No. 24-_____

IN THE
Supreme Court of the United States

ANDREW SABLAN SALAS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOSEPH E. HOREY
Counsel of Record
BANES HOREY NIE & MILLER, LLC
First Floor, Macaranas Building
4156 Beach Road, Garapan, Saipan, CNMI
P.O. Box 501969
Saipan, MP 96950
(670) 234-5684
jhorey@pacificlawyers.law

Counsel for Petitioner

QUESTION PRESENTED

Is the application of federal legislation to the Commonwealth of the Northern Mariana Islands under the US-CNMI Covenant properly evaluated by means of a "rational basis" test, as the application of such legislation to a Territory of the United States would be evaluated under the Territorial Clause?

RELATED CASES

Salas v. United States, No. 1:22-cv-00008, District Court for the Northern Mariana Islands. Judgment entered November 17, 2022.

Salas v. United States, No. 22-16936, United States Court of Appeals for the Ninth Circuit. Judgment entered August 27, 2024. Petition for rehearing denied November 5, 2024.

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

United States Constitution

United States – Northern Mariana Islands Covenant

Cases

United States Statutes, Public Laws, and Legislative History

Northern Mariana Islands Statutes
(available online at https://cnmilaw.org)

Treaties and International Law

Other

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Ninth Circuit is published at 116 F.4th 830. It appears as Appendix A to this Petition. The decision of the District Court for the Northern Mariana Islands is unpublished, but is available on Lexis at 2022 U.S. Dist. LEXIS 209195, and on Westlaw at 2022 WL 16964141. It appears as Appendix B to this Petition.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit decided this case on August 27, 2024. A timely petition for rehearing and rehearing en banc was denied by the Court of Appeals on November 5, 2024. The order denying the petition appears at Appendix C to this Petition. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

LEGAL PROVISIONS INVOLVED

US-NMI Covenant,[1] Section 103:

> The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption.

U.S. Pub. L. 115-334 § 12616(a), 132 Stat. 4490, 5015-16 (2018):

> Section 26 of the Animal Welfare Act (7 U.S.C. 2156) is amended –
>
> (1) in subsection (a) –
>
> (A) in paragraph (1), by striking "Except as provided in paragraph (3), it" and inserting "It"';
>
> and
>
> (B) by striking paragraph (3)[.]

7 U.S.C. § 2156(a) (prior to Pub. L. 115-334):

---

[1] COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, *approved by and reprinted in* U.S. Pub. L. 94-241 (March 24, 1976), 90 Stat. 263 (hereinafter COVENANT).

> (1) Except as provided in paragraph (3), it shall be unlawful for any person to knowingly sponsor or exhibit an animal in an animal fighting venture.
>
> …
>
> (3) With respect to fighting ventures involving live birds in a State where it would not be in violation of the law, it shall be unlawful under this subsection for a person to sponsor or exhibit a bird in the fighting venture only if the person knew that any bird in the fighting venture was knowingly bought, sold, delivered, transported, or received in interstate or foreign commerce for the purpose of participation in the fighting venture.

STATEMENT OF THE CASE

Statement of Material Facts

Andrew Salas, of the island of Saipan, was, prior to 2019, regularly and actively involved in the sport of cockfighting in the Commonwealth of the Northern Mariana Islands (CNMI). He raised hundreds of roosters for cockfighting purposes, and regularly entered such roosters in competitive cockfights in the CNMI for many years.

This was perfectly lawful at the time.[2] Cockfighting was not only lawful in the CNMI, it was actively regulated by the CNMI government.[3] A federal law existed making it "unlawful for any person to knowingly sponsor or exhibit an animal in an animal fighting venture," 7 U.S.C. § 2156(a)(1), but this law, by its own terms, did not prohibit cockfights "in a State where it would not be in violation of the law." 7 U.S.C. § 2156(a)(3) (pre-2018).[4] This system of state-level control over the legality of cockfighting remained intact through various amendments to the statute from its enactment in 1976 up through 2018.

By 2018, however, cockfighting had been prohibited by state law in all of the fifty states.[5] It remained lawful only in the five outlying island jurisdictions of the United States – Puerto Rico, the Virgin Islands, American Samoa, Guam, and the CNMI – because none of them had yet prohibited it by legislation of

---

[2] Mr. Salas himself was, during part of that time, CNMI Secretary of Commerce and a member of its House of Representatives.

[3] *See, e.g.,* the Saipan Cockfighting Act (10 CMC §§ 3601-18), the Tinian Cockfighting Act (10 CMC §§ 2411-19). and the Rota Cockfighting Act (10 CMC §§ 1401-21).

[4] The exemption covered "fighting ventures involving live birds." *Id.* "State" was defined as "a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States." 7 U.S.C. § 2156(f)(3).

[5] The last to do so were New Mexico (2007) and Louisiana (2008).

their own. Rather than wait for them to do so in their own good time, as it has done in the case of the states, Congress decided to take matters into its own hands, by enacting Section 12616 of U.S. Public Law 115-334, the Agriculture Improvement Act of 2018, 132 Stat. 4490 at 5015. Section 12616 was enacted for the specific purpose of "extending [the] prohibition on animal fighting to the territories[,]" *id.*, and it did so by deleting the statutory language which had established state-level control.[6] Non-voting island delegates in the House of Representatives spoke in opposition to the bill,[7] but it was adopted, and it went into effect on December 20, 2019. Its application to Puerto Rico and Guam was challenged, but this was upheld as a valid exercise of Congress' powers under the Commerce Clause and/or the Territorial Clause, the courts in both cases applying a "rational basis" test.[8] Then, in this case, its application to the CNMI was challenged by Mr. Salas as a violation of the Covenant.

---

[6] *See* U.S. Pub. L. 115-334 § 12616(a), 132 Stat. 4490, 5015-16 (2018), quoted in Legal Provisions Involved, *supra.*

[7] *See, e.g.*, Congressional Record – House (May 18, 2018) at H4222 (Delegate Plaskett of the Virgin Islands: "[A]ll of the territories' Delegates are against this amendment."); *id.* (Delegate Gonzales-Colón of Puerto Rico: "Our constituents were never heard on this issue[.]").

[8] *See Linsangan v. United States*, Ninth Cir. App. No. 20-17024 (Dec. 22, 2021), 2021 U.S. App. LEXIS 37902, 2021 WL 6103047; *Hernández-Gotay v. United States*, 985 F.3d 71 (1st Cir. 2021).

Basis for Federal Jurisdiction in the Court of First Instance

The District Court for the Northern Mariana Islands had jurisdiction pursuant to 28 U.S.C. § 1331, by way of 48 U.S.C. §§ 1821-22 (establishing the District Court for the Northern Mariana Islands, and providing that it "shall have the jurisdiction of a district court of the United States"), and also pursuant to Section 903 of the Covenant (providing that cases arising under the Covenant are justiciable in courts of the United States).

REASONS FOR GRANTING THE PETITION

The decision of the Ninth Circuit "has decided an important question of federal law that has not been, but should be, settled by this Court." S. Ct. Rule 10(c). The important question is the meaning of right of self-government over internal affairs guaranteed to the people of the Northern Mariana Islands by the US-CNMI Covenant. If the Ninth Circuit's view – that Congress may unilaterally prohibit and criminalize even a "quintessential internal affair" of the Northern Marianas, so long as a hypothetical rational basis exists for it to do so – is allowed to stand, it would mean that the Covenant accomplished precisely the opposite of its own stated purpose, and that the United States, by entering into such a Covenant, stands in breach of its obligations to the international community of nations in the United Nations Charter, and of "sacred trust" it assumed toward the Northern Marianas people themselves in the Trusteeship

Agreement.[9] It would mean that the United States, rather than eliminating colonial rule in the Northern Marianas, has instead institutionalized it. To allow such a holding to stand would be, in effect, to hold that the United States has committed a historic betrayal of the most fundamental principles upon which it was itself founded, in the very context where those principles appeared to emerge triumphant in the world at large.

A. Historical Background[10]

The Mariana Islands are a chain of islands located in Micronesia in the tropical western Pacific. Visited by Magellan in 1521, in the course of his historic circumnavigation, they became the first Pacific islands to come to the attention of the European powers, and the first to be colonized. They were ruled by Spain from the late 1600's until the end of the Spanish-American war, at which point Spain sold Guam to the United States (along with the Philippines and Puerto Rico), and the remainder of its Pacific islands, including the Northern Marianas, to newly-emerging colonial power Germany.[11] After World War I, however, such outright proprietary

---

[9] *See* UNITED NATIONS CHARTER, 59 Stat. 1031 (1945), at Art. 73; TRUSTEESHIP AGREEMENT FOR THE FORMER JAPANESE MANDATED ISLANDS, 61 Stat. 3301 (July 18, 1947).

[10] *See generally* Don A. Farrell, HISTORY OF THE NORTHERN MARIANA ISLANDS (1991).

[11] The Northern Marianas are "Northern" in relation to Guam, the southernmost of the Marianas chain.

colonialism fell afoul of developing international law, and the Northern Marianas were mandated to Japan by the League of Nations, to be administered for the benefit of their inhabitants under League supervision; then, after World War II, they were placed under trusteeship by the United Nations, administered by the United States. The United Nations Charter provided:

> Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government … accept as a sacred trust the obligation … to develop self-government[.]

U.N. CHARTER, *supra*, at Art. 73. This obligation extended to territories under trusteeship such as the Northern Marianas.[12] Accordingly, the United States agreed with the United Nations, in the Trusteeship Agreement, to "promote the development of the inhabitants of the trust territory toward self-government or independence[.]" TRUSTEESHIP AGREEMENT, *supra*, at Art. 6(1). "The task of the United States under the Trusteeship Agreement … [was] primarily to nurture the Trust Territory toward self-government." *Gale v. Andrus*, 643 F.2d 826, 830

---

[12] *See id.* at Art. 76 ("The basic objectives of the trusteeship system … shall be … to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence[.]").

(D.C. Cir. 1980).[13] Eventually, the United States entered into the Covenant with the Northern Marianas for the purpose of fulfilling its duties under the U.N. Charter and the Trusteeship Agreement.[14]

B. Self-Government, in International Law, is a People's Free Pursuit of its Economic, Social and Cultural Development.

The term "self-government," as used in the Covenant, was not pulled out of thin air. It is "self-government" as the term is used in international law, particularly the U.N. Charter and the Trusteeship Agreement. This derivation is clear and explicit not only on the face of the Covenant itself, but also in the U.S. Public Law approving the Covenant,[15] the resolution of the U.N. Trusteeship Council

---

[13] *See also, e.g.*, *Temengil v. Trust Territory of the Pacific Islands*, 881 F.2d 647, 649 (9th Cir. 1989) ("The paramount duty of the United States was to steward Micronesia to self-government.").

[14] *See* COVENANT, pmbl. ("Whereas, the Charter of the United Nations and the Trusteeship Agreement … guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence … Now, therefore, the Marianas Political Status Commission … and the Personal Representative of the President of the United States have entered into this Covenant[.]").

[15] *See* U.S. Pub. L. No. 94-241 (Mar. 24, 1976), 90 Stat. 264 ("Whereas the United States in accordance with the trusteeship agreement and the Charter of the United Nations, has assumed the obligation to promote the development of the peoples of the trust territory toward self-government or independence ... Now be it Resolved ... That the Covenant ... is hereby approved.").

recommending termination of the trusteeship over the Northern Marianas,[16] and the proclamations of both President Reagan and the U.N. Security Council declaring the trusteeship terminated there.[17] This context therefore controls the meaning of the term "self-government" as used in the Covenant. Just as provisions of the U.S. Constitution "are framed in the language of the English common law, and are to be read in light of its history," *Smith v. Alabama*, 124 U.S. 465, 478 (1888), so are the provisions of the Covenant framed in the language of the U.N. Charter, and must be read in light of *its* history.

Self-government, in this international context, is an aspect of the broader term "self-determination," also used in both the U.N. Charter and the Covenant,[18] which has repeatedly been described in international law in the following terms:

---

[16] *See* U.N. Trusteeship Council Res. 2183 (53rd Sess. 1986), U.N. Doc. T/RES/1901(LIII) (with establishment of self-government, U.S. has "satisfactorily discharged its obligations under the terms of the Trusteeship Agreement").

[17] *See* Proclamation No. 5564, 51 Fed. Reg. 40,399 (Nov. 3, 1986) (with establishment of self-government, "the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the [CNMI]"); U.N. Security Council Res. 683 (45th Year, 1990), U.N. Doc. S/RES/683 (1990) (determining, "in light of…the new status agreement[] for the…Northern Mariana Islands, that the objectives of the Trusteeship Agreement have been fully attained").

[18] *See* U.N. CHARTER at Art. 1(2) ("equal rights and self-determination of peoples" is a foundational principle of U.N.); COVENANT at pmbl. (acknowledging the "inalienable right of self-

> All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

U.N. Gen. Assembly Res. 1514 (15th Sess., 1960), U.N. Doc. A/RES/1514(XV).[19] The choice of political status is the initial, outwardly focused, aspect of self-determination: *i.e.*, the relationship a people will bear

---

determination" of the Northern Marianas people); *id.* (their adoption of the Covenant constitutes a "sovereign act of self-determination").

[19] *See also, e.g.*, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, U.N. Gen. Assembly Res. 2200A (21st Sess., 1966), U.N. Doc. A/RES/2200(XXI)A, at Art. 1 § 1 (same); INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, U.N. Gen. Assembly Res. 2200A (21st Sess., 1966), U.N. Doc. U.N. Doc. A/RES/2200(XXI)A, at Art. 1 § 1 (same); DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS, U.N. Gen. Assembly Res. 2625 (25th Sess. 1970), U.N. Doc. A/RES/2625(XXV) (hereinafter DECLARATION ON PRINCIPLES) ("By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development…."); HELSINKI FINAL ACT (Final Act of the Conference on Security and Cooperation in Europe), 14 I.L.M. 1292 (August 1, 1975) at Principle VIII ("By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.").

toward other peoples of the world.[20] Self-government is the other, internal, aspect: *i.e.*, the internal system by which the people will "freely pursue their economic, social and cultural development" within the context of the political status they have chosen. A series of U.N. resolutions describes factors indicative of whether a formerly non-self-governing territory has attained the "full measure of self-government" prescribed by Article 73 of the Charter, with the factors varying depending on the political status the people of the territory have chosen. The possibilities range from full independence to full integration with another state,[21] and include a status which, like that of the Northern Marianas, is neither fully independent nor fully integrated. This kind of status has sometimes been described as "free association with an independent state,"[22] but more often simply as a

---

[20] *See* DECLARATION ON PRINCIPLES, *supra* ("The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."). *See also* COVENANT, pmbl. (approval of Covenant by NMI people "constitut[ed] on their part a sovereign act of self-determination").

[21] *See* U.N. Gen. Assembly Res. 567 (6th Sess., 1952), U.N. Doc. A/RES/567(VI); U.N. Gen. Assembly Res. 648 (7th Sess., 1952), U.N. Doc. A/RES/48(VII); U.N. Gen. Assembly Res. 742 (8th Sess., 1953), U.N. Doc. A/RES/742(VIII); U.N. Gen. Assembly Res. 1541 (15th Sess., 1960), U.N. Doc. A/RES/1541(XV).

[22] U.N.G.A. Res. 1541, *supra*.

"separate system of self-government."[23] The attainment of a full measure of self-government by a people in such a status is evaluated by factors including the degree of "[f]reedom from control or interference by the government of another State in respect of the internal government … of the territory," and the degree of "autonomy in respect of economic, social affairs and cultural affairs."[24] Any arrangement for a status of this kind should "respect[] the individuality and cultural characteristics of the territory and its peoples" in order for a full measure of self-government to be said to exist there.[25]

The application of these international principles of self-government to the particular kind of situation existing in the Northern Marianas – *i.e.*, their application to an indigenous people living and exercising self-government under the sovereignty of a larger nation-state – has most recently been addressed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), U.N. Gen. Assembly Res. No. 61/295 (61st Sess. 2007), U.N. Doc. A/RES/61/295. UNDRIP makes clear that the right of self-determination applies to indigenous peoples as it does to all others:

> Indigenous peoples have the right to self-determination. By virtue of that right

---

[23] U.N.G.A. Res. 567, 648, 742, *supra*.

[24] U.N.G.A. Res. 567, 648, 742, 1541, *supra*.

[25] U.N.G.A. Res. 1541, *supra*.

> they freely determine their political status and freely pursue their economic, social and cultural development.

Id. at Art. 3. UNDRIP is also explicit that self-government is an aspect of self-determination, and expresses that right in terms quite similar to those of the Covenant:

> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs….

Id. at Art. 4.[26] And it emphasizes that these internal and local affairs include social and cultural matters:

> Indigenous peoples have the right to maintain and strengthen their distinct … social and cultural institutions, while retaining their right to participate fully, if they so choose, in the … social and cultural life of the State.

