

**The original documents are located in Box 7, folder “Trust Territories” of the
Norman Ross Files, 1974-75
at the Gerald R. Ford Presidential Library.**

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DEPARTMENT of the INTERIOR

news release

OFFICE OF THE SECRETARY

For Release Wednesday, January 23, 1974

SELF-GOVERNMENT GOAL FOR PACIFIC ISLANDS ANNOUNCED BY MORTON; FOREIGN INVESTMENT RESTRICTIONS TO BE LIFTED BY APRIL 1, 1974

SAIPAN, Mariana Islands -- Interior Secretary Rogers C. B. Morton, in a historic "Message to Micronesia," today announced support of the United States Government for a constitutional convention leading to self-government of the Trust Territory of the Pacific Islands. At the same time he announced the lifting of restrictions on foreign investment.

The message was recorded in Washington for broadcast in Micronesia.

Under a 1947 trusteeship agreement with the United Nations, the United States -- through the Department of the Interior -- administers the more than 2100 islands lying in a three-million square mile expanse of the Western Pacific Ocean. Fewer than 100 islands are inhabited by approximately 110,000 persons.

Administrative districts include the Marianas (except for Guam, a U.S. Territory), the Marshall Islands, Palau, Ponape, Truk and Yap.

In his message, Morton declared:

"The United States Government is giving whole-hearted support to the organization of a Constitutional Convention. I believe the development of this fundamental instrument is an essential part of efforts toward self-government.

"I am confident that the Congress of Micronesia will act rapidly to make the Constitutional Convention a reality. Your new constitution will be the blueprint for your future. It will be the cornerstone for important programs during the period of your transition from trusteeship to self-government. I have asked the High Commissioner, Edward E. Johnston, to make available any and all technical and staff support as requested by the Congress to assist in this historic step.

"With regard to the disposition of public lands, let me say that the U.S. policy represents a fulfillment of a promise made years ago by the United States to hold these lands in trust for the people. The decision to return control over public lands to those districts requesting it is full of meaning for the people of Micronesia. Acting through your elected and territorial government and traditional leadership you are now to assume responsibility for matters pertaining to land, culturally the most prized and socially and economically the most significant commodity in Micronesia. This constitutes an enormous step in transition toward self-government."



Of international importance, Secretary Morton announced:

"To promote further control by Micronesians over their own economic affairs, I have ordered the lifting of restrictions on foreign investment in the Trust Territory effective April 1, 1974. From that date, individual and commercial investors from any of the world's community of nations will be permitted to apply for business permits in Micronesia. More specifically, each District Economic Development Board will be able to consider business applications from any nation within the guidelines of your own Foreign Investors Business Permit Act. Under the terms of that Act, the High Commissioner will have final authority to review each recommendation of the District Economic Development Boards.

"I have instructed the High Commissioner to base his review on the security of the area and the general welfare and development of the Micronesian people."

In further support of the self-government goal, Secretary Morton said he is instructing U.S. representatives to work closely with the Micronesians to implement a comprehensive program of education for self-government, "so that it will reach all areas and all levels of society."

He added:

"We will continue the policy of elevating qualified Micronesians into more responsible positions in the Administration. I have asked the High Commissioner to submit to me his best forecast of manpower needs over the next three years so that we might determine how more Micronesians may be placed in key positions."

Already, Morton said, Micronesians hold the directorships in Health Services, Education, and Public Affairs. He pointed out that at the beginning of the Nixon Administration in 1969, no Micronesians served in the High Commissioner's cabinet, and only one Micronesian was a District Administrator. Today eight of these top level positions are held by Micronesians.

Citing advances in road construction, hospital and school expansion, and modern sewage disposal facilities, Morton pointed out that local revenues have jumped from \$850,000 to \$4.5 million in the last five years.

Tourism has become big business in Micronesia with the building of airports and hotels. In 1973 some 48,000 visitors added over \$3.5 million to the local economy.

He announced that Stanley S. Carpenter, Director of Territorial Affairs, will work with High Commissioner Johnston, the Congress of Micronesia and district leaders to prepare a revised five-year plan aimed at providing more power, water, classroom space, roads, sewage systems and airports.

Already established are the Micronesian Occupational Center and the Micronesian Community College.

"We have a new hospital in Truk, and planning is completed for another in Ponape," Morton said. "The long-sought Renrak Bridge connecting Babelthaup with Koror has been funded and will soon be a reality."

Morton gave emphasis to this statement:

"As we approach the end of the Trusteeship we believe even greater responsibility for Micronesia must be assumed by the people of Micronesia. There will remain many areas that will be shared with you. But for the larger part, the future of Micronesia is a Micronesian matter. The responsibility for determining your future government is yours. The obligation to promote social, economic and political welfare of Micronesians is yours. The right to self-determination is yours."

x x x

The White House
Washington

WN32 194 VIA RCA

1974 AUG 10 AM 6 57

SAIPAN 1940 AUG 10 1974

THE PRESIDENT

THE WHITE HOUSE

THE MEMBERS OF THE MARIANA ISLANDS DISTRICT LEGISLATURE VOTED
UNANIMOUSLY TODAY THAT I SEND OUR CONGRATULATIONS TO YOU ON YOUR
BEING SWORN IN AS THE 38TH PRESIDENT OF THE UNITED STATES. AS
A TRUSTEESHIP OF THE UNITED STATES, WE PLEDGE OUR FULL SUPPORT
TO YOU AND YOUR ADMINISTRATION. THE ADMINISTRATION UNDER FORMER
PRESIDENT RICHARD M. NIXON MADE GREAT STRIDES IN THE FIELD OF

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INTERNATIONAL FOREIGN POLICY AND WE IN THE MARIANA ISLANDS
DISTRICT ARE PARTICULARLY PLEASED THAT DURING THIS ADMINISTRATION,
THE STATUS NEGOTIATIONS ON THE FUTURE POLITICAL STATUS OF THE MARIANA
ISLANDS DISTRICT AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS
(MICRONESIA) RECEIVED HIGHEST PRIORITY. NEGOTIATIONS WITH A
AMBASSADOR FRANKLIN HAYDN WILLIAMS, HEAD OF THE UNITED STATES
DELEGATION ON FUTURE STATUS AND THE MARIANA POLITICAL STATUS
COMMISSION HAVE RECEIVED BROAD AGREEMENTS ON FUTURE PERMANENT
RELATIONSHIP BETWEEN MARIANA ISLANDS AND THE UNITED STATES OF
AMERICA AND WE HOPE THAT YOU WILL CONTINUE THIS NOBEL EFFORT

mobile

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4 SO THAT THESE NEGOTIATIONS CAN BE SUCCESSFULLY CONCLUDED.
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6 CONGRATULATIONS.
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8 PRESIDENT VICENTE N. SANTOS, MARIANA ISLANDS DISTRICT
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10 LEGISLATURE
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September 11, 1974

Dear Mr. President:

The President has asked me to respond to your letter of August 14, 1974, which enclosed a copy of Resolution No. 32-1974 enacted by the Fourth Mariana Islands District Legislature.

The President is gratified by your expression of good wishes and wants to assure you that he appreciates the opportunity to hear your views.

Sincerely,

**Norman E. Ross, Jr.
Assistant Director
Domestic Council**

**Honorable Vicente N. Santos
President
Trust Territory of the Pacific Islands
Saipan, Mariana Islands 96950**

**NEROSS/pt 9-11-74
cc:WH files**



THE WHITE HOUSE
WASHINGTON

October 10, 1974

The attached has been sent to
Jack Froebe for his information.



THE WHITE HOUSE
WASHINGTON

9/23/74

TO: NORM ROSS

For Your Information: XX

For Appropriate Handling:

Original has been sent to

Warren Rustand.


RL
Robert D. Linder

10
TRUST TERRITORY OF THE PACIFIC ISLANDS
FOURTH MARIANA ISLANDS DISTRICT LEGISLATURE
P. O. Box 929 Saipan, Mariana Islands 96950

September 17, 1974

RH
The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D. C. 20025

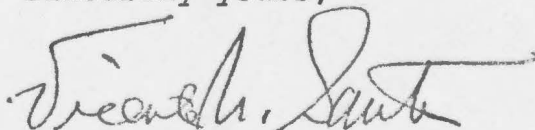
Dear President Ford:

It is my very great pleasure to transmit to you Resolution No. 5-1974 that was enacted by the Fourth Mariana Islands District Legislature, First Special Session, on September 5, 1974 that invites you to visit Saipan, Mariana Islands, Trust Territory of the Pacific Islands during your visit to Japan later this year.

We are honored for such a distinguished visit and we earnestly hope the President of the United States can be able to accommodate such a visit despite his busy schedule.

Thank you very much.

Sincerely yours,



Vicente N. Santos
President

Enclosure

cc: High Commissioner w/encl.
Distad/Marianas w/encl.



received Sept 24

4TH. MARIANA ISLANDS DISTRICT LEGISLATURE

FIRST SPECIAL SESSION

RESOLUTION NO. 5-1974



4TH. MARIANA ISLANDS DISTRICT LEGISLATURE

FIRST SPECIAL SESSION

RESOLUTION NO. 5-1974

INTRODUCED BY: HON. CARLOS A. SHODA, SAIPAN

A RESOLUTION RELATIVE TO EXTENDING AN INVITATION TO THE HONORABLE GERALD R. FORD, PRESIDENT OF THE UNITED STATES OF AMERICA, TO VISIT SAIPAN, MARIANA ISLANDS, TRUST TERRITORY OF THE PACIFIC ISLANDS DURING HIS VISIT TO JAPAN LATER THIS YEAR

WHEREAS, according to news reports, the Honorable Gerald R. Ford, President of the United States of America, is scheduled to make his first visit outside the United States since assuming the presidency later this year when he visits Japan; and

WHEREAS, since Japan is a very close neighbor to Saipan in the Northern Marianas, being only 1,283 miles away, it would be very convenient to make a side visit to Saipan in the Northern Marianas while enroute to or from Japan; and

WHEREAS, a visit to the Northern Marianas by a President of the United States of America would represent a first in history for such a distinguished visit; and

WHEREAS, if current negotiations regarding the Future Political Status of the Northern Marianas are successfully concluded, the Northern Marianas will become a permanent part of the American political family, and a visit to Saipan in the Northern Marianas will give a great boost to this historic effort;

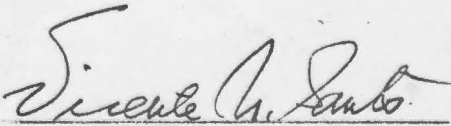


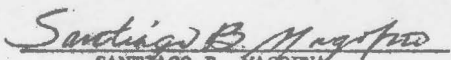
RES. NO. 5-1974

PAGE TWO

NOW, THEREFORE, BE IT RESOLVED BY the 4th. Mariana Islands District Legislature, First Special Session, that an invitation be extended to the Honorable Gerald R. Ford, President of the United States of America, to visit Saipan, Mariana Islands, Trust Territory of the Pacific Islands during his visit to Japan later this year.

PASSED BY THE 4TH. MARIANA ISLANDS DISTRICT LEGISLATURE SEPTEMBER 5, 1974.


VICENTE N. SANTOS
President


SANTIAGO B. MAGOFNA
Legislative Secretary



LOUIS STOKES
21ST DISTRICT, OHIO

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:
DISTRICT OF COLUMBIA
TREASURY, POST OFFICE
AND GENERAL GOVERNMENT
LEGISLATIVE

AD HOC COMMITTEES:
CONGRESSIONAL BLACK CAUCUS
CHAIRMAN

Congress of the United States
House of Representatives
Washington, D.C. 20515

315 CANNON BUILDING
WASHINGTON, D.C. 20515
(202) 225-7032

DISTRICT OFFICE:
ROOM 2947
NEW FEDERAL OFFICE BUILDING
1240 EAST 9TH STREET
CLEVELAND, OHIO 44199
(216) 522-4900

October 23, 1974

File

Dear Mr. Secretary:

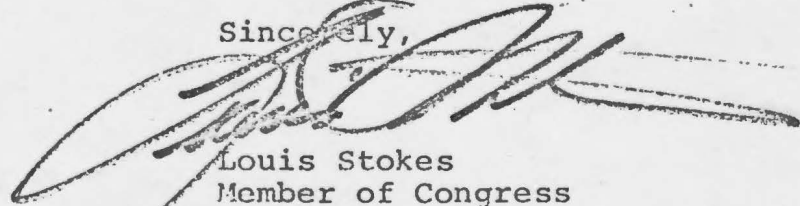
It has been brought to my attention that the United States is proposing to take over a major portion of the Island of Tinian, in the Mariana Islands archipelago, for a military complex.

This is a disturbing situation, if indeed the United States has violated its promises, as indicated in the attached letter, and now intends to take over the island without the agreement of or compensation to those directly involved.

Several points in the letter relate to areas for which you have major responsibility. I would greatly appreciate your clarifying this matter for me and providing me with the justification for what has occurred and what is now ostensibly proposed.

Thank you for your prompt reply.

Sincerely,



Louis Stokes
Member of Congress

The Honorable Rogers C. B. Morton
Secretary
United States Department of the Interior
Washington, D. C. 20240



25391

LAW OFFICES OF
MICRONESIAN LEGAL SERVICES CORPORATION

ATTORNEYS AND MICRONESIAN COUNSELORS

CABLE ADDRESS: MICROLEX

THEODORE R. MITCHELL
EXECUTIVE DIRECTOR

EDWARD C. KING
DEPUTY DIRECTOR

LORENZO L.G. CABRERA
DEPUTY DIRECTOR
FOR ADMINISTRATION

GIDEON DOONE
ASSISTANT DIRECTOR

ROMAN T. TUDELA
COMPTROLLER

DANIEL AQUINO
HAMLET J. BARRY, III
ALAN B. BURDICK

DELSON EHME
ANDREW FIGIRMAD
FELIX FITAL
HEMOS A. JACK
IOANES KANICHY
JAMES LECHE
ALAN S. LIEBERMAN
DANIEL MACMEEKIN
SIONAG MACMEEKIN
DENNIS F. OLSEN
OLIVER G. RICKETSON
BELHAIM SAKUMA
NAHOY G. SELIFIS
ALBERT R. SNYDER
MICHAEL UNGER
TONY VILLANUEVA
HANS WILANDER
SAMUEL WITHERS, III

CENTRAL OFFICE
POST OFFICE BOX 828
SAIPAN, MARIANA ISLANDS 96950
TELEPHONE 6228

PALAU OFFICE
POST OFFICE BOX 87
KOROR, PALAU
WESTERN CAROLINE ISLANDS 96940

MARSHALLS OFFICE
POST OFFICE BOX 376
MAJURO
MARSHALL ISLANDS 96900

TRUK OFFICE
POST OFFICE BOX D
MOEN, TRUK
EASTERN CAROLINE ISLANDS 96942

PONAPE OFFICE
POST OFFICE BOX 129
KOLONIA, PONAPE
EASTERN CAROLINE ISLANDS 96941

MARIANAS OFFICE
POST OFFICE BOX 828
SAIPAN, MARIANA ISLANDS 96950
TELEPHONE 6243

YAP OFFICE
POST OFFICE BOX 206
COLONIA, YAP
WESTERN CAROLINE ISLANDS 96943

REPLY VIA AIR MAIL TO Marianas Office

October 11, 1974

The Honorable Louis Stokes
House of Representatives
315 Cannon House Office Building
Washington, D. C. 20515

Dear Congressman Stokes:

The Tinian Municipal Council has engaged us to advise and represent it with respect to the present plans of the United States Military to establish a joint-military complex on Tinian. On their behalf, we have decided to inform you and several other members of the United States Congress of the current developments on Tinian. This is the purpose of this letter, plus its enclosures of a Resolution passed by the Tinian Municipal Council, a cover letter by the Speaker of the Tinian Municipal Council and various other documents and news clippings.

Tinian is an island in the Mariana Islands archipelago, immediately south of Saipan. It is part of the Trust Territory of the Pacific Islands, otherwise known as Micronesia, administered by the United States under the United Nations Charter and a 1947 Trusteeship Agreement.

During Japanese times, Tinian was inhabited only by Okinawans and Japanese people. Following World War II, the United States Government decided to return all those peoples who had, in one way or another, migrated to other islands, to their original islands. A group of these peoples were Chamorros (people from the Marianas) who had migrated to Yap Island during Japanese times. These Chamorros were returned to the Mariana Islands in the late 1940's. While a few went to other islands in the Marianas, many went to Tinian because the United States promised them that they would be given valuable fee simple estates if they resettled and farmed on Tinian.

