HAWAIʻI CIVIL RIGHTS COMMISSION
KOMIKINA PONO KĪWILA O HAWAIʻI

830 PUNCHBOWL STREET, ROOM 411, HONOLULU, HI 96813 ·PHONE: (808) 586-8636 · FAX: (808) 586-8655 · TDD: (808) 586-8692

Thursday, March 23, 2023 at 9:30 a.m.
Conference Room 016 & Videoconference

To: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Members of the Senate Committee on Judiciary

From: Liann Ebesugawa, Chair
and Commissioners of the Hawaiʻi Civil Rights Commission

Re: S.C.R. No. 102/ S.R. No. 112

The Hawaiʻi Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawaiʻi's laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawaiʻi constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

HCRC supports S.C.R. No. 102 and S.R. No. 112 which encourage the United States Congress to facilitate a path to citizenship for immigrants from parties to the Compacts of Free Association.

Compact of Free Association nations include the Federated States of Micronesia (Yap, Pohnpei, Chuuk, Kosrae) (FSM), the Republic of the Marshall Islands (RMI), and the Republic of Palau. After WWII, these COFA nations were part of the Trust Territory of the Pacific Islands, with the Micronesian Trust region under U.S. trusteeship, with trust responsibility for economic development and providing the infrastructure for self-reliance. As trustee, the U.S. did little to build health and educational infrastructure in the region, instead creating increased economic dependence and degrading the environment. From 1946-1958, the U.S. conducted 67 nuclear tests in the Marshall Islands, with above-ground testing on Bikini and Enewetak islands, including detonation of the largest bomb (codenamed "Bravo") ever tested by the U.S., with a magnitude of over 1,000 times of the Hiroshima bombing.

The U.S. has a significant historical and continuing military interest and presence in the region. In the 1980s the FSM and RMI entered into compacts of free association with the U.S., followed by Palau in the 1990s. Under these bilateral treaties, the U.S. is allowed exclusive rights to operate armed forces and negotiate for bases in the COFA nations, to the exclusion of other foreign powers. Citizens of the COFA nations can travel freely to live and work in the U.S., and are eligible for some, but not all, benefits that U.S. citizens can receive.

As "non-qualified" aliens, COFA migrants are ineligible for Medicaid and other federal welfare programs, and unlike other legal immigrants, are not eligible for benefits even after residing in the U.S. for five years. Of course, children born in the U.S. are U.S. citizens.

Driven by poor health conditions (including some due to the impact of nuclear testing and contamination) and insufficient health care, displacement due to nuclear testing and contamination, and weak economies in their homelands, the number of COFA migrants in Hawai‘i has dramatically increased over the past decade.

However, citizens of COFA nations have a unique status as nonimmigrants who may live and work in the U.S. indefinitely without a visa. They may be deported. COFA nations are different from U.S. territories such as Guam, the Northern Mariana Islands, the U.S. Virgin Islands or Puerto Rico, whose citizens are U.S. citizens. COFA resident status also differs from that of American Samoa, whose citizens are U.S. nationals and may apply for U.S. citizenship.

There is no path to citizenship for citizens of COFA nations, despite U.S. involvement since WWII. HCRC supports passage of S.C.R. No. 102 and S.R. No. 112.

JOSH B. GREEN, M.D.
GOVERNOR

SILVIA LUKE
LIEUTENANT GOVERNOR

JADE T. BUTAY
DIRECTOR

WILLIAM G. KUNSTMAN
DEPUTY DIRECTOR

JOVANIE DOMINGO DELA CRUZ
EXECUTIVE DIRECTOR

IN REPLY, REFER TO:
OCS 23.1110

STATE OF HAWAI'I
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA
OFFICE OF COMMUNITY SERVICES
830 PUNCHBOWL STREET, ROOM 420
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8675 / Fax: (808) 586-8685
Email: dlir.ocs@hawaii.gov

March 21, 2023

To: The Honorable Karl Rhoads, Chair,
The Honorable Mike Gabbard, Vice Chair, and
Members of the Senate Judiciary Committee

Date: Thursday, March 23, 2023
Time: 9:30 a.m.
Place: Conference Room 016, State Capitol & Videoconference

From: Jovanie Domingo dela Cruz, Executive Director
DLIR – Office of Community Services

Position: Support

Re: SCR 102 / SR 112 – Citizenship for Immigrants from COFA Countries

I. OVERVIEW OF PROPOSED RESOLUTIONS

SCR 102 and SR 112 encourage the United States Congress to facilitate a path to citizenship for immigrants from the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands. Also, the resolutions request that the United States Immigration and Customs Enforcement will refrain from deporting the aforementioned immigrants.