Id. at Art. 5. *See also id.* at Art. 11(1) ("the right to practice and revitalize their cultural traditions and customs"); *id.* at Art. 31(1) ("the right to maintain, control, protect and develop their cultural heritage … and traditional cultural expressions, as well as the

---

[26] *Cf.* COVENANT Sec. 103 ("The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs…."). The Covenant also recognizes the people of the Northern Mariana Islands as possessing the right and power to make "a sovereign act of self-determination." *Id.* at pmbl.

manifestations of their ... cultures"); *id.* at Art. 34, ("the right to promote, develop and maintain … distinctive customs … traditions, procedures [and] practices"). With particular specificity, it makes clear that protected cultural practices "include[e] … sports and traditional games." *Id.* at Art. 31(1).

C. U.S. Territories are Non-Self-Governing.

The polar opposite of self-government is colonial status, or, as it is termed in the context of American constitutional law, "Territorial" status:

> [A] "territory" of the United States … is a governmental subdivision which happened to be called a "territory," but which quite as well could have been called a "colony" or a "province."

O'Donoghue v. United States, 289 U.S. 516, 537 (1933).[27] A Territory, by definition, has no right of local self-government:

> The right of local self-government … belongs, under the Constitution, to the States and to the people thereof, by whom that Constitution was ordained, and to whom by its terms all power not conferred by it upon the government of the United States was expressly

[27] This condition is generally held to derive from the Territorial Clause of the Constitution. *See* U.S. CONST. Art. IV, Sec. 3, Cl. 2 ("The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.").

> reserved…. The … political rights [of the inhabitants of the Territories] are franchises which they hold as privileges in the legislative discretion of the Congress of the United States.

Murphy v. Ramsey, 114 U.S. 15, 44-45 (1885). *See also id.* at 44 ("In ordaining government for the Territories, and the people who inhabit them, all the discretion which belongs to legislative power is vested in Congress[.]"). *See also, e.g.*, *American Ins. Co. v. 356 Bales of Cotton*, 26 U.S. (1 Pet.) 511, 542 (1828) ("[T]he inhabitants of [the Territory of] Florida … do not … participate in political power; they do not share in the government, till Florida shall become a state … [A] territory … has not, by becoming a state, acquired the means of self-government").[28] Congress' powers over a territory are most commonly described as *plenary*.

---

[28] *See generally, e.g.*, *Asiatic Petroleum Co. v. Insular Collector of Customs*, 297 U.S. 666, 670-71 (1936) ("The erection of a local legislature in a territory or a possession and the grant of legislative power do not deprive Congress of the reserved power to legislate for the territory or possession, or abrogate existing congressional legislation in force therein."); *Simms v. Simms*, 175 U.S. 162, 168 (1899) ("Congress has ... full legislative power"); *United States v. McMillan*, 165 U.S. 504, 510-11 (1897) ("Congress … may itself directly legislate for any territory, or may extend the laws of the United States over it, in any particular that Congress may think fit."); *Talbott v. Bd. of Comm'rs of Silver Bow County*, 139 U.S. 438, 441 (1891) (describing a territory as "wholly dependent upon Congress, and subject to its absolute supervision and control"); *First Natl. Bank of Brunswick v. County of Yankton*, 101 U.S. 129, 133 (1879) ("Congress … has full and complete legislative authority over the people of the Territories and all the Territories.").

See, e.g., *District of Columbia v. Carter*, 409 U.S. 418, 430 (1973) ("It is true, of course, that Congress … possessed plenary power over the Territories.").[29]

In evaluating legislation enacted pursuant to this plenary power, "[t]he deferential rational-basis test applies." *United States v. Vaello-Madero*, 596 U.S. 159, 165 (2022) (*citing Harris v. Rosario*, 446 U.S. 651, 6512 (1980); *Califano v. Torres*, 435 U.S. 1, 3-5 (1978)); *Linsangan*, *supra*, 2021 U.S. App. LEXIS 37902 at *2 ("Congress needs only a 'rational basis' for its acts exercising [its plenary] power" over Territories) (*citing Harris*). Under the rational basis test, legislation survives if there is any hypothetical rational basis for it, whether that was the actual basis or not. *See, e.g.*, *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 587 U.S. 490, 492 (2019) ("[O]n rational basis review, the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it") (*quoting Armour v. City of Indianapolis*, 566 U.S. 673, 685 (2012)). This is not true of legislation evaluated under any stricter standard of review, such as strict or even intermediate scrutiny. For example, a law

> cannot withstand strict scrutiny based upon speculation about what may have motivated the legislature. To be a

---

[29] *See also, e.g., El Paso & N. R. Co. v. Gutierrez*, 215 U.S. 87, 93 (1909) (noting "the plenary power of Congress under the Constitution over the Territories of the United States"); *Binns v. United States*, 194 U.S. 486, 24 S. Ct. 816 (1904) ("[C]ongress, in the government of the Territories … has plenary power….").

> compelling interest, the State must show that the alleged objective was the legislature's actual purpose for the [law], and the legislature must have had a strong basis in evidence to support that justification before it implements the [law.]

Shaw v. Hunt, 517 U.S. 899, 908 fn. 4 (1996) (citation and internal quotation marks omitted). Under intermediate scrutiny too, the government interest asserted in support in the challenged legislation "must be genuine, not hypothesized[.]" *United States v. Virginia*, 518 U.S. 515, 533 (1996).

A Territory such as Guam, however, is subject to plenary powers of the type described above. *See, e.g.*, *Sakamoto v. Duty Free Shoppers, Inc.*, 764 F.2d 1285, 1286 (9th Cir. 1985) ("Plenary control by Congress over the Guamanian government is illustrated by the provision that Congress may annul any act of Guam's Legislature."). Pursuant ultimately to this power, for example, the first American governor of Guam issued numerous orders intended to "change local customs," including an order in 1900 which forbade cockfighting, "the main sport on Guam and dearly beloved by the men of the island." Robert F. Rogers, DESTINY'S LANDFALL: A HISTORY OF GUAM (1995), at 119. *See also id.* at 84 (men of Guam described by visitors as early as 1772 as "passionately fond of cockfighting").[30]

---

[30] Similar efforts to by American authorities to suppress cockfighting also occurred in other territories acquired in the Spanish-American War, such as Puerto Rico and the Philippines. *See generally* Janet M. Davis, *Cockfight Nationalism: Blood*

The same dynamic was evident at the hearing in the House of Representative on the bill that became Section 12616 of Pub. L. 115-334, the law challenged herein. Several Territorial delegates spoke in opposition, including Delegate Bordallo of Guam, who stated: "[C]ockfighting is a culturally significant practice in many of our islands." Congressional Record – House (May 18, 2018) at H4222. *See also id.* (Delegate Plaskett of the Virgin Islands: "This is a highly regulated, cultural and historic activity in the territories"). However, the bill's sponsor, Rep. Blumenhauer of Oregon, said:

> I am sorry, this Congress has rejected the notion that this is culturally specific. Animal cruelty has no place in any territory, in any State, by any race or ethnic group or cultural tradition. We have gone past that.

Id. The Ninth Circuit resolved the issue by invoking Congress' plenary powers over the Territories:

> It has long been settled that the Territorial Clause grants to Congress plenary authority over the territories, including Guam. In legislating for Guam, Congress has full and complete legislative authority and may do for the

---

Sport and the Moral Politics of American Empire and Nation Building, AMER. QUARTERLY (Sept. 2013). Davis's article appears at ER-108 *ff.* in the court of appeals' record in this case. The quoted passages of Rogers' book appear at ER-135 *ff.*

> Territories what the people may do for the states. Congress needs only a rational basis for its acts exercising such power. Here, Congress had a rational basis to extend the existing prohibitions on animal fighting to Guam. The AWA's statement of policy shows that Congress based the regulations on the need to ensure "humane care and treatment" for animals.

Linsangan, *supra*, 2021 U.S. App. LEXIS 37902 at *1-2 (*quoting* 7 U.S.C. § 2131) (footnote, citations and internal punctuation omitted).

D. The Covenant Made the CNMI Self-Governing; the Decision Below Makes it the Opposite.

Legislation of this character could only be upheld as applied to a place whose people are afford less than a "full measure of self-government" in the international sense discussed above. The people affected are not being allowed to "freely pursue their … social and cultural development." Instead, the pace and direction of their social and cultural development is being dictated to them unilaterally by Congress, without their vote, even contrary to their law. And indeed, the United States has acknowledged from the outset that a U.S. "Territory," with plenary powers in Congress, is a "non-self-governing territory" under international law. In the United Nations' very first session, the United States listed with the U.N. as "non-self-governing territories" all of the Territories

that it held at the time – Alaska, Hawaii, Puerto Rico, the Panama Canal Zone, American Samoa, Guam, and the U.S. Virgin Islands. *See Transmission of Information under Article 73e of the Charter*, U.N. Gen. Assembly Res. 66 (1st Sess.1946), U.N. Doc. A/RES/66(I). It continues to report to the U.N. about conditions in each of the last three of these, as required by Article 73 for non-self-governing territories. *See* U.N. Secretary-General, *Information from Non-Self-Governing Territories transmitted under Article 73e of the Charter of the United Nations*, U.N. Doc. A/79/63 (2024) (noting 2022-23 receipt of information from U.S. on American Samoa, Guam, and U.S. Virgin Islands).[31]

Courts have, therefore, repeatedly and correctly recognized that the Northern Mariana Islands' right of self-government distinguishes them from a United States Territory:

> The NMI argues that its political status is distinct from that of unincorporated territories such as Puerto Rico. This argument is credible … As a commonwealth, the NMI will enjoy a right to self-government guaranteed by the mutual consent provisions of the Covenant…. No similar guarantees have

[31] Information is no longer transmitted for Puerto Rico, due to circumstances described in *Financial Oversight & Mgt. Bd. for Puerto Rico v. Aurelius Inv., LLC*, 590 U.S. 448, 491-92 (2020) (Sotomayor, J., concurring).

> been made to Puerto Rico or any other territory.

Northern Mariana Islands v. Atalig, 723 F.2d 682, 691 n.28 (9th Cir. 1984). *See also, e.g.*, *Ngiraingas v. Sanchez*, 858 F.2d 1368, 1371 n.1 (9th Cir. 1988), *aff'd*, 495 U.S. 182 (1990) ("Guam's relation to the United States is entirely different … [U]nlike [the] CNMI, it is subject to the plenary power of Congress and has no inherent right to govern itself.") (internal quotation marks omitted); *Sagana v. Tenorio*, 384 F.2d 731, 734 (9th Cir. 2004) ("[B]ecause of its powers of self-government … the CNMI is not under the plenary authority of the United States[.]") (*citing Atalig*, *supra*). It has been correctly acknowledged that the self-governing status of the NMI imposes substantive limits on Congress' powers to act. *See, e.g.*, *Borja v. Nago*, 115 F.4th 971, 983 (9th Cir. 2024) ("[T]he covenant governing the CNMI's consensual relationship with the United States continues to impose unique restrictions on the United States's ability to enact new legislation governing the CNMI."); *United States v. Chang Da Liu*, 538 F.3d 1078, 1084 (9th Cir. 2008) ("[T]he Covenant does limit Congress's legislative power."); *Northern Mariana Islands v. United States*, 670 F.Supp.2d 65, 85 (D.D.C. 2009) ("Sections 103 and 105 of the Covenant impose substantive limits on Congress' authority to legislate with respect to the CNMI in order to protect the Commonwealth's right to govern itself with regard to internal affairs. All persuasive authority points to this conclusion.").

In *United States ex rel. Richards v. Deleon Guerrero*, 4 F.3d 749 (9th Cir. 1993), the Ninth Circuit developed a balancing test for determining when those substantive limits were crossed. The *Richards* court required, in order for a federal law to apply in the Northern Marianas, that "the federal interest to be served by the legislation at issue" must outbalance "the degree of intrusion into the internal affairs of the Commonwealth." *Id.* at 755. However, the *Richards* test has never been fully developed; *i.e.*, it has never been clear how important an interest must be in order for it to outweigh how intrusive an intrusion.[32] Federal interests have been variously described as "significant,"[33] "substantial,"[34] and "weighty and legitimate,"[35] while the countervailing local interests, and the degree of intrusion into them, have rarely been described at all, other than as lesser than, thus outweighed by, the federal interests asserted against them.[36] At the same time, moreover, courts have

---

[32] *See* Joseph E. Horey, *The Right of Self-Government in the Commonwealth of the Northern Mariana Islands*, 4 ASIAN-PAC. L. & POL'Y J. 180, 197 n. 58 (2003) ("The scope of the *Richards* test remains to be worked out in practice.").

[33] *Chang Da Liu*, *supra*, 538 F.3d at 1084.

[34] *Olopai v. Deleon Guerrero*, Civil Action No. 93-0002 (D.N.M.I. Sep. 24, 1993), 1993 U.S. Dist. LEXIS 13839 at *40.

[35] *NMI v. US*, *supra*, 670 F.Supp.2d at 87.

[36] *See, e.g.*, *Chang Da Liu*, *supra*, 538 F.3d at 1084 ("In this case, the balance tips in favor of applicability because the federal government's significant interest … outweighs the intrusion[.]"); *NMI v. US*, 670 F.Supp.2d at 90-91 (discounting local interests

begun, off-handedly and without analysis, describing the Northern Marianas as a "Territory."[37]

These tendencies culminated in this case. The court of appeals still insisted that some legislation would not pass the balancing test required for it to apply in the CNMI consistently with self-government.[38] However, it interpreted that test itself so narrowly as to make this concession meaningless. The panel majority refused to apply the test at all to a great deal of legislation,[39] and the full court found

---

because they are "inextricably intertwined" with "identifiable and legitimate" federal interests).

[37] *See, e.g.*, *Borja*, *supra*, 115 F.4th at 974 (listing CNMI as one of the "Territories that the U.S. Congress governs pursuant to the Territory Clause"); *Saipan Stevedore Co. v. Office of Workers' Comp. Programs*, 133 F.3d 717, 720 (9th Cir. 1998) ("Because the Commonwealth is a United States territory…."); *Nguyen v. United States*, 539 U.S. 69, 72 (2003) (referring to the District Court for the Northern Mariana Islands as an "Article IV territorial court").

[38] *See* Appendix A at 28a fn. 8 ("We do not foreclose the possibility that a federal law can impermissibly intrude upon the CNMI's internal affairs, which would preclude its application under Covenant § 103 and § 105. Our decision holds only that § 2156 and its 2018 Amendment do not.").

[39] The panel majority would not apply the test to any legislation passed before 1978, or to any amendments to such legislation, even amendments enacted after 1978 *See, e.g.*, Appendix A at 24a fn. 5 ("[W]eighing the federal interest against the degree of intrusion into the CNMI's local affairs per the *Richards* test is unnecessary for statutes enacted before January 9, 1978."); *id.* at 16a-21a (same holding to "subsequent amendments," as distinct from "new laws"). *But see id.* at 34a-47a (Paez, J., concurring) (maintaining that the *Richards*

that legislation with even a hypothetical rational basis outweighs any degree of interference into local matters.

Only one of the federal interests cited by the court of appeals – to "ensure the humane treatment of animals" (*see* Appendix A at 28a) – has even rhetorical support in the 2018 legislative history.[40] That interest, as we have seen, was found a "rational basis" by the court in *Linsangan*, *supra*, but it could not have been found anything more than that, because there was no "strong basis in evidence,"[41] nor indeed any evidence at all, before Congress regarding the actual conditions of regulated cockfights in any of the territories that were the sole and explicit focus of the legislation.[42] This leaves at most a set of hypothetical conditions, assumed but not shown to exist, as the sole "rational" basis for the act.[43] The other two interests

---

balancing test should apply to all legislation enacted since 1978, including amendments to pre-exiting laws).

[40] *See* Congressional Record, *supra* ("Animal cruelty has no place in any territory….").

[41] *Shaw*, *supra*, 517 U.S. at 908 fn. 4.

[42] *See* Congressional Record, *supra*. Claims that, for example, "[t]he animals are drugged to make them more ferocious," or that "they are equipped with metal spurs to slash each other," *id.* at H2222, were entirely unsubstantiated by any evidence before Congress, nor was the legislation tailored to address only such practices.