The Honorable Louis Stokes
October 11, 1974
Page 2

Relying on this promise, this group of people gave up lands that they had acquired on Yap. They went to Tinian, stayed and farmed the land under a homestead program similar to the homestead programs in the United States. That program, however, has been poorly administered from the beginning. A few received the promised titles, but most have been denied homestead deeds for entirely arbitrary reasons.

At present, there are approximately 800 people on the island of Tinian. Some of these have been issued homestead permits which were summarily revoked without due process. Some have paid the required permit fee but never received the permit. Some have been issued permits and have farmed the land for the acquired three-year period, but have never received deeds to which they are entitled under the law.

The people of Tinian, characteristic of Micronesians, are a patient group of people. They have quietly borne this injustice thinking that all will turn out as promised eventually. You can imagine the disillusionment of the people of Tinian when they discovered that they may be removed from Tinian altogether.

On May 16, 1973, an unauthorized newspaper story appeared in the Pacific Daily News, a copy of which is enclosed, which informed the public and the people of Tinian, for the very first time, the extent of the United States' plans to establish a military base on Tinian. According to the article, the Department of Defense wanted all of Tinian. The residents of Tinian would be moved off-island to be relocated later. As an alternative to this plan, the United States would propose to relocate the village the people are presently living in to another area on Tinian.

Because of the uproar over the military's first alternative, the military decided to take the other alternative - relocating the village to another area. Again, the people of Tinian learned of this decision, not by direct communication to the people, but through the news media. In a May 30, 1973 article in the Pacific Daily News, a copy of which is enclosed, the people of Tinian learned that, although the plans had not yet been officially announced, the United States proposed to take control of two-thirds of Tinian, and that the people would be relocated. That same evening, May 30, 1973, according to a

The Honorable Louis Stokes
October 11, 1974
Page 3

May 31, 1973 Pacific Daily News article, Ambassador Williams, in a radio broadcast to the people of the Marianas, confirmed the May 30, 1973 news article. But it did more than confirm the previous stories. The article stated not only did the United States want the northern two-thirds of the island, but also that the United States "should also ask to acquire the southern third but would then make this part of the island available to the current residents for normal civilian activities and community life." (Pacific Daily News, May 31, 1973, front page). (See enclosed copy.) The people of Tinian were going to be allowed to lease a small portion of their own island! It should be noted that United States officials had, for the previous two weeks, flatly denied that the United States wanted the whole of Tinian.

As if it were not enough that the United States military was eventually going to drive the people of Tinian out of their homes, another move was made by the administering authority to further aggravate the people of Tinian. This time, the High Commissioner of the Trust Territory of the Pacific Islands, an American appointed by the President and directly responsible to the Secretary of Interior, unilaterally and without authority or consultation from the Congress of Micronesia, suspended the Tinian homestead program, a program which the government had really never started despite its promises. The apparent reason for the homestead moratorium was to minimize the cost and difficulty of acquiring land for the military.

On February 14, 1974, the Tinian Municipal Council passed an Ordinance providing for a referendum to determine what the people of Tinian thought about the military's land requirements. This Ordinance, unfortunately, was vetoed by the District Administrator, an appointee of the High Commissioner of the Trust Territory of the Pacific Islands, apparently out of fear that the results of the referendum would be negative.

A proclamation was circulated among the voters of Tinian on June 8, 1973. The proclamation, signed by 178 of the 348 registered voters, expressed the opposition of the people to the plans of the military. This proclamation was presented to Ambassador Williams. He refused to even read it saying that the proclamation should go to the Marianas Political Status ✓



The Honorable Louis Stokes
October 11, 1974
Page 4

Commission. This was done. However, the Marianas Political Status Commission voted that the proclamation should not be referred to Ambassador Williams. (The Marianas Political Status Commission was established in May of 1972 by the Marianas District Legislature for the purpose of negotiating with the United States as to a possible commonwealth status for the Mariana Islands. Ambassador Franklin Haydn Williams was appointed head of the United States delegation to the negotiations.) Another petition was later circulated on July 7, 1974. This one was in favor of the military's plans. What all of this shows is that the actions of the United States has only sown confusion and disruption among the people of Tinian. No one really knows or understands exactly what the military's plans include.

It is obvious that the U. S. Military's plans on Tinian are serious and substantial. It also appears that the administering authority has not, and does not intend to live up to its obligation under the Trusteeship Agreement in which it "protect the inhabitants against the loss of their lands and resources". (Art. 6(2), Trusteeship Agreement).

Admittedly, the United States is granted the power, under Article 5 of the Trusteeship Agreement (an agreement which the people of Micronesia were never a part of), "in the maintenance of international peace and security...to establish naval, military and air bases and to erect fortifications in the Trust Territory..." (Art. 5, Trusteeship Agreement.) However, nobody from the United States has clearly shown to the people of Tinian that the whole of Tinian would be needed for the maintenance of peace and security. This was not shown when the military's land requirements were changed to two-thirds. The whole plans for Tinian have been kept secret from the people of Tinian until the news leak on May 16, 1973. In fact, the military's plans would, in all probability, be secret still had it not been for the news leak. Moreover, in an article appearing in the July 7, 1974 issue of the Honolulu Advertiser, a copy of which is enclosed, Ambassador Williams was quoted as saying that the "President approved the military plan in 1971 and reaffirmed it in 1972 following a National Security Council review."



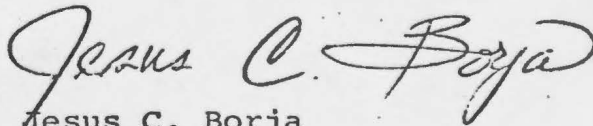
The Honorable Louis Stokes
October 11, 1974
Page 5

Our client is very interested in learning the present status of the military plans for their island, what decisions and commitments have already been made by the United States executive branch agencies involved, and what steps are to be taken to protect the existing culture of the people of Tinian. Our initial attempt to get this description failed, as you can see from the enclosed October 2, 1974 news story. Our client strongly believes that any military installation occupying more than one third of the island and any acquisition of land beyond a lease for such use would be extremely and unnecessarily disruptive of the lives of the people of Tinian. The Tinian Municipal Council is unaware of any reason why the United States must establish an installation larger than one third of the island, especially in light of the extreme consequences to the people of Tinian. As the enclosed Resolution states, the people of Tinian are not opposed to use of the northern one-third of Tinian by the U. S. Military.

Your assistance in this matter would be greatly appreciated.

It would also be appreciated if any response on this matter would be addressed to this office.

Sincerely,


Jesus C. Borja
Attorney

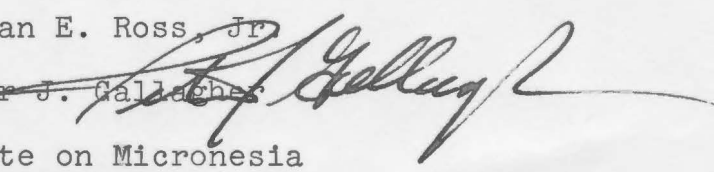
Enclosures



file

AD HOC ADVISORY GROUP
ON PUERTO RICO
1016 16th Street, NW.
Washington, DC 20036

November 21, 1974

MEMORANDUM FOR: Norman E. Ross, Jr.
FROM: Peter J. Gallagher 
SUBJECT: Update on Micronesia
and the Marianas

1. The provisions for the unilateral termination of the Micronesian proposal has been further modified. The proposal as modified provides that the Micronesians can not unilaterally terminate until U.S. security has been assured.
2. The Micronesian discussions have slowed somewhat so they are not as advanced as those involving the Marianas.
3. The election results of earlier this month may have a slowing effect on the Marianas. The chief negotiators for the Marianas, who were members of the Trust Territory legislature, were defeated. Their seats were taken by members of a political party which is not as enthusiastic about a commonwealth agreement as those presently in office.
4. Ambassador Williams has a negotiating session scheduled with the present Marianas negotiators who were not successful in their bid for re-election in order to push forward as much as possible with commonwealth status as possible.





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

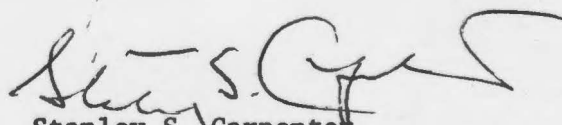
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DEC 3 1974

Dear Kurt:

This is in response to your cable of November 20, 1974, to Mr. Norman Ross, Assistant Director of the Domestic Council. As you know, there is indeed a vacancy on the High Court of the Trust Territory of the Pacific Islands. As I indicated to Mr. Andrews in a telephone conversation, we have pretty much made a commitment for this position but would be pleased to review his qualifications before a final decision is made. We have now received Mr. Andrews' SF-171 and will give him every consideration for the position. Thank you for your interest and we will advise you of the results when the Secretary has made his final decision.

Sincerely yours,


Stanley S. Carpenter
Director of Territorial Affairs

Honorable Kurt S. Moylan
Lt. Governor of Guam
Agana, Guam 96910

cc:
Norman E. Ross, Jr.
Assistant Director
Domestic Council
The White House



Save Energy and You Serve America!



THE WHITE HOUSE OFFICE

REFERRAL

To: Mr. John Whitaker
Under Secretary
Interior

Date: November 27, 1974

ACTION REQUESTED

~~XXXXX~~ Draft reply for:

President's signature.

~~XXXXXXXX~~ Undersigned's signature.

_____ Memorandum for use as enclosure to
reply.

~~X~~ Direct reply.

~~X~~ _____ Furnish information copy.

~~XXXXXX~~ Suitable acknowledgment or other
" appropriate handling.

_____ Furnish copy of reply, if any.

_____ For your information.

_____ For comment.

NOTE

Prompt action is essential.

If more than 72 hours' delay is encountered,
please telephone the undersigned immediately,
Code 1450.

Basic correspondence should be returned when
draft reply, memorandum, or comment is re-
quested.

REMARKS:

Mr. Ross would like you to handle this as you see fit. Whether by a draft
reply for his signature or by some other appropriate handling. Would you
please let us know what you decide. Room 218, OEOB, Telephone 456-6554.

Description:

_____ Letter: ~~XXXXXX~~ Telegram: Other:

To: Norman E. Ross,

From: Lt. Governor Kurt S. Moylan

Date: Nov. 20 - 1974

Subject: He wants Attorney General Keith L. Andrews to be considered for the
appointment to the vacant Judicial Position on the high court of the Trust
Territory.

By direction of the President:

Norman E. Ross, Jr.
Norman E. Ross, Jr.
Assistant Director
Domestic Council

NEROSS/ee

(Copy to remain with correspondence)

26721

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VN2 141 VIA RCA

GUAM 425PM GST NOV 20, 1974

MR NORMAN ROSS

THE WHITEHOUSE

AS YOU MAY HAVE ALREADY HEARD THE CAMACHO-MOYTAN
ADMINISTRATION SUFFERED A DEFEAT ON THE POLLS IN
YESTERDAY'S RUN-OFF ELECTION AS A RESULT OF THIS
DEVELOPMENT OUR ATTORNEY GENERAL KEITH L ANDREWS IS
MOST ANXIOUS TO BE CONSIDERED FOR APPOINTMENT TO
THE VACANT JUDICIAL POSITION ON THE HIGH COURT OF THE

TRUST TERRITORY WE ARE INFORMED THAT AN APPOINTMENT TO THIS
POSITION IS BEING EMINENTLY CONSIDERED BY THE SECRETARY
OF THE INTERIOR AND WE ARE MOST ANXIOUS THAT IF AT ALL
POSSIBLE A FINAL DETERMINATION BE DELAYED UNTIL THE APPLICATION OF
MR ANDREWS CAN BE CONSIDERED FOR THE APPOINTMENT ANY
ASSISTANCE YOU CAN GIVE US IN HOLDING OFF THE THE APPOINTMENT
BRIEFLY SO THAT MR ANDREWS CAN SUBMIT HIS APPLICATION
WOULD CERTAINLY BE APPRECIATED BEST PERSONAL REGARDS

LT GOVERNOR KURT S MOYLAN SENDS





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

ad
fih

DEC 11 1974

Dear Judge McKnight:

Thank you for your letter of December 2, 1974, in which you enclosed a copy of the Complaint and Summons regarding civil action 2876-74, concerning the wrestlers.

This appears to be an internal matter for resolution in American Samoa and specifically by the local courts. However, we appreciate your informing us of the incident in case there are inquiries in Washington.

Sincerely yours,

(Sgd.) Fred Radewagen

Acting

Director of Territorial Affairs

Hon. William J. McKnight, III
Chief Justice of American Samoa
Pago Pago, Tutuila
American Samoa 96799

cc: Mr. Norm Ross, White House



DEPARTMENT OF STATE TELEGRAM

INDICATE
☐ COLLECT
☐ CHARGE TO

	FROM INTERIOR DEPT/DOTA	CLASSIFICATION UNCLASSIFIED	
E.O. 11652: TAGS: SUBJECT: ACTION:	N/A PGOV, AQ WRESTLERS GOV/AMSAMOA, PAGO PAGO DOTA NO. 283-AS PAS TOO IVI PELE. RE YOUR TELEGRAM TO WHITE HOUSE. WE HAVE REVIEWED FILE PROVIDED BY CHIEF JUSTIC MCKNIGHT AND ARE KENXXXX CONVINCED THIS IS AN INTERNAL MATTER FOR RESOLUTION IN AMERICAN SAMOA AND SPECIFICALLY BY THE LOCAL COURTS. RADEWAGEN SENDS.		

7

DRAFTED BY: INT:RShaffer	DRAFTING DATE 12/11/74	TEL. EXT. 4736	CONTENTS AND CLASSIFICATION APPROVED BY: Red Radewagen, Acting DOTA
CLEARANCES:			

UNCLASSIFIED

THE WHITE HOUSE
WASHINGTON

December 5, 1974

TO : FRED RADEWAGEN

FROM: NORM ROSS

Per our conversation.
Please keep me posted on
any new developments



The White House
Washington

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7 WNI 63 VIA RCA

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9 PAGOPAGO AMERICAN SAMOA 0308 2 DECEMBER 1974

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11 THE PRESIDENT

12
13 THE WHITE HOUSE

14
15 AMERICAN SAMOA GOVERNMENT HOLDING US AMERICAN PROFESSIONAL
16 WRESTLERS PRISONERS UNLESS WE PAY TAX THAT WE DO NOT OWE.

17
18 LAWYERS WORKING ON GETTING US OUT BUT NEED ALL HELP POSSIBLE

19
20 WILL YOU HELP US. OUR FAMILIES IN STATES DESTITUTE. OUR

21
22 MORALE CRUSHED. OUR LAWYER-PELE BOX 579 PAGOPAGO AMERICAN SAMOA

23
24 WILSON, WILLIAMSON, BROWN, GONZALES AND ANOAI
25

The High Court of American Samoa
Courthouse
Pago Pago, American Samoa
96799

Office of Chief Justice
William J. McKnight, III

December 2, 1974

Honorable Stanley S. Carpenter
Director of Territorial Affairs
U.S. Department of the Interior
Interior Building
Washington, D. C. 20240

Dear Stan:

I am enclosing herewith our latest cause celebre involving professional wrestlers and hundreds of thousands of dollars in claim.

Sincerely,



William J. McKnight III
Chief Justice

Enclosure

WJM/mv



HIGH COURT OF
AMERICAN SAMOA

DEC 02 1974

FILED

By *H. H. H.*

MULTAUAOTERE L. S.
(PELE-IVI S.)
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Pago Pago, American Samoa 96799

IN THE HIGH COURT OF AMERICAN SAMOA

TRIAL DIVISION

J. M. WILSON, L. WILLIAMSON,)
LEONE BROWN AND A.H. GONZALES,)
Plaintiffs,)

V.)

PAN AMERICAN WORLD AIRWAYS,)
INC., A corporation; LEFITI)
FAAFETAI, Individually and as)
Immigration Officer for the)
Government of American Samoa;)
RAY COSTON, Individually and)
in his capacity as Acting At-)
torney General for GAS; ART)
WESTERVELT, Individually and)
in his capacity as Tax Director)
for GAS; and GOVERNMENT OF)
AMERICAN SAMOA,)

Defendants.)

