



**STATEMENT
OF**

KELLY RYAN

**Acting Deputy Assistant Secretary for Policy
Office of Immigration and Border Security
Department of Homeland Security**

Before

**The House Committee on Natural Resources
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs**

**“Implementation of Public Law 110-229, the Consolidated Natural Resources Act, and Legislative
Hearing on H.R. 1466”**

**Washington, DC
July 14, 2011**

Chairman Fleming, Ranking Member Sablan, and other distinguished Members of the Subcommittee. Thank you for the opportunity to testify today on the efforts that the Department of Homeland Security (DHS) has undertaken to implement Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) (Pub. L. No. 110-229). DHS recognizes the importance of the implementation of Title VII of the CNRA to the United States and to the people of the Commonwealth of the Northern Mariana Islands (CNMI) and Guam. Since the enactment of this

historic legislation, DHS and its components have been working hard together and with our interagency partners to ensure that we implement the CNRA in a manner that will minimize any adverse effects on the CNMI. Further, since DHS last testified in May 2009, important steps have been taken toward implementation of federal immigration law in the CNMI and the transition program, which began on November 28, 2009 (the “transition program effective date”).

Because the CNRA has provisions that affect Guam and the CNMI to differing extents, I would like to first address those provisions that affect both territories, and then will discuss those provisions that are unique to the CNMI.

The Guam-CNMI Visa Waiver Program

An issue of great significance to both the CNMI and Guam is the Guam-CNMI Visa Waiver Program (VWP). The CNRA replaced the preexisting Guam VWP with a combined Guam-CNMI VWP that allows admission to Guam, the CNMI, or both for a period up to 45 days. As was the case with the former Guam VWP, the program does not provide for onward travel to the rest of the United States. The Guam-CNMI VWP is a separate program under Section 212 of the Immigration and Nationality Act (INA), and is distinct from the Visa Waiver Program authorized for the entire United States (including Guam and the CNMI) by Section 217 of the INA. Some countries are participants in both programs. A visitor from one of those countries arriving in Guam or the CNMI may choose to travel under either of the programs, but must comply with all the conditions of whichever program is chosen. DHS issued an interim final rule, Implementation of the Guam-CNMI Visa Waiver Program, on January 16, 2009 and is developing a final rule for the program.

In recognition of the CNMI’s reliance on visitors from China and Russia, Secretary Napolitano announced on October 21, 2009 her decision to exercise her discretionary authority to parole into the CNMI-only, on a case-by-case basis, eligible visitors for business or pleasure who are nationals of the People’s Republic of China (PRC) and Russian Federation (Russia).

Provisions Affecting the CNMI Only

Certain provisions of the CNRA affect the CNMI only. DHS has worked diligently with its federal and local partners and stakeholders in developing our approach to implementing the CNRA in the CNMI. Through working with the community and both private and public parties, DHS has identified groups of individuals who may not necessarily fall within the INA classifications and for whom the CNMI classifications authorized by the CNRA may not be appropriate. To address these challenges, in November 2009, USCIS implemented a policy under which USCIS favorably considers members of four designated groups for a grant of parole under INA section 212(d)(5), subject to case by case review: CNMI permanent residents, immediate relatives of CNMI permanent residents, spouses and children of deceased CNMI permanent residents, and immediate relatives of citizens of the Freely Associated States. Currently, DHS is actively considering additional policy options that, it is hoped, will further help to reduce the uncertainty associated with the ongoing transition to federal immigration law. In so doing, DHS is fully aware of the challenges facing the CNMI economy and considers it a priority and goal to support existing businesses when developing policies and regulations to implement the legislation.

As part of our implementation efforts, DHS has promulgated a number of regulations to set forth the processes and procedures for seeking federal immigration status in the CNMI. The CNMI E-2 Nonimmigrant Investor Notice of Proposed Rulemaking was published in September 2009. USCIS received and reviewed public comments and published a Final Rule on December 20, 2010. This

rule, which took effect on January 19, 2011, fully implements the CNRA provision that provides during the transition period a nonimmigrant status under U.S. immigration law for certain foreign investors in the CNMI who had been previously granted long-term investor status by the CNMI government. In January of this year, USCIS conducted outreach on the regulation in Saipan and is currently accepting applications for this program from eligible investors and their spouses and children.

In the fall of 2009, DHS and the Department of Justice and its Executive Office for Immigration Review published an interim final rule to update the current immigration regulations to ensure they reflect the changes in immigration law made by the CNRA. Typically referred to as the “conforming rule,” this interim final rule amended DHS and DOJ regulations to conform them to the CNRA, including in the areas of employment verification and asylum. DHS and DOJ currently are working toward issuance of a final rule. In October 2009, DHS published the Transitional Worker Classification Interim Final Rule. As a result of pending litigation, those regulations were enjoined. DHS is working toward publication of the Final Rule, which was submitted to the Office of Management and Budget (OMB) for official review on June 15, 2011; We are well aware of the interest and concern among CNMI stakeholders about the issuance of this rule, particularly in light of the upcoming statutory expiration on November 27, 2011 of large numbers of “grandfathered” CNMI work authorization permits.

