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United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

April 30, 1973

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Memorandum

To : Mr. Tom Whittington
Political/Legislative Officer
Office of the Deputy Assistant Secretary
for Territorial Affairs

From : Acting Assistant Solicitor
Branch of Territories

Subject: Mariana Islands Status Negotiations

TER-T-Pol

This is in response to your request that we submit to you comments and background material relating to specific areas referred to in a letter of April 10, 1973, to you from J. M. Wilson, Jr., U.S. Deputy Representative for Micronesian Status Negotiations. Our comments are attached. Enclosure 1 relates to paragraph a.(2) of the referenced letter on the subject "Citizenship vs. National Status or Alien Status"; enclosure 2 relates to paragraph a.(3)(a), "Application of Federal Constitution"; enclosure 3 relates to paragraph a.(3)(b), "Application of U.S. Legislation"; enclosure 4 relates to paragraph a.(3)(c), "Court systems desired, including options available and precedents." Background material is attached where appropriate.

As to each enclosure we submit the following:

1. If U.S. sovereignty is extended over the Marianas and it is placed in a position which parallels that of Puerto Rico (a commonwealth), or Guam and Virgin Islands (both unincorporated territories), its people should be citizens of the United States, as are the people of these three territories. If sovereignty is extended but the relationship parallels that of American Samoa (an unincorporated and unorganized territory) then noncitizen-national status for its people would appear appropriate. If the Marianas retain their identity as foreign then alien status for its people would appear appropriate.

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2. Assuming that unincorporated territorial status is unacceptable and commonwealth status is acceptable, our experience in establishing Puerto Rico as a commonwealth should prove invaluable in working out technical details and substantive matters. Following the Puerto Rico guidelines, there would be no general extension of the U.S. Constitution to the Marianas. Its people would organize a government pursuant to a constitution of their own adoption, the said constituion to provide a republican form of government and include a bill of rights. A Federal relations act could insure U.S. Constitution privileges and immunities where necessary.

3. United States legislation now applicable in the Trust Territory of the Pacific Islands could be continued in force in the Marianas. A Commission should be appointed, as was done in regard to Puerto Rico, Guam and Virgin Islands, to make recommendations as to the application of Federal laws to the Marianas.

4. Extension of the jurisdiction of the District Court of Guam, a Federal court, would appear desirable. A two division court, one division in Guam and one division in Saipan would provide ready access to a Federal forum. The local government could establish its own local court system patterned after the existing system, if desirable.

Please let us know if we can be of further assistance.

William D. Holeman

William D. Holeman
Acting Assistant Solicitor
Branch of Territories

Enclosures

cc's: Secretary's File
Sol. Docket
DASTA
Asso. Sol. - GLS
Mr. Holeman
CAHiter - Reading File

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CITIZENSHIP vs. NATIONAL STATUS OR ALIEN STATUS. DIFFERENCES AND PRECEDENTS; ARGUMENTS PRO AND CON FROM ECONOMIC, POLITICAL, CULTURAL AND EDUCATION VIEWPOINT

Section 1 of the Fourteenth Amendment to the U.S. Constitution states in pertinent part that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and 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; * * *

Since the preceding is not a definition for the term "citizen," and since it is not defined elsewhere in the Constitution, the term must be defined and interpreted in the light of the common law, acts of Congress, court decisions and principles and history as known to the framers of the Constitution. In addition, the Constitution does not define "the privileges or immunities of citizens of the United States."

In the Slaughter House Cases, 16 Wall. 35, decided in 1873, the Supreme Court enumerated some of the rights of United States citizens - which could also be termed privilege and immunities of these citizens. See the attached document marked Exhibit 1, for an enumeration of the rights identified by the Court, as well as comments relating to duties and obligations of the United States citizen and distinctions between a citizen and national.

Enclosure 1.

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The United States Code (1970 Ed.), Title 8, Section 1101 (a) (22), defines "national of the United States" 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 permanent allegiance to the United States.