CIVIL ACTION NO. 2876-74

COMPLAINT

and

SUMMONS



IN THE HIGH COURT OF AMERICAN SAMOA
TRIAL DIVISION

HIGH COURT OF
AMERICAN SAMOA

DEC 02 1974

FILED

By *[Signature]*

J. M. WILSON, L. WILLIAMSON,
LEONE BROWN AND A.H. GONZALES,

Plaintiffs,

V.

PAN AMERICAN WORLD AIRWAYS,
INC., A corporation; LEFITI
FAAFETAI, Individually and as
Immigration Officer for the
Government of American Samoa;
RAY COSTON, Individually and
in his capacity as Acting Attor-
ney General for GAS; ART WESTER-
VELT, Individually and in his
capacity as Tax Director for GAS;
and GOVERNMENT OF AMERICAN SAMOA,

Defendants.

Civil Action No. 2876-74

C O M P L A I N T

COME NOW the Plaintiffs above-named, and by and through
their Attorneys undersigned, complain of defendants, and each
of them as their interests shall appear, as follows:

COUNT I -- INJUNCTIVE AND DECLARATORY JUDGMENT ACTION

I

Plaintiffs WILSON, WILLIAMSON, BROWN and GONZALES (here-
inafter referred to as "WRESTLERS") are citizens of the United
States of America, and residents of places other than the
Territory of American Samoa. Defendant PAN AMERICAN WORLD
AIRWAYS, INC. (hereinafter "PAN AM") is a corporation organized
and existing under the laws of the State of Delaware, and duly
authorized to and actually doing business in the Territory of
American Samoa. Defendant LEFITI FAAFETAI is the Immigration
Officer for Defendant Government of American Samoa. Defendant
RAY COSTON is the Acting Attorney General for Defendant
Government of American Samoa, and Defendant ART WESTERVELT
is the Tax Director for Defendant Government of American Samoa.



II

On or about November 19, 1974, WRESTLERS arrived in American Samoa for the purpose of engaging and performing in certain athletic contests in this Territory as paid professional wrestlers. In connection therewith, each received certain compensation and incurred certain expenses.

III

On or about Thursday, November 28th, 1974, and again on Sunday December 2nd, 1974 following completion of their contractual obligations, WRESTLERS sought to depart the Territory of American Samoa on Flight #806 of Defendant PAN AM, but were detained by defendants and each of them, and prevented from leaving the Territory over WRESTLERS' strenuous protests, allegedly on the authority of 9 A.S.C. Sec. 209 and possibly 34 A.S.C. Sec. 3.

IV

Despite the fact that plaintiffs possessed valid air passage tickets with defendant PAN AM, said defendant failed and refused to honor said tickets, and prevented plaintiffs from boarding Flight 806.

V

9 A.S.C. Sec. 209 reads, in pertinent part:

Departure Clearance.

(a) All persons departing from American Samoa may be required to obtain clearances from the Treasurer of American Samoa and the Chief of Police prior to being allowed to board any aircraft or vessel.

(b) The Treasurer may grant a clearance only after payment of any indebtedness to the government of that person....

(c) If a person attempts to depart from American Samoa without the clearances required by this section he may be taken into custody by an immigration officer or a police officer.

(d) ... (emphasis added).

34 A.S.C. Sec. 3, entitled "Showing of Payment of Taxes Prior to Leaving American Samoa," reads:

Before leaving American Samoa, any person may be required to show that all taxes due or accrued to American Samoa have been paid or guaranteed. (emphasis supplied).

VI

Defendants contend that plaintiffs owe income taxes to the Government of American Samoa as a result of their athletic performances in this Jurisdiction, and continue to refuse said plaintiffs the right to leave until said alleged taxes are paid. Plaintiffs, on the other hand, aver among other things that no taxable income has been generated in this Territory, and that in any event, even if they did owe such taxes, the same would not be ascertainable, due, or payable until April 15, 1975.

VII

Sections 209 of Title 9 and Section 3 of Title 34 of the American Samoa Code are void and unconstitutional as applied to these plaintiffs, since they violate the fundamental constitutional rights of travel and of due process of law, and among other things in particular:

(a) They give unbridled and standardless discretion to the Treasurer of American Samoa to pick and choose arbitrarily and capriciously among "ALL" persons departing from American Samoa who "may" be required to obtain prior clearance, all without standards, guidelines, or other appropriate legal authority, in violation of the Equal Protection and Due Process Clauses of the United States Constitution and Due Process Clause of the American Samoa Constitution;

(b) They deprive an individual of the right to travel freely and to be secure in his person and property without the slightest prior notice or hearing, in violation of the fundamental law of our land, and in particular the Due Process clauses thereof;



(c) They are void for vagueness and ambiguity on their face, for failure to define the term "any indebtedness," among other things, which the defendants herein have construed to mean unpaid and undue income taxes, if any;

(d) They effectively transform citizens of the United States of America and of other countries into prisoners on the Island of Tutuila or in this United States territory of American Samoa without hearing, and without legal right, all in violation of the Due Process Clause of the Constitutions, the Equal Protection Clause thereof, and the provisions contained therein prohibiting Cruel and Unusual Punishment.

VIII

Plaintiffs have been and continue to be deprived in the most outrageous fashion of one of the most fundamental rights of free men, the right to travel freely, and they have no adequate remedy at law to compel adherence to that right, thus making the injunctive remedy appropriate hereto.

IX

An actual controversy exists between the parties as to the validity and construction of the statutes quoted in paragraph 5 above, making this action appropriate, inter alia, for declaratory relief.

COUNT II -- WRONGFUL ARREST AND FALSE IMPRISONMENT

X

Plaintiffs refer to paragraphs 1 through 7 above, and by this reference incorporate the same herein as though fully set forth.

XI

As a result of the actions above described, plaintiffs have been prevented from leaving the Island of Tutuila against their will, and have been embarrassed, humiliated, and caused



to expend additional monies in their support pending a quick determination of this lawsuit, all to their damage in the sum of \$100,000 each.

XII

On or about Friday, November 29, 1974, Plaintiffs once again demanded their immediate release in an effort to avoid litigation, but defendants continued to refuse to permit such release, thereby demonstrating, among other things, that defendants were and are motivated by malice and ill-will, entitling each of the plaintiffs herein to punitive and exemplary damages in the sum of \$50,000 each.

COUNT III -- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

XIII

Plaintiffs refer to paragraphs 1 through 7, 11 and 12 above, and incorporate the same herein as though fully set forth.

XIV

Plaintiffs are well-known athletic performers with many fans in American Samoa and elsewhere, a fact well known to each of the defendants herein.

XV

Defendants knew or should have known that their action of physically restraining plaintiffs from leaving the Island of Tutuila, and of alleging without right or truth that said plaintiffs owed the Government of American Samoa tax monies, would cause plaintiffs severe emotional distress, and subject them to ridicule and embarrassment.

XVI

Plaintiffs did indeed suffer severe emotional distress, ridicule and embarrassment as a result of the actions of defendants above complained of, and further were required to expend additional monies in their support in a total sum



presently unknown, but which plaintiffs will seek leave to insert at time of trial, and to incur other damages, all in a total sum of \$100,000 each.

XVII

In addition to the allegations of paragraph 12 incorporated herein, punitive damages are further permitted since plaintiffs allege, on information and belief, that the reason they were arbitrarily chosen to be detained was the very fact that accusations of this sort would damage their reputations tending to make them more susceptible to paying the demanded "taxes," and that the actions of defendants herein therefore constitute a kind of governmental blackmail which must be eradicated by an award of substantial damages.

COUNT IV -- AGAINST DEFENDANT PAN AM FOR BREACH OF CONTRACT

XVIII

Plaintiffs refer to paragraphs 1 through 4 above and incorporate the same herein by this reference as though fully set forth.

XIX

The failure of defendant PAN AM to honor plaintiffs' contract of air passage constitutes a breach of that contract to plaintiffs' damages in the sum of \$1000 or more per day for each plaintiff for increased expenses, lost income and expectancy, and other foreseeable consequential damages which plaintiffs seek leave to insert at time of trial, when the same are finally ascertained.

WHEREFORE, Plaintiffs pray for judgment against the defendants and each of them as their interests shall appear, as follows:

1. For issuance of an immediate Temporary Restraining Order and, after hearing, a Permanent Injunction prohibiting



defendants from preventing plaintiffs' departure from this Territory;

2. For a Declaratory Judgment declaring 34 A.S.C. Sec. 3 and 9 A.S.C. Sec. 209 unconstitutional as applied, and preventing their further administration and enforcement at least until standards have been properly promulgated pursuant to the Administrative Procedure Act and other applicable law which will relieve the said statutes of their susceptibility to challenge because of arbitrary and capricious acts of those administering the said laws;

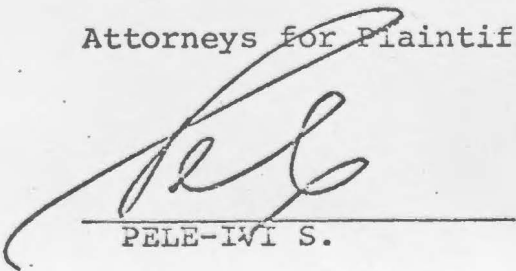
3. For the sum of \$100,000 compensatory, and \$50,000 punitive damages to each plaintiff by reason of Counts II and III of the complaint;

4. For such actual consequential damages as plaintiffs, and each of them, have suffered by reason of defendant PAN AM's breach of contract as alleged in Count IV of this Complaint; and

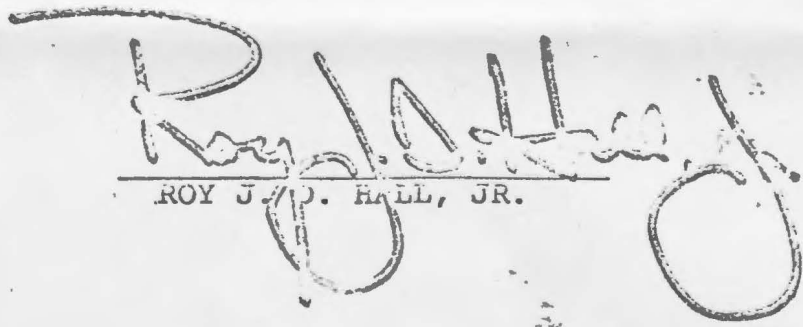
5. For attorneys fees, costs of suit, interest, and such other and further relief as this Court deems just in the premises.

DATED: Pago Pago, American Samoa, this 2nd day of December, 1974.

Attorneys for Plaintiffs:


PELE-IWI S.


STEVEN E. KROLL


ROY J. HALL, JR.



MULITAOPELE L. S.
(PELE-IVI S.)
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Pago Pago, American Samoa 96799

HIGH COURT OF
AMERICAN SAMOA

DEC 12 1974

FILED

By Holman

IN THE HIGH COURT OF AMERICAN SAMOA

TRIAL DIVISION

J. M. WILSON, et. al.,

Plaintiffs,

V.

PAN AMERICAN WORLD AIRWAYS,
INC., & GOVERNMENT OF AMERI-
CAN SAMOA, et. al.,

Defendants.

Civil Action No. 2876-74

S U M M O N S

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon PELE-
IVI S., P.O. Box No. 579, Pago Pago, American Samoa 96799,
STEVEN E. KROLL, 7th Floor - Aloha Tower, Honolulu, Hawaii 96813,
and ROY J.D. HALL, JR., P.O. Box No. 75 (Lumana'i Bldg.), Pago
Pago, American Samoa 96799, Attorneys for Plaintiffs an ANSWER
to the complaint which is herewith served upon you, within 20 days
after service of this summons upon you, exclusive of the day of
service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You are
further directed and notified to appear today, December 2nd, 1974,
at 2:00 o'clock p.m. in the large courtroom, Court-house, Faga-
togo to hear Plaintiffs' Application for a Temporary Restraining
Order.

DATED: December 2nd, 1974.

Ed/ROBERT C. COCHRAN
ROBERT C. COCHRAN
Clerk of the High Court

File

THE WHITE HOUSE
WASHINGTON

January 22, 1975

MEMORANDUM FOR:

NORM ROSS

THROUGH:

MAX FRIEDERSDORF

FROM:

BOB WOLTHUIS *ekw*

SUBJECT:

Rep. Ron deLugo/Virgin Islands

Attached is correspondence from delegate Ron deLugo of the Virgin Islands explaining a problem which has arisen in the Islands as a result of a Justice Department ruling that a Presidential Proclamation No. 4227, issued on June 21, 1973, has certain legal flaws therein. The impact upon the Virgin Islands is that they will not qualify for rebates from oil import license fees. Congressman deLugo's concern is that the President's proclamation to be issued this week will not take into consideration the problem facing the Virgin Islands.

It is my understanding that it is a legislative problem and I would appreciate it if you could contact the Congressman regarding the matter. I have assured him that the White House will look into it very carefully.



123

RON DE LUGO
DELEGATE, VIRGIN ISLANDS

COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS

SUBCOMMITTEES:
TERRITORIAL AND INSULAR AFFAIRS
NATIONAL PARKS AND RECREATION
ENVIRONMENT
INDIAN AFFAIRS

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 22, 1975

1217 LONGWORTH BUILDING
WASHINGTON, D.C. 20515
(202) 225-1790

P.O. Box 65
7 KING CROSS STREET
CHRISTIANSTED, ST. CROIX
(809) 773-5900

22 CRYSTAL GADE
CHARLOTTE AMALIE, ST. THOMAS
(809) 774-4408

JAN 22 1975

Mr. Robert K. Wolthuis
Deputy Assistant for Congressional Relations
The White House
Washington, D.C. 20500

Dear Bob:

This letter refers to our telephone conversation of Tuesday, January 21, 1975 in which I stressed the disastrous impact which a recent ruling of the Justice Department would have on the income of the Virgin Islands Government.

Presidential Proclamation No. 4227 which was issued on June 21, 1973, a copy of which is enclosed, modified Proclamation No. 3279, and provides for payments to the Virgin Islands, Guam, Puerto Rico, and American Samoa of funds collected from oil import license fees. At the time the Proclamation was issued it was estimated that by 1980, if all Virgin Islands refined oil was imported into the United States, the Virgin Islands Government would receive \$30 million annually. I have been informed that through April 4, 1974, oil import fee refunds for the Virgin Islands, held by the United States Treasury, amounted to \$10.4 million.

As you can see from the opinion of the Department of Justice, a copy of which is also enclosed, the Department now considers that Proclamation No. 4227 contains fatal legal defects in regard to the payment of refunds to the Virgin Islands and the other jurisdictions which would benefit under its provisions. The Deputy to the General Counsel of the Federal Energy Administration has informed me that FEA is bound by the ruling of the Department of Justice. Thus, at the present time the Virgin Islands will not receive any of the monies which they legitimately anticipated receiving on the basis of the Proclamation of June 21, 1973.



Mr. Robert K. Wolthuis
January 22, 1975
Page 2

I am sure you can appreciate the severity of this loss of funds to the territorial government which is already facing profound budgetary problems because of the decline in revenues related to the general national economic slump. This problem is further compounded in the Virgin Islands by a fall-off in tourism which is their primary industry, and by chronic problems associated with insularity, small population, and a total lack of mineral resources. In addition, future anti-recession reductions in the level of Federal taxation will have an immediate impact on Virgin Islands Government revenues in view of the fact that all such taxes are returned to the territorial treasury and form its principal source of income. Unlike the Federal Government, however, the territorial government cannot exercise deficit spending without facing immediate bankruptcy.

The FEA has informed me that the Proclamation concerning petroleum imports, which is to be issued later this week, will include provisions which will substantially compensate for the loss Puerto Rico will sustain under the Justice Department ruling. At the same time, I understand that it is silent in regard to the needs of the Virgin Islands, Guam, and American Samoa.

I believe that the Federal Government which drafted, reviewed, and approved the issuance of Presidential Proclamation No. 4227, has an obligation to honor the commitment which was made in that Proclamation. I, therefore, request that simultaneously with the issuance of the President's petroleum import proclamation later this week, that the Administration publicly state that it endorses legislation which will fully implement the substance and intent of Proclamation No. 4227 as it applies to refund payments to the Virgin Islands, Guam, and American Samoa. While the Virgin Islands are the chief recipients of the benefits of that Proclamation, I believe that the Federal Government should also honor its commitment to Guam and American Samoa.