[43] In fact, the CNMI has its own strict law against animal cruelty, which specifically permits "conduct … consistent with traditional customs or cultural practices … including slaughter

cited by the court of appeals – "to relieve [a] burden on interstate commerce … and prevent the spread of avian flu" (*see* Appendix A at 28a) – were also entirely hypothetical. They appear nowhere in the legislative history of Section 12616, enacted in 2018, but rather in the history of other, earlier laws, which had *not* prohibited cockfighting in either the Territories or the states, if and to the extent it was permitted there by law. For example, the court quoted Congress's statement of findings from an act passed in 1976, and a 1976 House committee report on that act. *See* Appendix A at 26a-27a.[44] *But see, e.g.*, *United States v. Price*, 361 U.S. 304, 313 (1960) ("[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one."); *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004) ("The starting point in discerning congressional intent is the existing statutory text … and not the predecessor statutes.").[45] The court also quoted statements from lawmakers on yet another act passed 2007. *See* Appendix A at 27a. These are presented as evidence

---

for personal consumption and cockfighting." 6 CMC § 3197(d). *See generally* 6 CMC §§ 3191-98 (CNMI Animal Protection and Control Act).

[44] The court quoted 7 USC § 2131, which codified § 1(b) of U.S. Pub. L. 94-279, 90 Stat. 417 (Apr. 22, 1976), as well as H.R. Rep. No. 94-801, at 10 (1976).

[45] *See also Shelby County, Ala. v. Holder*, 570 U.S. 529, 553 (2013) (holding that, when Congress singles out some jurisdictions for different treatment, it must do so "on a basis that makes sense in light of current conditions[,]" and not "rely simply on the past").

of interests that Congress "may have" sought to advance with the 2018 act challenged in this case. *See id.* at 27a-28a.[46]

On the other side of the balance, moreover, both the district court and the court of appeals found that no degree of intrusion into local internal affairs could outweigh such hypothetical federal interests. On the contrary, they assumed that the maximum degree of intrusion existed, to the point that no evidence on the issue need even be received. The district court wrote:

> Plaintiff's proffer of providing more facts about how deeply entrenched cockfighting is [in] the CNMI would not cure the deficiency. Such amendment would be futile because the federal interests in regulating interstate commerce, preventing the spread of avian flu, and ensuring the humane treatment of animals outweigh the degree of intrusion into the internal affairs of the CNMI as it relates to the tradition of cockfighting.

Appendix B at 67a (footnote omitted). *See also id.* at fn. 55 ("[T]he Court accept[s] as true … that cockfighting is a traditional local recreational activity

---

[46] These interests were also found to provide a "rational basis" for the cockfight ban in *Hernández-Gotay*, *supra*, 985 F.3d at 78-79, which analyzed the issue under the Commerce Clause rather than the Territorial Clause, but applied the same lenient "rational basis" standard. As hypothetical interests, they, like the interest in preventing animal cruelty discussed above, could not have met any stricter standard.

that is also a quintessential internal affair of the Northern Mariana Islands.") (internal punctuation omitted). The court of appeals agreed. *See* Appendix A at 24a ("The district court presumed the regulation of cockfighting to be an internal affair of the CNMI, and we do the same.") (footnotes omitted); *id.* at 28a ("[T]hese federal interests outweigh *any* intrusion into the CNMI's internal affairs.") (emphasis added).

The result was to transform the *Richards* balancing test into a test whereby an entirely hypothetical federal interest can outweigh the greatest possible degree of local intrusion. In other words, the balancing test has been reduced to a rational basis test, which is the same test that would be applied in a Territory with no right of self-government at all.[47] Its use in the NMI therefore amounts to a holding that the Covenant affords the NMI no greater measure of self-government than exists in the Territories, and that the Covenant, rather than establishing and guaranteeing self-government, instead institutionalizes non-self-government.

---

[47] It would also apply, of course, in the states, to laws enacted under the commerce power and others. The crucial difference, of course, is that the people of the states themselves control the government enacting and enforcing the laws. Indeed, the whole point of extending deferential "rational basis" scrutiny to laws enacted for the states is the "assumption that the institutions of … government are structured so as to represent fairly all the people." *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621, 627-28 (1969).

E. The Decision Below Puts the United States in Breach of International and Constitutional Duties, and Results in a Reversal of Principles of Historic Proportions

Such a holding is the direct opposite of the historic purpose of the Covenant. The Covenant was entered into and approved as the fulfillment of the terms of two treaties – the Trusteeship Agreement and the United Nations Charter – that obliged the United States to develop a full measure of self-government in the Northern Marianas, and it must be construed *in pari materia* with the treaties it is designed to effectuate.

> For since the purpose avowed in the act was to faithfully execute the treaty, any interpretation of its provisions would be rejected which imputed to Congress an intention to disregard the plighted faith of the government, and, consequently, the court ought, if possible, to adopt that construction which recognized and saved rights secured by the treaty.

Chew Heong v. United States, 112 U.S. 536, 549 (1884). *See also, e.g.*, *United States v. Gue Lim*, 176 U.S. 459, 465 (1900) (refusing to infer that Congress would, "while assuming to carry out its provisions, pass an act which violated or unreasonably obstructed the obligation of any provision of the treaty"). Indeed, it had no power to act outside those agreements. *See, e.g., Gale*, *supra*, 643 F.2d at 830 ("[T]he authority of the trustee is never any greater than that with which

it was endowed by the trust agreement. The task of the United States under the Trusteeship Agreement at issue is primarily to nurture the Trust Territory toward self-government."). Still less did it have power to take actions in direct violations of those agreements, as the institutionalization of colonialism would be. *See, e.g.*, PROGRAMME OF ACTION, U.N. Gen. Assembly Res. 2621 (25th Sess. 1970), U.N. Doc. A/RES/2621(XXV) ("The further continuation of colonialism in all its forms and manifestations [is] a crime which constitutes a violation of the Charter of the United Nations[.]"); DECLARATION ON PRINCIPLES, *supra* ("Every State has the duty to promote … realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter … in order … [t]o bring a speedy end to colonialism[.]").

The United States is also bound in the exercise of its powers, including even its Territorial powers, by rights fundamental to all free government, which this Court has held are implicit in the Constitution, such that the United States is inherently prohibited from violating them. *See, e.g.*, *Powell v. Alabama*, 287 U.S. 45, 71 (1932) ("certain immutable principles of justice, which inhere in the very idea of a free government") (*quoting Holden v. Hardy*, 169 U.S. 366, 389 (1898)); *Dorr v. United States*, 195 U.S. 138, 146 (1904) ("fundamental limitations in favor of personal rights") (*quoting Late Corp. of Church of Jesus Christ v. United States*, 136 U.S. 1, 44 (1890)); *Downes v. Bidwell*, 182 U.S. 244, 282 (1901) (Brown, J.) ("such [] immunities as are indispensable to a free

government"); *id*. at 291 (White, J.) ("principles which are the basis of all free government which cannot be with impunity transcended"); *Chicago, Burlington & Quincy R. Co. v. City of Chicago*, 166 U.S. 226, 237 (1897) ("limitations on [governmental] power, which grow out of the essential nature of all free governments"); *Corfield v. Coryell*, 6 F.Cas. 546, 551 (C.C.Pa. 1823) ("those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments").

It is fundamental to all free government that the power to make and alter the laws rest in the people who must live under those laws. That principle goes back to the very beginning of the American system of government, and is indeed the very warp and woof of that system. Hamilton, for example, wrote as follows on the subject:

> It is not the supreme power being placed in one, instead of many, that discriminates an arbitrary from a free government. When any people are ruled by laws, in framing which, they have no part, that are to bind them, to all intents and purposes, without, in the same manner, binding the legislators themselves, they are in the strictest sense slaves, and the government, with respect to them, is despotic. Great-Britain is itself a free country; but it is only so because its inhabitants have a share in the legislature: If they were

> once divested of that, they would cease to be free. So that, if its jurisdiction be extended over other countries that have no actual share in its legislature, it becomes arbitrary to them; because they are destitute of those checks and controuls which constitute that moral security which is the very essence of civil liberty.

Alexander Hamilton, *The Farmer Refuted: or, a More Impartial and Comprehensive View of the Dispute Between Great-Britain and the Colonies* (1775).[48] *See also, e.g.*, John Adams, *Reply of the House to Hutchinson's First Message* (1773) ("The Right to be governed by Laws made by Persons in whose Election they had a Voice [is a] most essential Right, which discriminates Freemen from Vassals.");[49] John Dickinson, *An Essay on the Constitutional Power of Great-Britain Over the Colonies in America* (1774) ("The freedom of a people consists in being governed by laws, in which no alteration can be made, without their consent.").[50] It is with good cause, therefore,

---

[48] *Reprinted in* THE PAPERS OF ALEXANDER HAMILTON, VOL. I (Harold C. Syrett, ed., 1961) at 81, 100; *also available online at* https://founders.archives.gov/documents/Hamilton/01-01-02-0057#ARHN-01-01-02-0057-fn-0001-ptr

[49] *Reprinted in* THE BRIEFS OF THE AMERICAN REVOLUTION 53, 63 (John Philip Reid ed., 1981); *also available online at* https://founders.archives.gov/documents/Adams/06-01-02-0097-0002

[50] *Reprinted in* THE POLITICAL WRITINGS OF JOHN DICKINSON at 329, 403 (1801).

that a system where subject peoples are "controlled as Congress may see fit, not … as the people governed may wish[,]" is "entirely foreign to the genius of our Government and abhorrent to the principles that underlie and pervade the Constitution" *Hawaii v. Mankichi*, 190 U.S. 197, 240 (1903) (Harlan, J., dissenting).[51] A partial exception to this principle has been recognized, such as to allow for Territorial rule of people and places which remain in a "condition of temporary pupilage."[52] However, that exception is necessarily limited to its purpose of such rule – *i.e.*, preparing those people for self-government.[53] It thus

---

[51] Even in its otherwise bleakest moments, this Court recognized that "[a] power [] in the General Government to obtain and hold colonies and dependent territories, over which they might legislate without restriction, would be inconsistent with its own existence in its present form." *Scott v. Sandford*, 60 U.S. (19 How.) 393, 448 (1856) (superseded by constitutional amendment on other grounds). *Cf. Downes*, *supra*, 182 U.S. at 275 ("The difficulty with the Dred Scott case was that the court refused to make a distinction between property in general, and a wholly exceptional class of property.") (Brown, J.).

[52] *Dorr*, *supra*, 195 U.S. at 148 (*quoting* Cooley, PRINCIPLES OF CONSTITUTIONAL LAW, at 164). *See also, e.g.*, *DC v. Carter*, *supra*, 409 U.S. at 432 ("the transitory nature of the territorial condition"); *Reid v. Covert*, 354 U.S. 1, 14 (1957) (plurality opinion) (noting "the power of Congress to … govern temporarily territories with wholly dissimilar traditions"); *O'Donoghue*, *supra*, 289 U.S. at 537 (Territorial rule "necessarily limited to the period of pupilage").

[53] *See, e.g.*, *Murphy*, *supra*, 114 U.S. at 45 (conceding that "this discretion in Congress is limited by the obvious purposes for which it was conferred," which is to "prepare the people of the Territories" for "the founding of a free, self-governing commonwealth").

has no application to a people, such as that of the Northern Mariana Islands, that has already secured a permanent self-governing status, having already advanced out of a that prior state of pupilage that was the Trusteeship.[54]

It is apparent, therefore, that the construction of the Covenant's self-government guarantee in harmony with postwar international law, and its construction in harmony with rights fundamental to all free government, yield the same result. That is so because these two sets of principles are, in fact, two sides of the same coin. The self-government principles of the U.N. Charter, and their application in international law since their enunciation, shows that the nations of the world have, at long last, come around to the free-government principles upon which the United States was founded, and upon which it continues to be based,[55] and that those principles are recognized as applying not only to the nations themselves, but to their own colonies, territories, and

---

[54] *See, e.g.*, *Gale*, *supra*, 643 F.2d at 830 (purpose of trusteeship was "to nurture the Trust Territory toward self-government"); *Temengil*, *supra*, 881 F.2d at 649 ("to steward Micronesia to self-government.").

[55] The parallels are often strikingly direct. For example, the principle of U.N. Resolution 742 that self-government can be achieved by a status short of independence "if this is done freely and on the basis of absolute equality," G.A. Res. 742, *supra*, at ¶ 6, does no more than catch up, two centuries later, with Hamilton's demand that there be "an exact equality of constitutional right … in the several parts of the empire." Hamilton, *The Farmer Refuted*, *supra*, at 163.

indigenous peoples, to "alien races, differing from [them] in religion, customs, laws … and modes of thought." *Downes*, *supra*, 182 U.S. at 287 (Brown, J.). The Covenant can and should be read as the crowning achievement of this development. With the enactment of the Covenant in 1976, the principles of 1945 and those of 1776 converged in the Northern Mariana Islands. But the district court and the court of appeals instead read that same Covenant as a throwback to 1900 – to an age of "plenary powers," when an imperial government could always find, in its own arrogant confidence in the enlightened superiority of its own civilization, a "rational basis" to mandate an end to the "barbaric" customs of the natives in the colonies. The assistance of the Court is sought to prevent this tragic historical mistake.

CONCLUSION

Petitioner therefore submits that the writ of certiorari should be granted.

Respectfully submitted.

JOSEPH E. HOREY
Counsel of Record
BANES HOREY NIE & MILLER, LLC
First Floor, Macaranas Building
4156 Beach Road, Garapan, Saipan, CNMI
P.O. Box 501969
Saipan, MP 96950
(670) 234-5684
jhorey@pacificlawyers.law

Counsel for Petitioner

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED AUGUST 27, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-16936
D.C. No. 1:22-cv-00008

ANDREW SABLAN SALAS,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Filed August 27, 2024
Argued and Submitted February 12, 2024
Honolulu, Hawaii

Appeal from the District Court
for the Northern Mariana Islands
Ramona V. Manglona, Chief District Judge, Presiding

Before: Richard A. Paez, Milan D. Smith, Jr., and Lucy H. Koh, Circuit Judges.

Opinion by Judge Koh;
Concurrence by Judge Paez.

Appendix A

OPINION

KOH, Circuit Judge:

Andrew Sablan Salas ("Salas"), a resident of the Commonwealth of the Northern Mariana Islands ("CNMI"), filed suit seeking a declaratory judgment stating that the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the "Covenant"), Pub. L. No. 94-241, 90 Stat. 263 (1976), precludes the application to the CNMI of a federal cockfighting prohibition set forth in 7 U.S.C. § 2156 and its 2018 Amendment. Salas also sought an injunction barring the prohibition's enforcement. In response, the government filed a motion to dismiss. Finding that the federal cockfighting prohibition applied to the CNMI pursuant to the Covenant, the district court dismissed the complaint with prejudice. Salas appeals that decision. We conclude that 7 U.S.C. § 2156 and its 2018 Amendment apply to the CNMI. Accordingly, we affirm.

LEGAL BACKGROUND

I. The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States.

After Japan's defeat in World War II, the United Nations Trusteeship Council established the Trust Territory of the Pacific Islands, encompassing most of the islands of Micronesia formerly held by Japan, including the CNMI. *United States ex rel. Richards v. Guerrero*, 4

F.3d 749, 751 (9th Cir. 1993). The United Nations appointed the United States as the administering authority of the Trust Territory pursuant to a trusteeship agreement. *Id.* The agreement imposed on the United States a duty to "promote the development of the inhabitants of the trust territory toward self-government or independence." *Id.* In 1972, the United States entered formal negotiations with the Northern Mariana Islands as part of this obligation. *Id.*

In 1975, negotiations between the United States and the Northern Mariana Islands concluded with the signing of the Covenant. *Id.* The Covenant established "a self-governing commonwealth for the Northern Mariana Islands within the American political system" and "define[d] the future relationship between the Northern Mariana Islands and the United States." Pub. L. No. 94-241, 90 Stat. 263, 264 (1976). The Covenant was unanimously endorsed by the Northern Mariana Islands legislature on February 20, 1975, and approved by 78.8% of the people of the Northern Mariana Islands voting in a plebiscite held later that year. *Id.* at 263. The Covenant reflected the Northern Mariana Islands' "desire for political union with the United States" which "for over twenty years" had been "clearly expressed" through "public petition and referendum." *Id.* at 264.

In 1976, Congress approved and enacted the Covenant into law, the main provisions of which became effective on January 9, 1978. Proclamation 4534, 42 Fed. Reg. 56,593 (Oct. 24, 1977). Today, "the authority of the United States towards the CNMI arises solely under the

Covenant." *Hillblom v. United States*, 896 F.2d 426, 429 (9th Cir. 1990). Because the Covenant created a "unique" relationship between the United States and the CNMI, its provisions alone define the boundaries of those relations. *N. Mariana Islands v. Atalig*, 723 F.2d 682, 684–87 (9th Cir. 1984).

The Covenant provides that certain provisions of the United States Constitution and certain United States statutes apply to the CNMI. For those laws not explicitly addressed, the Covenant provides formulae for determining whether a federal law will apply to the CNMI. Three sections of the Covenant are at issue in this case: § 103, § 105, and § 502. These sections outline which federal laws in existence on January 9, 1978, and which federal laws enacted thereafter apply to the CNMI.

Section 103 of the Covenant provides:

> The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption.

