

**UNITED STATES OF AMERICA
vs.
Jesus Pangelinan MAFNAS**

**Criminal Case No. 88-00003
District Court NMI**

Decided May 19, 1988

1. Covenant - Construction

By adopting the Covenant, the people of the Commonwealth excepted from the Covenant those provisions of the United States Constitution and laws which they chose not to accept and chose to accept those laws, civil and criminal, which were applicable to Guam and which were of general application to the several states. Covenant §502.

2. Federal Laws - Applicability to CNMI

Federal criminal statute that was applicable to Guam and of general application to the several states applied in the CNMI. Covenant §502; 18 U.S.C. §1951.

DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS

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2
3 UNITED STATES OF AMERICA,)

CRIMINAL CASE NO. 88-00003

4 Plaintiff,)

FILED
DECISION
DISTRICT COURT

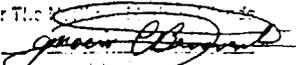
5 v.)

MAY 10 1988

6 JESUS PANGELINAN MAFNAS,)

7 Defendant.)

For The

By 

8
9 The motion to dismiss ~~represents~~ defendant's belief
10 that the CNMI operates independently of the United States except
11 in the areas of defense and foreign affairs. The Court cannot
12 accept this extremely narrow reading of the Covenant. Such a
13 reading finds no support in the Covenant itself, the supporting
14 documents, or the history of the negotiations between the United
15 States and the People of the Northern Mariana Islands.

16 To this Court, the most salient feature of the
17 relationship between the United States and the People of the
18 Northern Mariana Islands is that the people chose overwhelmingly
19 and voluntarily to take United States citizenship and become a
20 part of the United States' family. At the same time the people
21 of the Northern Mariana Islands, nonetheless, wished to retain
22 their cultural identity and these rights were preserved through
23 the Covenant, although they would or could be considered
24 unconstitutional in the United States. The Court refers, of
25 course, to provisions like the unique jury trial system here, the
26 restrictions on alienation of land, and the composition of the

1 Legislature. As well, the people of the Northern Marianas wanted
2 to control, insofar as was practical, their economic growth. To
3 this end the Northern Mariana Islands established a tax structure
4 designed to encourage growth and investment and kept control over
5 immigration.

6 And, like the States of the United States, the Northern
7 Mariana Islands was guaranteed the right of self-government.
8 However, the question of "sovereignty," which has recently been
9 forwarded by litigants in one form or another is being read in a
10 new and unsupportable fashion.

11 The Preamble to the Covenant states that the United
12 States and the Northern Mariana Islands entered into the Covenant
13 "in order to establish a self-governing commonwealth...within the
14 American political system." Further, Article I, §101, of the
15 Covenant establishes the Commonwealth "in political union with
16 and under the sovereignty of the United States." There is little
17 room here for argument or interpretation. The Section-by-Section
18 Analysis of the Covenant which was prepared by the Marianas
19 Political Status Commission has this to say:

20 The United States will have sovereignty, that
21 is, ultimate political authority, with
22 respect to the Northern Mariana Islands. The
23 United States has sovereignty with respect to
24 every state, every territory and the
25 Commonwealth of Puerto Rico. United States
26 sovereignty is an essential element of a
close and enduring political relationship
with the United States, whether in the form
of statehood, in the traditional territorial
form, or as a commonwealth. The kind of
relationship with the United States which the
people of the Northern Marianas have said

1 they desire, and which is reflected in the
2 legislation creating the MPSC, necessarily
3 involves United States sovereignty. United
4 States sovereignty is not inconsistent with
5 the exercise of the right of local
6 self-government by the people of the Northern
7 Marianas. Section 103 of the Covenant
8 specifically recognizes that right.
9 Moreover, the states and the Commonwealth of
10 Puerto Rico, and to a great extent even the
11 territories, have very substantial powers of
12 local self-government. The people within
13 these areas determine local policies without
14 undue interference, notwithstanding the
15 ultimate political authority of the central
16 government. The same will be true of the
17 Commonwealth of the Northern Marianas.

18 Those who now mechanically intone the mantra of
19 "sovereignty" have either never read the Covenant and the
20 Section-by-Section Analysis of the Covenant or have deluded
21 themselves into believing that the United States and the CNMI
22 approach each other as completely sovereign states.

