



Office of the Vice Speaker

TINA ROSE MUÑA BARNES

I Mina'trentai Sais Na Liheslaturan Guåhan

36th Guam Legislature

GUAM CONGRESS BUILDING
163 CHALAN SANTO PAPA
HAGÁTÑA, GUAM 96910
TEL 671-989-5681

SENATORMUNABARNES@GUAMLEGISLATURE.ORG

Testimony on House Res. 279

Testimony before the House Committee on Natural
Resources, Office of Insular Affairs

Full Committee Hearing Regarding the
“Insular Cases Resolution”

United States House of Representatives

Wednesday May 12, 2021

Tina Rose Muña Barnes

Vice Speaker, 36th Guam Legislature
Chairwoman, Committee on Rules,
Public Accountability, Human Resources,
Guam Buildup, *Hagåtña* Revitalization,
Regional Affairs, Public Libraries,
Telecommunications & Technology



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Hafa Adai! My name is Tina Rose Muña Barnes, and I am the Vice Speaker of the 36th Guam Legislature. My Committee held a public hearing last week on Resolution 56-36, a measure I introduced in support of House Resolution 279. My testimony today is, in part, based on the testimony presented before my Committee,

First and foremost, I would like to express my heartfelt thank you and *Un Dangkolo Na Si Yu'os Ma'ase* (thank you) to Chairman Grivalja and Vice Chairman Gregorio Killili Sablan for their leadership in authoring House Resolution 279 along with its many cosponsors and for convening this hearing.

My grandfather is the late Colonel Juan Muna, for whom the Guam National Guard's Headquarters, Fort Juan Muna, bears his name to honor his contributions to the US Armed Forces during World War II. I am also the proud wife of an Air Force Veteran, the mother of an Active-Duty Air Guardsman, mother-in-law of an Air Guard Veteran, and lastly a grand-mother-in-law of a deployed Army Soldier.

As you may recall, when COVID-19 swept our nation, and made its way onto the USS Theodore Roosevelt, the people of Guam responded to protect the lives of thousands of sailors who took an oath to protect both you and me¹. Yes, there was fear and anxiety within our community as we took extraordinary action to help the TR and eliminate any further spread into our community. We did so because our ancestors taught us the Ancient *CHamoru* spirit of *Inafa'maolek*, where we must step up, when our community is in need – its literal definition means “to make good.”² At that time, it was not the people of Guam vs. the US Navy, it was the people of Guam *alongside* our fellow Americans, *for* our fellow Americans.

What makes me proud to call myself an American, is the fact that the country is capable of recognizing its past mistakes, and it can take action to *make amends* to those who were harmed or negatively impacted. Today, House Resolution 279, which calls the *Insular Cases* racist, undemocratic, unconstitutional, unamerican, and having no place in the America we know and love, is the first and important step to make amends and heal the millions of our fellow Americans who have been impacted by the decisions and harmful language used by the U.S. Supreme Court. As my good friend, Senator Paul Strauss, who is DC's Shadow Senator to the U.S. Senate testified last week³, House Res. 279 “express(es) the overdue opinion that the racist ideology expressed in the Insular Cases is an idea that belongs on the dustbin of history, along with so many other terrible, racist ideas – be it slavery, racial segregation, Jim Crow laws, fascism, and the types of discrimination on the basis of religion and other ideologies that no longer deserve a place in 21st century, civilized society.”

But we can't stop there. This resolution, as the panel of leading legal experts testified at my

¹ Baldor, Lolita C. “Carrier Theodore Roosevelt, Sidelined in Guam by Coronavirus, Heads Back to Sea This Week.” *The Associated Press*, 19 May 2020.

² Perez-Iyechad, Lilli. “Inafa'Maolek: Striving for Harmony.” *Guampedia*.

³ Strauss, Paul. “Testimony on Resolution 56-36 (COR).” 36th Guam Legislature. Hagatna, Guam. 5 May 2021. Testimony.



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hearing stated, it sends a strong message, but is non-binding on the courts. We cannot call ourselves the land of the free, but allow the *Insular Cases* to set the precedence of jurisprudence. I would like to reflect on the testimony of your former colleague, my former Congressman and former President of the University of Guam, Dr. Robert Underwood⁴. We are taking the first step by calling the *Insular Cases* for what it is, but this is where I need your help. As a local lawmaker, I cannot single-handedly change the relationship between the United States and its Unincorporated Territory. Members of this Committee, I humbly urge you to exercise the Plenary Powers granted to you, to make right by the people of Guam.

You *all* have made strides, by temporarily granting Guam parity with our fellow Americans by raising our Medicaid allotments⁵ and increasing the federal Medicaid rates, through the FY 2020 appropriations and the Families First Coronavirus Relief Act. But these are temporary and set to expire. While I am also grateful for the numerous relief packages passed by this body, and the continued advocacy of Guam's Delegate, Mr. San Nicolas, the requirement for a local match, in a time where our main economic driver, *tourism*, is at a standstill, I echo our Governor Lourdes Leon Guerrero's sentiments that "this high match requirement has prevented us from availing of much-needed federal funds."⁶

I also had the honor of hearing from Attorney Rodney Jacob, who hails from Chairman Grivalja's District in Arizona and represented Katrina Schaller in the District Court of Guam. Ms. Katrina Schaller of Barrigada, Guam, filed a lawsuit in the District Court of Guam in December of 2018. Katrina and her twin sister Leslie Schaller both live with myotonic dystrophy, which severely inhibits muscle function and other critical aspects of daily life. Leslie is able to live independently in Pennsylvania due to the aid she receives from SSI. Katrina however is ineligible for the same SSI benefits received by her twin simply by virtue of her geographic location.