Section 105 of the Covenant, which governs laws enacted after January 9, 1978, provides, in relevant part:

> The United States may enact legislation . . . which will be applicable to the Northern Mariana Islands, but if such legislation cannot also be made applicable to the several

> States[,] the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands.

Section 502 of the Covenant, which governs the application of laws in effect on January 9, 1978, provides:

> (a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:
>
> (1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam . . . .
>
> (2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States; and
>
> (3) those laws not described in paragraph (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands . . . .

Thus, under § 502(a)(2), a federal law that was both "applicable to Guam" and "applicable to the several States" on January 9, 1978, applies to the CNMI.

To facilitate the transition of the Northern Mariana Islands to its new political status, the Covenant established the Commission on Federal Laws ("Commission") to survey the laws of the United States and make recommendations to Congress as to which laws should be made applicable or inapplicable to the CNMI and to what extent and in what manner. Covenant § 504; *Micronesian Telecomms. Corp. v. NLRB*, 820 F.2d 1097, 1101 (9th Cir. 1987). In formulating its recommendations, the Commission considered the policies embedded in the law and the provisions and purposes of the Covenant. Covenant § 504. The Commission published its recommendations as interim reports to Congress until the Trust Territory's termination. *Id.*

In its second interim report, the Commission reported that it examined the chapters of Title 7 of the United States Code, including the chapter containing 7 U.S.C. § 2156, and found "[n]o significant problems in the application of these chapters to the Northern Mariana Islands." Commission on Federal Laws, Welcoming America's Newest Commonwealth: The Second Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States 229 (1985) ("Second Interim Report").

II. The Animal Welfare Act and the Agriculture Improvement Act of 2018.

The Animal Welfare Act ("AWA"), established in 1966, sets forth standards for the humane care and treatment of animals. Pub. L. No. 89-544, 80 Stat. 350 (1966). In

1976, Congress amended the Animal Welfare Act to prohibit animal fighting. Pub. L. No. 94-279, 90 Stat. 417 (1976). That amendment, codified as 7 U.S.C. § 2156, is the pertinent version of § 2156 at issue here.

Section 2156 provided that "[i]t shall be unlawful for any person to knowingly sponsor or exhibit an animal in any animal fighting venture to which any animal was moved in interstate or foreign commerce." 7 U.S.C. § 2156(a) (1976). Section 2156(d) provided an exception stating that the prohibition of animal fighting ventures "shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof." *Id.* § 2156(d). "State" was defined as "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States." *Id.* § 2156(g)(4). Therefore, after 1976, cockfighting was federally unlawful in a particular state or territory only if that state or territory also deemed cockfighting unlawful. In other words, if a state or territory's laws authorized cockfighting, then cockfighting in that state or territory was not federally prohibited.

Because cockfighting was lawful in both Guam and the CNMI under each jurisdiction's own laws, cockfighting was not federally prohibited there under the AWA.

In 2018, Congress passed the Agriculture Improvement Act of 2018 ("AIA"), which amended the AWA. Section 12616 of the AIA, hereafter the "2018 Amendment," eliminated the cockfighting exception contained in 7

U.S.C. § 2156(d). Pub. L. No. 115-334, 132 Stat. 4490 (2018). The ultimate effect of the 2018 Amendment was "the prohibition of animal fighting ventures, including live-bird fighting, in every United States jurisdiction." *Club Gallístico de Puerto Rico Inc. v. United States*, 414 F. Supp. 3d 191, 200 (D.P.R. 2019) (citations omitted), *aff'd sub nom. Hernández-Gotay v. United States*, 985 F.3d 71 (1st Cir.), *cert. denied sub nom. Ortiz-Diaz v. United States*, 142 S. Ct. 336, 211 L. Ed. 2d 178 (2021).

Thus, after the AIA went into effect, cockfighting was federally prohibited in both Guam and the CNMI.

FACTUAL AND PROCEDURAL BACKGROUND

Until 2019, when the AIA prohibited cockfighting completely, Salas had been regularly and actively involved in cockfighting. After the passage of the AIA, Salas filed suit in the District Court for the Northern Mariana Islands, seeking a declaratory judgment stating that 7 U.S.C. § 2156 did not apply to the CNMI in 1978, and in turn, that the 2018 Amendment (eliminating the cockfighting exception) did not apply to the CNMI. Salas also sought an injunction prohibiting the U.S. government from enforcing those laws in the CNMI.

In his complaint, Salas advanced three legal theories as to why the Covenant precluded the application of the AWA's federal prohibition on cockfighting to the CNMI. First, Salas argued that because § 2156 was not a law of general application in 1978, it did not apply to the CNMI under Covenant § 502. Second, Salas asserted that § 2156

did not apply to the CNMI under § 105 because it could not be made applicable to the several states. Finally, Salas contended that the 2018 Amendment intrudes into the internal affairs of the CNMI in violation of Covenant § 103, which preserves the CNMI's right of local self-government.

The government moved to dismiss Salas's complaint with prejudice under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. The district court granted the government's motion with prejudice. In its decision, the district court noted that § 502 "was the pertinent section of the Covenant to determine whether § 2156 applies to the CNMI" because § 2156 existed prior to 1978. Additionally, because the parties "agreed in their briefs and at the hearing that section 502 of the Covenant governs, as opposed to section 105," the district court found it unnecessary to address whether § 105 of the Covenant precludes the application of § 2156 to the CNMI. For the reasons below, the district court determined that § 2156 applied to the CNMI because § 2156 was applicable to Guam and the several states as required by § 502 of the Covenant.

First, the district court found that § 2156 "was applicable to Guam" in 1978, explaining that although the § 2156(d) exception allowed cockfighting to remain legal in Guam, the lack of a cockfighting prohibition in Guam did not mean that the statute was not "applicable to Guam." The district court noted that Salas's argument that § 2156 needed to impose a federal cockfighting prohibition in Guam for it to apply to Guam under Covenant § 502, was

"very similar to the government's unsuccessful argument" in *Northern Mariana Islands v. United States*, 279 F.3d 1070 (9th Cir. 2002), where the Ninth Circuit defined "applicable to Guam" to mean "applicable within" and "applicable with respect to" Guam. Because the Ninth Circuit's definition of "applicable to Guam" foreclosed "Plaintiff's proposed definition of 'apply,'" the district court found that § 2156 applies to Guam.

Next, the district court found that § 2156 was applicable to the several States under Covenant § 502. Because the Ninth Circuit in *Northern Mariana Islands* defined the phrase "applicable to Guam" to mean "applicable with respect to" and "applicable within" Guam," the district court held that § 502's phrase "general application to the several States" also meant "applicable within" and "applicable with respect to" the several States, as principles of statutory interpretation require a court to presume that the same words and phrases have the same meaning when used in different parts of the same statute.

Finally, the district court determined that Covenant § 103 did not preclude the 2018 Amendment's application to the CNMI because § 502 governed, as opposed to § 105. Because Covenant § 502 governed, the requirement under § 103, that a federal law not intrude on the CNMI's internal affairs, was not implicated. Even if such a requirement were implicated, the district court explained that the federal interests in regulating interstate or foreign commerce, protecting the nation's values, and controlling the interstate spread of the avian flu outweighed any degree of intrusion. The district court declined to give

Salas leave to amend his complaint, noting that Salas's request to plead more facts regarding the importance of cockfighting in the CNMI was unnecessary because the district court had presumed cockfighting regulation to be an internal affair of the CNMI. Additionally, leave to amend would be futile because the federal interests outweighed any intrusion caused by § 2156 and its 2018 Amendment. The district court thus dismissed Salas's complaint with prejudice. Salas timely appealed.

STANDARD OF REVIEW

"We review de novo the dismissal of a complaint for failure to state a claim." *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010).

DISCUSSION

The issue in this case is whether the district court properly dismissed Salas's complaint because the federal cockfighting prohibition, set forth in 7 U.S.C. § 2156 and its 2018 Amendment, applies to the CNMI. To address this question, we must first determine whether Covenant § 105 or § 502 governs. For the reasons below, we hold that Covenant § 502 governs. However, under either section of the Covenant, 7 U.S.C. § 2156 and its 2018 Amendment apply to the CNMI.

I. The Covenant's plain language establishes that § 502 governs.

The applicability of a federal law to the CNMI is guided by whether § 502 or § 105 of the Covenant governs. *See*

Richards, 4 F.3d at 756. "When interpreting the meaning of [a] statute, we look first to its plain language." *Infuturia Glob. Ltd. v. Sequus Pharms., Inc.*, 631 F.3d 1133, 1137 (9th Cir. 2011) (internal quotation marks omitted). According to its terms, Covenant § 502 determines the applicability of "laws of the United States in existence on [January 9, 1978] and subsequent amendments to such laws." Covenant § 502(a). "Section 105 governs the application of federal laws enacted after that date." *Richards*, 4 F.3d at 754. We have held that the language of the Covenant "is clear and unambiguous." *Micronesian Telecomms. Corp.*, 820 F.2d at 1101. "If the statutory language is plain, we must enforce the statute according to its terms." *Rainero v. Archon Corp.*, 844 F.3d 832, 837 (9th Cir. 2016) (citing *Jimenez v. Quarterman*, 555 U.S. 113, 118, 129 S. Ct. 681, 172 L. Ed. 2d 475 (2009)). Here, § 2156 existed on January 9, 1978. *See* Pub. L. No. 94-279, 90 Stat. 421 (1976). Covenant § 502 thus governs whether § 2156 and its 2018 Amendment apply to the CNMI.

II. Under Covenant § 502, 7 U.S.C. § 2156 and its 2018 Amendment apply to the CNMI.

Because § 502 of the Covenant governs, the test to determine whether 7 U.S.C. § 2156 and its 2018 Amendment apply to the CNMI is whether that law was "applicable to Guam" and was "of general application to the several States" prior to January 9, 1978. Covenant § 502(a)(2). Under this framework, we hold that § 2156 and its 2018 Amendment apply to the CNMI for the reasons below.

Salas argues that § 2156 was not "applicable to Guam" under the first prong of § 502 because cockfighting was legal under Guam's laws in 1978. In other words, because § 2156(d) exempted Guam from § 2156's animal fighting prohibition, the cockfighting prohibition did not "apply to Guam." As the district court noted, however, Salas appears to misconstrue what it means for a law to be "applicable to Guam." According to Salas, "[t]he plain meaning of 'apply' is to have some practical effect, and a law imposing a ban that bans nothing in a given place has no more practical effect in that place than a law that is never enacted in the first place." Salas's theory, however, contradicts the language of § 2156 and Ninth Circuit precedent.

First, the language of § 2156 clearly states that the law was meant to apply in every state and territory, including the CNMI. When interpreting a statute, we "look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S. Ct. 1811, 100 L. Ed. 2d 313 (1988); *see JPMCC 2007-C1 Grasslawn Lodging, LLC v. Transwest Resort Props. Inc.* (*In re Transwest Resport Props., Inc.*), 881 F.3d 724, 727 (9th Cir. 2018). Section 2156 made it a federal offense to sponsor or exhibit an animal in any "animal fighting venture" in which an animal was moved in interstate commerce, 7 U.S.C. §§ 2156(a), (e) (1976), including "live bird[s]," *id.* §§ 2156(g)(1), (4). Interstate commerce was defined as "any movement between any place in a State to any place in another State or between places in the same State through another State." *Id.* § 2156(g)(2). In turn, State meant "any State of the United States . . . and any territory or

possession of the United States." *Id.* § 2156(g)(4). Salas acknowledges that Guam falls under the definition of "State" because it is a U.S. territory. Thus, Salas concedes that § 2156 writ large was the law in Guam. Even without this concession, a statute that references the United States and its territories and possessions is a strong indication that it is meant to apply in the CNMI. *Misch ex rel. Est. of Misch v. Zee Enters., Inc.*, 879 F.2d 628, 631 (9th Cir. 1989) ("[T]he Act itself strongly indicates that it is meant to apply in the CNMI by expressly barring relief to those seamen who [worked] . . . 'in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, *its territories, or possessions*.'" (quoting 46 U.S.C. App. § 688(b)(1))).

Second, we rejected a theory like the one Salas advances in *Northern Mariana Islands v. United States*. There, the government argued that amendments to the federal Quiet Title Act that exempted the States, but not Guam, from the act's statute of limitations were not "applicable to Guam" under Covenant § 502. 279 F.3d at 1072–74. We rejected the government's theory, explaining that "[t]he Covenant's framers considered the term 'applicable to Guam' to mean not only 'applicable with respect to' Guam, but also to mean 'applicable within' Guam." *Id.* at 1073. As a result, that "the amendments themselves did not exempt Guam from [the act's] statute of limitations" did not mean the amendments were not applicable to Guam within the meaning of Covenant § 502(a)(2). *Id.* at 1073–74. "That is, the amendments, regardless of their treatment of Guam, are law within Guam." *Id.* at 1073. We thus rejected understanding

"applicable to Guam" in Covenant § 502 to mean that a federal law must have a practical effect in Guam for the law to apply. Therefore, § 2156(d) was applicable to Guam in 1978, satisfying the first prong ("applicable to Guam") of § 502's two-part test.

For the second prong ("of general application to the several States"), Salas asserts the same theory. Specifically, Salas argues that § 2156 was not of "general application to the several states" because it was applicable to the states "only variably and selectively," "depending on whether cockfighting was or was not already prohibited by their own laws," In interpreting statutes, "the same words or phrases are presumed to have the same meaning when used in different parts of a statute." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1061 n.7 (9th Cir. 2008) (internal quotation marks omitted). Thus, the meaning of "application to Guam" should be consistent with the meaning of "application to the several States." Because application to Guam is understood to mean "applicable with respect to" and "applicable within" Guam, it follows that "application to the several States" likewise means "applicable with respect to" and "applicable within" the several States. *See N. Mariana Islands*, 279 F.3d at 1073. Therefore, § 2156 "was of general application to the several states" for the same reasons that § 2156 was "applicable to Guam," as discussed above.

Because § 2156 was in existence on January 9, 1978, and was applicable to Guam and to the States generally, § 2156 and its 2018 Amendment prohibiting cockfighting

are applicable to the CNMI under Covenant § 502.[1] *United States v. Dela Cruz*, 358 F.3d 623, 625 (9th Cir. 2004) (where other conditions of § 502 were met, "[t]he only inquiry for this court is therefore whether [the challenged law] was in existence on [January 9, 1978]").

III. Covenant § 105 does not govern the applicability of amendments to statutes in existence on January 9, 1978.

In the district court, Salas argued that either (1) both § 2156 and its 2018 Amendment were governed by Covenant § 502, or (2) the 2018 Amendment was "a new law enacted in 2018" that was instead governed by Covenant § 105. As we have explained, § 2156 and its 2018 Amendment are governed by § 502; Salas's argument in the alternative is incorrect. Now on appeal, however, Salas contends that Covenant § 105 must also govern the applicability of the 2018 Amendment—indeed, all amendments to statutes in existence on January 9, 1978—notwithstanding the applicability of § 502. We disagree.

First, "in the absence of strong evidence that Congress intended a different meaning," "we must interpret

1. Our conclusion is consistent with the Commission on Federal Laws's own determination that Title 7 of the U.S. Code, which includes § 2156, is applicable to the CNMI. Second Interim Report 299. This factor "point[s] unequivocally in favor of [the law at issue] applying in the Commonwealth." *Misch*, 879 F.2d at 630 (holding that the Jones Act applied to the CNMI based, in part, on the Commission on Federal Laws's conclusion that the act applied to the CNMI).

statutory terms by their plain meaning." *N. Mariana Islands*, 279 F.3d at 1072 (citing *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 548, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987)). The language of the Covenant, which is "clear and unambiguous," *Micronesian Telecomms. Corp.*, 820 F.2d at 1101, states that § 502 governs the applicability to the CNMI of "laws of the United States in existence on [January 9, 1978] and subsequent amendments to such laws." Salas offers no evidence, let alone "strong evidence," that Congress intended § 502 to possess a meaning different from its plain meaning. At oral argument, Salas could point to no case, nor does our research reveal any, in which the applicability of a federal law was governed by both § 105 and § 502. We thus interpret § 502 consistent with its plain meaning.