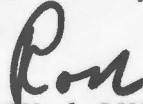


Mr. Robert K. Wolthuis
January 22, 1975
Page 3

I greatly appreciate your prompt attention to this matter of critical importance to the people of the Virgin Islands.

With warmest personal regards, I am

Sincerely,

A handwritten signature in cursive script, appearing to read "Ron".

RON deLUGO
Member of Congress



MODIFYING PROCLAMATION NO. 3279, RELATING TO IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS, PROVIDING FOR THE LONG-TERM CONTROL OF IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS THROUGH A SYSTEM OF LICENSE FEES AND PROVIDING FOR GRADUAL REDUCTION OF LEVELS OF IMPORTS OF CRUDE OIL, UNFINISHED OILS AND FINISHED PRODUCTS

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION

The Chairman of the Oil Policy Committee, after consultation with the committee, has advised me that Proclamation No. 3279,⁵⁷ as amended by Proclamation No. 4210 of April 18, 1973,⁵⁸ requires a number of technical changes which include, among others, revisions in the definitions of certain terms, the correction of inadvertent omissions, and provisions relating to the application of the oil import program to certain imports from foreign trade zones and the territories of American Samoa, Guam, and the Virgin Islands.

The Chairman has advised me that none of these changes will adversely effect the national security.

I agree with the foregoing recommendations and findings of the Chairman.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and laws of the United States, including section 232 of the Trade Expansion Act of 1962, as amended,⁵⁹ do hereby proclaim that, effective as of this date, Proclamation No. 3279, as amended by Proclamation No. 4210 of April 18, 1973, is hereby amended as follows:

1. Subparagraph (1) of paragraph (a) of section 2 thereof is amended to read as follows:

"(1) for Districts I-IV, 1,992,000 average barrels per day per calendar year; *Provided*, That, in addition to the foregoing, there may be imported into District I an average of 50,000 barrels per day of No. 2 fuel oil, manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere under allocations made by the Secretary, pursuant to regulations of the Secretary, to deepwater terminal operators who do not have crude oil import allocations into Districts I-V or Puerto Rico and who, in the allocation period beginning prior to January 1, 1973, had received, from the Secretary, an allocation of imports into District I of No. 2 fuel oil; *Provided Further*, That the Secretary may, by regulation, provide that a holder of an allocation for the importation of No. 2 fuel oil, may import crude oil produced in the Western Hemisphere in lieu of No. 2 fuel oil, barrel for barrel, and exchange such crude oil for No. 2 fuel oil. Whenever the Chairman of the Oil Policy Committee, after consultation with the committee, finds that, because of supply, price, or other considerations, the requirement that No. 2 fuel oil be manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere is unduly restricting the availability of such oil for importation into District I and is not required for the national security, he shall so advise the Secretary who shall then suspend such requirement for such period of time as he shall deem compatible with the purposes of this proclamation."

57. 19 U.S.C.A. § 1862 note.

Pamph. No. 5, p. 922.

58. 1973 U.S.Code Cong. & Adm.News,

59. 19 U.S.C.A. § 1801 et seq.



PROCLAMATIONS

2. Subparagraph (i) of paragraph (d)(1) of section 2 thereof is amended to read as follows:

"(i) for Districts I-IV, 960,000 average barrels per day per calendar year; *Provided*, That the Secretary may, within the limits established by subparagraph (1) of paragraph (a) of this section, increase the quantity of crude oil and unfinished oils, which may be imported from Canada so long as such increase is, in his judgment, consonant with the purposes of this proclamation."

3. Subparagraph (ii) of paragraph (d)(1) of section 2 thereof is amended to read as follows:

"(ii) for District V, 280,000 average barrels per day per calendar year; *Provided*, That, the Secretary may, within the limits established by subparagraph (1) of paragraph (a) of this section, increase the quantity of crude oil and unfinished oils which may be imported from Canada, so long as such increase is, in his judgment, consonant with the purposes of this proclamation."

4. Paragraph (a) of section 3 thereof is hereby amended to read as follows:

"Sec. 3(a)(1) Effective May 1, 1973, the Secretary shall, by regulation, establish a system of fees for licenses issued under allocations of imports of crude oil, unfinished oils, and finished products, over the above levels of imports established by section 2 of this proclamation. Such regulation shall require, among other appropriate provisions, that (i) with respect to imports, other than imports from Canada of motor gasoline and finished products, such fees shall be:

Fee Schedule

[Cents per barrel]

	May 1, 1973	Nov. 1, 1973	May 1, 1974	Nov. 1, 1974	May 1, 1975	Nov 1 1975
Crude	10.5	13.0	15.5	18.0	21.0	21.0
Motor gasoline	52.0	54.5	57.0	59.5	63.0	63.0
All other finished products and unfinished oils (except ethane, propane, butanes, and asphalt)	15.0	20.0	30.0	42.0	52.0	63.0

and,

(ii) that, with respect to imports from Canada of motor gasoline and finished products, such fees shall be:

Fee Schedule

[Cents Per Barrel]

	May 1, 1973	Nov. 1, 1973	May 1, 1974	Nov. 1, 1974	May 1, 1975	Nov. 1, 1975	May 1, 1976	Nov 1 1976
Motor gasoline	0	0	5.7	6.0	12.6	12.6	22.1	22.1
Other finished products (but not including ethane, propane, butanes, or asphalt)	0	0	3.0	4.2	10.4	12.6	22.1	22.1
	May 1, 1977	Nov. 1, 1977	May 1, 1978	Nov. 1, 1978	May 1, 1979	Nov. 1, 1979	May 1, 1980	Nov 1 1980
Motor gasoline	31.5	31.5	41.0	41.0	50.4	50.4	63.0	63.0
Other finished prod- ucts (but not in- cluding ethane, propane, butanes, or asphalt)	31.5	31.5	41.0	41.0	50.4	50.4	63.0	63.0

PROCLAMATIONS

"(2) License fees payable for imports of motor gasoline or other finished products or unfinished oils, manufactured in American Samoa, Guam, or the Virgin Islands or in a foreign trade zone and transported to the Customs territory of the United States by overland means or by vessel or vessels under United States registry, shall be at the rate applicable to the feedstock from which such motor gasoline or other finished product or unfinished oil was manufactured: *Provided*, That such rate shall apply also in cases where the holder of the license establishes to the satisfaction of the Secretary that he made a good faith attempt to arrange shipment by vessel under United States registry and that no such vessel was available for the purpose at the time this shipment was made.

"(3) The Secretary is authorized to refund fees, whether in whole or in part, where (i) the licensee failed to use, wholly or in part, the license issued to him; (ii) refunds of license fees, whether in whole or in part, are ordered by the Oil Import Appeals Board; (iii) refund of a license fee, whether in whole or in part, is called for by reason of a person having exported finished products or petrochemicals; (iv) crude oil imported by virtue of a license for which a fee was paid has been manufactured into asphalt; (v) refund of a license fee is called for by reason of the same having been improperly charged."

5. Paragraph (b) of section 3 thereof is amended to read as follows:

"(b) Except for allocations and licenses to which a license fee is not applicable, applications for allocations and licenses for imports subject to fee under the preceding paragraph shall be accompanied by the applicant's certified check, or a cashier's check, payable to the order of the Treasurer of the United States in the amount chargeable pursuant to this section or by a bond with a surety on the list of acceptable sureties on Federal bonds maintained by the Bureau of Accounts, Department of the Treasury, in a sum not less than the amount chargeable pursuant to this section, conditioned upon payment to the order of the Treasurer of the United States, within thirty (30) calendar days from the date of entry or withdrawal from warehouse for consumption of the commodities for the importation of which a license or licenses have issued, in the amount chargeable pursuant to this section. Applications not accompanied by a certified check, cashier's check, or bond in the amount required shall not be considered. Applications by or for the account of a department, establishment, or agency of the United States need not be accompanied by a certified check or a cashier's check or a bond as required by this paragraph."

6. Subparagraph (1) of paragraph (c) of section 3 thereof is hereby amended to read as follows:

"(c)(1) All monies received by the Secretary under the terms of paragraph (b) of this section shall be held by the Secretary in a suspense account and may be drawn upon by the Secretary (i) for the payment of refundable license fees; (ii) for the payment to Puerto Rico of sums equal to the sums collected by way of license fees for imports into Puerto Rico (other than imports from the Virgin Islands) and not otherwise refundable; and (iii) for the payment to American Samoa, Guam, or the Virgin Islands, as the case may be, of sums equal to the sums collected by way of license fees and not otherwise refundable for imports therefrom into the Customs territory of the United States of crude oil or motor gasoline, other finished products, or unfinished oils, manufactured in American Samoa, Guam, or the Virgin Islands. Balances remaining in such suspense account and not required to be reserved for payments hereinabove provided shall be deposited at the end of each fiscal year in the Treasury of the United States and credited to miscellaneous receipts. Whenever the Chairman of the Oil Policy Committee, after consultation with the committee, determines that any such payments to Puerto Rico, American Samoa, Guam, or the Virgin Islands are not consonant with the purposes of this proclamation, he shall so advise the Secretary who shall then amend the applicable regulations accordingly."

PROCLAMATIONS

7. Subparagraph (1) of paragraph (b) of section 4 thereof is hereby amended by adding the following at the end thereof:

"In respect of the territories of American Samoa, Guam, the Virgin Islands, and foreign trade zones, the Secretary may make such regulations as he deems consonant with the purposes of this proclamation to the end that persons having refineries and petrochemical plants located in such territories or zones shall participate to the fullest practicable extent, upon terms not less favorable, so far as possible, than those accorded to persons in the Customs territory of the United States in all appropriate aspects of the programs authorized by this proclamation."

8. Subparagraph (2) of paragraph (b) of section 4 is hereby amended by deleting the proviso therein contained.

9. Subparagraph (5) of paragraph (b) of section 4 thereof is hereby amended to read as follows:

"(5) With respect to the allocation of imports to which license fees are not applicable of residual fuel oil to be used as fuel in Puerto Rico, such regulations shall, to the extent possible, provide for a fair and equitable distribution of imports of residual fuel oil to be used as fuel among persons who were importers of that product into Puerto Rico during all or part of the calendar year 1958. In addition, the Secretary by regulation may, to the extent possible, provide for a fair and equitable distribution of imports of residual fuel oil to be used as fuel, the maximum sulphur content of which is acceptable to the Secretary, (i) among persons who are in the business in the respective districts or Puerto Rico of selling residual fuel oil to be used as fuel and who in a base period to be established by the Secretary had inputs of that product to deepwater terminals located in the respective districts or Puerto Rico and (ii) among persons who are in the business in the respective districts or Puerto Rico of selling residual fuel oil to be used as fuel and who have throughput agreements (warehouse agreements) with deepwater terminal operators. With respect to the allocation of imports into District I of residual fuel oil to be used as fuel, such regulations, shall, to the extent possible, provide for a fair and equitable distribution of imports of residual fuel oil to be used as fuel (i) among persons who are in the business in District I of selling residual fuel oil to be used as fuel and who in a base period to be established by the Secretary had inputs of that product to deepwater terminals located in District I; (ii) among persons who are in the business in District I of selling residual fuel oil to be used as fuel and who have throughput agreements (warehouse agreements) with deepwater terminal operators; and (iii) notwithstanding the levels established in section 2 of this proclamation, during the allocation year commencing in 1973, the Secretary may make allocations of imports of residual fuel oil to be used as fuel into District I to persons in District I who own and operate newly constructed deepwater terminal facilities, based upon estimated deepwater terminal inputs during a base period to be established by the Secretary. For the allocation period commencing in 1974 and subsequent allocation periods, the Secretary may make allocations of imports of residual fuel oil to be used as fuel into District I based upon estimated deepwater terminal inputs during a base period to be established by the Secretary to persons in District I who own and operate newly constructed deepwater terminal facilities; *Provided*, That such allocations shall be included within the levels established by subparagraph (4) of paragraph (a) of section 2 of this proclamation, as amended."

10. Paragraph (b) of section 5 thereof is hereby amended to read as follows:

"(b) The Appeals Board may be empowered, subject to the general direction of the Chairman of the Oil Policy Committee, without regard to the limits of the maximum levels of imports established in section 2 of this proclamation: (1) to reverse or modify on grounds of error action taken by the Secretary on applications for allocations of imports under



PROCLAMATIONS

such regulations; (2) to modify, on the grounds of exceptional hardship, any allocation made to any person under such regulations; (3) to grant allocations of imports of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under such regulations; (4) to grant allocations of imports of finished products on grounds of exceptional hardship; (5) to grant allocations of imports of crude oil, unfinished oils, and finished products to independent refiners or established independent marketers who are experiencing exceptional hardship or in emergencies in order to assure, insofar as practicable, that adequate supplies are available; (6) to review the revocation or suspension of any allocation or license; (7) to review the denial by the Secretary of refunds of license fees, whether in whole or in part, theretofore paid by a person; and (8) to grant refunds, in whole or in part, of license fees paid by persons to whom licenses were issued for imports which they subsequently became entitled to make under allocations made by the Board. Except with respect to its function to review applications for allocations of imports to which license fees are applicable, licenses issued pursuant to Board allocations shall be fee exempt."

11. The first paragraph of section 11 thereof is amended to read as follows:

"Sec. 11. Annually, beginning May 1, 1974, the maximum levels of imports subject to allocation and license, to which license fees shall not be applicable, except allocations made and licenses issued by reason of new, expanded, or reactivated refinery capacity and petrochemical plants in Districts I-IV and District V allocations and licenses issued to persons who manufacture in such Districts finished products or petrochemicals from crude oil and unfinished oils and who export finished products or petrochemicals, subject to such designations as the Secretary may make, shall be reduced as follows:"

12. Paragraph (a) of section 12 thereof is amended to read as follows:

"Sec. 12(a). Commitments and obligations contained in long-term allocations heretofore made of imports of crude oil and unfinished oils into Puerto Rico shall be unimpaired by this proclamation or regulations issued thereunder."

13. Subparagraph (2) of paragraph (g) of section 15 thereof is amended to read as follows:

"(2) 'Gasoline' means a refined petroleum distillate, including naphtha, jet fuel or other petroleum oils (but not benzene which meets the ASTM distillation standards for nitrated grade or cumene, ethylbenzene, isoprene, meta-xylene, orthoxylene or para-xylene having a purity of 95 percent or more by weight) derived by refining or processing crude oil or unfinished oils, in whatever type of plant such refining or processing may occur, and having a boiling range at atmospheric pressure from 80° to 400° F."

14. Subparagraph (4) of paragraph (g) of section 15 thereof is amended to read as follows:

"(4) 'Distillate fuel oil' means any fuel oil, gas oil, topped crude oil, or other petroleum oils (except refined petroleum wax) derived by refining or processing crude oil or unfinished oils, in whatever type of plant such refining or processing may occur, which has a boiling range at atmospheric pressure from 550° to 1200° F."

15. Subparagraph (1) of paragraph (h) of section 15 thereof is amended to read as follows:

"(1) By distillation with a resulting yield of at least two distinct finished products or unfinished oils, two of which must be equal to not less than 10 percent of the total charge of such unfinished oils to a distillation unit. Different grades or specifications of finished products or unfinished oils will not constitute distinct finished products or unfinished oils for purposes of this subparagraph. Distillation of petroleum oils which have been reconstituted by blending of two or more finished



PROCLAMATIONS

products or unfinished oils does not constitute processing for the purposes of this subparagraph."

16. Subparagraph (2) of paragraph (h) of section 15 thereof is amended to read as follows:

"(2) By catalytic or thermal conversion in process units such as alkylation, coking, cracking, hydrofining, hydrodesulphurization, polymerization, isomerization, dehydrogenation, or reforming."

17. Paragraph (k) of section 15 thereof is amended by adding the following subparagraphs:

"(6) That certain allocation made to Fuel Desulphurization, Inc., of residual fuel oil and fuel oil into Districts I-IV—dated January 8, 1969 (as amended).

"(7) That certain allocation made to Guardian Oil Refining Corporation of residual fuel oil in Districts I-IV—dated January 8, 1969 (as amended).

"(8) That certain allocation made to Supermarine Inc., of residual fuel oil and fuel oil into Districts I-IV—dated January 8, 1969 (as amended).

