.C. 1408, and 1101(a) (29).

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under section 1 of the Fourteenth Amendment to the Constitution and thereby acquires the right to vote in national and State elections. A noncitizen national in like circumstances would not be entitled to such privileges.

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