Second, consistent with the statutory language, Ninth Circuit precedent also holds that § 502 governs the applicability of amendments to laws that existed on January 9, 1978, even if the amendments were enacted after that date. In holding the 1986 Quiet Title Act amendments applicable to the CNMI under Covenant § 502 in *Northern Mariana Islands*, as noted above, we explained that "the 1986 amendments became part of the Quiet Title Act." 279 F.3d at 1073. As a result, because the Quiet Title Act itself was applicable to the CNMI under § 502, so too were the 1986 amendments. *Id.* at 1073–74.[2]

2. The concurrence asserts that *Northern Mariana Islands* does not control the resolution of this issue because the court in that case was not presented with the argument that both § 105 and § 502 governed. In other words, the concurrence would have us disregard *Northern Mariana Islands*'s interpretation and

Third, we note that the Commission on Federal Laws, tasked with assisting Congress in determining the applicability of federal laws to the CNMI, also understood § 105 to govern only those laws enacted after January 9, 1978, that are not amendments to statutes enacted prior to that date. Second Interim Report 30–31 (noting that "[d]etermining the applicability to the Northern Mariana Islands of statutes enacted after January 9, 1978, that are not amendments of statutes enacted prior to that date is relatively simple" and is accomplished by applying the "rule of statutory construction" in § 105).[3]

---

application of § 502 because the court did not consider § 105 when it analyzed § 502. We respectfully disagree. In determining that the amendments at issue met § 502's requirements, the *Northern Mariana Islands* court reasoned that § 502 encompasses amendments of laws that are applicable to the CNMI as amendments become part of the original law. We remain bound by this well-reasoned analysis. *See Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1173 (9th Cir. 2004) ("[W]here a panel confronts an issue germane to the eventual resolution of the case, and resolves it after reasoned consideration in a published opinion, that ruling becomes the law of the circuit, regardless of whether doing so is necessary in some strict logical sense."); *Marshall Naify Revocable Tr. v. United States*, 672 F.3d 620, 627 (9th Cir. 2012) ("[W]e treat reasoning central to a panel's decision as binding later panels."). In other words, *Northern Mariana Islands* "squarely address[ed]" the issue whether § 502 encompasses amendments, even if it did not consider a potential counterargument. *United States v. Kirilyuk*, 29 F.4th 1128, 1134 (9th Cir. 2022) (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 631, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993)).

3. The concurrence makes much of the fact that a portion of the Second Interim Report was superseded by the Commission

Finally, Salas's argument overlooks the purpose of § 502 and § 105. Section 502 was designed to establish a "workable body of law" for the CNMI upon its inception as a self-governing commonwealth on January 9, 1978. *To Approve "The Covenant to Establish a Commonwealth of the Northern Mariana Islands," and for Other Purposes: Hearing on H.J. Res. 549, 550 and 547 Before the Subcomm. on Territorial & Insular Affs. of the H. Comm. on Interior & Insular Affs.*, 94th Cong. 388 (1975). On the other hand, § 105 granted Congress the right to enact laws applicable to the CNMI post-inception so long as the laws also applied to the several States or otherwise named the CNMI specifically. *Id.* at 630–32. To hold that both § 105 and § 502 govern the applicability of amendments to pre-existing federal laws would eliminate this distinction. *Collins v. Gee W. Seattle LLC*, 631 F.3d 1001, 1005 (9th Cir. 2011) ("[W]e may not read a statute's plain language

---

on Federal Laws's Final Report. As an initial matter, our court has continued to rely on the Second Interim Report's recommendations, which in turn necessarily rely on the analysis contained in the portions of the report that were superseded, even after the publication of the Final Report. *See, e.g., Fang Lin Ai v. United States*, 809 F.3d 503, 513–14 (9th Cir. 2015). At least one other court of appeals, too, has found the Second Interim Report to be a helpful tool in interpreting the Covenant notwithstanding the existence of the Final Report. *See Xianli Zhang v. United States*, 640 F.3d 1358, 1373–74 (Fed. Cir. 2011). In any event, we need not resort to this history because, as explained above, the Covenant's language is clear. *See Church of Scientology of Cal. v. U.S. Dep't of Just.*, 612 F.2d 417, 421 (9th Cir. 1979) ("[I]f the language of a statute is clear and there is no ambiguity, then there is no need to 'interpret' the language by resorting to the legislative history or other extrinsic aids.").

to produce a result contrary to the statute's purpose or lead to unreasonable results." (internal quotation marks omitted)).

Against this evidence, Salas and the concurrence point to § 502(a)'s preamble stating that laws and subsequent amendments to those laws apply to the Northern Mariana Islands "except as otherwise provided in this Covenant." Under Salas's interpretation, § 502 is subordinate to § 105, notwithstanding § 502's clear instruction to treat amendments to laws that existed on the Covenant's effective date the same as those laws themselves. We find this contention unpersuasive. Salas's argument hinges on the premise that "subsequent amendments" to laws in effect on the Covenant's effective date do not automatically apply to the Northern Mariana Islands but rather must meet § 105's requirements, just like entirely new legislation. Section 502(a)'s vague reference to "except as otherwise provided in this Covenant" is insufficient evidence in favor of Salas's position.

Moreover, if subsequent amendments were treated like new legislation for purposes of applying § 105's requirements, then we would expect to see some textual evidence distinguishing between laws in effect on the Covenant's effective date and subsequent amendments to those laws. We see no such evidence. Indeed, the one provision that does *not* treat "subsequent amendments" identically to existing laws is § 502(a)(3), which exempts "subsequent amendments" to certain laws "unless specifically made applicable to the Northern Mariana Islands." In our view, the absence of similar language from

the remainder of § 502(a) evinces an intent to treat other laws in effect on the Covenant's effective date and their subsequent amendments the same. *See, e.g.*, *United States v. Lopez*, 998 F.3d 431, 440 (9th Cir. 2021) (discussing canon against surplusage), *abrogated in part on other grounds by Pulsifer v. United States*, 601 U.S. 124, 144 S. Ct. 718, 218 L. Ed. 2d 77 (2024).

At bottom, Salas's (and the concurrence's) position is that there is no conflict between treating laws in effect on the Covenant's effective date and their subsequent amendments the same on the one hand, and yet subjecting subsequent amendments to laws in effect on the Covenant's effective date to § 105's requirements as though they are new laws on the other. For all the reasons discussed above, we respectfully disagree. Accordingly, we hold that § 502 alone governs whether § 2156 and its 2018 Amendment apply to the CNMI.

IV. Even if Covenant § 105 governs, 7 U.S.C. § 2156 and its 2018 Amendment would still apply to the CNMI.

Even if Covenant § 105 governs, which requires laws to be applicable to the several States or otherwise name the CNMI, § 2156 and its 2018 Amendment would still apply to the CNMI because they are "applicable to the several States." Moreover, the federal interests advanced by § 2156 and its 2018 Amendment are significant, outweighing any intrusion into the internal affairs of the CNMI.

A. 7 U.S.C. § 2156 and its 2018 Amendment are "applicable to the several States."

Under Covenant § 105, "the United States may legislate with respect to the CNMI, 'but if such legislation cannot also be made applicable to the several States[,] the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands.'" *Richards*, 4 F.3d at 754 (quoting Covenant § 105). Salas argues that the federal cockfighting prohibition cannot apply to the several States because state law in all fifty States already prohibited cockfighting. However, as explained above, under the Covenant the applicability of a federal law to the States is not based on the law's practical effect in the States. Section 2156 and its 2018 Amendment are thus "applicable to the several States" under § 105 and need not name the CNMI to apply.

B. 7 U.S.C. § 2156 and its 2018 Amendment do not intrude impermissibly upon the internal affairs of the CNMI under Covenant § 103 and § 105.

Finally, Salas argues that § 2156 and its 2018 Amendment do not apply to the CNMI because they intrude upon the CNMI's right to local self-government as guaranteed by § 103 and § 105 of the Covenant. We disagree.

Covenant § 103 guarantees the people of the CNMI the ability to "govern themselves with respect to internal affairs in accordance with a Constitution of their own

adoption." Covenant § 103. In turn, Covenant § 105 "prevent[s] any inadvertent interference by Congress with the internal affairs of the Northern Mariana Islands to a greater extent than with those of the several States." *Richards*, 4 F.3d at 754 (citation omitted). As a result, the United States must "have an identifiable federal interest that will be served by" the legislation it seeks to apply to the CNMI. *Id.* Congress is not precluded from passing legislation affecting the internal affairs of the CNMI. *Id.* at 755. Rather, a court must "balance the federal interest to be served by the legislation at issue against the degree of intrusion into the internal affairs of the CNMI." *Id.*

This balancing test, however, is unnecessary for statutes enacted before January 9, 1978, and thus governed by Covenant § 502. *United States v. Chang Da Liu*, 538 F.3d 1078, 1084 (9th Cir. 2008) ("For legislation enacted after [January 9, 1978], we balance the federal interests served by the legislation against the degree of intrusion into local affairs.").[4] Because Covenant § 502 alone governs, as discussed above, we need not conduct the *Richards* balancing test. Nonetheless, even if § 105 governed, the federal interests served by § 2156 and its 2018 Amendment would outweigh any intrusion into the CNMI's current internal affairs.

---

4. Indeed, although the government cited *Chang Da Liu* in its answering brief for the proposition that the *Richards* balancing test is unnecessary for statutes governed by § 502, Salas's reply failed to respond to this point.

1. We presume the regulation of cockfighting to be an internal affair of the CNMI.

At the motion to dismiss stage, we must accept all allegations of material fact as true and construe them in the light most favorable to the nonmoving party, and material allegations, even if doubtful in fact, are assumed to be true. *See Cedars-Sinai Med. Ctr. v. Nat'l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). The district court presumed the regulation of cockfighting to be an internal affair of the CNMI,[5] and we do the same.[6]

---

5. At the hearing below, Salas requested leave to amend the complaint to plead more facts regarding the importance of cockfighting in the CNMI. The district court found additional facts to be unnecessary as it had presumed cockfighting to be an internal of affair of the CNMI. Moreover, as the district court correctly noted, additional facts about how deeply entrenched cockfighting is in the CNMI would be futile. *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011) ("[Leave to amend] is properly denied . . . if amendment would be futile."). First, weighing the federal interest against the degree of intrusion into the CNMI's local affairs per the *Richards* test is unnecessary for statutes enacted before January 9, 1978. *See Chang Da Liu*, 538 F.3d at 1084 (citing *Richards*, 4 F.3d at 755). Second, as we explain below, even if we employ the *Richards* balancing test, the federal interests in regulating interstate commerce, ensuring the humane treatment of animals, and preventing the spread of avian flu outweigh any intrusion into the CNMI's internal affairs.

6. Despite this presumption, we note that Salas may not have established that the interstate regulation of cockfighting concerns an internal affair of the CNMI. Salas presents evidence

2. 7 U.S.C. § 2156 and its 2018 Amendment serve significant federal interests.

We next balance the federal interests to be served by § 2156 and its 2018 Amendment against the degree of intrusion into this presumed internal affair of the CNMI. The government asserts that the United States has an interest in regulating animal fighting, including cockfighting, because of its significant effect on interstate commerce and potential to spread avian flu. Salas, on the other hand, challenges these asserted interests, arguing that the animal fighting prohibition is instead motivated only by Congress's subjective, "moral distaste" for the sport. To the contrary, as discussed below, in regulating animal fighting under the AWA, Congress sought to relieve the burden of animal fighting on interstate commerce, ensure the humane treatment of animals, and prevent the spread of avian flu, all of which are significant federal interests.

---

indicating that Guamanian men enjoyed cockfighting in the 1700s and 1800s, as well as evidence that cockfighting has taken place in Bali, Cuba, Puerto Rico, and the Philippines. None are relevant to whether the regulation of cockfighting is an internal affair of the CNMI. Regarding the CNMI, Salas cites a book excerpt stating that cockfighting occurred there, without context or time period, and points to an essay from the 1900s, when the islands were under German rule, noting the occurrence of cockfighting to be an activity from "Spanish times." Such evidence, however, does not resolve whether cockfighting is integral to and thus an internal affair of the CNMI today.

Appendix A

When determining legislative intent, we look to specific expressions of legislative intent in the statute itself. *See Cal. Tow Truck Ass'n v. City & County of San Francisco*, 693 F.3d 847, 859 (9th Cir. 2012); *see also Bittner v. United States*, 598 U.S. 85, 98 n.6, 143 S. Ct. 713, 215 L. Ed. 2d 1 (2023) ("A preamble, purpose clause, or recital is a permissible indicator of meaning." (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 217 (2012))). We may also look to the legislative history, including congressional committee findings. *See Garcia v. United States*, 469 U.S. 70, 76, 105 S. Ct. 479, 83 L. Ed. 2d 472 (1984) ("[T]he authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation." (alteration and internal quotation marks omitted)).

Here, the statement of findings contained in the AWA expressly states that Congress sought to eliminate the burden of animal fighting ventures on interstate commerce and assure the humane treatment of animals in such commerce:

> The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively

> regulate such commerce, in order . . . to assure the humane treatment of animals during transportation in commerce . . . .

7 U.S.C. § 2131.

The AWA's congressional committee findings show the same. *See* H.R. Rep. No. 94-801, at 10 (1976) ("[The AWA] is necessary to prevent and eliminate burden upon [interstate or foreign] commerce, to effectively regulate such commerce, to protect the human values of this great Nation from the subversion of dehumanizing activities, and to carry out the objectives of the Act.").

The government also asserts, and the district court agreed, that the cockfighting prohibition serves to prevent the spread of avian flu, offering statements made by members of Congress to that effect. *E.g.*, 153 Cong. Rec. S451 (daily ed. Jan. 11, 2007) (statement of Sen. Cantwell) ("Interstate and international transport of birds for cockfighting is known to have contributed to the spread of avian influenza in Asia and poses a threat to poultry and public health in the United States."); 153 Cong. Rec. E2 (daily ed. Jan. 5, 2007) (statement of Rep. Gallegly) ("There is the additional concern that cockfighters spread diseases that jeopardize poultry flocks and even public health."). Although "comments by legislators are generally less authoritative than official committee reports, they nonetheless may be persuasive authority" as to statutory intent. *U.S. Aviation Underwriters Inc. v. Nabtesco Corp.*, 697 F.3d 1092, 1099 n.3 (9th Cir. 2012) (citations omitted). Evidence that Congress may have also sought to prevent

the spread of avian flu by restricting, and ultimately prohibiting, cockfighting reinforces the conclusion that the prohibition serves significant federal interests.

Thus, Congress's interests in regulating animal fighting to relieve its burden on interstate commerce, ensure the humane treatment of animals, and prevent the spread of avian flu are significant, not illusory, as Salas suggests.[7] Because these federal interests outweigh any intrusion into the CNMI's internal affairs, neither § 103 nor § 105 preclude § 2156 and its 2018 Amendment's application to the CNMI.[8]

CONCLUSION

For the foregoing reasons, we affirm the district court's judgment.

AFFIRMED.

---

7. Salas does not challenge Congress's ability to regulate interstate commerce through the AWA. Nor could he. "The authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained and is no longer open to question." *United States v. Lopez*, 514 U.S. 549, 558, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1995) (cleaned up).

8. Salas can point to no case, nor does our research reveal any, in which we have held a federal law inapplicable to the CNMI under § 105. We do not foreclose the possibility that a federal law can impermissibly intrude upon the CNMI's internal affairs, which would preclude its application under Covenant § 103 and § 105. Our decision holds only that § 2156 and its 2018 Amendment do not.

PAEZ, Circuit Judge, concurring in the result:

I concur in the court's judgment. Respectfully, however, I disagree that "§ 502 alone governs whether § 2156 and its 2018 Amendment apply to the [Commonwealth of the Northern Mariana Islands ("CNMI")]."[1] Maj. Op. at 21. In my view, the majority's analysis with respect to this point is incomplete, overlooking that the Covenant must be interpreted as a whole. Following this approach, I would hold that, based on the Covenant's plain text and "every other interpretive tool," § 105 also applies to amendments to laws in existence on January 9, 1978.[2] *Saipan Stevedore*

---

1. The pertinent language of § 502 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("Covenant") provides:

> The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant: . . . (2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States[.]

2. Section 105 of the Covenant provides:

> The United States may enact legislation in accordance with its constitutional processes which will be applicable to the Northern Mariana Islands, but if such legislation cannot also be made applicable to the several States the Northern Mariana Islands must be specifically named therein for it to become effective in

Co. Inc. v. Dir., Off. of Workers' Comp. Programs, 133 F.3d 717, 723 (9th Cir. 1998). As I explain below, such amendments constitute "legislation" as set out in § 105 and therefore must comply with that provision. Even so, however, Salas has failed to demonstrate that § 2156 and its 2018 Amendment "impermissibly intrude[] on the internal affairs of the CNMI." *U.S. ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749, 755 (9th Cir. 1993). I would thus affirm the district court for the reasons discussed by the majority in Part IV of its opinion. *See* Maj. Op. at 21–27.

I.

This case involves a question of first impression: whether § 105 of the Covenant applies to amendments to laws in existence on January 9, 1978. To be sure, we have previously held that "Section 502 governs the application to the CNMI of federal laws existing prior to January 9, 1978, and that Section 105 governs the application of federal laws enacted after that date." *Richards*, 4 F.3d at 756. But *Richards* and later cases, which discuss the applicability of *laws* in existence on January 9, 1978, to the CNMI, do not shed light on the question of "subsequent amendments to such laws." Covenant § 502. That question is squarely presented in this case.

