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Mar-Separation et al



United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

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Memorandum

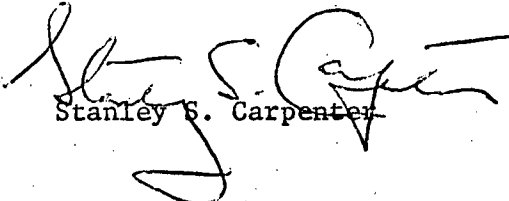
To: James M. Wilson, Jr., Micronesian Status Negotiations

From: Deputy Assistant Secretary for Territorial Affairs

Subject: Proposed Executive Order to establish a separate government for the Mariana Islands District

Please refer to my memorandum to you dated November 24, 1972. Attached is a proposed Executive Order to establish a separate government for the Mariana Islands District.

As we envision it, the substantive content of a U. S. proposal, which would include this draft Executive Order, proposed interim U. S. legislation, and permanent legislative provisions, would be negotiated with the Marianas Political Status Commission. When agreement has been reached on a total package, it would then be submitted to the people of the District for approval or disapproval by a referendum called for by the Mariana Islands Legislature. If a majority of the people voting favor the proposal, it would then be presented to the President for execution. Specifically, the President would promulgate the Executive Order and take steps to seek Congressional enactment of interim legislative provisions. Thereafter, the machinery and substantive provisions of the Order would be operative, and would provide the basis for the framing of a constitution for the Mariana Islands and for their administration and governance.

  
Stanley S. Carpenter

Enclosure

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PROPOSED DRAFT

Executive Order \_\_\_\_\_

To provide for the creation of a constitutional government by the people of the Mariana Islands District of the Trust Territory of the Pacific Islands, for their future political relationship with the United States of America and for other purposes.

Whereas the Trust Territory of the Pacific Islands was placed under the Trusteeship system, established in the Charter of the United Nations, by means of the Trusteeship Agreement approved by the Security Council of the United Nations on April 2, 1947, and by the United States Government on July 18, 1947, after due constitutional process; and

Whereas the United States of America was designated under the terms of the Trusteeship Agreement as the administering authority of the Trust Territory of the Pacific Islands; and

Whereas the United States has heretofore assumed obligations for the civil administration of the Trust Territory in accordance with the terms of the Trusteeship Agreement, including the establishment of six administrative districts and the creation of a Congress of Micronesia whose members are elected from the aforesaid administrative districts; and

Whereas the United States Government has been conducting political status negotiations for the future political status of the Trust Territory of the Pacific Islands; and

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Whereas the people of the Mariana Islands District, by referenda, memorials and petitions to the United Nations, and by acts of the Mariana Islands District Legislature, have signified their desire to have a closer political relationship with the United States of America than that currently being sought by and negotiated with the other five administrative districts of the Trust Territory of the Pacific Islands; and

Whereas, it is consistent with the obligations of the Administering Authority under the Trusteeship Agreement to create political institutions within the Trust Territory of the Pacific Islands as may be appropriate to the particular circumstances and the needs of the diverse peoples of the Territory; and

Whereas a Constitutional Convention is a basic method of ascertaining the wishes of the people and seeing such wishes reflected in a structure of government; and

Whereas it is deemed appropriate that in the process of developing self-government, the people of the Mariana Islands District should enjoy certain rights and responsibilities inherent in the representative form of government;

Now, therefore, by virtue of the authority vested in me by the Act of June 30, 1954 (68 Stat. 330, 48 U.S.C. 1681) and as President of the United States, and in recognition of the principles of government by consent of the governed, and the right of self-determination, it is hereby ordered:

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TITLE I - CONSTITUTIONAL CONVENTION

SEC. 101. The people of the Mariana Islands are authorized to form a government for the Mariana Islands pursuant to the constitution which they shall adopt as follows:

SEC. 102. The Mariana Islands District Legislature shall call a constitutional convention to convene within six months from the date of this Executive Order to formulate and draft a constitution for the Mariana Islands which constitution shall not be contrary to the provisions of this Executive Order. The procedure for the drafting, and adoption of the constitution of the Mariana Islands shall be in accordance with the rules and regulations established by the Mariana Islands District Legislature. Delegates shall be elected from among the qualified voters of each representational district for the Mariana Islands District Legislature to be apportioned as the District Legislature shall direct, provided that each representational district shall have at least one delegate.