"(9) That certain zone allocation made to Hawaiian Independent Refinery, Inc., of shipments of crude oil and unfinished oils into foreign-trade sub-zone No. 9-A at Ewa, Oahu, Hawaii, of foreign-trade zone No. 9—Honolulu, Hawaii, dated May 7, 1970."

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of June, in the year of our Lord nineteen hundred seventy-three, and of the Independence of the United States of America the one hundred ninety-seventh.

RICHARD NIXON.



NOV 14 1974

Robert E. Montgomery, Jr., Esq.
General Counsel
Federal Energy Administration
Washington, D.C. 20461

Dear Mr. Montgomery:

This is in response to your letter of July 18, 1974, requesting our opinion as to the legality of the system outlined in section 3(c)(1)(ii) and (iii) of Presidential Proclamation 3279, as amended by Proclamations 4210 and 4227, providing for payments to Puerto Rico, the Virgin Islands, Guam, and American Samoa derived from funds collected as oil import license fees pursuant to the Proclamation.^{1/} We regret the delay in responding.

Section 3(c)(1) provides in relevant part as follows:

All monies received by the Secretary [now the Administrator of FEA] under the terms of paragraph (b) of this section shall be held by the Secretary in a suspense account and may be drawn upon by the Secretary (i) for the payment of refundable license fees; (ii) for the payment to Puerto Rico of sums equal to the sums collected

^{1/} For a general discussion of the legal basis of Proclamation 4210, amending Proclamation 3279, see letter from Assistant Attorney General Robert Dixon to Deputy Secretary of the Treasury William Simon, dated May 17, 1973 (hereinafter "OLC letter of May 17, 1973"). Neither that letter nor the letter from Assistant Attorney General Robert Dixon to the President, dated June 14, 1973, dealing with Proclamation 4227 which further amended Proclamation 3279, addressed the question at issue here.

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by way of license fees for imports into Puerto Rico (other than imports from the Virgin Islands) and not otherwise refundable; and (iii) for the payment to American Samoa, Guam, or the Virgin Islands, as the case may be, of sums equal to the sums collected by way of license fees and not otherwise refundable for imports therefrom into the customs territory of the United States of crude oil or motor gasoline, other finished products, or unfinished oils, manufactured in American Samoa, Guam, or the Virgin Islands. Balances remaining in such suspense account and not required to be reserved for payments hereinabove provided shall be deposited at the end of each fiscal year in the Treasury of the United States and credited to miscellaneous receipts.

To carry out this mandate there was established in the Treasury a "Budget Clearing Account (Suspense)" in which the license fees have been deposited and from which refunds of license fees pursuant to section 3(a)(3) have been made. This type of account was first created in 1968 so as to give immediate budget effect to remittances which were "presumed to be applicable to Budget accounts in general" but which had to be held in suspense either because the specific budget account to be credited could not yet be determined or because the specific amount to be credited could not yet be determined. See Transmittal Letter No. 14 to the Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies (hereafter "Transmittal Letter No. 14").

Article I, section 9, clause 7 of the Constitution states: "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law. . . ." Funds held in Budget Clearing Accounts (Suspense) would appear to be "in the Treasury" for purposes of this provision. That appears first, from the manner in which such funds are recorded by the Treasury--to wit, as receipts into the Treasury in the same fashion as fees, fines, gifts, rents, and taxes. See Combined Statement of Receipts, Expenditures, and Balances of the United States Government (1973) (hereinafter referred to as "Combined Statement"). Moreover, all funds in Budget Clearing

for meeting with . . .

Accounts (Suspense) are utilized in determining the monthly budget surplus or deficit, which reflects that the funds are dedicated "for the use of the United States" and are therefore required to be paid into the Treasury. See 31 U.S.C. § 484. Thus, the effect of placing the oil import license fees in a Budget Clearing Account (Suspense) is to require an appropriation by Congress for any payments to be made to Puerto Rico, the Virgin Islands, Guam or American Samoa pursuant to the Proclamation

A search of the statutes dealing with territories and with money and finance has failed to disclose any such appropriation act. The sole provision which even requires discussion relates only to Puerto Rico. Section 740 of Title 48 of the United States Code provides in relevant part that:

The duties and taxes collected in Puerto Rico in pursuance of the provisions of this chapter . . . shall be paid into the Treasury of Puerto Rico. . . .

This is deemed a permanent, indefinite special fund appropriation. See The Budget of the United States Government in Fiscal Year 1975, Appendix, 735. But application of this statute to the oil import license fees requires a determination that such fees are "duties . . . collected . . . in pursuance of the provisions of [chapter 191 of the Act of April 12, 1900, 31 Stat. 77.]"^{2/} It is our view that such a determination is

^{2/} There are other statutes which say in general terms that customs duties shall be turned over to the respective island governments. See 48 U.S.C. §§ 1394, 1396, 1421e, 1421h, 1642, 1644. With reference to the Virgin Islands, however, the longstanding administrative interpretation of the statutes is that they apply only to duties collected on items imported into the Virgin Islands, not to duties collected on items imported into the United States from the Virgin Islands. See 23 Comp. Dec. 574 (1917). The provisions relating to Guam also apply only to duties on items imported into Guam. H.R. Rep. No. 1677, 81st Cong., 2d Sess., 15 (1950). There is no law dealing with Samoan customs duties at all.

not possible. While there are certain similarities between duties and these oil import license fees, there are substantial differences. These were outlined in a memorandum accompanying a letter from Assistant Attorney General Robert Dixon to Deputy Secretary of the Treasury William Simon dated April 11, 1973 (hereinafter referred to as "OLC memo"), preliminarily assessing the legality of the proposed Presidential Proclamation which, upon its issuance, replaced the previous oil quota system with the import license fee system. One conclusion of the memorandum was that the money exaction proposed by the Proclamation should be denominated an oil import license fee, not a duty, because aspects of the regulatory scheme were inconsistent with the latter concept.^{3/} Id. at 11. The difference between the license fees and normal duties is further reflected in the actual transactions involved in the collection and retention of the respective funds. Customs duties contemplated by 48 U.S.C. § 740 are collected by U.S. Customs Officials in Puerto Rico, and the funds are placed in a special funds receipt account, 20 x 5687. Combined Statement at 570. The oil import license fees, however, are paid to FEA and placed in its Budget Clearing Account (Suspense); Customs officials have no role whatever in the process. Thus the fees do not appear to be duties contemplated by 48 U.S.C. § 740, and that statute's appropriation of customs duties collected in Puerto Rico would not seem to apply to the oil import license fees. Even as to Puerto Rico, then, executive payment of funds from the Treasury account would violate the Constitution.

^{3/} This was so because: (1) duties are normally considered primarily a revenue measure, while the fees involved here had assuredly regulatory purposes; (2) the oil import scheme provides exemptions for certain persons based on their actions, and such exemptions from a duty are anomalous; (3) the scrapping of the existing statutory duty on oil would not be justified unless a whole new system were being created, using different regulatory devices. Id. at 10-11.

The question may arise how refunds (as distinct from the payments here at issue) may be made under section 3(a)(3) of the Proclamation. The answer is to be found in 31 U.S.C. § 725q-1, a permanent, indefinite appropriation for moneys erroneously deposited in the Treasury. This statute is regarded generally as an appropriation of money for the purpose of paying refunds on customs duties, taxes, fees, fines, etc. The justification would appear to be that the amount of money entitled to be refunded was not "received . . . for the use of the United States" within the meaning of 31 U.S.C. § 484 and therefore should not have been covered into the Treasury. This justification cannot be applied to the regular payments to the island governments contemplated by section 3(c)(1) of the Proclamation, since these do not involve funds erroneously collected, and since the President had no authority to receive the funds properly collected except "for the use of the United States."

If the payments to the island governments were necessary to comply with or furthered the purpose of 19 U.S.C. § 1862, the statute which is the legal basis of Proclamation 3279, then it might be argued that that statute authorizes the President to make such payments. Cf. Varney v. Warehine, 147 F.2d 238 (6th Cir. 1945), cert. denied, 325 U.S. 882. Such is not the case, however. See Letter from Deputy Secretary of the Treasury William Simon to John Sawhill, dated May 25, 1973; Memorandum from Sandra Sherman to you, dated July 17, 1974.

It is our conclusion, therefore, that it is not within the President's authority to direct the payment to Puerto Rico, the Virgin Islands, Guam, and American Samoa of those oil import license fees collected on oil imported from the respective islands. Accordingly, section 3(c)(1)(ii) & (iii) is without legal foundation, and the payments contemplated therein should not be made.

We realize that this Office approved both Proclamation 4210 and 4227 for their legal sufficiency prior to their going into effect. We regret our oversight, pleading in

mitigation only that the provisions in question formed a small and relatively insignificant part of a complex Proclamation, raising substantial issues of executive authority and reviewed on an urgent basis.

Sincerely,

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel



THE WHITE HOUSE
WASHINGTON

1.25.75

TO: Norm Ross

For Your Information: ✓

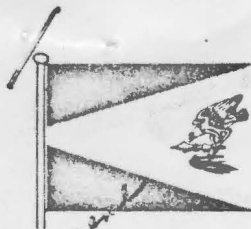
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LEGISLATURE OF AMERICAN SAMOA
OFFICE OF THE SPEAKER OF THE HOUSE
PAGO PAGO, AMERICAN SAMOA. 96920.

In reply refer to:
LAW/4-1
Serial: 10

January 22, 1975

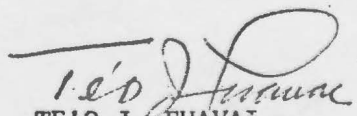
His Excellency Gerald R. Ford
President of the United States
The White House
Washington, D. C.

Dear Mr. President:

Words have circulated here in the Territory concerning the possible appointment of former Congressman Earl Ruth to be the next Governor of American Samoa.

I wish to go on record favoring the appointment of Mr. Ruth to be our next Governor and, as Speaker of the House of Representatives, Legislature of American Samoa, I ask you to extend my congratulations to Mr. Ruth and to assure him of my support and looking forward to working closely together with him in the event that he is appointed.

Sincerely yours,


TE'O J. FUAVAI
Speaker of the House

TJF:fah

cc: Secretary Roger C. B. Morton
Department of the Interior



DEPARTMENT of the INTERIOR

news release

OFFICE OF THE SECRETARY

For Release January 28, 1975

EARL B. RUTH NAMED GOVERNOR OF AMERICAN SAMOA

Secretary of the Interior Rogers C. B. Morton today announced the selection of Dr. Earl Baker Ruth to be Governor of American Samoa.

Dr. Ruth, 58, was U.S. Representative to Congress from North Carolina's Eighth District (1968-74), where he served on the Appropriations, the Veterans Affairs and the Education and Labor Committees.

He succeeds John M. Haydon, who had been Governor of Samoa for over five years.

The post is appointive by the Secretary of the Interior. Samoa came under the U.S. Flag in 1900, and was administered as a Naval station until 1951. It has been under Interior Department administration since 1951, during which period an elective bicameral Legislature has developed. Three referenda were held during the past two years providing for an elective governor but the Samoan electorate rejected the option each time.

Dr. Ruth, who holds a doctoral degree from the University of North Carolina, was dean of students at Catawba College, Salisbury, N.C. prior to his election to Congress. Active in local government, he served three terms on the Salisbury City Council and was mayor pro tem from June 1967 to November 1968. His career has also included state park administration as well as high school and college teaching.

A veteran of World War II, Dr. Ruth served in the Pacific as a Lieutenant in the Navy from 1942 to 1945. He is married to the former Jane Wiley of Charlotte, N.C. They have three married daughters and one married son.

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INT: 3308-75



File

THE VIRGIN ISLANDS OF THE UNITED STATES
OFFICE OF THE GOVERNOR
CHARLOTTE AMALIE, ST. THOMAS

January 30, 1975

Honorable Frank Zarb
Administrator
Federal Energy Administration
Washington, D.C. 20461

Dear Mr. Zarb:

I respectfully request a reconsideration of the actions which have been taken recently by the Federal Energy Administration based on a legal opinion dated November 14, 1974, provided to the Administration by Assistant Attorney General Scalia of the Department of Justice, which reversed in part the Justice Department's earlier approval of the legal sufficiency of Presidential Proclamation No. 3279 as amended (hereinafter "the Proclamation"). The Scalia opinion advised that payments provided for by Section 3(c)(1)(iii) of the Proclamation by the Federal Energy Administrator to the Virgin Islands of import license fees collected on oil products imported from the Virgin Islands into the customs territory of the United States would be unconstitutional on the grounds that they would be monies drawn from the Treasury without appropriation by the Congress in violation of Article I, Section 9, Clause 7. Apparently based on the Scalia opinion, Section 3(c)(1)(iii) payments have not been made to the Virgin Islands, and on January 23, 1975 the Proclamation was modified so as to delete Section 3(c)(1)(iii) entirely.

Former Section 3(c)(1)(iii) was based on the long-standing national policy, expressed in the Revised Organic Act of 1954, that the Virgin Islands, an unincorporated territory of the United States which has no vote in the Congress and no voice in the selection of the President, should receive for the support of its local government the proceeds of certain taxes, duties and fees originating in the Territory, rather than being compelled to go to Congress annually to seek funds on a handout basis. This is entirely consistent with the policy of the Proclamation of achieving a reduction in demand for petroleum products and thereby reducing the dependence of the nation on imports of foreign crude oil and petroleum products.



.../...

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Honorable Frank Zarb

I cannot overstate the dire consequences to the Virgin Islands if the actions based on the Scalia opinion remain in effect. The payments which the Virgin Islands were to receive pursuant to Section 3(c)(1)(iii) are of enormous importance to the economic survival of the Territory. We rely upon our entitlement under that section to provide the most essential governmental services to our people during this period of severely increased costs and diminished revenues. This is especially true because the Government of the Virgin Islands is precluded by Federal law from securing additional revenues either by deficit budgeting or by amending our income tax laws. Therefore, what the Scalia opinion characterizes as the withdrawal of Justice Department approval for only "a small and relatively insignificant part of a complex Proclamation" has placed the already fragile Virgin Islands economy in very serious jeopardy. To us, it is a decision of utmost significance.

I recognize, of course, that the resolution of the urgent economic needs of the Virgin Islands must be accomplished in a constitutional manner, and that the Scalia opinion has concluded that the payments to the Virgin Islands provided for by the Proclamation are constitutionally impermissible for want of an appropriation authorizing such payments. It is our contention, however, that monies to be paid to the Virgin Islands pursuant to Section 3(c)(1)(iii) are not by law required to be deposited in the United States Treasury and are therefore not subject to the constitutional requirement of congressional appropriation. Even assuming that such an appropriation is required, it is our contention that it has been provided by the Congress in Section 28 of the Revised Organic Act of the Virgin Islands. We therefore conclude that it would be both lawful and constitutional for the payment of import fees to be made to the Virgin Islands as contemplated by Section 3(c)(1)(iii) of the Proclamation. A legal memorandum prepared by the Attorney General of the Virgin Islands establishing these propositions is enclosed for your review and consideration.

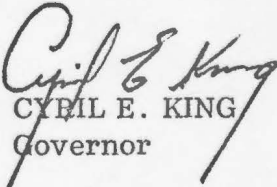
Accordingly I strongly urge the Federal Energy Administration to reconsider the actions which it has taken based upon the Scalia opinion, with a view toward making the Section 3(a)(1)(iii) payments to the Virgin Islands for the period during which this section was contained in the Proclamation, and recommending to the President the restoration of this section to the Proclamation as modified on January 23, 1975, so that Section 3(a)(1)(iii) will be applicable in the future.



Honorable Frank Zarb

The Government of the Virgin Islands respectfully requests the opportunity to meet with you and other appropriate federal officials at your earliest convenience to discuss this problem which is of such critical and urgent importance to the United States Virgin Islands.

Sincerely,


CYRIL E. KING
Governor

cc: Senator Henry M. Jackson
Senator Hubert H. Humphrey
Secretary of the Interior Rogers C.B. Morton
~~Mr. Norman Ross~~
Antonin Scalia, Esq.
Mr. Emmit Rice, Department of Interior
Robert E. Montgomery, Jr., Esq.
Congressman Phillip Burton
Congressman Ron deLugo
Senate President Elmo D. Roebuck

encl.