The American Samoan falls under (B) above since he is not a citizen of the United States but is a person owing permanent allegiance to the United States. For further discussion of the American Samoan national see the attached Exhibit 2: The Comparative Status of the American Samoan National to the United States and the United States Citizen in: (1) the United States; (2) Samoa, by Goler T. Butcher, Legislative Attorney, The Library of Congress (1963). In addition we attach for your information and guidance a Yale Law Journal article entitled "Subject," "Citizen," "National," and "Permanent Allegiance," marked as Exhibit 3.

The term "alien," as defined in 8 U.S.C. 1101 (a) (3), means "any person not a citizen or national of the United States." The Constitution has specific provisions which require a person to have citizenship in order to hold certain offices. By implication, nationals and aliens are disqualified. For example:

1. No person shall be a Representative who has not been a citizen of the U.S. for 7 years. Sec. 1, Art. I.

2. No person shall be a Senator who shall not have been a citizen of the U.S. for 9 years. Sec. 3, Art. I.

3. Only a natural born citizen may be President. Sec. 1, Art. II.

Throughout the United States Code there are laws under which rights or duties of an individual depend upon United States citizenship. A 1960 Department of the Interior review of the Code revealed that 34 of the 50 titles contained one or more sections relating to such. We attach a copy of the pertinent document, marked Exhibit 4, for your information.

Under Clause 4 of Article I of the Constitution, Congress is given the power to establish rules of naturalization. This is an exclusive power. The most comprehensive law is the Immigration and Nationality Act of 1952, as amended, codified primarily in Title 8 of the U.S. Code. The Act describes 7 different categories of persons who are considered as national and citizens of the United States at birth. 8 U.S.C. 1401. It also sets forth 31 categories of aliens who are excludable from the United States.

Although resident aliens are, in general, entitled to most Constitutional privileges and safeguards, they still may not vote in Federal or State elections unless qualified under State law; they may not own land in any of the Territories unless they have declared an intention to become a citizen or this right is protected by treaty (48 U.S.C. 1501); an alien enemy may be restricted or deported; aliens are subject to control - registration, fingerprinting, periodic reporting - while in the United States.

The Immigration and Nationality Act of 1952 provides that persons born in the Canal Zone and Panama after February 26, 1904, one or both of whose parents were at the time of birth of such person citizens of the U.S., are declared to be citizens of the U.S.; likewise as to certain categories of persons born in Puerto Rico, Alaska, Hawaii, the Virgin Islands and Guam, on or after certain stated dates. 8 U.S.C. 1402-07. Appropriate amendatory legislation could relate to persons of the Marianas. Establishment of a status for the people of the Marianas would relate to the nature of the relationship between the U.S. and the Marianas. If the united States acquires complete and absolute sovereignty and dominion, then the Marianas would become part, or territory of the United States. Based upon historical precedent, the status of noncitizen national, as the American Samoan, may be appropriate. Continuation of restrictive land tenure policies and elements of the matai system could be recognized until such time as the people may option for citizenship. Congress has not organized the government of American Samoa as it has Guam and Virgin Islands. As unincorporated and organized territories the inhabitants of Guam and Virgin Islands were afforded the privilege of citizenship. The progress of these inhabitants as citizens, just as that of the people of the Commonwealth of Puerto Rico who are also citizens, is a matter of record. Under a looser arrangement with the Marianas where the islands may retain their status as "foreign" then alien status for its people would appear appropriate.

If the Marianas have a relationship with the U.S. on equal footing as Guam, Virgin Islands or Puerto Rico, then citizenship for its people would appear appropriate.