SEC. 103. The constitutional convention shall prepare a proposed constitution for the Mariana Islands which shall be submitted not later than one year after the convening of the constitutional convention to the High Commissioner for transmittal to the President of the United States. If the President of the United States finds that the proposed constitution provides a republican form of government, includes a bill of rights, and is not contrary to the provisions of this Executive Order and the Constitution of the United States of America,

he shall so certify to the High Commissioner of the Trust Territory, who shall so advise the Mariana Islands District Legislature which shall dissolve the constitutional convention. If the President finds that the proposed constitution does not provide for a republican form of government, or for a bill of rights, or is contrary to the provisions of this Executive Order or the Constitution of the United States, he shall so advise the High Commissioner of the Trust Territory of the Pacific Islands, stating wherein in his judgment the constitution does not so provide or is contrary to the provisions of this Act. The High Commissioner shall in turn submit such message to the constitutional convention for further action. The revised document shall be returned to the President of the United States and the same procedure repeated until the constitution is certified by the President.

SEC. 104. (a) Upon certification by the President of the United States to the High Commissioner of the Trust Territory of the Pacific Islands in accordance with section 103 of this Title, the High Commissioner shall, within thirty days after receipt of such certification, issue a proclamation for a referendum to be held not more than ninety days after the date of the proclamation to vote "yes" or "no" on the following proposition:

The peoples of the Mariana Islands hereby adopt the  
Constitution of the Mariana Islands as certified  
by the President of the United States.

(b) The High Commissioner of the Trust Territory of the Pacific Islands shall, within thirty days following the referendum, certify the results to the President of the United States. If the President finds that a majority of the qualified votes cast at the referendum are in favor of adopting the proposition, he shall issue a proclamation so stating, and the Constitution of the Mariana Islands, and Titles III and IV of this Executive Order shall become effective upon the date specified in the proclamation. In the event the foregoing proposition is not adopted at the referendum by a majority of the qualified votes cast, neither the Constitution nor the provisions of Titles III and IV of this Executive Order shall become effective.

SEC. 105. Amendments to the Constitution of the Mariana Islands which are not contrary to the provisions of this Executive Order may be made from time to time as provided in such Constitution, subject to approval by the President of the United States and ratification by a majority of the qualified voters of the Mariana Islands.

## TITLE II

### CHARACTER OF THE CONSTITUTION OF THE MARIANA ISLANDS

SEC. 201. The Constitution of the Mariana Islands shall provide for a Government which is republican in form, and which shall have three separate branches; namely, legislative, executive, and judicial. The Constitution also shall contain provisions either as a part thereof, or as an ordinance appended thereto to the effect

that --

(a) The legislative branch, to be known as the "Mariana Islands Legislature," shall be a unicameral body composed of 16 elected representatives from election districts for the Mariana Islands which shall be of approximately equal population as established and determined by the Legislature.

Election districts shall be reapportioned every 10 years after the effective date of the Constitution on the basis of population, but each such district shall be entitled to at least one representative.

(b) No legislation enacted by the Mariana Islands Legislature may be inconsistent with the Constitution of the United States, the laws of the United States made in pursuance thereof which are applicable to the Mariana Islands, or any treaties made, or which shall be made, under the authority of the United States.