MEMORANDUM OF THE GOVERNMENT OF THE VIRGIN ISLANDS IN RESPONSE TO THE OPINION OF THE JUSTICE DEPARTMENT CONCERNING PAYMENTS TO THE VIRGIN ISLANDS BY THE FEDERAL ENERGY ADMINISTRATION OF OIL IMPORT LICENSE FEES.

Introduction

Presidential Proclamation No. 3279 as amended (hereinafter "the Proclamation") subjects oil products produced in the Virgin Islands and imported into the customs territory of the United States to import license fees. These fees, according to Section 3(c)(1) of the Proclamation, are to be held by the Administrator of the Federal Energy Administration in a "suspense account." It was from this "suspense account," according to Section 3(c)(1)(iii) of the Proclamation as it existed prior to the modification of the Proclamation on January 23, 1975 that the Administrator was to draw:

"for the payment to ... the Virgin Islands ... sums equal to the sums collected by way of license fees and not otherwise refundable for imports therefrom into the Customs territory of the United States of crude oil or motor gasoline, other finished products, or unfinished oils, manufactured in ... the Virgin Islands." ^{1/}

The United States Department of Justice, in an opinion dated November 14, 1974, authored by Assistant Attorney General Antonin Scalia (hereinafter "the Scalia opinion"), advised the Federal Energy Administration that such payments to the Virgin Islands would be unconstitutional, on the grounds that they would be monies drawn from the United States Treasury without appropriation by the Congress, in violation of Article I, Section 9, Clause 7 of the United States Constitution.

On this basis, Section 3(c)(1)(iii) payments have been withheld from the Virgin Islands, and on January 23, 1975 the Proclamation was modified so as to delete Section 3(c)(1)(iii) entirely. This modification was not based upon a finding that

^{1/} Section 3(c)(1)(iii) of the Proclamation refers to payments to American Samoa and Guam as well as payments to the Virgin Islands. For brevity, however, the references to American Samoa and Guam are omitted from this memorandum.



the Section 3(c)(1)(iii) payments were in any way inconsistent with the Proclamation's policy of reducing the dependence of the United States on imports of foreign petroleum. On the contrary, payments already owing to the Virgin Islands have been withheld, and the Proclamation has been modified so as to preclude future payments, purely on the strength of the legal conclusions stated in the Scalia opinion.

The Government of the Virgin Islands disagrees with the legal conclusions reached in the Scalia opinion. Basically, it is our contention that the monies payable to the Virgin Islands pursuant to Section 3(c)(1)(iii) of the Proclamation were not to be "drawn from the Treasury" within the meaning of Article I, Section 9, Clause 7 of the United States Constitution, and therefore were not subject to the constitutional requirement of Congressional appropriation. Assuming arguendo, however, that the monies to be paid to the Virgin Islands were to be "drawn from the Treasury" in the constitutional sense, it is our contention that an appropriation of the funds has been provided by Section 28 of the Revised Organic Act of 1954, Title 48 U.S.C. §1642, and by Title 48 U.S.C. §1396.

ARGUMENT

POINT I

LICENSE FEES TO BE PAID BY THE ADMINISTRATOR TO THE VIRGIN ISLANDS FROM THE "SUSPENSE ACCOUNT" ARE NOT DRAWN FROM THE TREASURY WITHIN THE MEANING OF ARTICLE I, SECTION 9, CLAUSE 7 OF THE CONSTITUTION, AND THEREFORE DO NOT REQUIRE CONGRESSIONAL APPROPRIATION

Section 3(c)(1) of the Proclamation reserved in a "suspense account" license fees collected by the Federal Energy Administrator. From this "suspense account" the Proclamation authorized the Administrator to make certain payments, among them payments to the Virgin Islands pursuant to former Section 3(c)(1)(iii). According to Section 3(c)(1), only "(b)alances remaining in such suspense account and not required to be reserved for [the prescribed] payments ... [were to] be deposited at the end of each fiscal year in the Treasury of the United States and credited to miscellaneous receipts."



The Scalia opinion concluded that monies received by the Administrator and held by him in the "suspense account" could be withdrawn for payments to the Virgin Islands only by Congressional appropriation, since such funds were "in the Treasury" and subject to the requirements of Article I, Section 9, Clause 7 of the Constitution of the United States. We disagree.

Section 3(c)(1) of the Proclamation, standing alone, does not sustain this conclusion of the Scalia opinion. As has been made clear by the Court of Appeals for the Sixth Circuit:

"[The Article I, Section 9, Clause 7] provision that 'No money shall be drawn from the Treasury, but in consequence of appropriations made by law' relates to public funds arising from taxes, customs, etc., which are required by law to be deposited in the Treasury. The mere fact that moneys are received by federal agencies in the lawful exercise of their public functions, standing alone, does not bring them within the constitutional or statutory provision requiring all 'public funds' to be covered into the Treasury and withdrawn only by an appropriation." *Varney v. Warehime*, 147 F.2d 238, 245 (6th Cir. 1945).

In reasoning that funds in the "suspense account" were "in the Treasury," the Scalia opinion relied on Title 31 U.S.C. §484, and on a description of how the Proclamation's "mandate" was carried out as a matter of federal bookkeeping procedure. We will treat these contentions *seriatim*.

A. TITLE 31 U.S.C. §484 DOES NOT PLACE "INTO THE TREASURY" THE SECTION 3(c)(1) "SUSPENSE ACCOUNT"

Title 31 U.S.C. §484 states in relevant part as follows:

"The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in section 487 of this title, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever."

For Title 31 U.S.C. §484 to compel the result argues for by the Scalia opinion, the fees received by the Administrator pursuant to Section 3(b) of the Proclamation must be "received ... for the use of the United States." Manifestly, however, the funds received into the "suspense account" created by Section 3(c)(1) which



were to be paid to the Virgin Islands were received by the Administrator not for the use of the United States, but for the use of the Virgin Islands. Only after payments to the Virgin Islands and others had been made or reserved was the Administrator to deposit the "balances remaining in such suspense account ... at the end of each fiscal year in the Treasury of the United States" Proclamation, Section 3(c)(1).

Therefore, it was the "suspense account" balances alone, and not the funds to be paid to the Virgin Islands under Section 3(c)(1)(iii), which were, within the intent of Title 31 U.S.C. §484, "for the use of the United States." If funds in the "suspense account" were *ab initio* "for the use of the United States" and thus "in the Treasury," as the Scalia opinion contends, the requirement that the Administrator deposit the fiscal year-end balances of the "suspense account" in the Treasury would not be necessary. It is therefore clear that the "suspense account" from which the Federal Energy Administration was to make payments to the Virgin Islands must be viewed as having been outside the Treasury until after the payments to the Virgin Islands were made. Only then were the unpaid balances properly to be deposited "in the Treasury." 2/

This misconception in the Scalia opinion perhaps results from the opinion's failure to treat even in cursory fashion the purpose of the Proclamation in returning oil import fees to the Virgin Islands. That purpose is based upon the policy long embraced by the United States Government that citizens of the Virgin Islands, who have no right to vote in the United States elections, should be exempted from making

2/ This procedure is similar to the treatment given taxes collected under the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States. Pursuant to Section 28(b) of the Revised Organic Act of the Virgin Islands, there is paid over to the Government of the Virgin Islands from the amounts so collected a sum equal to the total amount of the revenue collected by the Government of the Virgin Islands during the fiscal year. After such payment is made, "any amounts remaining shall be deposited in the Treasury of the United States as miscellaneous receipts." According to a letter dated October 23, 1973 from the Assistant Director of the United States General Accounting Office to the Government Comptroller for the Virgin Islands, "the revenue collected by the Virgin Islands Government always exceeds the taxes collected by Customs on Virgin Islands exports to the United States so that the amount due the Virgin Islands for any fiscal year is the amount collected by Customs less the 1 percent provided by law." It follows, therefore, that since there are no "amounts remaining" after the payments to the Virgin Islands, no taxes collected pursuant to Section 28(b) are "deposited in the Treasury of the United States."

certain contributions into the United States Treasury. As early as 1954, the United States Senate Committee on Interior and Insular Affairs articulated the reason for this policy:

"Every year, spokesmen for the people of the Virgin Islands have had to come before the Appropriations Committees requesting grants of funds to support their local government. The Congress has appropriated such sums as it saw fit, more or less on a handout basis." Senate Report No. 1271, Apr. 29, 1954 (To accompany S. 3378), *U.S. Code Congressional and Administrative News*, 83rd Congress, Second Session, 1954, p. 2589.

In a report to the Committee, Chief Judge Albert B. Maris of the United States Court of Appeals for the Third Circuit, recommended that Federal internal revenue taxes on articles produced in the unincorporated Territory of the Virgin Islands should go into the local treasury rather than that of the Federal Government:

"For it is true that these unincorporated territories not destined for statehood are being taxed without any present or future hope of representation. It seems democratic and fair, therefore, that any taxation imposed upon them by Congress ought to be for their own benefit and subject to disposition by their own elected representatives." Report of Albert B. Maris, Senate Report No. 1271, Apr. 29, 1954 (To accompany S. 3378) *U.S. Code Congressional and Administrative News*, 83rd Congress, Second Session, 1954, p. 2613.

Section 28 of the Revised Organic Act of the Virgin Islands, Title 48 U.S.C. §1642, was enacted by the Congress that same year to "give a greater degree of autonomy, economic as well as political, to the people of the Virgin Islands," to "increase the financial self-sufficiency of the Territory," and to "confer greater responsibilities, and a higher degree of self-government, both economic and political, upon the Virgin Islands." Senate Report No. 1271, Apr. 29, 1954 (To accompany S. 3378), *U.S. Code Congressional and Administrative News*, 83rd Congress, Second Session, at pages 2586, 2601 and 2616. It is in accord with this policy that Section 3(c)(1) of the Proclamation dedicated to the Virgin Islands the import license fees collected by the Administrator on oil products imported from the Virgin Islands.

B. AN ERRONEOUS BUREAUCRATIC BOOKKEEPING PRACTICE CANNOT PLACE THE SECTION 3(c)(1) "SUSPENSE ACCOUNT" WITHIN THE TREASURY IN THE CONSTITUTIONAL SENSE, AND THEREBY MAKE A PRESIDENTIAL PROCLAMATION UNCONSISTUTIONAL.

The second argument in the Scalia opinion which attempts to bring the Section 3(c)(1) "suspense account" within Article I, Section 9, Clause 7 of the Constitution is that such a result is compelled by federal bookkeeping procedure, which places the oil import license fees in a "Budget Clearing Account (Suspense)" of the type created for "remittances which were 'presumed to be applicable to Budget accounts in general' but which had to be held in suspense either because the specific budget account to be credited could not yet be determined or because the specific amount to be credited could not yet be determined." Scalia opinion, page 2. Manifestly, however, license fees received by the Federal Energy Administration on Virgin Islands oil imports under the terms of Section 3(b) of the Proclamation are not maintained in a "suspense account" for either of those reasons.

License fees to be paid to the Virgin Islands were in a "suspense account" rather than "in the Treasury" not because the specific budget account or the amount to be credited could not be determined, but because the President had dedicated the funds to the Virgin Islands Treasury consistent with the intent of Congress in legislating the Revised Organic Act of 1954. If as a matter of bookkeeping the particular "Budget Clearing Account (Suspense)" established pursuant to Section 3(c)(1) of the Proclamation was recorded "in the Treasury," such bookkeeping was erroneous. In that case, Title 31 U.S.C. §725 q-1 provided the mechanism for withdrawal of the funds erroneously covered into the Treasury so that they could be paid to the Virgin Islands, to whose use they were committed by the Proclamation, without the necessity of further Congressional appropriation.

The Scalia opinion, in fact, resorts to 31 U.S.C. §725 q-1 for its solution to the rather thorny problem of how the Administrator may make refunds to licensees under Section 3(a)(3) of the Proclamation if he is not legally entitled to make the Section 3(c)(1)(iii) payments to the Virgin Islands. The Scalia opinion seeks to

bridge this chasm by arguing that "money entitled to be refunded was not 'received for the use of the United States' within the meaning of 31 U.S.C. §484, and therefore should not have been covered into the Treasury because it was "erroneously collected." Scalia opinion, page 5. However, while one of the five bases for refunds enumerated in Section 3(a) is that an erroneous charge has been made (Sec. 3(a)(v)), Section 3(a) provides four other circumstances (Section 3(a)(i-v)) under which the Administrator is empowered to make refunds which do not involve the restoration of "erroneous" payments, and to which 31 U.S.C. sec. 725 q-1 therefore cannot be applicable.

A fair consideration of the refund provisions inevitably leads one to conclude that the Administrator's authority to make refunds from the "suspense account" without Congressional appropriation is based upon the fact that no funds in the "suspense account" are to be deposited "in the Treasury" until after the refunds have been made. This, of course, is the same rationale which establishes that money to be paid to the Virgin Islands from the "suspense account" is money which has not been "received for the use of the United States" within the meaning of Title 31 U.S.C. §484, and which therefore has not been covered into the Treasury.

The Scalia opinion purports to reinforce its argument that the "suspense account" is "in the Treasury" by emphasizing that the funds in the account are "recorded" in the same fashion as are fees, fines, gifts, rents, and taxes. Similarly, the Scalia opinion notes that the funds in the "suspense account" are included in reports of monthly budget surplus or deficit for the United States, which the opinion concludes "reflects that the funds are dedicated 'for the use of the United States' and are therefore required to be paid into the Treasury." Scalia opinion, pages 2, 3. The indicia upon which this argument places so much reliance, however, are merely the decisions of administrative personnel at levels of government removed from national policy making. For this reason, even if the accounting practices described by the Scalia opinion are interpreted to signify that the recorded funds are "in the Treasury," without reference to Congressional and Presidential intentions this interpretation is without legal significance.

POINT II

ASSUMING ARGUENDO THAT OIL IMPORT LICENSE FEES HELD IN THE SECTION 3(c)(1)(iii) "SUSPENSE ACCOUNT" ARE "IN THE TREASURY" WITHIN THE MEANING OF THE CONSTITUTION, TITLE 48 U.S.C. §§1396 AND §1642 CONSTITUTE A PERMANENT APPROPRIATION OF THESE FEES TO THE VIRGIN ISLANDS

The Scalia opinion states that there exists no appropriation by the Congress of the payments to be made to the Virgin Islands by Section 3(c)(1)(iii) of the Proclamation. However, while asserting that "a search of the statutes dealing with territories and with money and finance has failed to disclose any such appropriation act," the Scalia opinion does at page 3, footnote 2, allude without elaboration to certain "statutes which say in general terms that customs duties shall be turned over to the respective island governments." Among the statutes cited in this footnote is Title 48 U.S.C. §1642, which is Section 28 of the Revised Organic Act of 1954 of the Virgin Islands. It states in relevant part:

(a) The proceeds of customs duties, the proceeds of the United States income tax, the proceeds of any taxes levied by the Congress on the inhabitants of the Virgin Islands, and the proceeds of all quarantine, passport, immigration, and naturalization fees collected in the Virgin Islands, less the cost of collecting all of said duties, taxes, and fees, shall be covered into the treasury of the Virgin Islands, and shall be available for expenditure as the Legislature of the Virgin Islands may provide.

An understanding of the Congressional purpose underlying the return to the Virgin Islands of the proceeds of taxes, customs duties and other fees levied by the United States on the inhabitants of the Virgin Islands, and the return of proceeds of United States taxes collected on articles produced in the Virgin Islands and transported to the United States (Title 48 U.S.C. §1396), is at the center of the present controversy. That purpose, based on a recognition of the inequity of Virgin Islanders, citizens of the United States without the right to vote for Congress or the President, being compelled annually to seek handouts from the Congress has already been alluded to in Point I of this Memorandum. Consistent with Congressional recognition of this inequity, virtually all public revenues derived from Virgin Islands inhabitants are returned to the territorial government under the terms of the cited statutes, so that the people of the Virgin Islands will not be subjected to the indignity and oppression which the American colonies suffered at the hands of their mother country: taxation without representation. This comprehensive policy affecting public revenues clearly encompasses the oil import license fees in

question, because these fees, imposed upon Virgin Islands inhabitants, are indistinguishable from other customs duties or taxes.