II. CURRENT LAW

The United States administered the Micronesian islands as a United Nations Trustees after World War II, up until 1986. The Commonwealth of the Northern Mariana Islands (known mostly by its largest island, Saipan) broke away and has become a US territory.

The other three jurisdictions – the Federated States of Micronesia (FSM), the Republic of the Marshall Islands, and the Republic of Palau – entered into separate Compacts of Free Association with the United States, starting in or around 1986. Those compacts continue up to the present. The compact between

the US and the Marshall Islands and the compact between the US and the FSM are up for renewal soon. See the Compact of Free Association Amendment Act of 2003, Public Law 108-188, 117 Stat. 2720 (Dec. 17, 2003). (The compact between the US and Palau is on a different timetable.)

These three countries have sovereignty and are members of the United Nations and other international organizations. However, these countries are economically disadvantaged, and they have small populations.

Micronesians, especially those from the FSM and the Marshall Islands, have come to the United States and are living here in Hawaii, as well as several areas of concentration on the US continent, particularly in the Northern Mariana Islands, Guam, California, Washington State, and in midwestern states such as Arkansas, Missouri, and Iowa, where many of them work at meatpacking industry. At present, probably one third of all FSM and Marshall Islands citizens have left the FSM and the Marshalls and are living long-term in these US jurisdictions.

Under the compacts, citizens of these countries may freely enter and stay in the United States and work here, for unlimited periods, as **non-immigrants** under US immigration law. US immigration law does not provide for immigrant quotas for citizens of the "COFA countries." The only way COFA citizens can naturalize as US citizens is through one or another of a couple of very narrow exceptions, primarily (1) service in the US military and (2) marriage to a US citizen.

When COFA citizens started coming to the United States in large numbers in the 1980s and early 1990s, they were qualified to receive virtually any benefit that a US citizen could receive, such as Medicaid and welfare benefits of various kinds.

However, in 1996, the US government adopted its "welfare reform" law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104-193. That law clamped down on welfare for everyone who was in poverty and living in the United States. The law also disqualifies all people who are not US citizens from the vast majority federal welfare benefits, unless they are in the US on immigrant visas and have been lawfully present for more than 5 years.

Micronesians living in the US on the basis of a COFA visa never qualify for these benefits, because they are deemed "non-immigrants," even if they've been living in the US for decades, which many of them have been. Most importantly, the "welfare reform" act resulted in Micronesians losing Medicaid coverage. Hawaii's Congressional delegation was able to shepherd legislation through the Congress to reinstate these benefits as a partial carve-out from the adverse effects of the "welfare reform" law. However, the lingering effects of the "welfare reform" act continue to undermine Micronesians' access to benefits.

III. COMMENTS ON THE PROPOSED RESOLUTIONS

The Office of Community Services was created by the Legislature by Act 305, SLH 1985, codified as Chapter 371K, Hawai'i Revised Statutes. The mission of OCS is to eliminate the causes and conditions of poverty for economically disadvantaged persons, immigrants, and refugees in the State of Hawaii, by facilitating and enhancing the development, delivery, and coordination of effective programs for these persons and communities to enable them to achieve and maintain greater economic self-sufficiency and integration into Hawaii's society.

OCS believes that COFA-country citizens who have been residing in the United States and wish to become citizens of the United States should be allowed to do so. As the history of the relationship between the United States and "the COFA countries" described above makes clear, Micronesians have been disabled from access to US citizenship as a result of complications in that relationship. That disability harms the Micronesians who live in the United States.

Negotiations between the United States and the FSM and the Marshall Island are ongoing right now for renewal of the Compacts of Free Association. Now is a very appropriate time for the United States to agree to a revision of the citizenship provisions of the Compacts.

For these reasons, the Office of Community Services supports these resolutions.