Attachments:

Enclosure 1 wi. Exhibits 1-4

Enclosure 2 wi. Exhibit 1

Enclosures 3 and 4

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APPLICABILITY OF U. S. LAW
APPLICATION OF THE FEDERAL CONSTITUTION

Supreme Court decisions recognize that, in general, the Constitution extends to all territory under the sovereignty of the United States. The issue involved in a particular case is whether a certain provision in the Constitution is applicable in the territory where the case arises. The Insular Cases, particularly Downes v. Bidwell, 182 U.S. 244 (1901, re. then Territory of Puerto Rico), and Balzac v. Puerto Rico, 258 U.S. 298 (1922), tried during the early part of this century and after the United States acquired the Philippines, Puerto Rico, Hawaii, Alaska, Guam, and American Samoa, deal at length with Constitutional questions in relation to territory which is property of the U.S. for which Congress under Art. IV, Sec. 3, Cl. 2 of the Constitution may make all needful rules and regulations. From the Insular Cases and subsequent similar ones the following terms, with connotations as to Constitution extension, have evolved:

1. The term territory is used to describe any area over which the U.S. exercises sovereignty. The term is so used in Article IV, Section 3, Clause 2 of the Constitution which provides that the Congress shall have power to ". . . make all needful rules and regulations respecting the territory or other property belonging to the United States . . ."

Enclosure 2.

2. The term territory is used to describe those areas to which the Constitution has been extended and in which it is applicable as fully as in the continental United States. The term is synonymous with incorporated territory, which refers to an area which the Congress has "incorporated" into the United States by making the Constitution applicable to it. The last two incorporated territories were Alaska and Hawaii. During the course of United States history there have been others, all on the mainland and all subsequently erected into States.

The Congress used the following language in extending the Constitution to Alaska: "The Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the Territory as elsewhere in the United States. * * *." Act of August 24, 1912, 37 Stat. 512.

The following language was used in extending the Constitution to Hawaii: "The Constitution, and, except as otherwise provided, all the laws of the United States, including laws carrying general appropriations, which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States." Act of April 30, 1900, 31 Stat. 141, as amended through 1932.

3. The term insular possession is used to refer to any unincorporated territory of the United States, i.e., any territory to which

the Constitution has not been expressly and fully extended. The Virgin Islands, Guam, and American Samoa are unincorporated territories.

Organic acts for both Virgin Islands and Guam declare each an unincorporated territory of the United States. Such acts were silent as to extension of the Constitution until 1968 when amendments to each act extended specific provisions to the two territories. For example, section 10 of P.L. 90-497, Sept. 11, 1968 (48 U.S.C. 1421b.(u)) provides that:

> The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, sections 1 and 2, clause 1; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments.
>
> All laws enacted by Congress with respect to Guam and all laws enacted by the territorial legislature of Guam which are inconsistent with the provisions of this subsection are repealed to the extent of such inconsistency.

In regard to the Virgin Islands, see 48 U.S.C. 1561, last two paragraphs for similar language. In regard to American Samoa, no organic legislation has been enacted. The Act of Feb. 20, 1929, as amended, 48 U.S.C. 1661, which is the basis for the existing government in American Samoa, is silent as to Constitution extension. Provision is made in the Act that:

> Until Congress shall provide for the government of such islands, all civil,judicial, and military powers shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

Under E.O. 10264, the Secretary of the Interior is responsible for the administration of civil government in American Samoa. In carrying out this responsibility, the Secretary has ratified and approved a Revised Constitution of American Samoa. Copy attached as Exhibit 1. Its Bill of Rights contains many rights found in the U.S. Bill of Rights or organic legislation for other territories. The Revised Constitution of American Samoa is structured to take into consideration the customs, culture and traditions of persons of Samoan ancestry.

4. Unincorporated territories may be further subdivided into those which are organized and those which are unorganized, i.e., those for which the Congress has provided organic acts which serve the same purpose as do the constitutions of the States, and those for which organic legislation has not been enacted. Guam and the Virgin Islands are organized but unincorporated - American Samoa is both unorganized and unincorporated.