A. OIL IMPORT LICENSE FEES ARE TAXES WITHIN THE MEANING OF TITLE 48 U.S.C. §1642.

The Scalia opinion errs profoundly when it characterizes §1642 as a statute dealing only with "customs duties." Section 1642 is substantially broader in scope than is implied by that characterization, for it constitutes a permanent, indefinite special fund appropriation of "the proceeds of *any taxes levied by Congress on the inhabitants of the Virgin Islands, . . .*" to the treasury of the Virgin Islands government. (emphasis added)

The Proclamation is an exercise by the President of the United States of his power, conferred by Congress under Title 19 U.S.C. §1862, to "take such action . . . as he deems necessary to adjust the imports of . . . articles . . . [which] threaten to impair the national security," 19 U.S.C. 1862(b), and there is apparently no question as to the propriety of the oil import license fee imposed by the Proclamation as a device to accomplish such adjustment. Similar modes of delegating power to the executive have been approved by the courts in situations virtually identical to that represented by Title 19 U.S.C. §1862, *Varney v. Warehime, supra*; *Ralston Purina Co. v. Hagemeister*, 188 N.W.2d 405 (N.D. 1971); *c.f., Best Foods v. United States*, 158 F. Supp. 583 (U.S. Cust. Ct. 1957), so long as the congressional policy is articulated and the applicable standards controlling the exercise of discretion are prescribed. *Varney v. Warehime, supra*, at 244. This is so because the executive or administrative role prescribed by the legislation is viewed as a necessary device adopted by Congress to achieve the precise results it intends, where variations in circumstances may render categorical legislation ineffective. Thus, it has been held that a statute authorizing the President to vary customs duties is a lawful act of Congress, and that the President's actions implementing the statute upon the occurrence of the specified contingency merely execute the Act of Congress. *Hampton v. United States*, 276 U.S. 394 (1928). It follows that where Congress properly authorizes the President to take necessary action, including the imposition of taxes or duties to protect the national interest, and he does so, his act effecting

the imposition of taxes or duties is merely the execution of the Congressional enactment, and, consequently, the tax or duty is, in legal effect, levied by Congress.

The commonly understood significance of the term "taxes" would comprehend the oil import license fees here at issue. In this general sense, any financial contribution imposed by a government upon its subjects, for the use of the sovereign, is a "tax", whether it be denominated a "toll", "tribute", "tollage", "gabel", "impost", "duty", "custom", "excise", "subsidy", "aid", "supply", or any other name.

Story, Constitution, §950. Consistent with this definition, the Supreme Court has held, for example, that a bank which is exempt from any "taxes" must be deemed to be exempt from the imposition of a "license tax", *Citizens Bank v. Parker*, 192 U.S. 73 (1904); *Accord, Ralston Purina Co. v. Hagemeister, supra*. Under extensive case law, "taxes" are broadly defined to include all measures which are primarily intended to produce revenue, or which in fact produce substantial revenue whatever their primary purpose may have been. *State v. Wisconsin Contractors*, 268 N.W. 238, 243 (Wisc. 1936); *c.f. Moon v. Freeman*, 379 F.2d 382 (9th Cir. 1967).

"License fees" have been defined by courts throughout the history of the common law as sums extracted to cover the actual costs of administering a regulatory scheme, as distinguished from "taxes", which are essentially revenue-generating measures. *City of Philadelphia v. Southeastern Penn. Transportation Authority*, 303 A.2d 247, 251 (Pa. 1973); *Gunby v. Yates*, 102 S.E.2d 548 (Ga. 1958); *Attorney General v. Winnebago Lake & F.R. Plank Road Co.*, 11 Wisc. 35 (Wisc. 1860). Oil import license fees are clearly calculated to generate revenues far in excess of any sum reasonably related to the actual cost of administering the regulatory process. Indeed, the most recent revisions of the Proclamation, announced by the President on January 23, 1975, reflect an ultimate escalation in the fees by at least five hundred percent, with no indication whatever of a concomitant increase in administrative costs. There is no pretense that the purpose of the oil import license fees is to render the regulatory apparatus self-supporting or that any portion of the resulting revenues are to be devoted to subsidizing the cost thereof, and this factor is of controlling importance in determining the true nature of the levy. *Gunby v. Yates, supra; Pittsburgh C. & St. L. Ry. Co., v. State*, 30 N.E. 435 (Ohio, 1892).

Under any reasonable interpretation of the Proclamation and of Title 48 U.S.C. §1642, the revenues produced by the oil import license fees are "taxes", and thus, even if they are "in the Treasury" for purposes of Article I, Section 9, Clause 7 of the Constitution, they may properly be drawn therefrom for payment to the Virgin Islands under the authority of the permanent appropriation created by Section 1642, which dedicates to the Virgin Islands "the proceeds of any taxes levied by the Congress on the inhabitants of the Virgin Islands..."

B. THE OIL IMPORT LICENSE FEES ARE "CUSTOMS DUTIES" WITHIN THE MEANING OF TITLE 48 U.S.C. §§1396 AND 1642.

The Scalia opinion relies heavily on a purported distinction between the oil import license fees and "customs duties." This distinction is premised upon two kinds of arguments, one definitional and the other administrative. Both are fallacious.

1) The Scalia Opinion's Definitional Arguments

The following three definitional arguments quoted from page 4, footnote 3, of the Scalia opinion are discussed *seriatim*:

- a) "[D]uties are normally considered primarily a revenue measure, while the fees involved here had assuredly regulatory purposes."

The argument that "customs duties" are properly revenue-creating measures and that regulatory purposes are not an appropriate motivation for imposing tariffs was rejected as long ago as 1928 by the Supreme Court in *Hampton v. U.S.*, *supra*. Indeed, since the Revenue Law of 1789, the motive of protecting the American economy has permeated the tariff acts of the United States, and it is hardly appropriate at this late date to suggest that such a motive makes a levy something other than a "customs duty." It is also relevant in this regard to again note that the oil import license fee is a revenue-generating measure of very substantial impact. No distinction, therefore, can properly be drawn between this license fee and a duty on the basis of their respective purposes or effects.

- b) "[T]he oil import scheme provides exemptions for certain persons based on their actions, and such exemptions from a duty are anomalous ..."

The vast system of customs duties established by Title 19 of the United States Code is riddled with exemptions. These exemptions turn on such varied considerations as the age of the importer, his place of residence, the point of exportation, the point of importation, the item imported, other characteristics of the importer, whether the item is intended for personal use or as a gift to another, whether the imported item is destined for final delivery to a port outside the United States, and on a multitude of other factors. For example, a person may import an article into the customs territory of the United States in order to sell it, or to repair, alter, or process it, and then to export it. If he imports the item for sale, he is liable to pay duty; if he imports it to alter and then export within three years, he is granted an exemption. 19 U.S.C. §1308(1). Similar exemptions are available to individuals who import films for advertising purposes; articles for testing, experiment or review; or mannequins for displaying women's wearing apparel. 19 U.S.C. §1308. An individual may also import an automobile, a motorcycle, an airplane, boat or balloon with a customs duty exemption, if he does so in order to participate in a race or other contest and he later exports the vehicle within three years. In addition, certain persons (nonresidents) may import professional equipment, tools, or camping equipment, if they do so for their personal use during their stay in the United States, and, as to such imports, they will enjoy an exemption from duty. 19 U.S.C. §1308. Very much to the point, manufacturers may import materials for incorporation into their final product, and, if they do so in a "bonded warehouse," their imports may be exempted from duty if they export the final product. 19 U.S.C. §1311. Similarly, when an individual exports articles which incorporate any imported duty-paid or duty-free merchandise, he is granted a "drawback" or refund of the duty - in effect an exemption. This is true even if the exported articles do not actually contain the imported materials, if the export contains materials of equivalent kind and quality. 19 U.S.C. §1313. Indeed, there is even a specific exemption from customs duties for persons who import articles, and use them solely to display or exhibit at Rockefeller Center. 19 U.S.C. §144a.

The list is long, and there is no need to rehearse it here in greater detail. The cited examples adequately demonstrate that the system of customs duties developed by this country is composed of almost as many exemptions as rules. Certainly, some of these exemptions are granted to "certain persons based on their actions." The single most accurate statement that can be made about exemptions to customs duties is that they have been created piecemeal, in response to changing circumstances, public reaction, and special appeals. Like these exemptions, the exemptions provided in the oil import license fee program are designed to protect the objects of the tariff, while respecting the special equities affecting certain classes of importers. The purported distinction, then, between the oil import license fee and other custom duties, on the basis of the types of exemptions provided by the two, is invalid.

Even if it were true that the Proclamation allowed exemptions which would be absolutely unique in the history of United States customs duties, there still would be no authority for the proposition that such an "anomaly" would, *ipso facto*, remove the license fees from the general category of customs duties. Nowhere does it appear that there is any rule of law which prohibits such exemptions in customs duties. In fact, it appears that virtually every exemption to the "dutiable list" was an "anomaly" when it was first adopted. Therefore, in view of the general identity in all other respects of the oil import license fees and customs duties, the argument that a new type of exemption would remove the license fees from the class altogether is unpersuasive.

- c) "[T]he scrapping of the existing statutory duty on oil would not be justified unless a whole new system were being created, using different regulatory devices ..."

This inference drawn by the Scalia opinion is logically fallacious. Certainly, it is entirely proper to replace one scheme of customs duties with another, whether or not the newly imposed system consists of new regulatory devices.

Because of the extreme impact of petroleum products on the nation's economy, Congress clearly concluded that the President had to be vested with comprehensive authority to take all action necessary to control the import and allocation of petroleum. Nevertheless, it is evident that the President could not impose a levy beyond the

scope of his statutory authorization. It is of importance therefore, that the Congressional authorization upon which the most recent amendments to the Proclamation rely is provided in Title 19 of the United States Code, the title establishing "Customs Duties." Title 19 U.S.C. §1862. Moreover, the Proclamation was originally issued pursuant to §1352(a) of Title 19, the Tariff Act of 1930. Thus, the Proclamation, by imposing escalating imposts on imported petroleum products, accomplishes a comprehensive system of regulation through customs duties within the authority of the enabling legislation.

This assessment of a charge against petroleum imports on a per-barrel basis, coupled with a quota system, designed to generate revenues and regulate allocation, by whatever name, is essentially a customs duty, and the fact that the present system was substituted for a pre-existing conventional tariff in no way detracts from this conclusion.

2. The Scalia Opinion's Administrative Arguments

The Scalia opinion contends, first, that "the longstanding administrative interpretation of the statutes [48 U.S.C. §§1394, 1396, 1642] is that they apply only to duties collected on items imported into the Virgin Islands, not to duties collected on items imported into the United States from the Virgin Islands." Scalia opinion, page 3, footnote 2. Yet, this "longstanding administrative interpretation," if such it be, is directly contradictory to the language of the cited statutes.

Section 1394 of Title 48 provides:

There shall be levied, collected and paid upon all articles coming *into the United States or its possessions from the Virgin Islands* the rates of duty and internal revenue taxes which are required to be levied, collected and paid upon like articles imported from foreign countries . . . , (emphasis added)

Section 1396 of Title 48, in turn, directs the following:

The duties and taxes collected in pursuance of sections 1391, 1392, 1394 and 1395 of this title shall not be covered into the general funds of the Treasury of the United States, but shall be used and expended for the government and benefit of the Virgin Islands, under such rules and regulations as the President may prescribe.

Thus, Congress's own language expresses its intention: *all* duties imposed on items imported *into* the United States from the Virgin Islands are appropriated to the territorial government.

The Scalia opinion further asserts that the differences in collection agencies employed and accounting practices applied to "duties," as compared to oil import license fees, demonstrates the fundamental distinction between the two. The opinion asserts, for example, that United States Customs officials collect "duties" in the territories, whereas the Federal Energy Administration collects the import license fees. Scalia opinion, page 4. In fact, the "... fees are 'incurred' ... when the product passes through United States Customs, even though payment of the fees by the purchasing firm [to the F.E.A.] may be at a later date," 40 Fed. Reg. No. 15, p. 3467, 3469. In addition, as with all other dutiable imports, the United States Customs Service is responsible for monitoring and manifesting the actual petroleum imports; reporting the quantities passed into the United States to the Federal Energy Administration, determining whether specific imports shall be admitted, consistent with the terms of the Proclamation; and holding, as well as distributing, the actual licenses issued by the Federal Energy Administration to the licensees. The Federal Energy Administration simply sends a bill to the licensee at a subsequent time and requests payment of the sum assessed by Customs. Thus, the United States Customs Service plays a central role in the administration of the oil import license fee. To the extent that such administrative participation is relevant to a determination of the character of the monies collected, this participation militates in favor of the categorization of the oil import license fee as a duty.

Moreover, the apportionment of responsibility for assessing and collecting the license fees between Customs and the Federal Energy Administration is wholly extra-legal. No statute, proclamation or published regulation mandates the practice adopted. Yet, the Scalia opinion would raise the present procedures to a constitutional level, and advise that the President's Proclamation is illegal because the practice of these two agencies suggests that the moneys they are collecting are not being handled strictly as other duties and tariffs have been handled in the past. It is respectfully submitted that the Scalia opinion approaches this issue from the wrong prospective, and, for this reason, that it draws the wrong conclusion.

The Scalia opinion also notes that the proceeds of the license fees are placed in a "Budget Clearing Account (Suspense)" rather than a "special funds receipt account," as are the Customs duties collected in Puerto Rico. Scalia opinion, page 4. This the opinion views as evidence that the "fees are not duties" within the meaning of the applicable statutes. However, it simply is not sufficient, as a matter of legal reasoning, to conclude that a Presidential action is illegal and unconstitutional because, in some sense, it adopts a position contrary to existing beauracratic practice. Specifically, to argue that improper accounting procedures were adopted is not an adequate premise upon which to construct an argument that the President's actions are illegal. In this instance, the President's intention to comply with the statutes which protect the United States territories from taxation without representation, and, in that regard, to treat the oil import license fee as a "duty" within the terms of those statutes - is manifest. If in implementing this policy an accounting decision was made to deposit the monies in an account improperly denominated, obviously the policy rather than the accounting error must predominate, and the latter rather than the former must be corrected to cure the discrepancy. It is blatant "bootstrapping" to use an administrative or accounting practice as an authoritative definition of terms, and on that basis to reason that failure of a Presidential Proclamation to adhere to such definitions constitutes a legal deficiency in the executive action.

In summary, the Scalia opinion identifies no convincing basis on which to distinguish the oil import license fee from a customs duty, whereas there are striking similarities between the two. The license fee is imposed on oil and petroleum imports as they enter the customs territory of the United States, on a per-barrel basis, in order to regulate importation, protect domestic supplies, and generate revenues. Further, the license fee is applicable by force of a Presidential Proclamation, issued under statutory authority of the "Customs Duties" Title of the United States Code, and, the Tariff Act of 1930. In every significant sense, then, the oil import license fee is a "duty", and under the terms of Title 48 U.S.C. §§1396 and 1642, there exists a permanent, indefinite, special fund appropriation of the

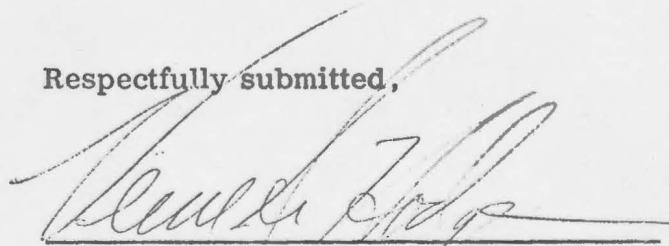
proceeds of all such sums to the treasury of the Virgin Islands. Therefore, it is wholly legal and proper that the President should direct that the proceeds of the oil import license fees be paid to the Virgin Islands upon the authority of the recited statutory appropriations.

CONCLUSION

There exists no constitutional or other legal impediment to the payment by the Federal Energy Administrator of fees accrued to the Virgin Islands pursuant to former Section 3(c)(1)(iii) of the Proclamation, and to the restoration of that Section to the Proclamation as modified on January 23, 1975.

DATED: January 31, 1975

Respectfully submitted,



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FEBRUARY 3, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

RESERVING CERTAIN LANDS ADJACENT TO AND ENLARGING
THE BOUNDARIES OF THE BUCK ISLAND REEF NATIONAL
MONUMENT IN THE VIRGIN ISLANDS OF THE UNITED STATES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

The Buck Island Reef National Monument, situated off the northeast coast of Saint Croix Island in the Virgin Islands of the United States, was established by Proclamation No. 3443 of December 28, 1961 (76 Stat. 1441). It now has been determined that approximately thirty acres of submerged land should be added to the monument site in order to insure the proper care and management of the shoals, rocks, undersea coral reef formations and other objects of scientific and historical interest pertaining to this National Monument.

