

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

October 24, 1986

Honorable James C. Miller III
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Miller:

Enclosed is a draft of a Presidential Proclamation entitled "Placing Into Full Force and Effect the Covenant with the Northern Mariana Islands, and the Compacts of Free Association with the Republic of the Marshall Islands and the Federated States of Micronesia." The Proclamation would have the effect stated in its title. It would also determine that the Trusteeship Agreement for the Pacific Islands, concluded on July 18, 1947 between the United States and the Security Council of the United Nations (61 Stat. (Pt. III) 3301), has terminated with respect to those three entities. The Proclamation would not affect the Trusteeship Agreement with respect to the Republic of Palau, the fourth area covered by the Trusteeship Agreement. The Proclamation would be based on Section 1002 of the Covenant with the Northern Mariana Islands, approved by Public Law 94-241. The authority to issue it is also implied in Sections 101 and 102 of the Joint Resolution to Approve the Compact of Free Association and for other purposes, approved on January 14, 1986, Pub. L. 99-239.

The background for this Proclamation is as follows. Since 1947 the United States has administered the Trust Territory for the Pacific Islands under the above mentioned Trusteeship Agreement with the Security Council of the United Nations. Negotiations for the termination of the Trusteeship have been going on since 1969 with the four components of the Trust Territory, viz., the Northern Mariana Islands, the Federated States of Micronesia, Palau, and the Marshall Islands. The Northern Mariana Islands have elected to become a Commonwealth in political union with and under the sovereignty of the United States, the other three areas have chosen to be freely associated with the United States. The Covenant with the Commonwealth of the Northern Mariana Islands and the Compact with the Freely Associated States of Micronesia and the Republic of the Marshall Islands have been ready to be placed in effect for some time. In the Republic of Palau the Compact approval process has not been completed. For local constitutional reasons that process may possibly take several years.

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The usual, but not the exclusive way of terminating a Trusteeship Agreement would be by agreement with the Security Council. This, however, is not feasible because it is subject to a virtually certain Soviet veto. The Department of State has been advised that an alternative method, viz., a procedural motion, not subject to a veto, to limit the agenda item of the Security Council on the Trusteeship Agreement to the Republic of Palau, would not be supported by the necessary nine votes. This is because the partial termination of the Trusteeship would be considered an amendment of the Trusteeship Agreement that, pursuant to Article 83(1) of the Charter of the United Nations requires approval by the Security Council, and that, as indicated above, is subject to a Soviet veto. It is the view of the Department of Justice that a Trusteeship ends by operation of law by agreement between the Administering Authority and the inhabitants of the Trust Territory when the latter have by a sovereign act of self determination chosen a status of self government or independence. As indicated in recital #6 of the draft Proclamation, the Trusteeship Council has found that the United States has satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement.

A Presidential Proclamation announcing that the Trusteeship has terminated is urgently required for two reasons. First, while the Covenant with the Northern Mariana Islands has been partly effective since January 9, 1978 (Proclamation No. 4534 of October 24, 1977), those islands will become a Commonwealth in political union with and under the sovereignty of the United States only upon the issuance of a Presidential Proclamation announcing the termination of the Trusteeship. The same applies to the acquisition of United States citizenship by the inhabitants of the Northern Mariana Islands. Covenant Sections 101, 301, 1002, 1003(c). Further delay in the full implementation of the Covenant is bound to affect adversely the delicate relationship between the United States and the people of the Northern Mariana Islands who had been given to understand that the Trusteeship would come to an end in 1981.

The issuance of the Proclamation on November 3, 1986, is even more important and urgent in the context of litigation being conducted by the Department of Justice. The Department of Justice is defending suits claiming about \$4-5 billion for personal injuries and damage to property resulting from nuclear testing in the Marshall Islands in late 1940s and early 1950s. An agreement provided for in Section 177 of the Compact with the Republic of the Marshall Islands contains an espousal provision which settles those claims for \$150 million and provides for the dismissal of those suits. While those claims are probably exaggerated they are nevertheless substantial. The suits for damage to property pending in the United States Claims Court have been stayed subject to two conditions. First, the stay expires under any circumstances, on December 31, 1986. In any event, the United States must plead to the suits ten days after the effective date of the Compact. The effective date of the Compact with