(c) No law shall be passed by the Mariana Islands Legislature imposing any tax upon property or activities of the Government of the United States or property of the Government of the Mariana Islands or of the Trust Territory of the Pacific Islands. No import levies shall be imposed on goods imported into the Mariana Islands from the United States or on goods of United States origin imported from any United States territory or the Trust Territory of the Pacific Islands, or any political subdivision thereof, or on any goods from a United States territory which are entitled to duty free entry into the United States. No taxes or export levies shall be imposed upon the

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exportation of goods from the Mariana Islands to the United States, its territories or possessions, or the remainder of the Trust Territory of the Pacific Islands.

(d) Every member of the legislative branch of the Mariana Islands shall be popularly elected, and they and all officers of the Government of the Mariana Islands shall take an oath or affirmation to support the Constitutions of the Mariana Islands and of the United States and all laws applicable to the Mariana Islands.

(e) The Executive power of the Government of the Mariana Islands shall be vested in a popularly elected chief executive officer whose title shall be "Governor of the Mariana Islands."

(f) The judicial authority of the Government of the Mariana Islands shall be vested in a paramount court and in such inferior court or courts as may be provided for in the Constitution of the Mariana Islands or by act of the Mariana Islands Legislature. The selection and tenure of the judges of the courts shall be provided for in the Constitution of the Mariana Islands or by act of the Mariana Islands Legislature.

(g) The paramount court of the Mariana Islands shall have jurisdiction to review on appeal all decisions of the inferior courts in accordance with rules prescribed by the Mariana Islands Legislature. It may from time to time prescribe rules for the conduct of its business and that of the inferior courts.

(h) No public indebtedness shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the real property in the Mariana Islands. Bonds or other obligations

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of the Government of the Mariana Islands payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of the Mariana Islands within the meaning of this section.

(i) The rights of the United States to acquire property by purchase or condemnation shall be provided for and recognized.

(j) The territorial sea of the Mariana Islands shall be delimited in accordance with the laws and treaties of the United States, and shall not exceed the limits maintained by the United States in its international relations. All laws and treaties of the United States of general application regarding navigable waters, the territorial sea, the high seas, including but not limited to the contiguous zone and the continental shelf, and fisheries shall be applicable with respect to the Mariana Islands.

(k) The rights, privileges, and immunities of citizens of the United States shall be respected in the Mariana Islands as though the Mariana Islands were a State of the Union and subject to the provisions of clause 1, section 2, of Article IV of the Constitution of the United States.

### TITLE III

#### Chapter 1

#### GOVERNMENT OF MARIANA ISLANDS

SEC. 311. (a) The Mariana Islands District of the Trust Territory of the Pacific Islands will hereafter be associated with the United States as a self-governing commonwealth to be known as

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"The Commonwealth of the Mariana Islands."

(b) The Government of the Commonwealth of the Mariana Islands shall have the powers set forth in this Executive Order, shall have power to sue by such name, and with the consent of the Legislature of the Mariana Islands, may be sued upon any contract entered into with respect to, or any tort committed incident to, the exercise by the Government of any of its lawful powers.

(c) Upon termination of the Trusteeship Agreement, the relations of the Government of the Commonwealth of the Mariana Islands with the Government of the United States shall continue in accordance with this Executive Order until enacted into law by the United States Congress pursuant to the provisions of Article 4, section 3, clause 2 of the Constitution of the United States. Such relations shall be conducted through the Secretary of the Interior.

## Chapter 2

### THE EXECUTIVE POWER

SEC. 321. The executive power of the Government of the Commonwealth of the Mariana Islands shall be vested in the Governor of the Commonwealth of the Mariana Islands. The Constitution of the Commonwealth of the Mariana Islands shall make provision for the popular election of the Governor and the Lieutenant Governor and for the term and powers and functions of the Governor.

SEC. 322. (a) The Governor shall have the following powers and duties in addition to those conferred upon him by the Constitution and laws of the Commonwealth of the Mariana Islands. He shall be responsible for the faithful execution of the laws of the Mariana Islands and the laws of the United States applicable to Micronesia. He may, with the approval of the President of the United States, restore in the Mariana Islands such civil rights as may have been lost as the result of convictions in Federal or State courts of the United States. Whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion, or imminent danger thereof, or to prevent or suppress lawless violence, he may request assistance of the military or naval commanders of the Armed Forces of the United States, which assistance may be given at the discretion of such commanders if not disruptive of, or inconsistent with, their Federal responsibilities.