---

the Northern Mariana Islands. In order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of that authority so that the fundamental provisions of this Covenant, namely Articles, I II and III and Section 501 and 805, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands.

Importantly, *Northern Mariana Islands v. United States*, 279 F.3d 1070 (9th Cir. 2002)—one of the only Ninth Circuit opinions to address amendments to laws in existence on January 9, 1978—does not settle the matter. In *Northern Mariana Islands*, we considered whether amendments to the Quiet Title Act were applicable to the CNMI under the terms of the Covenant. We ultimately determined that they were, concluding:

> Because the Quiet Title Act was in existence on January 9, 1978, and because the Quiet Title Act is applicable to Guam and to the States generally, the Quiet Title Act and its amendments are applicable to the CNMI "as they are applicable to the several States," under the terms of section 502(a)(2).

Id. at 1073 (footnotes omitted).

The majority understandably relies on *Northern Mariana Islands* as evidence that only "§ 502 governs the applicability of amendments to laws that existed on January 9, 1978, even if the amendments were enacted after that date." Maj. Op. at 18. Yet the parties in that case never presented the court with the argument that *both* § 105 and § 502 applied. Indeed, the parties did not brief the issue,[3] and § 105 appears nowhere in the opinion.

3. In *Northern Mariana Islands*, the parties did not argue over which sections of the Covenant applied to the amendments to the Quiet Title Act. Rather, both parties agreed that § 502 applied, and the key dispute was whether the amendments met § 502's requirements. *See* N. Mariana *Islands v. United States*, 279 F.3d

Northern Mariana Islands thus does not control how we should resolve this important question of territorial law. *See United States v. Kirilyuk*, 29 F.4th 1128, 1134 (9th Cir. 2022) ("Prior precedent that does not 'squarely address' a particular issue does not bind later panels on the question." (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 631, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993))); *United States v. Marin*, 90 F.4th 1235, 1240 (9th Cir. 2024) (observing that "questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents" (cleaned up) (internal quotation marks omitted) (quoting *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170, 125 S. Ct. 577, 160 L. Ed. 2d 548 (2004))).[4]

1070, 2000 WL 33982882, at *7; N. Mariana *Islands v. United States*, 279 F.3d 1070, 2000 WL 33984520, at *13–14 & n.9, *31; Reply Brief, *N. Mariana Islands v. United States*, 279 F.3d 1070, 2000 WL 33982268, at *7–11. Notably, however, the CNMI nonetheless assumed that both provisions applied, even though that issue was not litigated. *See* Reply Brief, *N. Mariana Islands v. United States*, 279 F.3d 1070, 2000 WL 33982268, at *8–*9 & n.18.

4. The majority suggests that I mean to "disregard *Northern Mariana Islands*'s interpretation and application of § 502 because the court did not consider other evidence (that is, § 105) when it analyzed § 502." Maj. Op. at 18 n.2. Not at all. Indeed, I do not dispute that "§ 502 encompasses amendments of laws that are applicable to the CNMI as amendments become part of the original law." Maj. Op. at 18 n.2. Rather, and as I explained above, the panel in *Northern Mariana Islands* was never presented with the argument that both § 105 and § 502 could apply. We are thus not bound by *Northern Mariana Islands* as to this separate issue.

As this case demonstrates, an amendment to a law can be just as far-reaching as the original law itself. The question of whether § 105 also applies to an amendment of a law in existence on January 9, 1978, is thus an important one. We should not imply an answer from *Northern Mariana Islands* to dispose of the matter. *See Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938 (9th Cir. 2007) ("We are not required to follow what amounts to, at most, an implicit assumption, because '[s]uch unstated assumptions on nonlitigated issues are not precedential holdings binding future decisions.'" (alteration in original) (quoting *Sakamoto v. Duty Free Shoppers, Ltd.*, 764 F.2d 1285, 1288 (9th Cir. 1985))).

II.

Turning to the merits, we must ascertain the statute's plain meaning by "look[ing] to the particular statutory language at issue, as well as the particular language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S. Ct. 1811, 100 L. Ed. 2d 313 (1988).[5] In my view, given the Covenant's plain text, § 105 applies to all federal "legislation" enacted after January 9, 1978, including original "laws" not in existence on January 9, 1978, and "subsequent amendments to [existing] laws." Covenant § 502. In addition, and to the extent there is any remaining ambiguity, the Covenant's structure and purpose, practical effects, and legislative history further support this interpretation.

---

5. We have interpreted the Covenant to be "a congressionally approved compact that is both a contract and a statute such that

Appendix A

A.

I begin with *Richards*, where we interpreted § 105. In that case, we first acknowledged that "Congress' legislative authority over the Commonwealth derives from Section 105." 4 F.3d at 754. We then held:

> To give due consideration to the interests of the United States and the interests of the Commonwealth as reflected in Section 105, we think it appropriate to balance the federal interest to be served by the legislation at issue against the degree of intrusion into the internal affairs of the CNMI.

Id. at 755.

Importantly, our analysis in *Richards* adhered to the plain text of the Covenant, referring consistently to "legislation." *Id.* at 754–55. And though we did not define the term in that case, the proper analysis for doing so is straightforward. The ordinary plain meaning of "legislation" is "the enactments of a legislator or a legislative body." Merriam-Webster Dictionary, "legislation," https://www.merriam-webster.com/dictionary/legislation (last accessed Aug. 15, 2024); *see also* LEGISLATION, Black's Law Dictionary (12th ed. 2024)

---

resort to extrinsic evidence of the Covenant's negotiations is entirely appropriate." *Fang Lin Ai v. United States*, 809 F.3d 503, 507 n.4 (9th Cir. 2015) (cleaned up) (quoting *Oklahoma v. New Mexico*, 501 U.S. 221, 235 n.5, 111 S. Ct. 2281, 115 L. Ed. 2d 207 (1991))

("The law so enacted; collectively, the formalutterances of the legislative organs of government."). Given these definitions, there can be no question that both original "laws" and "subsequent amendments to [existing] laws," Covenant § 502, constitute "legislation" that "[t]he United States may enact" as contemplated by § 105.

Unsurprisingly, the majority does not refute this point. In fact, the majority does not construe § 105 at all, even though we must examine both "the particular statutory language at issue, *as well as* the language and design of the statute as a whole." *K Mart Corp.*, 486 U.S. at 291 (emphasis added). Instead, the majority focuses only on § 502, reasoning that this provision controls the immediate case because it references the applicability of "laws of the United States in existence on [January 9, 1978] and subsequent amendments to such laws." Maj. Op. at 13 (alteration in original) (quoting Covenant § 502). This uncontroversial proposition, however, in no way suggests that § 105 cannot also apply. In circumstances where two provisions may be applicable, we do not merely disregard one or the other. Rather, we apply the "elementary canon of construction that an interpretation which gives effect to all sections of a statute is preferred." *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1175 (9th Cir. 2002).

In this case, giving effect to all sections of the Covenant requires that § 105 encompass all "legislation," even amendments to laws in existence on January 9, 1978. A narrower interpretation—for example, that "legislation" refers only to *laws* not in existence on January 9, 1978—would create an exception to § 105 not found in

the Covenant. This, in turn, would also run afoul of the canon against surplusage. *See United States v. Lopez*, 998 F.3d 431, 440 (9th Cir. 2021) ("This canon of construction requires a court, if possible, to give effect to each word and clause in a statute.").

Moreover, reading the Covenant to apply both provisions to such amendments is further supported by examining § 502. As Salas argues, § 502(a) (emphasis added) provides that:

> The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, *except as otherwise provided in this Covenant*[.]

Section 502(a) thus appears to contemplate that its own requirements operate subordinately to or in conjunction with those of other provisions, including § 105.[6] *Cf. Arizona All. for Cmty. Health Centers v. Arizona Health*

---

6. The majority confusingly responds that "if subsequent amendments were treated like new legislation for purposes of applying § 105's requirements, then we would expect to see some textual evidence distinguishing between laws in effect on the Covenant's effective date and subsequent amendments to those laws." Maj. Op. at 20–21. But if the drafters of the Covenant believed that the document would be examined as a whole and that § 105 applied to all "legislation" subsequently enacted by Congress—as is evident from, *inter alia*, their inclusion of the language "except as otherwise provided in this Covenant" in § 502—there is no reason why they would need to specify anything more.

Care Cost Containment Sys., 47 F.4th 992, 999 (9th Cir. 2022) (observing that "[p]articular phrases must be construed in light of the overall purpose and structure of the whole statutory scheme" (alteration in original) (quoting *United States v. Neal*, 776 F.3d 645, 652 (9th Cir. 2015))). There is no textual reason to read these provisions as being in conflict with one another, and we should correspondingly interpret the Covenant to give effect to both.

B.

If the plain text were to leave any ambiguity,[7] the Covenant's structure and purpose, practical effects, and legislative history leave no doubt that both provisions apply.

First, a reading of § 105 that encompasses amendments to laws in existence on January 9, 1978, conforms with the document's structure and purpose. With respect to structure, the Covenant makes clear that certain provisions of the document are "fundamental," "namely

---

7. The majority repeatedly cites *Micronesian Telecomms. Corp. v. NLRB*, 820 F.2d 1097, 1101 (9th Cir. 1987), *amended*, (9th Cir. Sept. 2, 1987), for the proposition that § 502 is "clear and unambiguous." Maj. Op. at 13, 17 (citing *Micronesian Telecommunications Corp.*, 820 F.2d at 1101). But *Micronesian Telecommunications Corp.* exclusively interpreted § 502 and dealt only with *laws* in existence on January 9, 1978, not "subsequent amendments to such laws." Covenant § 502. Thus, for the reasons already discussed, the cited language from *Micronesian Telecommunications Corp.* is of limited utility here.

Articles I, II and III and Section 501 and 805." Covenant § 105. It therefore makes sense that § 502 (and the analysis that the provision requires) is subordinate to § 105, which is found in Article I.

With respect to purpose, it is evident that at least one of the guiding principles of the Covenant is self-government. *See* Covenant Preamble (recognizing the CNMI's right to "express their wishes for self-government or independence" and "desire . . . to exercise their inalienable right of self—determination"); Covenant § 103 ("The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption."); Covenant § 105 ("In order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of [its legislative] authority . . . .").[8] To allow some "legislation" to escape the reach of § 105—

8. Further evidence that self-government is one of the Covenant's guiding principles is that the Covenant was ratified with the goals of the antecedent trusteeship in mind. *See Micronesian Telecommunications Corp.*, 820 F.2d at 1101 ("The 1976 Covenant was designed so the Commission [on Federal Laws] could take into consideration those laws that might defeat the goals of the trustee agreement."). And as we have recognized, two of the "purposes of the trusteeship agreement" were "self-government and economic self-sufficiency." *Id.*; *see also Wabol v. Villacrusis*, 958 F.2d 1450, 1461 (9th Cir. 1990) ("And we must be mindful also that the preservation of local culture and land is more than mere desideratum—it is a solemn and binding undertaking memorialized in the Trusteeship Agreement.").

which we have interpreted to incorporate the right of self-government enshrined in § 103, *see Richards*, 4 F.3d at 755—would consequently undermine one of the Covenant's guiding principles.[9, 10]

Second, the practical results of the majority's interpretation also counsel in favor of construing § 105 to reach all legislation, including "subsequent amendments to [existing] laws." Covenant § 502. Indeed, not only would the majority's interpretation allow amendments to laws in existence on January 9, 1978, to escape the reach of

---

9. The majority suggests that this interpretation "overlooks the purpose of §502 and § 105." Maj. Op. at 19. As the majority points out, thepurpose of § 502 was to "establish a 'workable body of law' for the CNMI upon its inception as a self-governing commonwealth on January 9, 1978." Maj. Op. at 19 (citation omitted). "On the other hand, § 105 granted Congress the right to enact laws applicable to the CNMI post-inception so long as the laws also applied to the several States or otherwise named the CNMI specifically." Maj. Op. at 20. It is far from clear, however, how the purposes of these provisions, even if distinct, are in conflict.

10. In fact, when determining whether application of a statute to the CNMI is "inconsistent with the purposes of the trusteeship agreement or the Covenant," our caselaw has examined whether application of that statute would be "incompatible with the history or culture of the Commonwealth," even under § 502. *Saipan Stevedore*, 133 F.3d at 722; *see also id.* at 725 (concluding that the Longshore and Harbor Workers' Compensation Act was "conceptually consistent with the goals of United States involvement in the Commonwealth" where there was "nothing in the Act itself or that we can foresee in its application that conflicts with the Commonwealth's right of self-government over local and internal matters").

§ 105, it would allow them to do so on the arbitrary basis of whether those enactments are classified as original "laws" or "subsequent amendments to [existing] laws." Covenant § 502. As Salas argues, "[t]he history of the Animal Welfare Act illustrates the folly lurking in such formalism."[11] *Cf. E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 670 (9th Cir. 2021) ("We avoid absurd results when interpreting statutes." (citing *Rowland v. Cal. Men's Colony, Unit II Men's Adv. Council*, 506 U.S. 194, 200–01, 113 S. Ct. 716, 121 L. Ed. 2d 656 (1993))).

Nor would Salas's interpretation impose novel constraints on the federal government. The primary requirement of § 105—that federal legislation specifically name the CNMI—only becomes effective when legislation is not applicable to the several states. Yet amendments to laws in existence on January 9, 1978, must already meet this requirement to be applicable to the CNMI under § 502(a)(2) as well. *See N. Mariana Islands*, 279 F.3d at 1073–75. The only additional requirement for such amendments would be *Richards*'s interest-balancing test, which already applies to all other legislation enacted after January 9, 1978. Interpreting § 105 to reach subsequent amendments to laws in existence on January 9, 1978, would thus only harmonize implementation of the Covenant's scheme.

Third, the Covenant's legislative history supports

11. Opening Br. 13 n.20 (explaining how the Act's evolution "show[s] clearly that the choice of whether or not to formally characterize a given piece of legislation an 'amendment' to an earlier law is often arbitrary").

this reading as well.[12] First, the Marianas Political Status Commission's Section-by-Section Analysis confirms that § 105 affects Congress's "legislative authority," not merely its ability to enact laws *rather than* amendments.

---

12. In previous cases involving the Covenant, we have relied upon the section-by-section analyses produced by representatives of the CNMI and the United States, *see, e.g., Richards*, 4 F.3d at 754, even calling them "authoritative," *N. Mariana Islands v. United States*, 399 F.3d 1057, 1065 (9th Cir. 2005). These include section-by-section analyses produced by the Marianas Political Status Commission and the Department of Interior. *See, e.g., Richards*, 4 F.3d at 754 (first citing Marianas Political Status Commission, *Section-by-Section Analysis of the Covenant to Establish a Commonwealth of the Northern Mariana Islands* 15 (1975) [hereinafter *Marianas Commission Section Analysis*]; and then citing Department of Interior, *Section-by-Section Analysis of the Covenant, reprinted in To Approve "The Covenant to Establish a Commonwealth of the Northern Mariana Islands," and for Other Purposes: Hearing Before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs*, 94th Cong., 1st Sess. 385 (1975) [hereinafter *Administration Section Analysis*]. We have likewise relied upon the congressional reports "produced in connection with Congress's approval of the Covenant." *Fang*, 809 F.3d at 513 (citing H.R. Rep. No. 94-364, at 11 (1975); S. Rep. No. 94-433, at 83 (1975)). Finally, we have also relied upon the final report produced by the Northern Mariana Islands Commission on Federal Laws established pursuant to Covenant § 504. *See, e.g., Saipan Stevedore*, 133 F.3d at 725 & n.14 (citing The Final Report for the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States, CNMI Reports Vol. I, p. 1G (1991) [hereinafter *Final Report* (as paginated in Opposition to Motion to Dismiss, Ex. 4, *Salas v. United States*, No. 1:22-CV-00008, 2022 U.S. Dist. LEXIS 209195, 2022 WL 16964141 (D. N. Mar. I. Nov. 17, 2022), ECF No. 8)]).

Marianas Commission Section Analysis, at 630; *see also id.* ("It is the view of the [Marianas Political Status Commission] that as a practical matter this wording of Section 105, combined with the recognition of the right of local self-government in Section 103 and the other provisions of Article I, provide adequate assurances that *federal legislation* will not be made applicable unless it is appropriate." (emphasis added)); *id.* at 631 ("The United States has made clear on many occasions its intent to exercise *its powers* with respect to the Northern Marianas *with strict regard for the right of local self-government*, as it must in view of Section 103." (emphases added)). The Administration's Section-by-Section Analysis and the House and Senate Reports are not to the contrary. *See Administration Section Analysis*, at 384 ("The main point of this section is that the United States may enact legislation applicable to the Northern Mariana Islands in accordance with its Constitutional processes."); H.R. Rep. No. 94-364, at 5 ("Section 105 provides that laws which Congress could not also make applicable to a state cannot be made applicable to the Northern Marianas unless the Northern Marianas is specifically named in the legislation, so as to insure that legislation is not unintentionally applied to the Northern Marianas."); S. Rep. No. 94-433, at 67 ("This section provides that the United States may enact legislation applicable to the Northern Mariana Islands in accordance with its Constitutional processes."); *see also Final Report*, at 22 ("Section 105 grants the United States the power to legislate with respect to the Commonwealth according to its Constitutional process.").