23 Reference to the Second Interim Report and Final Report
24 of the Northern Mariana Islands Commission on Federal Laws is not
25 particularly helpful. The Commission which was created pursuant
26 to Section 504 of the Covenant, was instructed "to survey the
laws of the United States and make recommendations to the United
States Congress as to which laws of the U.S. not (sic) applicable
to the NMI should be made applicable and what extent and in what
manner, and which applicable laws should be made inapplicable and
to what extent and in what manner."

Its recommendations in the Second and Final Reports
differ and to the extent that they are purely recommendations,
they do not necessarily provide an authoritative basis for

1 determining what laws of the United States are applicable or not
2 applicable in the Commonwealth of the Northern Mariana Islands.

3 On the other hand, the Section-by-Section Analysis
4 prepared by the Marianas Political Status Commission, whose
5 members negotiated the Covenant, provides a contemporaneous
6 explanation of the intent of each section which thus assists the
7 Court in construing the intent of a challenged provision.

8 Until and unless the Covenant is amended, this Court
9 will continue to give the Covenant a fair and realistic reading,
10 and one, hopefully, in tune with the intent of the people of the
11 Northern Mariana Islands and the framers of the Covenant.

12 Article V of the Covenant delineates with specificity
13 those provisions of the United States Constitution and laws which
14 will be applicable within the Northern Mariana Islands.

15 Section 502 clearly states, that unless otherwise
16 provided in the Covenant, those laws which are applicable to Guam
17 and which are of general application to the several states will
18 apply to the Northern Mariana Islands. Section 502 went into
19 effect on January 9, 1978.

20 Defendant does not deny that 18 USC 1951, the criminal
21 statute under which he has been indicted, is applicable to Guam.
22 Nor does he deny that it is of general application to the several
23 states.

24 Defendant claims, however, that 18 USC 1951 is not
25 applicable to the Northern Mariana Islands because it falls
26 within the "except as otherwise provided" language of Section 502

1 and because it allegedly contravenes Covenant Section 103 which
2 assures the people of the Northern Mariana Islands their right to
3 local self-government.

4 Section 103 states that "The people of the Northern
5 Mariana Islands will have the right of local self government and
6 will govern themselves with respect to internal affairs in
7 accordance with a constitution of their own adoption."

8 Defendant further argues in his memorandum that "unless
9 the federal law is expressly made applicable to the Commonwealth
10 of the Northern Mariana Islands in the Covenant, no federal law
11 is applicable if that law has the effect of denying the people of
12 the Commonwealth of the Northern Mariana Islands their right to
13 govern themselves on local matters."

14 Defendant's attempt to interpolate 18 USC 1951 into
15 this conclusion from a reading of Section 502 and Section 103 is
16 unpersuasive. The language of 103 is generically broad and would
17 require a statute by statute review to determine whether there is
18 an infringement upon the internal affairs of the Commonwealth of
19 the Northern Mariana Islands.

20 On the other hand, compared to Section 103, Section
21 502(a)(2) is clear and unambiguous in its intent.

22 [1,2] When the Covenant was adopted by the people of the
23 Commonwealth, they "excepted" from the Covenant those provisions
24 of the United States Constitution and laws which they chose not
25 to accept. However, they clearly did choose to accept those
26 laws, civil and criminal, which were applicable to Guam and which

1 were of general application to the several states. 18 USC 1951
2 meets both criteria and therefore does not fall within the
3 exception clause of Section 502 and does not constitute an
4 interference with internal affairs.

5 It is interesting to note that the Section-by-Section
6 Analysis of the Covenant, to which both parties make reference,
7 states that "This subsection (that is, §502(a)(2)) also removes
8 all doubt by assuring that certain very old territorial laws
9 passed by the United States would not apply to the Northern
10 Marianas. These also would have been inconsistent with local
11 self government. The result of this subsection will be the
12 application of a wide variety of federal laws to the Northern
13 Mariana Islands selected because of their applicability to Guam
14 and the United States." 18 USC 1951 is one of many of these
15 federal laws.^{1/}

16 The motion to dismiss is accordingly DENIED and it is
17 so ORDERED.

18 DATED this 19th day of May, 1988.

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22 Judge Alfred Laureta
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^{1/} Defendant argues that the Commerce Clause is inapplicable to the CNMI. However, see, MTC v. NLRB, 820 F.2d 1097 (9th Cir. 1987).