As Attorney Rodney Jacob, who serves as Katrina Schaller's counsel, eloquently stated: "It is contrary to common sense, human decency, and sound public policy to deny public benefits to all other American citizens with disabilities living on Guam."⁷ While Katrina won her case in the U.S. District Court of Guam last June, the U.S. federal government has appealed to the Ninth Circuit, which has paused the case pending the outcome of a similar case from Puerto Rico, which will be heard by the U.S. Supreme Court. As a result of this shocking injustice, and at the request of my good colleague, Senator Mary Camacho Torres⁸, who is the daughter of Guam's first elected Republican Governor, and founder of the Republican Party of Guam, I was honored to amend my resolution to seek parity on this matter. Senator Torres and I may hail from different political parties, but for our People, we can work together. I hope you all share this same desire.

Going back to the testimony of Dr. Underwood, and echoed by our Governor, the Legal

⁴ Underwood, Robert. "Testimony on Resolution 56-36 (COR)." 36th Guam Legislature. *Hagåtña*, Guam. 5 May 2021. Testimony.

⁵ Medicaid and CHIP Payment and Access Commission. *Medicaid and CHIP in Guam*. Washington, DC, 2021. Print.

⁶ Leon Guerrero, Lourdes. Letter to Gretchen Sierra-Zorita. 5 May 2021. BRIEF ON SIGNIFICANT FEDERAL POLICIES AFFECTING GUAM. *Hagåtña*, Guam.

⁷ Jacob, Rodney. "Testimony on Resolution 56-36 (COR)." 36th Guam Legislature. *Hagåtña*, Guam. 5 May 2021. Testimony.

⁸ Torres, Mary Camacho. Letter to Vice Speaker Muña Barnes. 7 May 2021. Suggested Language Relative to SSI Inclusion in Resolution No. 56-36 (COR) *Hagåtña*, Guam.



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Scholars, and Community Advocates, I would like to humbly further request this committee, that Congress further exercise its Plenary Powers to begin the process to correct this wrong. Congress could begin the process of creating a binding political status reconciliation process tailored for each Territory. I am a proud daughter of Guam, but I while I prefer a closer relationship with the United States, I believe that we must begin this conversation, will all of you here today, and all those who live on Guam, so that we can figure out our future, and not push this issue under the rug.

I also received testimony from human rights lawyer and law scholar Julian Aguon⁹, whose support for H.Res.279 was far more qualified than the other legal experts. While he denounces the racist and imperialist origins of the Insular Cases, Attorney Aguon argues that they nevertheless provide the basic analytical framework that later federal courts have used to protect the indigenous peoples of the territories, in particular the peoples of the CNMI and American Samoa. He argues that in certain cases, like *Wabol v. Villacrusis* and *Tuaua v. United States*, the Insular Cases were not used as a sword (against the peoples of the territories) but instead as a shield (to protect their lands, cultures, and self-determination). For instance, for all its flaws, the impracticable and anomalous test, which developed out of the doctrinal flexibility created by the Insular Cases, has been used to ward off challenges to things like ancestry-based land alienation restrictions. Without the doctrinal space created by these cases, programs like these would have almost certainly been struck down. In sum, Attorney Aguon argues that in our zeal to condemn these cases, we can't ignore the fact that in more recent times they have been repurposed to benefit the indigenous peoples in the territories. Finally, Attorney Aguon argues that until we are willing to do the much harder work of reconstruction (that is, establishing an alternative doctrinal path to protect the indigenous peoples of the territories), just denouncing the Insular Cases is not nearly enough.

In closing, I would like to reflect on the U.S. Navy Report on Guam. It outlines that the Navy was tasked with being the Administrator of Guam, simply because of our Geographical location, and its importance to the Navy. The Navy outlined its mission in a tone similar to the *Insular Cases*, by stating that "In a little less than 49 years the Naval administration of Guam had guided a people from illiteracy, peonage, and apathy to where in conservative estimate and appraisal, it had been educated to accept and intelligently to discharge the responsibilities (as well as the privileges) of citizenship¹⁰.

I come before you today, as a leader, a proud American and a daughter of Guam. My family's contribution to this nation, and my decades of service to my People, taking an oath every two years to uphold this same constitution, asking you to give me the right to Manifest my own destiny.

I look at my entire career, as an athlete, an Investigator, a Director, and a Senator for 15+ years -- I have lived a full life, blessed with a great family, great friends, and a great career. For me -- my goal now is to make sure that my children and our future generations are no longer subjected by these injustices. We have fought alongside you in wars, we are proud to be home to the highest enlistment rates into the U.S. Armed Forces. I ask you today, why

⁹ Aguon, Julian. "Testimony on Resolution 56-36 (COR)." 36th Guam Legislature. *Hagåtña*, Guam. 10 May 2021. Written Testimony.

¹⁰ United States. Dept. of the Navy. Office of the Chief of Naval Operations. *U.S. Navy Report on Guam 1899-1950*. United States Government Printing Office. Washington, D.C. 1951. Print.



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can't we be equals during peacetime? With the partnership and support of all of you whom I have the honor of testifying before, I will keep fighting to meet my goal.

On behalf of the People of Guam, Thank you, Mr. Chairman.