Second, the legislative history strongly suggests that § 502 is subordinate to the demands of § 105. For example,

the Senate Report expressly provides that § 502 "does not relate to the power of Congress to legislate with respect to the Northern Mariana Islands; that issue is dealt with in section 105." S. Rep. No. 94-433, at 76; *see also Administration Section Analysis*, at 388 (same).[13] More broadly, the Final Report, at 22 (emphasis added), notes that "Section 502 makes applicable . . . federal laws existing on January 9, 1978, and amendments to those laws *provided that they are not inconsistent with the Covenant*." *See also id.* ("The most important limitation on the applicability of these laws is Section 103 of the Covenant."); *id.* at 34 n.4 (emphasizing that, unlike § 503, § 502 has the "limitation 'except as provided by this Covenant'"). In combination, this legislative history supports concluding that (1) § 105 sweeps broadly, and (2) § 105 reaches § 502.

By contrast, the only legislative history cited by the majority is the Northern Mariana Islands Commission on Federal Laws's Second Interim Report, which predated the Commission's Final Report. To be sure, we have cited this specific report in prior cases involving the CNMI, *see,*

13. The Senate and Department of the Interior observed that this was the case even though they also noted that the "purpose of [§ 502] is to provide a workable body of law." S. Rep. No. 94-433, at 76; *Administration Section Analysis*, at 388. These two facts—that is, that § 105 applies to Congress's power to legislate and that § 502's purpose is to provide a workable body of law to the CNMI following ratification of the Covenant—thus do not inherently conflict. Again, the majority does not explain how holding "that both § 105 and § 502 govern the applicability of amendments to pre-existing federal laws would eliminate this distinction," or why this would matter. Maj. Op. at 20.

e.g., *Fang*, 809 F.3d at 513–14 (quoting Second Interim Report of the N. Mariana Islands Comm'n on Fed. Laws to the Congress of the United States 415 (1985) [hereinafter *Second Interim Report*]), and the approach described there does in fact support the majority's interpretation, *see Second Interim Report*, at 23–33. However, that approach was *explicitly* repudiated by the Commission's Final Report, which in turn sanctioned an entirely different approach.[14] *See Final Report*, at 24 ("[T]his final report specifically supplants those General Recommendations and other materials set forth in the Second Interim Report at pages 22 through 52."). And we have approvingly cited that superseding approach. *See, e.g., Saipan Stevedore*, 133 F.3d at 725 (citing *Final Report*).[15]

---

14. As laid out in the Final Report, at 24:

> In deciding whether or not to apply a federal law to the Commonwealth we should initially ask two questions: (1) Is the law necessary and proper for carrying out the Covenant, and (2) Is the law inconsistent with the right of self-government over local and internal matters reserved to the people of the Commonwealth in Section 103. Only if a Federal Law is both necessary and proper in carrying out the Covenant and not inconsistent with the right of self-government is it applicable within the Commonwealth.

15. The majority responds that we have continued to rely on the Second Interim Report in other cases. I never suggested otherwise. The difference here, of course, is that each of the cases cited by the majority relied on portions of the Second Interim Report that examined the applicability of specific statutes. *See Fang*, 809 F.3d at 513–14; *Xianli Zhang v. United States*, 640 F.3d 1358, 1373–74 (Fed. Cir. 2011). These portions of the Second

Finally, to the extent the above interpretive tools do not settle the matter, I would read any remaining ambiguity in favor of the CNMI and its people for at least two reasons. First, as Salas argues, this aligns with the intent of the Covenant's drafters. Indeed, Representative Phillip Burton, who served as Chairman of the House Subcommittee on Territorial and Insular Affairs,[16] expressed as much. *See* 122 Cong. Rec. 727 (statement of Rep. Burton) ("Our committee's and my own intent is that all possible ambiguities should be resolved in favor of and to the benefit of the people and Government of the Northern Mariana Islands.").

Second, in similar circumstances, both the Supreme Court and our court have read statutory ambiguities in favor of self-governing parties with whom the United States has ratified agreements. *See Antoine v. Washington*, 420 U.S. 194, 199, 95 S. Ct. 944, 43 L. Ed. 2d 129 (1975)

Interim Report were not "specifically supplant[ed]." *Final Report*, at 24; *see also id.* ("Some of those laws that the Commission found applicable [in the Second Interim Report] *may* not be applicable to the extent they conflict with the test adopted in this final report. . . . We leave to Covenant Section 902 consultations this methodology for reassessing some of the specific recommendations made in the Second Interim Report." (emphasis added)).

16. *See* Howard P. Willens & Deanne C. Siemer, *An Honorable Accord: The Covenant Between the Northern Mariana Islands and the United States* 296–99 (2002). In fact, according to Willens and Siemer, Representative Burton "[d]eliver[ed] the House [of Representatives]" as part of Congress's approval of the Covenant. *Id.* He also served as a member of the Northern Mariana Islands Commission on Federal Laws until his death in 1983. *See Final Report*, at 5.

("The canon of construction applied over a century and a half by this Court is that the wording of treaties and statutes ratifying agreements with the Indians is not to be construed to their prejudice."); *Swim v. Bergland*, 696 F.2d 712, 716 (9th Cir. 1983) ("Agreements between the United States and Indian tribes are to be construed according to the probable understanding of the original tribal signatories."); *United States v. S. Pac. Transp. Co.*, 543 F.2d 676, 687 (9th Cir. 1976) ("[S]tatutes enacted for the protection of Indians must be broadly construed in the Indians' favor."); *see also James T. Campbell*, Aurelius*'s Article III Revisionism: Reimagining Judicial Engagement with the* Insular Cases *and "The Law of the Territories*," 131 Yale L.J. 2542, 2637 (2022) ("There are many potentially relevant doctrinal threads with which to link the notion of promise keeping in the territorial and Indian law contexts. For instance, the Supreme Court's Indian-law jurisprudence . . . has declined to distinguish between treaty and nontreaty agreements with the federal government, subjecting both to interpretive rules that are designed to vindicate those promises and prevent diminishment of reservation borders."). Given the Covenant's consistent emphasis on self-government, I would likewise view any remaining ambiguity in the Covenant's language in favor of the CNMI and its people.

In this case, reading ambiguity in the Covenant in favor of the CNMI and its people means ensuring that § 105 reaches all federal "legislation," including subsequent amendments to laws in existence on January 9, 1978. This reading would further protect § 103's right to self-government. I would therefore hold that § 105 also

applies to amendments to laws in existence on January 9, 1978. This, in turn, requires that the *Richards* balancing test apply to our review of § 2156 and its 2018 Amendment.

III.

Applying the *Richards* balancing test to the immediate case, I agree with the majority that Salas has failed to demonstrate § 2156 and its 2018 Amendment "impermissibly intrude[] on the internal affairs of the CNMI." *Richards*, 4 F.3d at 755. I thus concur in the majority's thorough analysis concluding that "the federal interests advanced by § 2156 and its 2018 Amendment are significant, outweighing any intrusion into the internal affairs of the CNMI." Maj. Op. at 21.

* * *

To close, when the United States and the people of the Northern Mariana Islands came together to ratify the Covenant, they enshrined in that document the CNMI's fundamental right to self-government. *See* Covenant §§ 103, 105; *see also "The Covenant to Establish a Commonwealth of the Northern Mariana Islands," and for Other Purposes: Hearing Before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs*, 94th Cong., 1st Sess. 625 (1975) ("We look forward to the day when the people of the Marianas can control their own destiny."). As part of that momentous process, the United States expressly agreed to

limit the exercise of its authority to "enact legislation . . . [i]n order to respect the right of self-government guaranteed by this Covenant." Covenant § 105; *see also Richards*, 4 F.3d at 755. We are faced here with the question of just how committed we are to upholding that promise. Because I believe that we are bound to do so based on the Covenant's plain text and "every other interpretive tool," *Saipan Stevedore*, 133 F.3d at 723, I would hold that § 105 applies to all federal "legislation," including "laws" and "subsequent amendments to [existing] laws." Covenant § 502. Notwithstanding this application, Salas has failed to demonstrate that § 2156 and its 2018 Amendment "impermissibly intrude[] on the internal affairs of the CNMI." *Richards*, 4 F.3d at 755. I therefore respectfully concur in the court's judgment.

APPENDIX B — DECISION AND ORDER OF THE DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS, FILED NOVEMBER 17, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

Case No.: 1:22-cv-00008

ANDREW SABLAN SALAS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Filed November 17, 2022

DECISION AND ORDER GRANTING MOTION TO DISMISS WITH PREJUDICE

Plaintiff Andrew Sablan Salas filed this civil action seeking declaratory and injunctive relief from the application of the Agriculture Improvement Act of 2018 ("AIA") prohibiting any animal fighting venture under 7 U.S.C. § 2156 as to cockfighting. (Compl. 6, ECF No. 1.)[1] Defendant United States of America ("Government")

1. Page references to ECF documents refer to the page number provided on the blue ribbon generated by ECF.

filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) requesting dismissal of this action with prejudice alleging the complaint fails to state a claim as a matter of law. (Mot. Dismiss 2, ECF No. 3.) Plaintiff filed his opposition (Opp'n, ECF No. 8), to which the Government filed its reply (Reply, ECF No. 9). The matter was fully briefed and came on for a hearing on October 13, 2022, during which the Court took the matter under advisement. (Min., ECF No. 10.) The Court now issues this decision and order GRANTING the motion to dismiss with prejudice without leave to amend.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The following facts are taken from the complaint. Plaintiff "has been regularly and actively involved in the sport of cockfighting since childhood" with activities like raising hundreds of roosters for cockfighting and entering roosters in competitive cockfights. (Compl. ¶ 5.) He "desires and intends to resume raising roosters for cockfighting purposes, and entering such roosters in competitive cockfights" in the Commonwealth of the Northern Mariana Islands ("CNMI") but "a credible threat exists that he will [be] prosecuted for violation of law, particularly 7 U.S.C. § 2156," which bans cockfights. (*Id.* ¶ 6.)

Section 12616 of the Agriculture Improvement Act of 2018, which went into effect on December 20, 2019, amended 7 U.S.C. § 2156. (*Id.* ¶¶ 8, 9, 14.) Prior to the AIA, § 2156 banned animal fighting in general but had

an exception for "fighting ventures involving live birds in a State where it would not be in violation of the law." (*Id.* ¶ 9.) Section 12616 of the AIA deleted that exception thus federally banning cockfighting. (*Id.*) Plaintiff asserts that section 12616 of the AIA had no effect on the fifty states and the District of Columbia because those jurisdictions had already banned cockfighting. (*Id.* ¶¶ 11-12.) The only effect was on the laws in "the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, [and] any other territory or possession of the United States." (*Id.* ¶ 12.)

Plaintiff seeks a declaratory judgment stating that section 12616 of the AIA and 7 U.S.C. § 2156 do not apply to the CNMI, an injunction prohibiting Defendant from enforcing those laws in the CNMI, costs of suit, and all other relief the Court finds just and proper. (Compl. 6.) Plaintiff provides three separate justifications for its requested relief based on the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" (the "Covenant"), which is an agreement between the United States and the people of the Northern Mariana Islands governing the application of federal law to the Northern Mariana Islands. (*Id.* at 4-6.)

First, Plaintiff argues that because § 2156 was not a law of general application in 1978, it does not apply to the CNMI pursuant to section 502 of the Covenant. (*Id.* ¶¶ 19-22.) Second, Plaintiff asserts that § 2156 does not apply to the CNMI pursuant to section 105 of the Covenant because the law cannot be made applicable to the several states.

(*Id.* ¶¶ 23-27.) Finally, Plaintiff contends that section 12616 intrudes into an internal affair of the Northern Mariana Islands, particularly cockfighting, in violation of section 103 of the Covenant, which preserves the right of local self-government including internal affairs for the people of the Northern Mariana Islands. (*Id.* ¶¶ 28, 32.)

Conversely, the Government contends § 2156 was a law of general application in 1978 and so under section 502 of the Covenant, it may be amended and such amendment would be and is applicable to the CNMI. (Mot. Dismiss 8.) It further contends that because section 502 of the Covenant applies, Plaintiff's other two arguments fail. (Mot. Dismiss 25; Reply 6.)

II. LEGAL STANDARD

To survive a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a pleading "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). The factual allegations need not be detailed, but a plaintiff must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* at 678. In determining whether a motion to dismiss should be granted, there is a two-step process: first, "identify[] pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth," and second,

"[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* at 679. Conversely, "[a] motion to dismiss under Rule 12(b)(6) will be granted only if 'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Bonnichsen v. U.S., Dep't of the Army*, 969 F. Supp. 614, 619 (D. Or. 1997) (quoting *Gibson v. United States*, 781 F.2d 1334, 1337 (9th Cir.1986)).

Generally, when ruling on a 12(b)(6) motion, a court may consider only the pleadings and limited materials, such as "documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice[.]" *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (citations omitted). If a court considers other evidence, "it must normally convert the 12(b)(6) motion into a Rule 56 motion for summary judgment, and it must give the nonmoving party an opportunity to respond." *Id.* at 907 (citations omitted).

If a motion to dismiss for failure to state a claim is granted, "leave to amend should be granted unless it is clear that the deficiencies of the complaint cannot be cured by amendment." *Dog Bites Back, LLC v. JPMorgan Chase Bank, N.A.*, 563 F. Supp. 3d 1120, 1123 (D. Nev. 2021) (citing *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992)). Federal Rule of Civil Procedure 15(a) dictates that leave should be given freely "when justice so requires" and "in the absence of a reason such as 'undue delay, bad faith or dilatory motive on the part

of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.'" *Id.* (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)).

III. ANALYSIS

Defendant's motion to dismiss for failure to state a claim attacks the legal sufficiency of Plaintiff's complaint. The central issue is whether the federal cockfighting ban contained in § 2156 is applicable to the CNMI based upon various sections of the Covenant. Plaintiff disputes the applicability of § 2156 "only to the extent that [it] [a]ffect[s] a federal cockfight prohibition in the CNMI." (Opp'n 8.) Presently, § 2156 prohibits all animal fighting ventures, which includes fights not only involving birds, but also other mammals. *See* 7 U.S.C. § 2156(a)(1), (f)(4) (2019). Therefore, Plaintiff contests only one portion of § 2156; he does not dispute that other forms of animal fighting, such as dog fights, are prohibited in the CNMI. As the Government noted at the hearing, this carve-out of a particular section of a statute of the larger AIA, is unprecedented. This Court agrees.

A. 7 U.S.C. § 2156

The pertinent version of 7 U.S.C. § 2156 appeared in the Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279, 90 Stat. 417 (Apr. 22, 1976). Section 2156 provided that "[i]t shall be unlawful for any person to knowingly

sponsor or exhibit *an animal* in any animal fighting venture to which *any animal* was moved in interstate or foreign commerce." 7 U.S.C. § 2156(a) (1976) (current version at 7 U.S.C. § 2156) (emphasis added).

However, it had an exception that stated: "Notwithstanding the provisions of subsections (a), (b), or (c) of this section, the activities prohibited by such subsections shall be unlawful with respect to fighting ventures *involving live birds only* if the fight is to take place in a State where it would be in violation of the laws thereof." *Id.* at (d) (emphasis added). State was defined to mean "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States[.]" *Id.* at (g)(4). In other words, cockfighting was federally unlawful in a particular state only if the state also deemed cockfighting unlawful. If a state law authorized cockfighting, then there was no federal prohibition on cockfighting in that state.

In December of 2018, "Congress approved the Section 12616 amendments, under the Agriculture Improvement Act of 2018, PL 115-334, 132 Stat. 4490 (2018)[,]" which eliminated the cockfighting exception such that the ultimate effect was "the prohibition of animal fighting ventures, including live-bird fighting, in every United States jurisdiction[.]" *Club Gallístico de Puerto Rico Inc. v. United States*, 414 F. Supp. 3d 191, 200 (D.P.R. 2019) (citations omitted), *aff'd sub nom. Hernández-Gotay v. United States*, 985 F.3d 71 (1st Cir. Jan. 14, 2021). Currently, § 2156 provides that "[i]t shall be unlawful for any person to knowingly sponsor or exhibit an animal

in an animal fighting venture." 7 U.S.C. § 2156(a)(1) (2019). Animal fighting venture is defined as "any event, in or affecting interstate or foreign commerce, that involves a fight conducted or to be conducted between at least 2 animals for purposes of sport, wagering, or entertainment," and animal is defined as "any live bird, or any live mammal, except man." *Id.* at (f)(1), (f)(4).