(b) If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving the other items, parts or portions of the bill. In such a case he shall append to the bill, at the time of signing it, a statement of the items, or parts, or portions thereof, to which he objects, and the items, or parts, or portions thereof, so objected to shall not take effect. This provision shall be in effect so long as funds have to be appropriated by the Congress of the United States.

SEC. 323. The Secretary of the Interior shall order the Government Comptroller of Guam to make annual reports concerning the financial affairs of the Commonwealth of the Mariana Islands as authorized by law.

### Chapter 3

#### FISCAL PROVISIONS

SEC. 331. Except as provided in Section 201(c), the levy of duties on goods imported into the Mariana Islands is hereby reserved to the Government of the Commonwealth of the Mariana Islands.

SEC. 332. All bonds issued by the Government of the Commonwealth of the Mariana Islands or by its authority shall, to the extent the law permits, be exempt, as to principal and interest, from taxation by the Government of the United States or by the Government of any State, Territory, or possession, or any political subdivision thereof, or by the District of Columbia.

SEC. 333. Effective on the first day of January following the effective date of this Title, the income tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the Commonwealth of the Mariana Islands as a local income tax. The proceeds of such taxes shall be paid into the treasury of the Mariana Islands.

SEC. 334. As soon as possible following the termination of each fiscal year, the Governor of the Commonwealth of the Mariana Islands shall certify to the Secretary of the Treasury of the United

States the net amount of revenue, exclusive of United States Federal matching and grant funds, received by the Government of the Commonwealth during the preceding fiscal year. The amount thus certified shall provide the basis annually for the next 10 years for a request, in accordance with a proposed budget submitted by the Governor to the Secretary of the Interior, for appropriations from the United States Congress for the expenses of the Government of the Commonwealth of the Mariana Islands.

SEC. 355. The Governor of the Commonwealth of the Mariana Islands shall make to the Secretary of the Interior an annual report of the transactions of the Government for transmission to the Congress of the United States and such other reports at such other times as may be required by the Congress or under applicable Federal law.

#### Chapter 4

#### GOVERNMENT PROPERTY

SEC. 341. The title to all property, real and personal, owned by the Government of the Trust Territory of the Pacific Islands and located in the Mariana Islands, and all interests in such property including rights of use and including all right, title, or interest of the Government of the Trust Territory of the Pacific Islands in tidelands, submerged lands, or filled lands in or adjacent to the Mariana Islands held by the Government of the Trust Territory of the Pacific Islands are hereby transferred to the Government of the

Commonwealth of the Mariana Islands, with the exception that such property or interests in property as may continue to be required for the operation of the Governments of the Trust Territory of the Pacific Islands or of the United States shall not be transferred. The term "tidelands, submerged lands, or filled lands" shall have the meaning ascribed to it in Section 1(a) of Public Law 88-183 (77 Stat. 338). This subsection shall not apply to any interest in lands, which interest by local or customary laws or rights is held in private or communal ownership, and such lands as may be transferred to the Government of the Commonwealth of the Mariana Islands are taken subject to any claims which may relate to their use or ownership by the Government of the Trust Territory of the Pacific Islands, or any other valid, subsisting claims.

#### Chapter 5

#### REAL PROPERTY

SEC. 351. (a) After the effective date of this Title, no real property, use rights, or interests in real property in the Mariana Islands which is privately or communally owned may be transferred, sold, alienated or leased for a term in excess of ten years to non-residents of the Mariana Islands, or corporations owned or controlled by non-residents of the Mariana Islands, except by descent or devise, unless such transfer, sale, alienation, gift, or lease is first approved in writing by the majority vote of a commission

to be especially established from residents of the Mariana Islands in accordance with the laws of the Commonwealth of the Mariana Islands.