Implementation of the CNRA

DHS has designated experienced personnel within its relevant components to serve as points of contact and to lead teams composed of Headquarters and Field Office staff to implement the transition to federal immigration law in the CNMI. DHS and its interagency partners, including the Departments of the Interior, Justice, Labor and State, periodically meet to coordinate efforts and identify issues for resolution in the CNMI. As of April 2011, all five departments (Departments of the Interior, Homeland Security, Justice, Labor and State) had completed and signed the Memorandum of Agreement required under Section 702 (a) of the CNRA. U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS) representatives have participated in meetings in Washington and in the CNMI with representatives of the Government of the CNMI and the CNMI private sector. DHS has submitted to Congress the required resource report on implementing Title VII and in support of the military build-up in Guam and, in doing so, identified some of the challenges that remain in implementing the legislation. In addition, DHS has met with the Delegates from Guam and the CNMI, the Governors of both territories and their staffs, as well as other elected officials and interested parties. Below is a sample of the most significant dates and meetings that have taken place with regard to implementation of the CNRA:

- January 2009 – A delegation from DHS Headquarters, Richard Vigna, CBP Director of Field Operations for San Francisco District, and Bruce Murley and Rocky Miner, the Port Directors for Honolulu and Guam, who oversee the Port in the CNMI, traveled to Guam and the CNMI to conduct public outreach and meet with the territorial governments in support of the publication of the Guam-CNMI VWP Interim Final Rule.
- October 2009 – A CBP delegation that included Assistant Commissioners Thomas Winkowski and Charles Armstrong visited Guam and the CNMI in preparation for the November 28, 2009 transition program effective date. During this visit, the CBP delegation met with both the Governor of Guam and the Governor of the CNMI regarding implementation of the CNRA.

- February 23, 2011 – Meeting between USCIS Director Alejandro Mayorkas and CNMI Governor Benigno Fitial, CNMI Attorney General Edward Buckingham, and other CNMI government representatives. The meeting focused on issues related to immigration status and grants of parole in the CNMI.
- February 24, 2011 – Meeting between CBP Deputy Commissioner David Aguilar, DHS Assistant Secretary for Intergovernmental Affairs Betsy Markey and CNMI Governor Fitial.
- February 24, 2011 – Meeting between ICE Executive Associate Director for Enforcement and Removal Operations (EAD), Gary Mead, CNMI Governor Fitial, CNMI Attorney General Buckingham, and other CNMI government representatives. At this meeting, Governor Fitial and EAD Mead reached an agreement in principle for an Intergovernmental Service Agreement (IGSA) to obtain ICE detention space in the CNMI Department of Corrections facility at a bed day rate of \$89.
- April 2011 – Meeting between Acting Deputy Assistant Secretary for Policy Kelly Ryan and Governor of Guam Eddie Calvo. The purpose of the meeting was to discuss DHS's implementation of the Guam-CNMI VWP.

DHS implementation efforts have involved establishing a full-time presence on the ground in the CNMI. Beginning in March 2009, USCIS opened an Application Support Center (ASC) on Saipan to provide information to the public and conduct interviews on the island, including for adjustment of status and naturalization.

On November 28, 2009, CBP began processing flights in the CNMI under U.S. immigration laws. CBP has officers in Saipan and Rota to conduct the inspection of passengers on flights arriving from foreign countries and to perform a departure control screening on flights traveling to other U.S. destinations.

On November 28, 2009, ICE Enforcement and Removal Operations (ERO), ICE Office of the Chief Counsel (OCC) and Homeland Security Investigations (HSI) opened offices on the island of Saipan. Both ERO and HSI are responsible for enforcing U.S. immigration laws in the CNMI. ERO is responsible for detention and removal of aliens unlawfully present in the CNMI, while HSI conducts investigations in such programmatic areas as narcotics, money laundering, immigration benefit and document fraud, wire fraud, and human smuggling and trafficking.

As a result of the February 24, 2011 meeting between ICE ERO Executive Associate Director Mead and CNMI Governor Fitial, the CNMI and ICE agreed to sign an Intergovernmental Service Agreement (IGSA) to provide ICE detention space in the CNMI Department of Corrections facility at a bed day rate of \$89. The IGSA was signed in April 2011 between ICE and the CNMI Department of Corrections. ERO began housing detainees at the Department of Corrections facility on June 6, 2011. ERO has funding for 20 beds at the facility through the end of fiscal year 2011.

H.R. 1466

H.R. 1466, introduced on April 8, 2011, would provide CNMI-only status for four designated groups of aliens in the CNMI: (1) individuals born in the Northern Mariana Islands between January 1, 1974 and January 9, 1978; (2) individuals who, as of May 8, 2008, held permanent resident status under a provision of CNMI law; (3) spouses and children of these two groups; and (4) individuals who, as of May 8, 2008, were immediate relatives of U.S. citizens (regardless of age; i.e., including parents of U.S. citizen children who cannot petition for their parents under U.S. immigration law until the children are 21 years of age). To be eligible, individuals must be otherwise admissible to the United States and have resided in the CNMI both on the transition program effective date and on the date

of enactment of H.R. 1466. The bill provides status as a permanent resident of the CNMI only during the transition period (with no resulting travel privileges to any other part of the United States), followed by an opportunity for the first three of the four designated groups to apply for adjustment to U.S. lawful permanent resident status during calendar year 2015.