B. Analysis Under Section 502(a) of the Covenant

"To determine whether a federal statute applies in the [CNMI], the Court looks to either Section 502(a)(2) or 105 of the Covenant." *Jiang Li Rong v. H.K. Ent. Overseas Invs. Ltd.*, Civil Case No. 05-0048, 2008 U.S. Dist. LEXIS 139144, at *5, 2008 WL 11343485, at *2 (D. N. Mar. I. Apr. 21, 2008) (citing *United States ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749, 756 (9th Cir. 1993)). Section 502 of the Covenant "governs the application to the CNMI of federal laws existing prior to January 9, 1978," while "Section 105 governs the application of federal laws enacted after that date." *Richards*, 4 F.3d at 756. As stated above, § 2156 existed prior to 1978; therefore, section 502 is the pertinent section of the Covenant to determine whether § 2156 applies to the CNMI. Thus, the Court need not address the parties' arguments on whether section 105 of the Covenant precludes application of § 2156 to the CNMI. Additionally, the parties also agreed in their briefs and at the hearing that section 502 of the Covenant governs, as opposed to section 105. (See Opp'n 18; Reply 6.)

Section 502 of the Covenant states:

> (a) The following laws of the United States in existence on [January 9, 1978] and subsequent

> amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:
>
> > (1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;
> >
> > (2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several states[.]

Thus, the test to determine whether § 2156 is presently applicable to the CNMI is whether § 2156 was a law "applicable to Guam" and was "of general application to the several States" in 1978. *See Northern Mariana Islands v. United States*, 279 F.3d 1070, 1073 (9th Cir. 2002). Plaintiff argues that in 1978, § 2156 was neither a law applicable to Guam nor was of general application to the several states such that the law does not apply to the CNMI. (Opp'n 11, 16.)

Appendix B

i. Section 2156 Was Applicable to Guam in 1978

Plaintiff contends that the 1976 cockfight prohibition contained in the Animal Welfare Act was not applicable to Guam in 1978 because Guam did not ban cockfighting, and thus cockfighting was not banned federally. (Opp'n 11.) However, just because § 2156(d) did not create a federal ban on cockfighting in Guam does not mean that the statute was not applicable to Guam. The dispute between the parties appears to arise over the definition of the term "applicable." The Ninth Circuit has defined "applicable to Guam" as used in the Covenant, *Northern Mariana Islands v. United States*, 279 F.3d at 1073-74, and its definition is precedential and carries more weight than Plaintiff's proposed definition of "apply." (*See* Opp'n 12.)

In *Northern Mariana Islands v. United States*, the Ninth Circuit addressed whether the 1986 amendments to the Quiet Title Act, which exempted states from the Quiet Title Act's statute of limitations, applied to Guam, to decide the first element in the test of determining the statute's applicability to the CNMI. 279 F.3d at 1072-73. Ultimately, the Ninth Circuit held that "[b]ecause the Quiet Title Act was in existence on January 9, 1978, and because the Quiet Title Act is applicable to Guam [pursuant to prior Ninth Circuit precedent] and to the States generally, the Quiet Title Act and its amendments are applicable to the CNMI[.]" *Id.* at 1073 (footnote omitted). In arriving at this conclusion, the Ninth Circuit rejected the government's argument that the 1986 Quiet Title Act amendments are not "applicable to Guam" because the amendment

"did not exempt Guam from the Quiet Title Act's twelve-year statute of limitations, as they did the 'States.'" *Id.* The Ninth Circuit noted that "[t]he Covenant's framers considered the term 'applicable to Guam' to mean not only 'applicable with respect to' Guam, but also to mean 'applicable within' Guam.'" *Id.* (citing S. Rep. No. 94-433, at 77 (1975)). Further, the Ninth Circuit clarified that "the amendments, regardless of their treatment of Guam, are law within Guam. Thus, these amendments *are* 'applicable to Guam,' even though the amendments themselves did not exempt Guam from the Quiet Title Act's twelve-year statute of limitations." *Id.* at 1073-74.

Plaintiff's argument that § 2156 was not applicable to Guam is very similar to the government's unsuccessful argument that the Quiet Title Act was not applicable to Guam in *Northern Mariana Islands v. United States*. Just as the Quiet Title Act's amendments were applicable to Guam despite not providing Guam the exemption from the statute of limitations, section 2156 was applicable to Guam even though it did not create a federal ban on cockfighting. *See Northern Mariana Islands v. United States*, 279 F.3d at 1073-74. Plaintiff mischaracterizes § 2156(d) — it did not create a ban on cockfighting; it created a test to determine the federal legality of cockfighting in a specific jurisdiction. The test had to apply to Guam in order for the people of Guam to determine if cockfighting was banned federally. The lack of a ban does not mean that the statute did not apply to Guam. Accordingly, the Court finds that § 2156(d) was "applicable to Guam" in 1978, which satisfies the first element of the test to determine the applicability of § 2156 to the CNMI.

ii. Section 2156 Was a Law of General Application to the Several States

Plaintiff asserts the same argument as to whether § 2156 was not generally applicable to the several States because the statute "distinguished sharply among the states, treating them entirely differently depending on whether cockfighting was or was not already prohibited by their own laws." (Opp'n 17.) As explained above, "the term 'applicable to Guam' . . . mean[s] not only 'applicable with respect to' Guam, but also . . . 'applicable within' Guam.'" *Northern Mariana Islands v. United States*, 279 F.3d at 1073. Thus, it logically follows that "general application to the several States" means "generally applicable with respect to the several States" and "generally applicable within the several States." *See Animal Legal Def. Fund v. U.S. Dep't of Agric.*, 933 F.3d 1088, 1095 (9th Cir. 2019) (citations omitted) ("[T]he same words or phrases are presumed to have the same meaning when used in different parts of a statute."). That is, § 2156 was applicable to all the states even though the federal legality of cockfighting depended upon the state's own treatment of cockfighting. *See Northern Mariana Islands v. United States*, 279 F.3d at 1073-74. The law was applicable to all the states as it determined whether cockfighting was federally legal in each state. Because § 2156 in 1978 was applicable to Guam and was of general application to the several States, so too was § 2156 applicable to the CNMI in 1978. Therefore, pursuant to section 502(a)(2) of the Covenant, the amendments to § 2156, including section 12616 of the AIA, apply to the CNMI.[2]

---

2. Plaintiff also asserted that "Section 12616 of the AlA could not be made applicable to the several States, because, prior to

C. Federal Interest Weighed Against Degree of Intrusion into Internal Affairs

In his final effort to deem section 12616 of the AIA inapplicable to the CNMI, Plaintiff argues that the statute violates the Covenant's right of local self-government because the statute's significant intrusion into the CNMI's cultural, political, and local interests in cockfighting outweighs the purely moral federal interest. (Compl. ¶ 33; Opp'n 23-24.) In response, Defendant argues that the federal ban on cockfighting is not a purely internal affair as the statute only criminalizes cockfighting affecting interstate or foreign commerce (Mot. Dismiss 25); and even if it does affect the CNMI's internal affairs, the federal interests of regulating interstate or foreign commerce, protecting the nation's human values "from the subversion of dehumanizing activities[,]" and controlling the "interstate spread of avian flu." (Reply 8-9 (citations omitted).)

The relevant sections of the Covenant pertaining to these arguments are as follows:

---

its enactment, it was already in violation of the State law in each State to sponsor or exhibit a bird in a fighting venture." (Compl. ¶ 25.) But Plaintiff misunderstands the word "apply," as explained above. *See Club Gallistico de Puerto Rico Inc.*, 414 F. Supp. 3d at 207 ("The fact that every State in the Nation has already banned livebird fights, does not hinder Congress from reinforcing its illegality at the federal level.").

Appendix B

> Section 103.
>
> The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption.
>
> Section 105.
>
> The United States may enact legislation in accordance with its constitutional processes which will be applicable to the Northern Mariana Islands, but if such legislation cannot also be made applicable to the several States the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands. In order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of that authority so that the fundamental provisions of this Covenant, namely Articles I, II and III and Sections 501 and 805, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands.

The Ninth Circuit "interpret[ed] the first sentence of Section 105 to mean that the United States must have an identifiable federal interest that will be served by the relevant legislation." *Richards*, 4 F.3d at 754. It further determined that the subsequent sentence "does not mean

that Congress may not pass any legislation 'affecting' the internal affairs of the CNMI." *Id.* at 755. Rather, "[t]o give due consideration to the interests of the United States and the interests of the Commonwealth as reflected in Section 105," a court should "balance the federal interest to be served by the legislation at issue against the degree of intrusion into the internal affairs of the CNMI." *Id.*; *see Northern Mariana Islands v. United States*, 670 F. Supp. 2d 65, 86 (D.D.C. 2009) (applying such).

In response to the local self-government argument, the Government argues that the *Richards* test should not be employed. (Mot. Dismiss 25.) The Ninth Circuit clarified that the *Richards* balancing test is unnecessary for statutes enacted before the Covenant's 1978 effective date; rather, the test should only be used for legislation enacted after the Covenant's effective date. *See United States v. Chang Da Liu*, 538 F.3d 1078, 1084 (9th Cir. 2008) (citations omitted) (distinguishing pre-1978 federal laws made applicable to the CNMI pursuant to section 501(a) of the Covenant and federal laws enacted after 1978 where courts "balance the federal interests served by the legislation against the degree of intrusion into local affairs"). Because the Court has already determined that § 2156 existed prior to 1978 such that section 501(a) of the Covenant permits its applicability to the CNMI, analysis under the *Richards* balancing test is not warranted. Nevertheless, even under the *Richards* test, this Court concludes the federal interests served by § 2156 do not impermissibly intrude into the CNMI's local affairs.

The United States has several interests in regulating cockfighting. Cockfighting "events have a substantial effect

on interstate commerce." *Club Gallistico de Puerto Rico Inc.*, 414 F. Supp. 3d at 206; *see United States v. Gibert*, 677 F.3d 613, 625 (4th Cir. 2012); *Linsangan v. United States*, Civil Case No. 19-00145, 2020 U.S. Dist. LEXIS 196200, at *8, 2020 WL 6130784, at *3 (D. Guam Sept. 30, 2020), *aff'd*, No. 20-17024, 2021 U.S. App. LEXIS 37902, 2021 WL 6103047 (9th Cir. Dec. 22, 2021). Additionally, cockfighting impacts the spread of avian diseases. *Club Gallistico de Puerto Rico Inc.*, 414 F. Supp. 3d at 206 (first citing 153 Cong. Rec. S451-52 (daily ed. Jan. 11, 2007) (Statement of Sen. Cantwell); and then citing 153 Cong. Rec. E2 (daily ed. Jan. 5, 2007) (Statement of Rep. Gallegly)).[3] Congress also contemplated moral considerations when passing the AIA, *id.* at 207, particularly, "the need to ensure 'humane care and treatment' for animals."[4] *Linsangan*, 2021 U.S. App. LEXIS 37902, at *2, 2021 WL 6103047, at *1 (quoting 7 U.S.C. § 2131).

Conversely, Plaintiff proposes that the CNMI has cultural and political interests in cockfighting, which the federal government is attempting to eradicate with

3. Although Plaintiff argued that the legislative history relating to the interests of preventing the spread of avian flu came from prior amendments to the AWA such that it did not relate to the 2018 amendment, the Court disagrees because the prior legislative history for regulating cockfighting is relevant to the federal ban on cockfighting. *See Club Gallistico de Puerto Rico Inc.*, 414 F. Supp. 3d at 206 (citing legislative history from 2007 for the 2018 AIA amendments).

4. Plaintiff contends that the government's interest is "purely moral[.]" (Opp'n 23-24). However, he mistakenly and notably overlooks the government's legitimate and concrete interests in regulating interstate commerce and the spread of avian flu.

colonialist overtones. (Opp'n 24-27; *see* Compl. ¶ 32 (stating that the cockfighting ban "prohibit[s] and criminaliz[es] a popular and traditional recreational activity").) At the motion to dismiss phase, the Court accepts Plaintiff's factual allegations as true; so, assuming that cockfighting is deeply entrenched in the CNMI's internal affairs, the question is whether that outweighs the federal interests. This is a legal issue such that if the Court determines that the federal interest in banning cockfighting outweighs the degree of intrusion into the CNMI's internal affairs, the motion to dismiss must be granted. *Cf. Linsangan*, 2021 U.S. App. LEXIS 37902, at *2, 2021 WL 6103047, at *1 (affirming grant of summary judgment in part because the plaintiff's "evidence of cockfighting as a cultural practice both predating and outside of American history does not show that cockfighting is objectively deeply rooted in our Nation's tradition").

The Ninth Circuit and other district courts have found that the federal interests outweigh the degree of intrusion into the CNMI's internal affairs in some circumstances. *See Richards*, 4 F.3d at 755 (holding that a federal audit did not violate the CNMI's right to self-government because the U.S. "has a significant interest in ensuring that federal funds are being used properly" and CNMI's internal fiscal interest was "inextricably link[ed]" to federal interests); *Northern Mariana Islands v. United States*, 670 F. Supp. 2d at 87-90 (finding that the federal interests of effective border control and national security and homeland security issues in applying federal immigration law did not impermissibly intrude on the CNMI's local labor matters that are inseparable from foreign affairs and security); *Camacho v. Northern Mariana Islands*,

Civil Action No. 05-0043, 2008 U.S. Dist. LEXIS 144403, at *5, 2008 WL 11405934, at *2 (D. N. Mar. I. Sept. 30, 2008) ("[B]alanc[ing] the interests of [the federal district court's] ability to enforce validly-rendered judgments versus the right of the [CNMI] Legislature to fulfill its statutory duties, the court finds that the balance tilts overwhelmingly in favor of protecting the independence of the federal judiciary and of providing federal litigants in the [CNMI] a meaningful, timely avenue to collect judgments."); *Olopai v. De Leon Guerrero*, CIV. A. No. 93-0002, 1993 U.S. Dist. LEXIS 13839, at *41, 1993 WL 384960, at *13 (D. N. Mar. I. Sept. 24, 1993) ("Because the CNMI rebates most of the taxes it receives while relying so heavily on federal financial assistance, it cannot be said that requiring public disclosure of information related to those rebates impermissibly intrudes on the internal affairs of the CNMI."); *Chang Da Liu*, 538 F.3d at 1084 ("[T]he balance tips in favor of applicability because the federal government's significant interest in combating international sex trafficking through United States territories outweighs the intrusion into the CNMI's local affairs."). Here, the federal interests in regulating interstate commerce, preventing the spread of avian diseases, and ensuring humane treatment of animals, outweigh the degree of intrusion into the internal affairs of cockfighting. Therefore, the AIA dos not impermissibly intrude on the local affairs of the CNMI.

D. Dismissal with Prejudice

At the hearing, Plaintiff requested leave to amend if the motion to dismiss was granted because he stated that he could plead more facts regarding the importance of cockfighting in the CNMI. However, as explained

above, weighing the federal interest to the degree of intrusion into the CNMI's local affairs per the *Richards* test is unnecessary for statutes enacted before 1978. *See Chang Da Liu*, 538 F.3d at 1084 (citing *Richards*, 4 F.3d at 755). Nevertheless, even applying the *Richards* test, Plaintiff's proffer of providing more facts about how deeply entrenched cockfighting is the CNMI would not cure the deficiency. Such amendment would be futile because the federal interests in regulating interstate commerce, preventing the spread of avian flu, and ensuring the humane treatment of animals outweigh the degree of intrusion into the internal affairs of the CNMI as it relates to the tradition of cockfighting.[55]

IV. CONCLUSION

Based on the foregoing, Defendant's Motion to Dismiss is GRANTED and Plaintiff's complaint is DISMISSED with PREJUDICE.

IT IS SO ORDERED this 17th day of November, 2022.

/s/ Ramona V. Manglona
RAMONA V. MANGLONA
Chief Judge

---

5. Moreover, because this case is at the motion to dismiss phase, the Court accepted as true well-pleaded facts in the complaint, including Plaintiff's allegation that: "[c]ockfighting [is] a traditional local recreational activity" that is also "a quintessential 'internal affair' of the Northern Mariana Islands." (Compl. ¶ 30.)

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED NOVEMBER 5, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

D.C. No. 1:22-cv-00008
District of the Northern Mariana Islands, Saipan

ANDREW SABLAN SALAS,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Filed November 5, 2024

ORDER

Before: PAEZ, M. SMITH, and KOH, Circuit Judges.

The panel has unanimously voted to deny appellant's petition for rehearing. Judge M. Smith and Judge Koh have voted to deny the petition for rehearing en banc. Judge Paez has recommended that the petition for rehearing en banc be granted. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petitions for rehearing and rehearing en banc are DENIED.