(b) Any real property or interests therein owned by the Government of the Trust Territory of the Pacific Islands and which may hereafter be transferred to the Government of the Commonwealth of the Mariana Islands shall not be sold, transferred, or leased for a period in excess of five years except pursuant to a plan which shall be included in the Constitution. Such plan shall include provisions to ensure that the beneficial ownership of these lands shall accrue to the benefit of all native born citizens of the Trust Territory who are permanent residents of the Mariana Islands on the effective date of this Order, their heirs and assigns. The plan shall also include provisions for homesteading and leasing public lands to such permanent residents, and limiting the permissible extent of land ownership or control by any individual or family grouping, so as to insure that all such native born citizens have an equal opportunity to benefit from the public lands and are protected from land alienation.

(c) Nothing in this section shall be deemed to restrict or in any way impair present or future ownership or use the rights of/United States Government in real property in the Mariana Islands.

## Chapter 6

### FEDERAL RELATIONS

SEC. 361. The President of the United States shall appoint a commission of seven persons, at least three of whom shall be residents of the Mariana Islands, to survey the field of Federal statutes and to make recommendations to the President of the United States as to which statutes of the United States not applicable to the Mariana Islands shall be made applicable to the Mariana Islands and which statutes shall be made inapplicable, following termination of the Trusteeship Agreement.

### TITLE IV

#### ADMINISTRATION OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS

SEC. 401. The responsibility for the administration of civil government in all of the Trust Territory except the Mariana Islands District and all executive, legislative, and judicial authority necessary for that administration, are hereby vested in the Secretary of the Interior. The Secretary of the Interior shall, however, have general oversight and residual jurisdiction over the administration of the Mariana Islands. Subject to such policies as the President may from time to time prescribe, and in harmony with applicable law, and, where advantageous, in collaboration with other departments and agencies of the Government, the Secretary of the Interior shall



take such actions as may be necessary and appropriate to carry out the obligations assumed by the United States as the administering authority of the Trust Territory under the terms of the Trusteeship Agreement and under the Charter of the United Nations; Provided however, That the authority to specify parts of all of the Trust Territory as closed for security reasons and to determine the extent to which Articles 87 and 88 of the Charter of the United Nations shall be applicable to such closed areas, in accordance with Article 13 of the Trusteeship Agreement, shall be exercised by the President: And provided further, That the Secretary of the Interior shall keep the Secretary of State currently informed of activities in the Trust Territory affecting the foreign policy of the United States and shall consult with the Secretary of State on questions of policy concerning the Trust Territory which relate to the foreign policy of the United States, and that all relations between the departments and agencies of the Government and appropriate organs of the United Nations with respect to the Trust Territory shall be conducted through the Secretary of State.

SEC. 402. The executive, legislative, and judicial authority of the Secretary of the Interior provided for in section 401 of this Order may be exercised through such officers or employees of the Department of the Interior, or through such other

persons under the jurisdiction of the Secretary of the Interior, as the Secretary may designate, and shall be exercised in such manner as the Secretary, or any person or persons acting under the authority of the Secretary, may direct or authorize.

SEC. 403. The executive departments and agencies of the Government shall cooperate with the Department of the Interior in the effectuation of the provisions of this Order.

SEC. 404. To the extent not heretofore superseded or otherwise rendered inapplicable, Executive Order No. 11021 of May 7, 1962 is hereby superseded.

SEC. 405. (a) Existing laws, regulations, orders, appointments, or other acts promulgated, made, or taken by the Secretary of the Interior or his delegates under the authority of Executive Order No. 11021, as amended are in effect until they are revised or superseded in pursuance of the provisions of this Order.

(b) Nothing contained in this Order shall be construed as modifying the rights or obligation of the United States under the provisions of the Trusteeship Agreement or as affecting or modifying the responsibility of the Secretary of State to interpret the rights and obligations of the United States arising out of that Agreement.

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