These thirty acres of submerged lands are presently owned in fee by the United States. They will be conveyed to the Government of the Virgin Islands on February 3, 1975, pursuant to Section 1(a) of Public Law 93-435 (88 Stat. 1210), unless the President, under Section 1(b)(vii) of that Act, designates otherwise.

Under Section 2 of the Act of June 8, 1906, 34 Stat. 225 (16 U.S.C. 431), the President is authorized to declare by public Proclamation objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. The aforementioned thirty acres of submerged lands are contiguous to the site of the Buck Island Reef National Monument, constitute a part of the ecological community of the Buck Island Reef, and will not enlarge the monument boundaries beyond the smallest area compatible with its proper care and management.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of the authority vested in me by Section 1(b)(vii) of Public Law 93-435 (88 Stat. 1210), do hereby proclaim that the lands hereinafter described are excepted from the transfer to the Government of the Virgin Islands under Section 1(a) of Public Law 93-435; and, by virtue of the authority vested in me by Section 2 of the Act of June 8, 1906, 34 Stat. 225 (16 U.S.C. 431), do hereby proclaim that, subject to valid existing

more



rights, the lands hereinafter described are hereby added to and made a part of the Buck Island Reef National Monument, and Proclamation No. 3443 of December 28, 1961, establishing the Buck Island Reef National Monument is amended accordingly.

Beginning at latitude $17^{\circ} 47' 30''$ N, longitude $64^{\circ} 36' 32''$ W; thence approximately 1000 feet to latitude $17^{\circ} 47' 27''$ N, longitude $64^{\circ} 36' 22''$ W; thence approximately 900 feet to latitude $17^{\circ} 47' 18''$ N, longitude $64^{\circ} 36' 22''$ W; thence approximately 1000 feet to latitude $17^{\circ} 47' 15''$ N, longitude $64^{\circ} 36' 22''$ W; thence approximately 1500 feet to latitude $17^{\circ} 47' 30''$ N, longitude $64^{\circ} 36' 32''$ W, the place of beginning, embracing an area of approximately 30 acres.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, in the year of our Lord nineteen hundred seventy-five, and of the Independence of the United States of America the one hundred and ninety-ninth.

GERALD R. FORD

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FEBRUARY 3, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

RESERVING CERTAIN SUBMERGED LANDS ADJACENT TO ROSE
ATOLL NATIONAL WILDLIFE REFUGE TERRITORY OF AMERICAN
SAMOA AND, CERTAIN SUBMERGED LANDS FOR THE DEFENSE
NEEDS OF THE UNITED STATES IN THE TERRITORIES OF GUAM
AND THE VIRGIN ISLANDS

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

The submerged lands surrounding the Rose Atoll National Wildlife Refuge in American Samoa are necessary for the protection of the Atoll's marine life, including the green sea and hawksbill turtles. The submerged lands in Apra Harbor and those adjacent to Inapsan Beach and Urano Point in Guam, and certain submerged lands on the west coast of St. Croix, United States Virgin Islands are required for national defense purposes. These submerged lands in American Samoa, Guam and the United States Virgin Islands will be conveyed to the Government of those territories, on February 3, 1975, pursuant to Section 1(a) of Public Law 93-435 (88 Stat. 1210), unless the President, under Section 1(b)(vii) of that Act, designates otherwise.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of authority vested in me by Section 1(b)(vii) of Public Law 93-435 (88 Stat. 1210) do hereby proclaim that the lands hereinafter described are excepted from the transfer to the Government of American Samoa, the Government of Guam and the Government of the United States Virgin Islands under Section 1(a) of Public Law 93-435.

American Samoa. The submerged lands adjacent to Rose Atoll located 78 miles east-southeast of Tau Island in the Manua Group at latitude 14° 32' 52" south and longitude 168° 08' 34" west, which lands shall be under the joint administrative jurisdiction of the Department of Commerce and the Department of the Interior.

Guam. (1) The submerged lands of inner and outer Apra Harbor; and, (2) the submerged lands adjacent to the following uplands: (a) Unsurveyed land, Municipality of Machanao, Guam, as delineated on Commander Naval Forces, Marianas Y & D Drawing Numbered 597-464, lying between the seaward boundaries of Lots Numbered 9992 through 9997 and the mean high tide, containing an undetermined area of land, (b) unsurveyed land, Municipality of Machanao, Guam, as delineated on Commander Naval Forces, Marianas Y & D Drawing Numbered 597-464, lying between the seaward boundary of Lot Numbered 10080 and the line of mean high tide, containing an undetermined amount of land, and (c) Lot Numbered PO 4.1 in the Municipality of Machanao, Guam, as delineated on Y & D Drawing Numbered 597-464, more particularly described as surveyed land bordered on the north by Lot Numbered 10080, Machanao, east by

more

Northwest Air Force Base, south by U.S. Naval Communication Station (Finegayan) and west by the sea containing a computed area of 125.50 acres, more or less. All of the above lands within the territory of Guam shall be under the administrative jurisdiction of the Department of the Navy.

The Virgin Islands. (1) The submerged lands as described in the Code of Federal Regulations revised as of July 1, 1974, cited as 33 CFR 207.817 areas "A" & "B", (2) the submerged lands seaward of the 100 fathom curve off the coast of St. Croix beginning at a point 17° 40' 30" N and ending at a point 17° 46' 30" North as depicted on Coast and Geodetic Survey Chart Numbered 25250, Third Edition; Title: St. Croix, Virgin Islands Underwater Range, and (3) the submerged lands seaward of the Underwater Range Operational Control Center St. Croix, Virgin Islands presently leased to the Department of the Navy and described as Plot #18 of Estate Sprat Hall subdivision, located in northside Quarter "A", St. Croix containing 4.84 acres of land. All of the above lands within the territory of the Virgin Islands shall be under the administrative jurisdiction of the Department of the Navy.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, in the year of our Lord nineteen hundred seventy-five, and of the Independence of the United States of America the one hundred and ninety-ninth.

GERALD R. FORD

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*Sent to Mike Reval
for approp. action*

THE SENATE
CONGRESS OF MICRONESIA
CAPITOL HILL * SAIPAN, MARIANA ISLANDS 96950

PRESIDENT
Tosiwo Nakayama

March 24, 1975

VICE PRESIDENT
Lazarus E. Salii

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D.C.

FLOOR LEADER
Ambilos Iehsi

Re: Service to Saipan Case
CAB Docket No. 24421

YAP DISTRICT
Petrus Tun
John A. Mangefel

Dear Mr. President:

TRUK DISTRICT
Tosiwo Nakayama
Andon Amaraich

At the outset it is my honor to extend to you my belated congratulations for your accession to the Presidency of the United States, as previously expressed in Senate Resolution No. 15, adopted August 9, 1974 by the Fifth Congress of Micronesia, First Special Session, 1974.

PONAPE DISTRICT
Bailey Olter
Ambilos Iehsi

Also, as a former member of the Marianas Political Status Commission, I would like to extend my appreciation for the work of Ambassador Franklin Haydn Williams, his Office of Micronesian Status Negotiations, and members of the United States Delegation in concluding an agreement between the United States of America and the Northern Mariana Islands which will provide for a close and lasting association between our respective jurisdictions.

PALAU DISTRICT
Lazarus E. Salii
Roman Tmetuchi

In connection with the above, and as the senior senator from the Mariana Islands District, I should like to respectfully apprise you that I have carefully and closely followed, over the past several years, the circumstances and events connected with the Service to Saipan Case, CAB Docket No. 24421. It is my considered opinion that Pan American Airlines should be awarded the route for the following reasons.

MARSHALLS DISTRICT
Amata Kabua
Wilfred I. Kendall

MARIANAS DISTRICT
Olympio T. Borja
Edward DLG. Pangelinan

1. **ECONOMIC IMPACT.** While selection of Pan American will be of benefit to all of Micronesia (which would also be the case should any other airline be chosen) it will have a prime impact on the people of the Mariana Islands District and, therefore, the desires of my people in this regard should be given the weight commensurate with such impact. Furthermore, I should also point out that

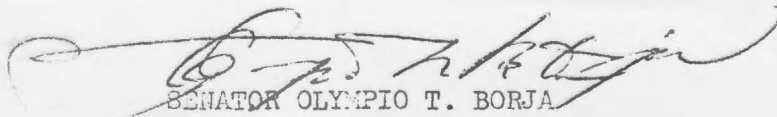


awarding of the route will also be beneficial to Pan American, which has lately experienced financial difficulties.

2. COMPETITION. One of the main underpinnings of a free enterprise system in a democratic government is that of competition. It is my judgement, based on such facts as Pan Am's serving the Pacific area since 1947 and its long established Guam-Japan route, that only this airline can effectively and profitably compete with Japan's national carrier, Japan Air Lines, and promote its service in the Japanese market. Neither Continental Airlines nor Northwest Orient Airlines have that capability.
3. POLITICAL CONSIDERATIONS. Only the Northern Mariana Islands are seeking a permanent relationship with the United States of America, while the other districts of the Trust Territory of the Pacific Islands are taking a direction toward a less permanent association. We, therefore, again ask that the desires of the people of the Mariana Islands District, who will be most affected, be weighed appropriately.

Mr. President, for over two decades now, my constituents have repeatedly requested to be a part of the American political family. This long-deferred dream now appears about to become reality. A Covenant between the people of the Northern Mariana Islands and the United States of America was signed by both parties on February 15, 1975, and has subsequently been ratified unanimously by the District Legislature of the Marianas. Authorization of funds for transition to a new status for my people has already been approved by the United States Senate, and favorable consideration is expected in the United States House of Representatives. We also anticipate a positive vote by the people of the Marianas on the Covenant sometime in June of this year, and separate administration of our district may be possible by as early as July 1975. Therefore, just as we look forward eagerly and with hope to the Covenant becoming effective, we also look to the United States Government to support our desires, economic aspirations and needs with regard to the Service to Saipan Case, and it is my hope, in this connection, that the Civil Aeronautics Board and your Office will act favorably in our behalf, so that in the end, both the interests of the people of the Northern Mariana Islands and the United States of America will be fully served.

Very truly yours,


SENATOR OLYMPIO T. BORJA
Senator, Mariana Islands District
Congress of Micronesia



cc: Richard O'Meila, Acting Director
Civil Aeronautics Board

Rogers C.B. Morton, Secretary,
Department of the Interior

James R. Schlesinger, Secretary
Department of Defense

F. Haydn Williams, Office of Micronesian
Status Negotiations, Dept. of the Interior

Emmett Rice, Acting Director, Dept. of
Territorial Affairs, Dept. of the Interior

A. B. Won Pat, Jr., United States Representative, Guam

William T. Seawell, President
Pan American Airways

Gerry Ryan, Esq.
Jones, Day, Reavis & Pogue

Kent Sitten, Director, Pan
American Airways, Guam

Vicente N. Santos, President
Marianas District Legislature

Edward DLG. Pangelinan, Chairman
Marianas Political Status Commission



OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS
WASHINGTON, D.C. 20240

F.L.

April 21, 1975

MEMORANDUM

To: Norman E. Ross, Jr., Assistant Director,
Domestic Council, Room 218, Old Executive
Office Building, Washington, D.C. 20506

From: Richard Y. Scott, Director, Office for Micronesian
Status Negotiations

Subj: Funding for Plebiscite in the Northern Mariana
Islands

Funding is urgently required for the plebiscite in the Northern Marianas, now announced by the Secretary of the Interior for June 17. Such funding would cover all relevant expenses including those of the Plebiscite Commissioner who has been designated by the President in line with recommendations from members of the Interagency Working Group on Micronesia.

The plebiscite is being held in fulfillment of the responsibility of the United States as Administering Authority of the Trust Territory of the Pacific Islands. Observers from the United Nations are expected to be present to witness the plebiscite and as much of the pre-plebiscite activities as their time permits.

Cost of the plebiscite and its related education program is estimated at \$50,000. Breakdown of this sum including tentative staffing pattern is given in the attachment to this memorandum. It is to be noted that definitive staffing will depend on the Plebiscite Commissioner to whom the Secretarial Order has given considerable discretion in this regard within a general budgetary framework.

The Plebiscite Education Program under supervision of the Plebiscite Commissioner, the Voter Registration, and the actual voting will make use insofar as possible of Trust Territory Administration personnel who will be given administrative leaves with uninterrupted salary to fill these duties. However, the Consultant fee and expenses of the Plebiscite Commissioner and staff, travel expenses, materials and supplies and other outside hire as may be necessary amount to the estimated \$50,000 cost.

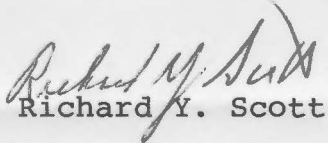


Initially the Department of the Interior assumed responsibility for \$25,000 to be matched with \$25,000 from the Trust Territory budget. However, after further assessment, it was decided that it would be politically inadvisable to consider defraying any part of the balance from the Trust Territory budget since that budget is subject to scrutiny by the Congress of Micronesia which could be expected to oppose vigorously such diversions of funds to facilitate the separate Marianas status choice.

Last week, OMSN requested the Department of State (EA) to provide \$25,000 to cover one half of the estimated cost of holding the plebiscite. After carefully looking into every possible source of funds for this purpose, State ascertained that no funds were available as a result of unanticipated demands on funding resulting from the situation in Cambodia and South Vietnam.

The Plebiscite Commissioner is now in Saipan in the process of organizing the Political Education Program and voter registration board. It is essential that he receive as soon as possible the full funding necessary to cover the cost of preparing for and conducting the plebiscite in the Northern Mariana Islands.

It is recommended that the Secretary of the Interior be requested to fund the entire \$50,000 cost of the plebiscite and its related activities from Department of the Interior sources.


Richard Y. Scott

enc: as indicated

RYS:kkc



NORTHERN MARIANAS PLEBISCITE
Estimated Budget

	<u>Salary</u>	<u>Expenses</u>
<u>Plebiscite Commissioner</u>		
Consultant fee (based on 80 days)	\$11,500	
Per diem (Consultation Washington and New York plus duty in Saipan)		\$ 3,300
Consultation travel (U.S.)		\$ 200
Round trip - Boston-Saipan		\$ 3,100
<u>Executive Director</u> (TTPI Staff)	No cost	
Travel and per diem		\$ 300
<u>Secretary</u> (American, locally hired)	\$ 1,500	
<u>Plebiscite Education Program</u>		
<u>Program Administrator</u> (TT Staff)	No cost	
<u>Information Specialist</u> (U.S.)	\$ 3,000	
Travel and per diem		\$ 3,600
<u>Information Specialists</u> (local)	No cost	\$ 200
Broadcasting--radio/TV		
Publications/printing		
Schools and community relations		
<u>Staff</u>	No cost	\$ 200
<u>Translator</u> (Chamorro)		
<u>Translator</u> (Carolinian)		
<u>Secretary</u> (trilingual)		
Local travel and per diem	_____	\$ 2,300
	\$16,000	\$ 13,200



	<u>Salary</u>	<u>Expenses</u>
	\$16,000	\$13,200
<u>Plebiscite Advisory Committee</u>		
<u>Secretary</u>	No cost	
Travel and per diem		\$ 500
<u>Voter Registration Board</u>		
<u>Executive Officer</u>	No cost	
<u>Secretary</u>	No cost	
<u>Clerk</u>	No cost	
Travel and per diem		\$ 3,000
<u>Program and materials</u>		
<u>Commissioner's office</u>		
Materials and Supplies		\$ 1,000
Travel and per diem		\$ 1,500
Representation		\$ 500
Transportation (ship and/or air transport to northern islands)		\$ 4,000
<u>Plebiscite Advisory Committee</u>	No cost	
Office rental		\$ 1,300
Publications and notices		\$ 1,000
<u>Voter Registration Board</u>		
Materials and Supplies		\$ 2,000
<u>Plebiscite Education Program</u>		
Publications		\$ 6,000
	\$16,000	\$34,000
		\$16,000
		\$50,000
TOTAL		