Republic of the Marshall Islands being October 21, 1986, the tenth day is November 4, 1986, according to Claims Court Rule 6(a). On that day the United States would move for the dismissal of those suits under the Espousal Agreement. The validity of the Espousal Agreement, however, is questionable as long as the United States exercises the powers of the Administering Authority over the Republic of the Marshall Islands. It is therefore necessary that the Trusteeship over the Marshall Islands be terminated before November 4, 1986. Moreover, the plaintiffs in those cases are certain to challenge the legal effectiveness of the termination of the Trusteeship. In this context issuance of the draft proclamation becomes crucial in view of Section 1002 of the Covenant with Northern Mariana Islands which provides:

"Any determination by the President that the Trusteeship Agreement has been terminated or will be terminated on a day certain will be final and will not be subject to review by any authority, judicial or otherwise, of the Trust Territory of the Pacific Islands, the Northern Mariana Islands or the United States."

Section 1001(b) of the Covenant provides that the Covenant, when approved by the United States in accordance with its constitutional processes, will thereupon become "law." The incontestability provision of Section 1002 therefore is not merely a part of the Covenant, but a part of the general laws of the United States.

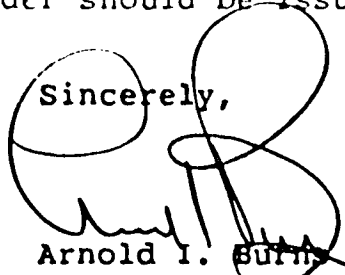
In order to have that defense available, the Presidential announcement that the Trusteeship Agreement has terminated must be issued prior to November 4, 1986.

The dates in the eighth recital of the Proclamation had to be left open because the negotiations between the United States and the Federated States of Micronesia on the effective date of the Compact are still pending. The dates will be supplied as soon as they have become finished. If no agreement with the Federated States of Micronesia can be reached by October 29th, 1986, it may become necessary to modify the Proclamation with respect to the Federated States.

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I should like to draw your attention to a draft Executive Order to be presented by the Department of the Interior that would vest general administrative supervision over the Commonwealth of the Northern Mariana Islands in the Secretary of the Interior. That Executive Order should be issued at the same time as the Proclamation.

Sincerely,



Arnold I. Burns
Deputy Attorney General

WITHDRAWAL SHEET
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
letter case (445053)			MD 11/5/01
1. letter	from Arnold I. Burns to James C. Miller; re draft presidential proclamation entitled "Placing into Full Force and Effect the Covenant with the Northern Mariana Islands, and the Compacts of Free Association with the Republic of the Marshall Islands and the Federated States of Micronesia." (4 pp.)	10/24/86	B5
letter	from Ralph W. Farr to James C. Miller, III; re the Northern Mariana Islands.	10/24/86	B5
letter case (453861)			
3. memo	from Peter J. Wallison to David L. Chew; re the Northern Mariana Islands, the Federated States of Micronesia and the Republic of the Marshall Islands.	11/3/86	B5
4. letter	same as doc. 1. (3 pp.)	10/24/86	B5
5. memo	from C. Dean McGrath, Jr. to Peter J. Wallison; re the Northern Mariana Islands, the Federated States of Micronesia and the Republic to the Marshall Islands.	11/3/86	B5
6. letter (461031)	from Ambassador Fred M. Zeder II to Admiral John Poindexter; re Micronesia.	9/29/86	A, B5 B1
7. memo (462307)	from Kenneth Kissell to Alton G. Keel; re Micronesia. (3 pp., including NSC profile sheet)	9/26/86	A B1
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FILE LOCATION: ST 051 State Government (440093-498999) Territories and Islands			6/11/92

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| <ul style="list-style-type: none"> A. National security classified information. B. Presidential Records Act <ul style="list-style-type: none"> B1. Release would violate a Federal statute. B2. Release would disclose trade secrets or confidential commercial or financial information. B3. Release would constitute a clearly unwarranted invasion of personal privacy. B4. Relating to appointment to Federal office. B5. Release would disclose confidential advice between the President and his advisors, or between such advisors. | <ul style="list-style-type: none"> B6. Release could disclose internal personnel rules and practices of an agency. B7. Release would disclose information compiled for law enforcement purposes. B8. Release would disclose information concerning the regulation of financial institutions. B9. Release would disclose geological or geophysical information concerning wells. C. Closed in accordance with restrictions contained in donor's deed of gift. |
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