5. The term commonwealth, when used in the context of American territorial relations, means approximately the status currently occupied by Puerto Rico. The legal consequences of commonwealth status are largely unclear (see Exhibit 2, attached, a draft report from the Legislative Reference Service, Library of Congress "Commonwealth" in

reference to Puerto Rico), but the term denotes, at a minimum, a high degree of local autonomy, under a constitution drafted and adopted by the residents of the affected area, pursuant to Congressional enabling legislation earlier approved by such residents by referendum. The Constitutional relationship of the Commonwealth of Puerto Rico to the United States is open to great uncertainty, with some parties (supported by court decisions) contending that the Congress retains its plenary authority under Article IV of the Constitution to legislate for Puerto Rico, while others contend (supported by other court decisions) that because the statutes giving rise to the Commonwealth were adopted "in the nature of a compact," the Congress is not free to legislate unilaterally for Puerto Rico.

Laws setting forth the relationship between the United States and Puerto Rico are codified in chapter 4 of title 48 of the U.S. Code. Recognizing that there may be doubt as to the applicability of the U.S. Constitution in certain areas, section 737 of title 48 illustrates how the Congress has assured that Constitutional rights, privileges and immunities of citizens do apply there. The section provides that:

> The rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of section 2 of article IV of the Constitution of the United States.

In the Act of July 3, 1950, 64 Stat. 319 (48 U.S.C. 731b to 731e), the people of Puerto Rico were granted authority to organize a government

pursuant to a constitution of their own adoption, with the stipulation that "The said constitution shall provide a republican form of government and shall include a bill of rights." Commonwealth status for the Mariana Islands, if it comes under the sovereignty of the United States, could be premised upon such a requirement. A bill of rights is included in Puerto Rico's Constitution. Organic acts for Guam and Virgin Islands also contain such.

Attachments:

Exhibits 1 and 2

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APPLICABILITY OF U. S. LAW
APPLICATION OF U. S. LEGISLATION

For any status for the Mariana Islands which recognizes sovereignty in the United States provision could be made that the existing laws of the United States applicable in the TTPI shall continue in full force and effect in the newly established political entity. As for Federal statutes which may refer to a named territory or possession, or to "territories and possessions," or to the Commonwealth of Puerto Rico, if the Mariana Islands falls into any of these categories, then these statutes should be screened and studied to determine (1) whether the Congress intended that the law apply to territories and possessions (2) whether it would apply to the Mariana Islands in its new status (3) is the statute compatible with Mariana Islands' social and economic development and with its geographical position (4) is the function one which could be better performed by the government of the Mariana Islands, and (5) will the application of the statute tend to place Mariana Islands in a position which parallels that of the other territories? Such a study was made by different commissions appointed by the President pursuant to an act of Congress as to the applicability of Federal laws to Guam, Puerto Rico and Virgin Islands.

Based upon past precedent, a 7-man commission should be given one year to do the screening and study.

Please refer to a classified memorandum of January 15, 1973, from DASTA to James M. Wilson, which contains pertinent comments.

Enclosure

62
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COURT SYSTEMS DESIRED

Assuming that the Mariana Islands are under the sovereignty of the United States but in a status similar to that of American Samoa (unincorporated and unorganized), we would suggest that the local court system presently in effect in the TTPI be adopted. This could be on a temporary basis and until such time as the jurisdiction of the District Court of Guam is extended to the Mariana Islands. In scope and structure, the local court would be similar to that of the High Court of American Samoa.

If the Mariana Islands have status equal to that of Guam, we suggest that the jurisdiction of the District Court of Guam be extended to include the Mariana Islands. A two-division court, one division in Guam, one in Saipan, would appear adequate. It could be within the authority of the local legislature to establish a system of local courts.

The wording of Part IV of Secretarial Order No. 2918, appropriately changed, could be used to establish judicial authority in a local court not unlike that already in existence in the TTPI.

An appropriate amendment to section 22 of the Organic Act of Guam, as amended, 48 U.S.C. 1424, would be necessary in order to extend the jurisdiction of the District Court of Guam to include Mariana Island lease refer to two classified memorandums of January 15, 1973, from DASTA to James M. Wilson, Jr., which contain pertinent comments.

Enclosure #157